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STATUS OF THE IMPLEMENTATION OF THE PIGFORD V. GLICKMAN SETTLEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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STATUS OF THE IMPLEMENTATION OF THE *PIGFORD* V. *GLICKMAN* SETTLEMENT

TUESDAY, SEPTEMBER 28, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 4:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order. This is the Judiciary Subcommittee on the Constitution. I'm Steve Chabot, the Chairman of the Committee. I welcome everyone here this afternoon and I'd like to thank everyone for being here today for this very important hearing.

However, I feel that it's necessary to qualify that statement by saying that it's unfortunate that we even have to be here because time after time it appears that the wrong choices have been made by those in positions of authority. I trust that today's hearing will enable this Subcommittee to examine those issues that are of utmost importance and will enable us to make a substantive and series of substantive recommendations to remedy the injustices that have occurred.

I would like to take this opportunity to recognize a few people: Arianne Callender of the Environmental Working Group; Mr. John Boyd, with the National Black Farmers Association; Mr. Thomas Burrell, with the National Black Farmers and Agriculturists Association; and Shirley Sherrod, with the Federation of Southern Cooperatives, for taking the time to provide this Committee with information. Through these individuals and others, it has come to this Subcommittee's attention that a second hearing is necessary in order to take additional testimony from additional witnesses, and some of the people that I just mentioned may very well be witnesses at the next hearing. I've directed my staff to investigate the scheduling of a second hearing and we will work with folks to make sure that that's at as convenient a time as possible.

When slavery was ended in the United States, our Government made a promise, a restitution of sorts, to the former slaves that they would be given 40 acres and a mule. While we can debate whether this allotment was intended to compensate the freed slaves for their involuntary service, what is clear is that this promise was intended to help freed slaves be independent economically and psychologically as holders of private property.

What also is clear is that the very Government that made this promise through the People's Agency established back in 1862 under President Abraham Lincoln, the Government has sabotaged it by creating conditions that make sovereign and economically viable farm ownership extremely difficult.

This is the backdrop against which we will be examining the issues before us today. We are here to consider the administration of the 1999 Consent Decree, which resulted from the civil rights case of *Pigford* v. *Glickman*.

The Consent Decree was developed to provide some monetary restitution to black farmers who were victims of racial discrimination carried out by the United States Department of Agriculture, the very institution designated to assist them, supposed to be done in a swift and timely manner.

Rather than help black farmers, this agency has been instrumental in causing their decline. Since the early 1900's the number of black farmers has decreased from nearly one million to fewer than 18,000. During this time, when black farmers tried to seek justice by filing discrimination complaints with the USDA, the United States Department of Agriculture, their claims were either ignored or dismissed, most without an investigation.

Ultimately, several of these black farmers, all whose claims of racial discrimination had been disregarded by the USDA, filed a class action suit against that agency. After extensive negotiations a settlement was reached that established a process to have all the discrimination claims heard in a timely manner. Yet, in an ironic twist the process that was created to provide a forum for those whose claims had been shut out has itself shut out nearly two-thirds of all who wanted to have their discrimination claims heard.

Whether or not each of these claimants would have prevailed on the merits is not the issue before us today. The process should have at least allowed them the opportunity to be heard. We cannot in good conscience allow a settlement that leaves out more potential claimants than it allows in to go unexamined or remain unsolved.

All the parties involved are responsible for developing a solution, whether it be modifying the current Consent Decree, creating a subsequent Consent Decree, or some other process, to stop the destructive cycle from reoccurring. The first step in this process should be to provide the nearly 65,000 people who were denied entry into the process the opportunity to at least be heard. We will never be able to put the racially discriminatory practices that have occurred and continue to occur within the USDA behind us until every one of these individuals has at least had the opportunity to be heard.

This is just one of the many problems with the Consent Decree that my colleagues and I hear about nearly every day. It is my sincerest hope that this hearing will help us all get a better understanding of what precisely the problems are, what potential solutions there may be, and what we can do to ensure that the Government never finds itself in a similar situation again. Too much has been lost and too much is at stake for black farmers to just accept the solution in 1999 that has failed more people than it has helped.

And that is my opening statement. And I would now yield to the gentleman from Michigan, the distinguished Member of this Committee, Mr. Conyers, for an opening statement.

Mr. CONYERS. Thank you, Chairman Steve Chabot. We appreciate your remarks, and I thank my colleague Bobby Scott, the Ranking Subcommittee Member, for allowing me to just make a brief statement because I am asking to be excused to go to the floor. I have to manage a bill.

But John Boyd of Virginia came to me a number of years ago now about this problem that we have been in, and since April 14, 1999, where we declared victory with black farmers, something incredible has happened. And by the way, I thank you for your opening statement, Chairman Chabot, because you are probably ready now to go on the reparations bill that's been languishing before this Committee for many years. Your analysis of the plight of African American farmers is right on. But here is the problem. We have 90 percent of the claims being denied and 65,000 people, farmers, turned away.

Now, look, folks. That isn't justice. Something is wrong. I want to thank Sister Roth for all that she's done in her capacity over the years as the monitor. But I really want to tell you that the plight of the black farmer is just as bad as it was in 1910 when black farmers owned almost 16 million acres of land, when today it is only a couple of million at best. The farmers are disappearing and so I want to make a direct appeal to Randi Roth—to Michael Lewis, the adjudicator. Brother Lewis, please open up this process so these 65,000 farmers can have their day of justice occur. There's a lot that you could do in the interpretation of this court order. I know that and you know that. Please, Al Pires, the class counsel, please join with us and try to get this Consent Decree amended or we are going—this will go down in history as one of the greatest governmental injustices that has ever occurred.

And I am here—I have been in this thing from the beginning. And I am going to stay with this Committee, the Chairman and Bobby Scott and Mel Watt, until the end. And I thank you so very much.

Mr. CHABOT. I thank the distinguished gentleman for his statement. I would now yield 5 minutes to Mr. Scott from Virginia.

Mr. SCOTT. I thank you, Mr. Chairman. I would like to take this opportunity to thank you, the Judiciary Committee Chairman, Mr. Sensenbrenner, the Agriculture Committee Chairman, Mr. Goodlatte, for your agreement to develop this hearing for the open bipartisan and productive manner in which you and your staffs have proceeded to do so. I must also acknowledge the work and dedication in developing this hearing by Judiciary Committee Ranking Member Conyers and Subcommittee Ranking Member, Mr. Nadler, and their staffs working on this as well.

There are several other Members and their staffs who have contributed to this effort, including the gentleman from North Carolina, Mel Watt, Bennie Thompson from Mississippi, Ed Towns from New York, G.K. Butterfield from North Carolina, Sanford Bishop from Georgia, and Joe Baca from California. Of course this hearing would not have been possible without the hard work and determination of all of the representatives and advocates of black farm-

ers too numerous to list who have worked with us in developing the hearing over the last year. This has truly been a collaborative effort of all of those that I have mentioned and more.

Now, this hearing is just about the *Pigford* settlement. There are many other issues and problems with USDA, and there are a number of efforts under way to address those problems. Among those are lawsuits and complaints by Hispanic women and Native American farmers. There is also a new lawsuit pending by black farmers alleging continuing discrimination since the period covered by the *Pigford* case as well as continuing allegations and complaints of discrimination by USDA employees.

I believe that all of these civil rights issues warrant oversight by the Judiciary Committee, and I appreciate you mentioning that they will be the focus of subsequent hearings. Everyone who needs to testify today obviously could not be accommodated in one hearing, and so I thank you for committing to the subsequent hearings. We have had a lot of people, like Tom Burrell and attorney James Myart, John Boyd from Virginia, Representative Henry Brooks from Tennessee, who have worked on this, and we obviously couldn't get everybody in this one hearing.

The U.S. farm services programs date back to 1862. Through their history the programs have been laden with the pall of racial discrimination in blatant as well as subtle ways. The Federal Government has stepped up its loan and technical assistance programs to farmers in recognition of the growing capital and other needs of farmers to stay viable, but black farmers have been largely left out due to discrimination and neglect.

In the early 1900's there were as many as a million black owned farms with about 16 million acres. Now there are an estimated 18,000 such farms, less than 3 million acres. Black farmers complained but no systemic action was taken to remedy the situation. And to add insult to injury, in 1983 the Civil Rights Office in USDA was closed down. Many complained about rampant discriminatory practices but others did not even bother, understandably, expecting that nothing would be done to address their complaints.

The Judiciary Committee looked into this issue in 1984 through a hearing held in this subject Committee which exposed racially discriminatory practices then in existence in USDA's loan and assistance programs and its nonexistent civil rights complaints process. Unfortunately, no substantial remedial effort was undertaken by either the Administration or by Congress until Secretary Glickman, in response to the growing and persistent complaints of black farmers and the disarray in complaint processing, ordered a moratorium on farm foreclosures and a series of reforms while pending complaint investigations. Yet it took a lawsuit by the black farmers in 1997 to bring about meaningful attention to the problem.

The original estimates of the backlog of pending complaints was a few hundred. Over a thousand were discovered. Then there were estimates of about 2,000 farmers who may have suffered discrimination by USDA. By the time the Consent Decree was entered, the estimates had risen to 4-5,000. Over 22,000 filed claims within the initial deadline.

However, as the deadline expired, the court found the claims were still coming in. In fact, they were coming in so fast that the

court extended the deadline and directed the adjudicator to determine those entitled to be included due to extraordinary circumstances out of their control. To everyone's astonishment, almost 66,000 claimants filed for consideration during the extension.

Most of them have been considered by the adjudicator and, curiously, only about 3 percent have been allowed in. Moreover, another 7,800 filed beyond the extended deadline. That adds up to almost 96,000 claimants.

Now, Mr. Chairman, I am concerned about the adequacy of the settlement process that leaves 70 percent of its claimants without a determination on the merits of their claim. I don't know whether the problem is the sufficiency of the original notice process or in the criteria applied to filers during the extended period, but I am not willing to accept that nearly 66,000 individuals who believe they have legitimate claims of racial discrimination knowingly ignored notice of the initial filing deadline and chose to submit their claims after the deadline for no good reason. I don't know what percentage of the claimants can show entitlement to relief, but it is certain that some can. As long as 70 percent of those who believe that they are entitled to recover under the settlement are prevented from having a determination on the merits of their claim, I don't see how we can move forward with transforming the image and effectiveness of USDA in serving minority customers fully. If this situation is allowed to stand, black farmers will not only have been victimized by the original discriminatory practices at USDA, but by the remedy process as well.

So, Mr. Chairman, I look forward to the testimony of the witnesses for any insights that they may provide regarding my questions and concerns about the unfortunate state of affairs of the *Pigford* settlement, and I thank you and look forward to working with you as we solve these problems.

Mr. CHABOT. I thank you very much for your opening statement. Are there any other panel Members that wish to make an opening statement?

Mr. Bachus, you're recognized for 5 minutes.

Mr. BACHUS. I thank the Chairman. Mr. Chairman, I want to read really a part of what the court said in the *Pigford* case because I think it is at least what the court thought is the situation. I think it is a pretty good summary.

The court, and I am quoting from the case itself, quote, the department itself, talking about the Department of Agriculture, has recognized that there has always been a disconnect between what President Lincoln envisioned as the people's department serving all the people and the widespread belief that the department is, I quote, the last plantation, end quote, A department perceived as playing a key role in what some see as a conspiracy to force minority and disadvantaged farmers off their land through discriminatory loan practices.

In explaining this point, and noting the failure, what they say, of the USDA to address the problem of discrimination through its Civil Rights Complaint Project, the court goes on to say this: For decades, despite its promise that no person in the United States shall on the grounds of race, color or national origin be excluded from participation and be denied the benefits of or be otherwise

subjected to discrimination under any program or activity, receiving Federal financial assistance from the Department of Agriculture, the department and the county commissioners discriminated against African American farmers when they denied, delayed or otherwise frustrated their applications for farm loans and other credit and benefit programs. Further compounding the problem, in 1983 the department disbanded its Office of Civil Rights and stopped responding to claims of discrimination. These events were the culmination of a string of broken promises that has been made to African American farmers for well over a century.

And I will just close by saying there is evidence, and I think one reason for this hearing today is that the Consent Decree may not be serving its intended purpose. And that's I think a very—it's obviously a very serious charge that the court leveled against the department. And it's certainly something that merits this hearing today to see where we are since the court said that.

So I yield back the balance of my time, but I thank the panel for being here on this most important occasion.

Mr. CHABOT. Thank you very much. The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I don't intend to take 5 minutes, although sometimes I don't know how much time I'm going to take. But I certainly don't start this statement with the intention of taking 5 minutes because I don't want the folks in the audience to get the impression that we have these hearings to listen to ourselves rather than to listen to the people who came to testify at the hearing. But I did want to take the opportunity to thank Mr. Scott for his leadership in pulling together the concept of and making the case for the necessity of a hearing such as this, and I want to thank the Chairman for agreeing to have the hearing because we know the power of the Chair in this body. You can't get a hearing without having a Chair who's willing to afford you a hearing unless you go out and do your own renegade hearing, which we have had to do on occasion and have done on this issue on a couple of occasions. So it's great to have a hearing inside the formal process that has a court reporter that produces a record and documents what is being said.

I actually have the most urban congressional district that North Carolina has ever had throughout its history and consequently don't have many farmers in my congressional district. Most of the farmers in North Carolina happen to be in eastern North Carolina out in G.K. Butterfield's district, Walter Jones' district, and out in eastern North Carolina. But there is not a single issue that I hear more about and more complaints about secondhand, firsthand, directly with people than the plight of black farmers. And I know, because my uncles when I was growing up were farmers, how difficult it is to be a farmer. Even when you don't have the odds stacked against you, even when you don't have the Department of Agriculture and the local officials discriminating against you, it is extremely difficult to be a farmer, even more difficult to be an African American farmer. And so I think we need to do whatever is necessary and I hope that this hearing can give us a basis for trying to figure out what can be done to address the concerns, the complaints that I am hearing even in my more urban congressional

district, and that Members of the Congressional Black Caucus are hearing over and over and over again throughout America about exclusion of people who should be in the class, who should have been in the class—maybe that's a better way to put it—and whether there is some effective way to provide compensation that acknowledges the discrimination that they have endured over a number of years and gets us to a point where we can start a new day and move forward and work on issues that are confronting farmers outside the process of discrimination and mistreatment.

So I appreciate the fact that this hearing is being held, and since I am the last person here that might make an opening statement before the witnesses, I will yield back quickly before somebody else comes in and delays us further. With that, I will yield back to the Chairman.

Mr. CHABOT. Thank you very much, Mr. Watt. Appreciate your opening statement.

I'd first like to introduce the witness panel here if there is no other opening statements to be made, and we want to thank all the witnesses for being here this afternoon and participating in this very important hearing.

The first witness I would like to introduce is Phillip Haynie, II. Mr. Haynie is a farmer in the Commonwealth of Virginia who has been involved in farming his entire life. Mr. Haynie has experienced discrimination in his dealings with the USDA. He was instrumental in bringing about the class action that led to the *Pigford* settlement. We welcome you here this afternoon, Mr. Haynie.

The next witness is Randi Ilyse Roth, the court appointed monitor in the *Pigford* case since March 2000. Prior to serving as the monitor, she worked as a legal aid lawyer for 16 years, and since 1986 she worked for the Farmers Legal Action Group, where she represented African American farmers and organizations, and we welcome you here this afternoon, Ms. Roth.

The third witness is Michael K. Lewis, the court appointed arbitrator. Mr. Lewis was involved in the negotiations that led to the Consent Decree, based on his many years of experience in civil rights dispute mediation, and we thank you for being here, Mr. Lewis.

And our final witness is Alexander Pires. He was the lead class counsel representing the black farmer plaintiffs in the *Pigford* suit. Mr. Pires has made a career of practicing agriculture law and has been involved in the *Pigford* suit from its inception.

We want to thank all four of the witnesses for being here this afternoon, and it is the practice of the Subcommittee to swear in all the witnesses, to administer the oath to the witnesses before us. So if you all would please stand and raise your right hand.

[witnesses sworn.]

Mr. CHABOT. We have a lighting system here which you might have noticed, the two boxes on the desk here, and the way it works is each of you will have 5 minutes to testify. And it starts out green. When it goes to yellow that will let you know that you have 1 minute to wrap up. And when the red light comes on your 5 minutes are up, and if you could conclude close to that we would appreciate it. And we always give a little leeway, if you need to wrap

up. But to the extent you are able to stay within the 5 minutes we would appreciate. Then each of the panel Members will have 5 minutes to ask questions of any of the witnesses. So are the lights all ready to go here?

Okay, Mr. Haynie, you're recognized for 5 minutes.

STATEMENT OF PHILLIP J. HAYNIE, II, HAYNIE FARMS, LLC

Mr. HAYNIE. Good afternoon. My name is Phillip J. Haynie, II. First of all, on behalf of all the black farmers in the United States of America, I would like to take this opportunity to thank this Committee for holding this hearing.

Mr. CHABOT. Could you pull the mike just a little closer? We've got a lot of folks, want to make sure everybody can hear you. You can even grab the whole box there and pull it a little closer, and we'll add a few seconds at the end for you.

Mr. HAYNIE. Okay, thank you.

I'm a fourth generation farmer from Heathsville, Virginia. On September the 14 in 1867 my great grandfather, the Reverend Robert Haynie, purchased 60 acres of land in Heathsville, Virginia. This was the first purchase of land by a former slave in Northumberland County. I'm about to lose a part of this land that I inherited due to the discriminatory practices of the USDA. For me and my family, spanning five generations, farming is not a job. It is a way of life.

The *Pigford* v. *Glickman* settlement was supposed to put an end to discrimination to black farmers and compensate black farmers for years of discrimination. This settlement has failed black farmers in the following ways:

Financial compensation. According to a recent Environmental Working Group report, that approximately 65,000 farmers did not get a fair hearing in their cases. Black farmers were required to go out and find similarly situated white farmers in order to determine discrimination in their cases.

I have with me today Reverend Nathaniel Jones from Gloucester, Virginia. He's the oldest black farmer in the United States. On October the 12 he will be 99 years old. How is a 99-year-old man going to go out and find similarly situated farmers when everybody that farmed with him is already dead? And he does not have access to USDA records.

The second, the settlement failed to end discrimination against black farmers by USDA employees.

The settlement failed to prevent the loss of black land.

The settlement has failed to provide educational and financial opportunities to help young African Americans to engage in farming.

The settlement has failed to end foreclosures on black farmers and their land.

The settlement has failed to provide the injunctive relief that is outlined in the settlement.

The settlement has failed to provide black farmers with equal and fair access to land in USDA inventory.

The Government has systematically and purposefully low-balled damage estimates in Track B. They have used a model based on averages, even when the individual Track B farmer's operation was

larger and more efficient than average. The USDA collects and analyzes a lot of good data at taxpayers' expense, but then conveniently ignores that information when estimating Track B farmers' damage. In short, to the extent that any farmer in Track B has an operation that was larger than average for that region and county, the USDA underestimated the damage and did so purposely, and this is statistically indefensible. Then to add in injury to insult, the USDA's damage model took a downward adjustment in the damage estimate if a farmer's crop productivity level was higher than the average for the county, again driving the estimates back to the average even when the farmer showed better than average yields and practice.

Just another example of how the Justice Department and the USDA together have twisted what was supposed to be a good faith settlement for the class into an opportunity to fight individual farmers one by one. Those farmers now have to fight the Government without the benefit of shared expense for the class for things like counsel and experts. They have to fight the Government without the benefit of shared learning for the class. They have to fight the Government without benefit of the normal discovery procedures. And they have to fight the Government without the benefit of an open and transparent process.

One of the trade-offs was supposed to be a fast process. Instead the process is taking years for Track A farmers. The monitor has until 2007 to complete the reviews of the petition. Of course because the Government does not have to pay interest on damage, the Government wins again if it understaffs the settlement process and drags it out.

To sum it up, I don't know how anyone can look at the reality of the settlement and call it a good faith settlement. It is clear that the Government is spending huge sums in fighting these cases. It is clear that the damage models the USDA used in Track B cases is not designed to produce accurate estimates for farmers damage. It is designed to underestimate them. It is clear that the Track A process is moving at a snail's pace. This is not a settlement. This is just a continuation of the USDA's war against black farmers, having disarmed them by false promises of a good faith settlement. USDA has used the Office of Inspector General to intimidate and reprise against farmers, especially large black farmers who have filed civil rights complaints against USDA.

Systemic discrimination at the United States Department of Agriculture goes far beyond black farmers. They include Hispanics, Native American farmers, Asian farmers, women farmers, disabled and other socially disadvantaged farmers. USDA even discriminates against its own employees.

The Conference of Black Farmers organization is in support of legislation to correct the shortfalls of the *Pigford* v. *Glickman* settlement in ending discrimination at USDA.

In closing, I pray that while the sons, daughters and the grandchildren of black farmers spill their blood and lose their lives in Iraq for the cause of democracy that we cannot, and we must not allow democracy to fail their parents and grandparents.

Thank you for this opportunity.

[The prepared statement of Mr. Haynie follows:]

Prepared Statement of Phillip J. Haynie, II

Good afternoon

My name is Philip Haynie II

I am a fourth generation farmer from Heathsville, Virginia. On September 14 , 1867 my great grandfather, Robert Haynie purchased sixty acres of land in Heathville,Virgina. This was the first purchased of land by former slave. I am about to lose part of this land that I inherited due to the discriminatory practices of USDA. For me and my family spanning five generations farming has been a way of life and not just a job.

The Pigford v. Glickman settlement was supposed to put an end to discrimination to Black Farmers and compensate Black farmers of years of discrimination. This settlement has failed black Farmers in the following ways;

1. Financial Compensation; according to a recent Environmental Working Group report 64,000 black farmers did not get a fair and just hearing of their cases.

2. Failed to end discrimination against black farmers by USDA employees.

3. Failed to prevent the lost of black land

4. Failed to provide educational and financial opportunities to help young African Americans to engage in farming.

5. Failed to end foreclosures on black farmers and their land

6. Failed to provided injunctive relief as outlined in the settlement.

7. Failed to provided black farmers with equal and fair access of land in USDA inventory

The government has systematically and purposefully low-balled the damage estimates in Track B cases.[1] They used a model based on "averages," even when the individual Track B farmer's operation was far larger than "average." The USDA collects and analyzes lots of good data at taxpayer expense, but then conveniently ignored that information when estimating Track B farmer's damages. In short, to the extent that any farmer in Track B had an operation that was larger than the "average" for that region and county, the USDA underestimated the damages, and did so purposefully, a choice that is objectively scientifically and statistically indefensible. Then, to add injury to insult, the USDA damages model took a downward "adjustment" in the damages estimate if the farmer's crop productivity level was higher than the average for the county, again just driving the

[1] Support for my statements can be found in the deposition testimony of Dr. Ronald Trostle, employee of the ERS, USDA, and documents he produced in connection with my lawsuit against the USDA, all of which have been filed with the District Court, in Civil Case No. 00-2516, Docket # 56, Exhibits 21 and 24, and can be accessed on line at https://ecf.dcd.uscourts.gov, under the same Case, Docket and Exhibit numbers (a PACER account is required).

estimates back to the average even when the farmer showed better than average yields.

This is just another example of how the Justice Department and the USDA together have twisted what was supposed to be a good faith ***settlement for the class*** into an opportunity to ***fight individual farmers one by one.*** Those farmers now have to fight the government

- without the benefit of shared expenses for the class for things like counsel and experts,
- without the benefit shared learning for the class,
- without the benefit of the normal discovery procedures,
- and without the benefit of an open and transparent process.

One of the trade-offs was supposed to be a fast process. Instead, the process is taking years for the Track A farmers. The Monitor now has until 2007 to complete the reviews of the petitions. Of course, because the government does not have to pay interest on the damages, the government wins again if it understaffs the settlement process and drags it out.

To sum it up, I don't know how anyone can look at the ***reality*** and call it a good faith settlement. It is clear that the government is spending huge sums in fighting these cases. It is clear that the damages model the USDA uses in Track B cases is not designed to produce an accurate estimate of the farmer's damages; it is designed to underestimate them. It is clear that the Track A process is moving at snail's pace, which disadvantages only the farmer. This is not a settlement; this is just a continuation of the USDA's war against the minority farmer, after having disarmed him by the false promise of a good faith settlement. And at every step, DOJ has enabled and facilitated the USDA's continued mistreatment of minority farmers in this process.

USDA has used the office of Inspector General to intimidate and reprise against farmers, especially large black farmers who have filled civil rights complaints against USDA

The systemic discrimination at the U.S. Department of Agriculture goes far beyond black farmers- It includes Hispanic farmers, native American farmers, Asian farmers, women farmers, disabled and socially disadvantaged farmers and USDA also discriminate against it's own employees.

The conference of Black Farm Organizations is in support of legislation to correct the shortfalls of the Pigford v. Glickman settlement in ending discrimination *at USDA.*

In closing I would pray that while the sons and daughters of black farmers spill their blood and lose their lives in Iraq in the name of democracy... we cannot and must not allow democracy to fail their parents and grandparents.

Thank you for this opportunity;

Have a blessed day.

Mr. CHABOT. Thank you very much, Mr. Haynie. Ms. Roth, you're recognized for 5 minutes.

STATEMENT OF RANDI ILYSE ROTH, MONITOR, *PIGFORD* V. *GLICKMAN*

Ms. ROTH. Thank you very much, Mr. Chairman, Members of the Committee. Again, I am the independent court appointed monitor in *Pigford* and I have served in that capacity for 4½ years since——

Mr. CHABOT. Could you pull the mike up. They can't—it's hard to hear.

Ms. ROTH. Okay. How's that?

Mr. CHABOT. That's great. If I could ask all the witnesses when they testify—it's very—you think they'd pick them up, we'd have better mikes around this place. But your tax dollars at work. Go ahead.

Ms. ROTH. Thank you very much. Is this working now?

Mr. CHABOT. Yes, you sound very good now. We'll start the clock over here for you.

Ms. ROTH. Thanks a lot.

Mr. CHABOT. Mr. Scott has just reminded me it was probably a low bid, so——

Ms. ROTH. I have served as the independent court appointed monitor in *Pigford* since March of 2000. *Pigford* represents an important chapter in civil rights history, and it's important that Congress, the press and the public come to an accurate understanding of what *Pigford* did and did not accomplish. Some of the recent press is confusing.

Some criticisms assert that the parties are failing to live up to the Consent Decree. Others assert that the parties are living up to the Consent Decree, but the Consent Decree just wasn't good enough to meet African American farmers needs. It's critical to arrive at a realistic assessment of the situation.

My testimony will provide some background about the case, and then will primarily address the question of whether the terms of the Consent Decree itself are being honored. I would like to explain my role in the case.

The court's order of reference in *Pigford* makes the monitor an agent and officer of the court. Because my role is quasi-judicial, topics about which I can testify are limited. In particular, I cannot testify regarding any matter that's pending before the court.

Paragraph 12 of the Consent Decree gives the *Pigford* monitor four jobs. The first is reporting. I have to report to the court about the good faith implementation of the decree. I included my most recent report as Appendix V to this testimony.

My second job is to attempt to resolve problems that class members are having about the Consent Decree. There are more than 22,000 claimants in the class and they raise many concerns. The most significant of these concerns are described in my reports. Historically, they have focused on debt relief, injunctive relief, tax relief and payment status.

My third job is to issue petition decisions. In approximately 5,400 cases claimants and/or the Government have petitioned to the mon-

itor for review of decisions issued by the adjudicator, arbitrator or facilitator. I issue monitor decisions in response to these petitions.

My fourth job is to staff a toll free line for class members and the public.

Next I will highlight some key aspects of implementation and explain what resources I have provided to the Committee to help explain them, following the outline of the written testimony.

First, how does the Consent Decree process work? The Consent Decree sets up a process through which each of the approximately 22,000 claimants is given a chance to prove to a neutral third party that he or she experienced discrimination. Both sides, the claimant and the Government, are allowed to submit information about the claim. Claimants are given the choice of proving discrimination through Track A or Track B. And I have put a table in the written testimony that highlights the differences between the tracks.

Second is the late claims process. But I am going to skip that in my own testimony because I'm aware that Michael Lewis is going to be explaining that in his.

Third, what is the success rate? About 61 percent of all claimants, people who are eligible to file claims, prevailed in their initial adjudications. So far, the unsuccessful claimants who filed petitions are prevailing in the petition process at a rate of about 50 percent. If one projected solely based on historical percentages, one would conclude that once the petitions process and reexamination process are over, close to 70 percent of the claimants will have prevailed on their claims.

Fourth, how much has been paid out? To date, about $831 million worth of relief has been distributed to more than 13,500 class members in this case, and in the written testimony I provided a table that shows the categories of the relief.

Fifth, what have been the results in the various processes? As Appendices I through III to my testimony, I have provided charts that detail the results in each of the processes. Chart 1 is about the claims process. Chart 2 is about the late claims process. And Chart 3 shows the results for the 2,000 or so people who have been allowed into the case through the late claims process.

Next, I would like to address the key question of whether the terms of the Consent Decree have been honored. This question simply asks whether the parties and the neutrals have done and are doing the things that they agreed to do under the Consent Decree. The answer is yes. Claims are being processed, prevailing claimants are being paid. Debt relief is being awarded and injunctive relief rights are being honored. As I have detailed in my court reports, where problems or administrative snags have arisen in individual claimants' situations the parties have worked in good faith to get the problem solved.

Finally, I understand that this Committee intends to turn its attention to next steps. The results of lawsuits are limited by the nature of the claims listed in the complaint, the parties' desires about how to resolve those claims, and by the court's ability to fashion relief. Congress is not bound by these limitations. I understand that several congressional Committees are now interested in figuring out the right next steps for legislation to benefit African American farmers. Perhaps the lessons learned in this case and our

testimony here today can contribute to a successful outcome in those new efforts.

[The prepared statement of Ms. Roth follows:]

House Judiciary Committee

Subcommittee on Constitution

Testimony of Randi Ilyse Roth

September 28, 2004

I. Introduction

I have served as the independent, Court-appointed Monitor in *Pigford v. Veneman* for four and one-half years, since March 2000. For the sixteen years that preceded the Monitor appointment, I worked as a legal aid lawyer, first as an advocate for low-income residents of Chicago's south side, and then, beginning in 1986, at Farmers' Legal Action Group, Inc. (FLAG). At FLAG, I worked as an advocate for low-income family farmers nationwide. One of my main areas of focus involved representing African American farmer organizations.

Now, in the fifth year of the implementation of the *Pigford* Consent Decree, the case is the subject of intense public debate. *Pigford* represents an important chapter in civil rights history, and it is important that Congress, the press, and the public come to an accurate understanding of what *Pigford* did and did not accomplish. Some of the recent press is confusing—it is hard to tell what, if anything, went wrong. Some criticisms assert that the parties are failing to live up to the Consent Decree, and some assert that the Consent Decree did not go far enough towards meeting African American farmers' needs. It is critical that the debate be framed in a way that allows for a realistic assessment of the situation.

My testimony will primarily address the question of whether the terms of the Consent Decree have been honored.

II. Background

A. Litigation Background

It might be helpful to explain some background about the *Pigford* litigation. At least three things were notable about *Pigford* from the outset.

First, *Pigford* lawyers sought certification as a class action. Getting class certification in a case like this is tough; similar cases both before and after *Pigford* have failed to overcome that hurdle. In *Pigford*, however, class certification was granted.

Second, the *Pigford* case asked for monetary relief and for some injunctive relief for individuals, but it did not ask the Court to require the United States Department of Agriculture to undergo structural change. I was not involved with the case at this stage of the proceedings, but I have heard J.L. Chestnut, now Co-Class Counsel, speak many

times in public settings about the strategic judgment calls that went into making that choice.

Third, this lawsuit had very serious statute of limitation problems. When it was filed, the governing statute of limitations went back only two years. This problem was solved by Congress. Shortly after the class was certified, Congress passed a law that changed the statute of limitations to allow farmers to raise claims from the entire sixteen-year period of January 1, 1981, through December 31, 1996.

Eventually, the parties agreed to settle the case. They reached a preliminary agreement, and the Judge held a Fairness Hearing to hear potential class members' concerns. After the Fairness Hearing, the Judge required a few changes to the Decree, and in the end, the parties entered into a settlement agreement that included the following elements:

1. Forum to Prove Discrimination. Each class member would be given a forum in which to prove that he or she experienced discrimination.
2. Low Standard of Proof. Because so many class members lacked documents to prove their case, the forum would allow a very low standard of proof, much lower than the "preponderance" standard normally used in civil court.
3. Deadlines. The parties agreed to deadlines to govern the process.
4. Notice. The parties agreed to specific notice provisions.
5. Relief. The parties agreed to the types and amounts of relief that would be made available to prevailing claimants. There was no cap to the total amount of relief.

That settlement agreement is now a Court Order and is binding much like a contract.

B. Role of the Monitor

Next, I would like to explain my role in this case. The Court's Order of Reference in *Pigford* makes the Monitor an agent and officer of the Court.[1] Because my role is quasi-judicial, the topics about which I can testify are limited. In particular, I cannot testify regarding any matter that is currently pending before the Court.

Paragraph 12 of the Consent Decree gives the Monitor four jobs in the *Pigford* implementation process.[2]

1. Reporting. The Monitor reports to the Court about the good faith implementation of the Consent Decree. I have included my most recent report as Appendix 5 to this testimony. All of my reports are available on the Monitor's web site at http://www.pigfordmonitor.org/reports/. The reports give

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[1] Order of Reference, *Pigford v. Glickman*, Civ. No. 79-1978 (Apr. 4, 2000).

[2] The Monitor's role is further defined in the Order of Reference issued by the Court on April 4, 2000. The Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/20000404oor.pdf.

detailed statistical information and conclude that the parties and the neutrals are working in good faith to implement the Decree.

2. Resolve Problems. The Monitor attempts to resolve problems that class members are having regarding the Consent Decree. There are more than 22,000 people in the class, and they raise many concerns. The most significant of these concerns are described in my reports. Historically, they have focused on debt relief, injunctive relief, tax relief, and payment status. The tools that my office uses in this problem-solving role include:

    a. Claimant Services. In the Claimant Services division of my office, Monitor staff attorneys are available to work closely with class members to attempt to solve their individual problems.

    b. Monitor Updates. My office issues Monitor Updates to the class. Copies of the Monitor Updates are included as Appendix 4 to this testimony and are available on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

    c. Web Site. My office maintains and regularly updates a web site with information for the class at www.pigfordmonitor.org. Our web site gets an average of 3,200 hits each month.

    d. Meetings With Parties and Neutrals. I have frequent phone conferences and quarterly in-person meetings with the parties and neutrals.

    e. Attend Claimant Meetings. My office attends meetings sponsored by claimant organizations throughout the South.

    f. Correspondence. The Monitor's office receives and responds to approximately 100 letters each month.

3. Issue Petition Decisions. In approximately 5,400 cases, claimants and/or the government have petitioned to the Monitor for review of the decisions issued by the Adjudicator, Arbitrator, or Facilitator regarding individual claims. I issue Monitor decisions in response to these petitions. The Consent Decree and Order of Reference require complicated legal analysis in Monitor decisions. Based on that analysis, I decide whether the Adjudicator's, Arbitrator's, or Facilitator's decision contained errors that meet the Consent Decree standard.[3] In cases where I find this type of error, I direct the Adjudicator, Arbitrator, or Facilitator to reexamine the claim. So far, in the vast majority of cases, decisions on reexamination have followed the Monitor's recommendations. (Redacted sample Monitor decisions will soon be available on the Monitor web site.)

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[3] Paragraph 12(b)(iii) provides that the standard is "a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice."

4. Toll-Free Line. The Monitor's office staffs a toll-free line (1-877-924-7483) that class members and the public can use to lodge Consent Decree complaints. The toll-free line fields approximately 1500 to 2000 calls each month.

C. Status of Implementation

1. How Does the Consent Decree Process Work?

The Consent Decree set up a process through which each of the 22,369 claimants is given a chance to prove to a neutral third party that he or she experienced discrimination. Both sides—the claimant and the government—are allowed to submit information about the claim. Claimants are given the choice of proving discrimination through Track A or Track B. Track A allows claimants to prove discrimination at a much lower standard of proof than would be required in a court proceeding; cash relief for prevailing Track A claimants with credit claims is fixed at $50,000. Track B allows claimants to prove discrimination at the preponderance of the evidence standard of proof that would apply at a civil trial; there is no cap for damages in Track B. The vast majority of class members elected to proceed under Track A. Some characteristics of Track A and Track B are summarized in Table 1 below.

Table 1. Characteristics of Track A and Track B

	Track A	**Track B**
Claims Process	Adjudicator decides claim based on papers submitted with and in response to claim form	Arbitrator decides claim after submission of written direct testimony, documents, and one-day in-person hearing
Discovery	None	Limited
Standard of Proof	Substantial evidence[4]	Preponderance of the evidence[5]
Amount of Damages for Prevailing Claimants	$50,000 plus tax relief, debt relief, and injunctive relief	Actual damages (no cap) plus debt relief and injunctive relief
Elements of Proof of Discrimination	Specifically identified, similarly situated white farmer who was treated more favorably	Claimant was a victim of discrimination and suffered actual damages

2. What Is the Late Claims Process?

Paragraph 5(g) of the Consent Decree created a "late claims" process. This process gives people the chance to show that extraordinary circumstances beyond their control

[4] In this case "substantial evidence" means "such relevant evidence as appears in the record before the adjudicator 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." Consent Decree, paragraph 1(i).

[5] In this case "preponderance of the evidence" means "such relevant evidence as is necessary to prove that something is more likely true than not true." Consent Decree, paragraph 1(j).

prevented them from filing on time. If a person prevails in this process, he or she is given a new opportunity to file a Claims package.

This late claims process also had a deadline: September 15, 2000. About 66,000 people filed timely applications in this late claims process. The Consent Decree Arbitrator, who administers this process, has so far found that 2,231 people—fewer than 4 percent of the applicants—meet that high standard.

3. What Is the Success Rate?

About 61 percent of all claimants prevailed in their initial adjudications and arbitrations. So far the unsuccessful claimants who filed petitions are prevailing at a rate of about 50 percent in the petition process. Projecting solely based on historical percentages, one would conclude that once the petitions process and reexamination process are complete, close to 70 percent of the claimants will have prevailed on their claims.

Some recent press reports assert that there has been only a 10 percent success rate. Those assertions must be based on combining three groups: (1) the approximately 22,000 claimants, (2) the approximately 66,000 people who submitted timely applications for permission to file late, and (3) the approximately 8,000 people who sought entry into the late claims process after its deadline.[6] The three groups have very different rights in this settlement. People who did not file a claim on time and did not meet the late claims standard cannot obtain relief through this lawsuit.

4. How Much Has Been Paid Out?

Overall, about $831 million of relief has been distributed to more than 13,500 class members in this case.

Table 2. Status of Payments

Status of Payments	**National**
Dollars Paid Directly to Track A Class Members Cash Award ($50,000)	$ 651,250,000
Dollars Paid Directly to Track A Class Members Non-Credit Awards ($3,000)	1,296,000
Dollars to Which Track A Class Members Are Entitled as IRS Payments	162,812,500
Debt Relief	15,642,321
Total Track A Relief	$ 831,000,821

[6] There are 22,369 eligible claimants in this case. There are 65,950 people who timely sought entry into the class through the late claims process. There are 7,870 who sought entry into the class through the late claims process after the deadline for doing so. If all three universes are added together, the three groups—22,369 claimants plus 65,950 timely late claims applicants plus 7,870 untimely late claims applicants—create a total universe of 96,189. The 13,532 claimants who prevailed in Track A constitute 61 percent of the 22,369 eligible claimants. The 13,532 claimants who prevailed in Track A constitute 14 percent of the 96,189.

5. What Have Been the Results in the Various Processes?

My office has prepared charts for the Committee regarding the results to date of implementation of the various processes.

a. Those Who Filed Claim Sheets on Time. Chart 1, which is in Appendix 1 to this testimony, explains the status of implementation as to the 22,369 claimants who filed Claim Sheets on time (by October 12, 1999) and were found eligible to participate in the settlement.

b. Those Who Did Not File Claim Sheets on Time. Chart 2, which is in Appendix 2 to this testimony, explains the status of implementation as to the 65,950 individuals who did not file Claim Sheets on time and who timely sought to become claimants through the "late claims" process.

c. Those Who Were Allowed Into the Case through the Late Claims Process. Chart 3, which is in Appendix 3 to this testimony, explains the status of implementation for the 2,231 claimants who have been allowed into the case through the "late claims" process.

I would be happy to answer questions about these charts in the question and answer session.

III. Was the Consent Decree Honored?

This question simply asks whether the parties and the neutrals have done and are doing the things that they agreed to do under the Consent Decree. The answer is yes. Claims are being processed, prevailing claimants are being paid, debt relief is being awarded, and injunctive relief rights are being honored. As I have detailed in my court reports, where problems or administrative snags have arisen in individual claimant situations, the parties have worked in good faith to get the problems solved.

Recent press reports have focused on two main factual assertions to support the allegation that the parties did not honor the Consent Decree. I will address each in turn.

First, some in the press have reported that $2.3 billion was allocated for the case and that therefore the case is a failure if the ultimate payouts total less than that amount. The reality is that there is no dollar amount allocated in the case. All claimants who prevail are paid out of the Treasury Department's Judgment Fund; unlike many class action settlements, this settlement has no cap on the total amount of payments.

Second, some press accounts have reported that every class member should have "automatically" prevailed. The settlement did not provide for automatic payment. Instead, as explained above, it created a procedure through which each claimant has a chance to prove to a neutral decision maker that he or she was a victim of discrimination. While this process has not been "automatic," it has permitted thousands of claimants to recover based on far less proof than would typically be required in a court of law.

IV. Next Steps

It seems obvious that the settlement of one lawsuit could never provide everything that African American farmers need to overcome decades of discrimination. In his opinion approving the settlement, Judge Paul L. Friedman wrote:

> It is difficult to resist the impulse to try to undo all the broken promises and years of discrimination that have led to the precipitous decline in the number of African American farmers in the United States. The Court has before it a proposed settlement of a class action lawsuit that will not undo all that has been done. Despite that fact, however, the Court finds that the settlement is a fair resolution of the claims brought in this case and a good first step towards assuring that the kind of discrimination that has been visited on African American farmers since Reconstruction will not continue into the next century.

This lawsuit provided a first step.

The results of lawsuits are limited by the nature of the claims listed in the complaint, by the parties' desires about how to resolve those claims, and by the Court's ability to fashion relief. Congress is not bound by these limitations. I understand that several congressional committees are now interested in figuring out the right next steps for legislation to benefit African American farmers. Perhaps the lessons learned in this case and our testimony here today can contribute to a successful outcome in those new efforts.

Attachments

Appendix 1 - Chart 1: Steps in *Pigford* Claims Processing for Claimants Who Filed Claim Sheets on Time
Appendix 2 - Chart 2: Steps in *Pigford* Claims Processing for Claimants Who Did Not File Claim Sheets on Time
Appendix 3 - Chart 3: Steps in *Pigford* Claims Processing for Claimants Who Were Approved in the Late Claim 5(g) Process
Appendix 4 - Full Set of Monitor Updates; Questions and Answers About Monitor Review of Decisions
Appendix 5 - Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of January 1, 2002, Through December 31, 2003

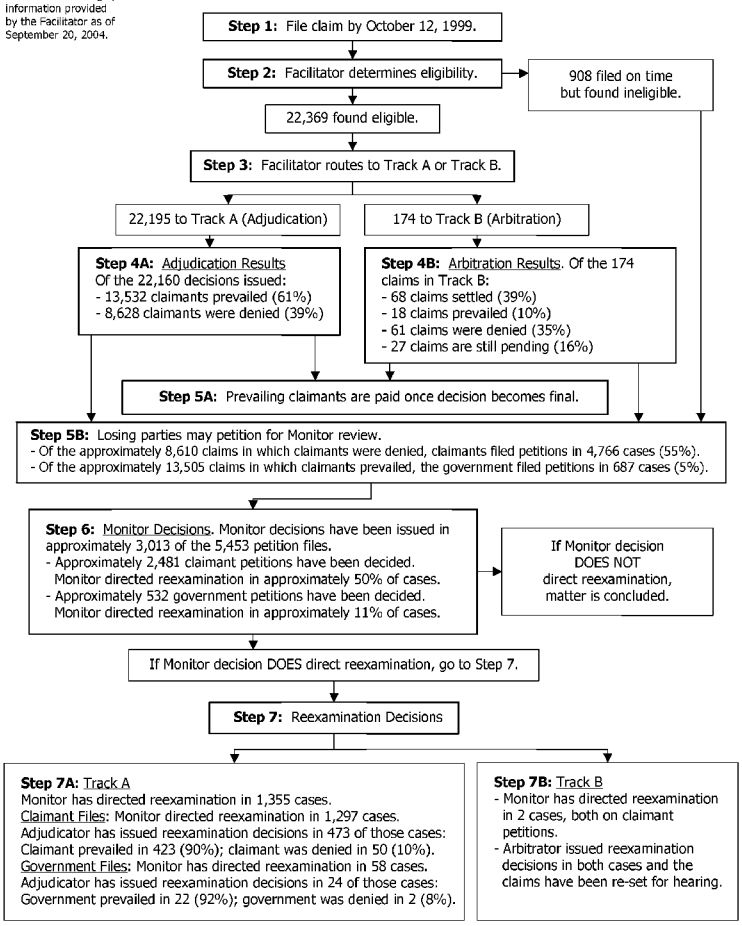
Appendix 1

Chart 1: Steps in *Pigford* Claims Processing for Claimants Who Filed Claim Sheets on Time

Chart 1:
Steps in *Pigford* Claims Processing for Claimants Who Filed Claim Sheets on Time

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 20, 2004.



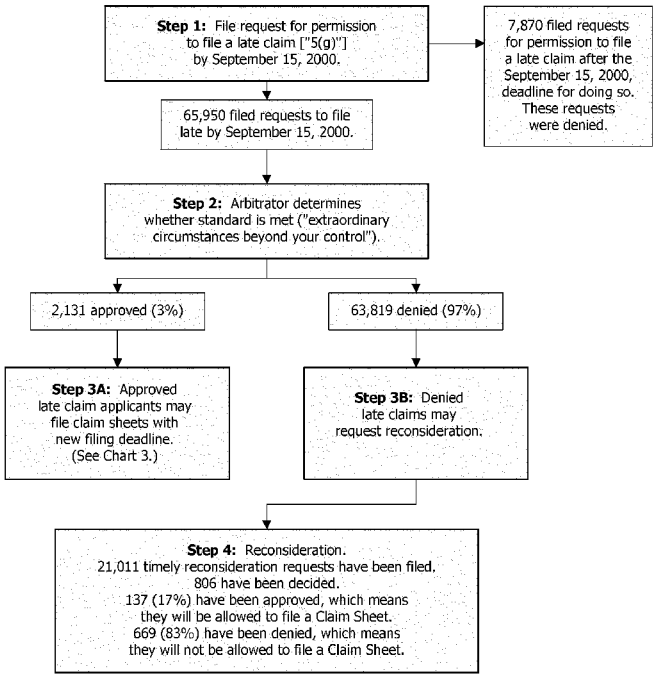
Appendix 2

Chart 2: Steps in *Pigford* Claims Processing for Claimants Who Did Not File Claim Sheets on Time

Chart 2:
Steps in *Pigford* Claims Processing for Claimants Who Did Not File Claim Sheets on Time

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 21, 2004.



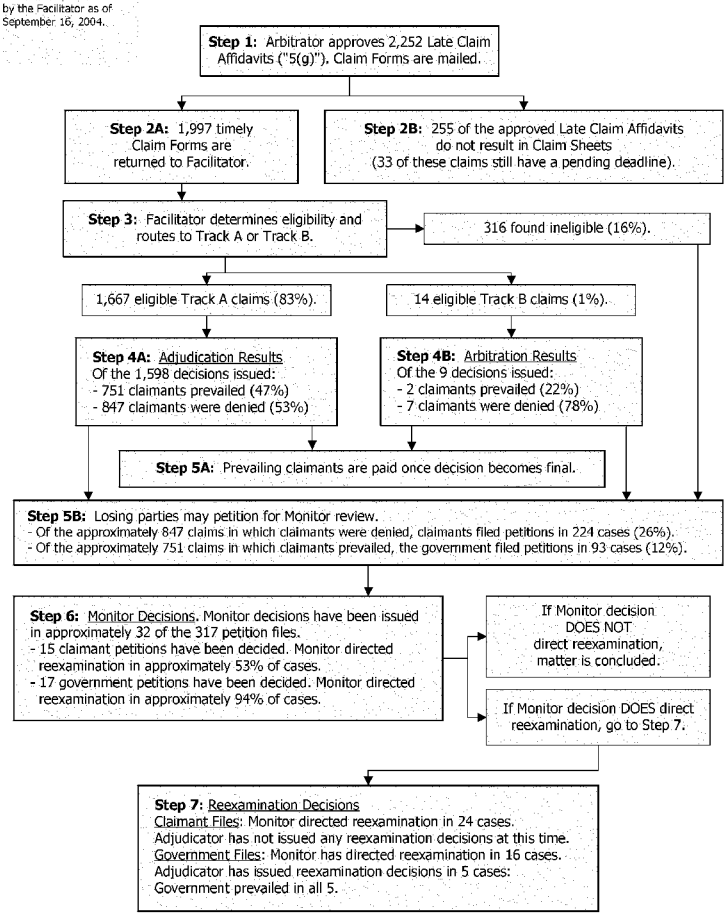
Appendix 3

Chart 3: Steps in *Pigford* Claims Processing for Claimants Who Were Approved in the Late Claim 5(g) Process

Chart 3:
Steps in *Pigford* Claims Processing for Claimants Who Were Approved in the Late Claim 5(g) Process

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 16, 2004.



Appendix 4

Monitor Updates

Questions and Answers About Monitor Review of Decisions

Monitor Update:
Late Claim Deadline

Originally Issued: August 14, 2000
Date Revised: October 1, 2003
Update 001
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Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)
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Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected the filing of late claims. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000, Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

3. Some late claims were allowed

In some cases, it was possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allowed a person to be a part of the case if the person could show that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] The Court directed the Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

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[1] This language is found in section 5(g) of the Consent Decree.

4. Judge's Order—deadline to request permission to file a late claim

The Judge's July 14, 2000, Order set a deadline for submitting a written request to file a late claim. **That deadline was September 15, 2000.** In order to meet the deadline, the written request must have been postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

5. How late claims were allowed

Three important rules applied when a claimant filed a late claim.

First, the claimant must have filed with the Claims Facilitator a **written** request for permission to file a late claim.

Second, the written request had to explain the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed.

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant **was** prevented from filing a timely Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a timely Claim Sheet and Election Form because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration.

7. Reconsideration of the Arbitrator's denial

The Arbitrator has established a limited reconsideration policy. When the Arbitrator denies a request for permission to file late, he sends a letter to the claimant. This letter will explain the Arbitrator's policy for reconsidering the request to file late.

8. If the Arbitrator decides in favor of claimant—60 days to file a claim form

If the Arbitrator grants a claimant's request to file a late claim, the claimant will receive a Claim Sheet and Election Form from the Claims Facilitator. The Claim Sheet and Election Form must be filled out and signed by an attorney, and it must be postmarked no later than 60 days from the date of the cover letter that accompanies the Claim Sheet and Election Form. No extension of this 60-day period will be granted for any reason.

9. More information

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

Monitor Update:
Cured Defective Claims

Date Issued: **August 14, 2000**
Update 002
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Cured Defective Claims

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affects cures of defective claims. An Order from the Judge has the force of law.

The Order directs the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- The October 12, 1999, deadline for filing a claim.
- What defective claims are.
- How the October 12, 1999, deadline affects the cure of defective claims.
- The deadline for curing defective claims
- How to get more information from the Monitor.

2. The October 12, 1999, deadline for filing a claim

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that frames the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is therefore a late claim.

3. Defective claim sheet and election forms—sent back and returned

Many people sent in their Claim Sheet and Election Form on time—but failed to fill out the form completely, or made a mistake in filling out the form. For example, some people simply forgot to sign the claim form. In this case, the Facilitator notified the person of a problem with the way the Claim Sheet and Election Form was filled out, and asked the person to fix the problem.

a. Corrected form returned—by the October 12, 1999, deadline

If the person returned the corrected claim form to the Facilitator by the October 12, 1999, deadline, there was no problem. These people became claimants who are eligible for a Track A adjudication or a Track B arbitration.

b. Corrected form returned—after October 12, 1999, deadline

Many people, however, returned the corrected claim form to the Facilitator but did not do so until after the October 12, 1999, deadline. Until the Judge issued his recent Order, there had been a question as to whether these people would become claimants who are eligible for a Track A adjudication or a Track B arbitration. The Judge's Order settles this question. People who filed on time and then corrected their Claim Sheet and Election Form and submitted the correction to the Facilitator will be considered to have filed and completed their forms on time—even if they submitted the correction after the October 12, 1999, deadline.

4. Deadline for correcting defective claim sheet and election forms—July 14, 2000

The Judge's new Order sets a deadline for correcting defective Claim Sheets and Election Forms. As a result of the Judge's Order, a defective claim that was corrected by July 14, 2000, will be treated as if it was filed on time. In other words, if a person sent in a timely Claim Sheet and Election Form that was defective, the Facilitator asked that the form be corrected, and the person then corrected the defective claim form, that correction must have been postmarked by **July 14, 2000.** If the correction was not postmarked by then, the person is not a claimant and is not eligible for Track A adjudication or Track B arbitration.

5. If the Claim Sheet and Election Form were not corrected by July 14, 2000

A person who did not file a corrected Claim Sheet and Election Form by July 14, 2000, may, in "extraordinary circumstances," still have a chance to participate in the settlement. In order to do so, the person will need to file a written request for permission to file a late claim. Permission will be granted only in cases in which the Arbitrator determines that the need to file late was caused by extraordinary circumstances that were beyond the person's control. Please note that the deadline for submitting written requests for permission to file a late claim is **September 15, 2000**. The process for filing written requests for permission to file a late claim is described in Monitor Update #1: Late Claim Deadline. To get a copy of Monitor Update #1, call the Monitor's office toll-free at 1-877-924-7483.

6. More Information from the Monitor

Anyone who has questions regarding the problem of curing defective claims should feel free to call the Facilitator toll free at 1-800-646-2873 or the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Deadlines for Petitions for Monitor Review

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Deadlines for Petitions for Monitor Review

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected petitions for Monitor Review. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This Update explains:

- What petitions for Monitor review are.
- The deadline for petitions for Monitor review.

2. Petitions for Monitor review

In the *Pigford* lawsuit, both Claimants and the Government are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any party who received a wholly or partly adverse final decision in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone may request a copy of the letter and pamphlet (which was updated on June 1, 2003) by calling the Monitor's office toll free at 1-877-924-7483.

3. Judge's Order created a deadline for most petitions for Monitor review

The Judge's Order created a deadline for filing petitions for Monitor review. The deadline worked in two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply. Information about Monitor Review of Facilitator denials can be found in "Monitor Update 5: Eligibility and Monitor Review".)

a. Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Track A Adjudicator or the Track B Arbitrator was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000. (This deadline was affected by the Register process in Orders dated November 8, 2000; April 27, 2001; and May 15, 2001.)

b. Decision after July 14, 2000—deadline 120 Days After Decision

If the decision by the Track A Adjudicator or the Track B Arbitrator was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

4. Deadlines created by the Order are firm

The deadlines explained in this Update are firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. More information from the Monitor

Anyone who has questions for the Monitor's Office regarding deadlines for petitions for Monitor review should call toll-free at 1-877-924-7483.

Monitor Update:
Injunctive Relief in
Pigford v. Veneman

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Injunctive Relief in *Pigford v. Veneman*

I. Introduction and the Monitor's Role

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Veneman*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

II. Only a Brief Summary

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

III. Eligibility for Injunctive Relief

A. Must Prevail in Track A or Track B

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

B. Credit vs. Noncredit Claims—the Difference Matters

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

C. What Law Applies for Injunctive Relief

1. Consent Decree

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a

remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

2. FSA Regulations and Most Favorable Light

The regulations governing FSA programs must be met in providing injunctive relief to class members. For example, in order to get a loan from the Farm Service Agency (FSA), the farmer must still meet FSA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies every time a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

IV. Types of Injunctive Relief

Injunctive relief falls under two main categories—priority consideration and technical assistance.

A. Priority Consideration—Three Types

The Consent Decree provides for priority consideration for three types of FSA benefits.

1. Inventory Property

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. FSA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

2. Farm Ownership Loan

Priority consideration for one FSA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

3. Farm Operating Loans

Priority consideration for one FSA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

Priority consideration is available only to those who had credit claims.

B. Technical Assistance and Service

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

1. Credit and Noncredit Claims

Technical assistance is available both for those with credit claims and noncredit claims.

2. Must Be Requested

The class member must request the technical assistance and service. Class members should consider making this request in writing.

3. Qualified and Acceptable USDA Employees

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

V. Getting an FSA Loan

A. Eligibility and Priority Consideration

Priority consideration does not mean that getting the loan is automatic. FSA eligibility requirements continue to apply.

B. Debt Forgiveness and Loan Eligibility

Many class members will have problems getting a loan because of past debt forgiveness.

1. General Rule—No FSA Direct Loan if Debt Forgiveness

As a general rule, applicants who have had FSA debt forgiveness that resulted in a loss to FSA cannot get an FSA direct loan.

a. Defining Debt Forgiveness

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of an FSA debt. It also includes the discharge of a debt to FSA as a result of bankruptcy. In addition, it includes a loss paid by FSA on a guaranteed loan.

b. Exceptions to the General Rule

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what FSA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

2. Debts Forgiven Under Pigford—or Affected by Discrimination

Many claimants had outstanding FSA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another FSA loan. Further, if discrimination was found in a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another FSA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants.

C. Creditworthiness

An applicant must be creditworthy to be eligible for an FSA loan. Credit history can be taken into account when FSA considers the creditworthiness of the applicant. FSA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

D. Other Requirements for FSA Loans

FSA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

E. Where to go for Assistance

The Monitor's Office has issued an Update that provides information for Class Members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for Pigford Claimants."

VI. If Injunctive Relief Efforts Fail

If those seeking to use the injunctive relief described in this booklet fail in their efforts, they have several options.

A. Contact the Monitor

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

B. FSA Appeals

Any FSA applicant—not just class members—who receives what is known as an adverse decision from FSA may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

C. Civil Rights Complaint

Any person—not just class members—may file a discrimination complaint with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC, 20250-9410.

VII. Timeline for injunctive Relief

Injunctive Relief for Pigford claimants expires on April 14, 2005. Originally, Injunctive Relief was to expire in April of 2004. An internal FSA notice issued on July 21, 2003, formally extended the availability of Injunctive Relief for one year. The Notice, FSA FLP 313, Priority Consideration for Prevailing Claimants, is available from the Monitor. To receive a copy, please call the Monitor's toll-free line and request it.

VII. More Information on Injunctive Relief

The Monitor's Office is in the process of preparing a much more detailed version of this Monitor Update. If you would like a copy of the much longer booklet, call the Monitor's office toll-free at 1-877-924-7483.

Monitor Update:
Eligibility and Monitor Review

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Eligibility and Monitor Review

1. Introduction

Some *Pigford* claimants have been denied relief on the grounds of class eligibility. In other words, they have been found not to be members of the class.

This Monitor Update is intended to:

a. Explain who is eligible to be a member of the class;
b. Describe how eligibility decisions are made; and
c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

In order to be a class member in the *Pigford* case, eligibility requirements must be met. In addition to being African-American, the following three things must be true about a person.

First, he or she had to farm, or attempt to farm, between January 1, 1981, and December 31, 1996.

Second, he or she must have applied to USDA between January 1, 1981, and December 31, 1996, to participate in a federal farm credit or benefit program. He or she must also have believed he or she was discriminated against on the basis of race in USDA's response to that application.

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

A claimant must submit proof that he or she filed a discrimination complaint. Listed below are the four types of proof that may be used by a claimant to show that he or she filed the discrimination complaint.

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

d. Declaration from another person about listening session or verbal complaint

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

If, after reexamination, the Facilitator rules that a claimant is not an eligible member of the class, he or she may not receive any of the relief found in the Consent Decree.

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.

Monitor Update:
Freeze on USDA Acceleration and Foreclosures

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Freeze on USDA Acceleration and Foreclosures

1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to "freeze" some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

a. Acceleration

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a $100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA's right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

b. Foreclosure

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

c. Inventory property

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

d. Other USDA actions—not covered

Other actions that USDA may take on the debt are not covered by the freeze.

3. Who can benefit from the freeze?

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

4. For the freeze to apply, claimant must petition for Monitor review

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

5. When the freeze begins and ends

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

6. Freeze does not stop administrative offsets—but refunds possible

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

7. After the freeze ends

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

8. More information

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Claimant and Claimant Attorney Access to USDA Documents

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Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

This Monitor Update explains how claimants and their attorneys can go about getting copies of these USDA documents.

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

Claimants who are being assisted by Class Counsel or Of-Counsel should not have any problem with access to papers that USDA filed in their *Pigford* claims. Class Counsel should have a copy of these files, and Of-Counsel should be able to get a copy from Class Counsel.

b. Assisted by an Attorney Who Is Not Class Counsel or Of-Counsel

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

Some claimants are not being assisted by an attorney at all. In legal terms, these claimants are acting "pro se"—that is to say, they are acting without legal counsel. Section 4 of this Update explains how these claimants should go about getting papers that USDA filed in their *Pigford* claims.

3. Types of Information Available to Claimant Varies

In general, USDA files used by the Adjudicator in deciding the claimant's case include two types of information. First, files sometimes include information about the claimant. This may include documents from old FmHA files, for example, or the results of USDA interviews about the claimant.

Second, USDA files may include information about people other than the claimant. This may include, for example, information about people named by the claimant as similarly situated white farmers. Information about claimants and similarly situated white farmers that is contained in USDA's responses to Track A claims is covered by the Privacy Act. A claimant can generally obtain private information about him- or herself but cannot obtain private information about other people. Therefore, a claimant who is not represented by a lawyer will not be able to obtain copies of any materials concerning similarly situated white farmers that USDA gave to the Adjudicator.

Therefore, if a claimant is acting pro se, he or she will not receive USDA information about other people.

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

a. Get a Copy of Privacy Order and the Acknowledgement Form

Claimants need to get a copy of the Privacy Order and the Privacy Order Acknowledgment Form. They can have these sent to them by calling toll-free at 1-877-924-7483.

b. Read the Form Closely and Sign It

Claimants should then read the Privacy Order and the Privacy Order Acknowledgment Form very closely and sign the Acknowledgement Form. When signed, that form is a binding legal document. It limits the claimant's right to use, distribute, or publish the information.

c. Send the Signed Form to the Facilitator—and Include Claimant Mailing Address

Claimants should then send the signed Acknowledgement Form to the Facilitator at:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

It is important that the claimant send a current mailing address to the Facilitator along with the signed form.

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

Attorneys need to get a copy of the Second Amended Supplemental Privacy Act Protective Order ("Privacy Order") and the Privacy Order Acknowledgment Form. They can request them by calling toll-free at 1-877-924-7483.

b. Sign Form and Return to USDA

Attorneys then sign the form and return it to USDA through the Facilitator at the following address:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.

Monitor Update:
Procedural Rules for the
Track B Monitor Petition Process

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Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)
Post Office Box 64511
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Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

All of the Court orders referenced below may be found on the Court's web site at http://www.dcd.uscourts.gov.

a. **General Procedures.** The general procedures for the Monitor review process can be found in the Court's April 4, 2000, Order of Reference. Further detail can be found in the Monitor's booklet entitled "Questions and Answers About Monitor Review of Decisions," which is available from the Office of the Monitor.

b. **Deadline for Petitions for Monitor Review.** The deadlines for filing petitions for Monitor review are found in the Court's Order of July 14, 2000. In general, petitions must have been filed by November 13, 2000, or by 120 days from the date of the Arbitrator decision, whichever is later.

c. **Deadline for Responses to Petitions.** The deadline for responding to petitions for Monitor review is found in the Court's Order of September 12, 2000. In general, responses to petitions must be filed within sixty days from the non-petitioning party's receipt of the petition for Monitor review.

2. Filing Petitions for Monitor Review

Under Track B, any party seeking Monitor review of the Arbitrator's decision must:

a. Timely file with the Facilitator an original petition for Monitor review ("petition") and one copy of the petition. Petitions will be deemed "filed" as of the date of postmark. Petitions should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. File with the petition a Designation of Record. The Designation of Record shall include material before the Arbitrator in the petitioning Track B proceeding and shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review.

c. Timely serve one copy of the petition, including the designation of record, on the opposing party. Petitions will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

Under Track B, any party responding to a petition must:

a. Timely file with the Facilitator an original response to the petition for Monitor review ("response") and one copy of the response. Responses will be deemed "filed" as of the date of postmark. Responses should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. In addition, the responding party may file a Designation of Record of additional material not identified by the petitioning party. The Designation of Record of the additional material shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review. The Designation of Record of additional material, if filed, must be filed within sixty days from receipt of the petition for Monitor review.

c. Timely serve a copy of the response, including the responding party's designation of record, if any, on the petitioning party. Responses will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

The Monitor may, in her discretion, review material in the record before the Arbitrator that has not been designated by the parties.

4. Publication of Rules

The Arbitrator shall include copies of these rules whenever he sends to parties copies of decisions in their Arbitration cases. He shall also immediately send copies to all parties who have already received Arbitration decisions. The Arbitrator, the Monitor, and the parties shall also be free to send copies out to the public upon request.

Monitor Update:
Noncredit Claims—$3,000 for Each Prevailing Class Member

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Office of the Monitor
Pigford v. Veneman (D.D.C.)
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Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483

Noncredit Claims—$3,000 for Each Prevailing Class Member

1. Introduction

The Consent Decree divided *Pigford* claims into two types—credit claims and noncredit claims. The vast majority of class members in the case have credit claims. Several hundred class members, however, have both a credit claim and a noncredit claim, or have only a noncredit claim. This Monitor Update describes noncredit claims, and describes the payment that class members with prevailing noncredit claims will receive.

2. Noncredit Claims and Credit Claims—Defining the Difference

In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to receive some other type of benefit, including the payment of money, from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Award for Noncredit Claimants

The amount to be given to class members who prevail on a noncredit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties that was entered as an official Order by the Court fills in many of the details.

a. Consent Decree—Receive Amount Denied

The Consent Decree provides that a class member who prevails on a noncredit claim is to receive the amount of the benefit that was wrongly denied to the class member. In addition, according to the Consent Decree, these payments will only be made if there are certain funds available in the USDA budget.

b. February 7, 2001, Stipulation and Order—$3,000 Payment

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the award that class members will receive in noncredit cases.

The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel believe that deciding the amount that should be paid for noncredit claims for each person would be difficult, if not impossible.

The Government and Class Counsel therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single payment from USDA in the amount of $3,000.

4. Other Details about the $3,000 Payment

Several other details about the $3,000 noncredit payment were explained in the February 7, 2001, Stipulation and Order. These are discussed below.

a. Only One $3,000 Payment Per Class Member

Each class member who prevails on a noncredit claim may receive only one $3,000 payment. This is true even if the class member prevailed on more than one noncredit claim. This means, for example, that if the class member had a successful claim for a disaster payment in both 1990 and 1992, he or she would receive only one payment of $3,000.

b. Credit and Noncredit Claim Combined

If a class member prevailed on both a credit claim and a noncredit claim, the class member will receive a payment for both the credit claim and the noncredit claim. A class member, therefore, could receive both a $50,000 payment for a credit claim and a $3,000 payment for a noncredit claim.

c. No Tax Payments for Noncredit Claims

Class members who receive a $3,000 payment for a noncredit claim will not receive any more funds—either paid to them or paid directly to the Internal Revenue Service—to cover any tax obligations the class member might incur as a result of the $3,000 payment.

5. More Information

Anyone who has any question regarding noncredit payments should feel free to call the Office of the Monitor at 1-877-924-7483. For more information about the Judge's Order, or for a copy of the Order, please call the Monitor's Office.

Monitor Update:
Debt Relief for Prevailing Class Members

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Office of the Monitor
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This is not a USDA publication.

Debt Relief for Prevailing Class Members

1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief class members will receive.

2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to obtain some other benefit from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Consent Decree and Court Order

Debt relief for class members who prevail on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

a. Consent Decree

The Consent Decree provides that a class member who prevails on a credit claim is to receive a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of the credit claim.

b. February 7, 2001, Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the debt discharge that class members will receive in credit

cases. The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Order.

4. Debts to be Discharged

Certain USDA debts will be discharged as a result of the *Pigford* settlement. These are discussed below. Three types of debts will be discharged. However, an important exception applies to the debt discharge.

a. Debts Affected by Discrimination

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged.

b. Some Debts Incurred After the Discrimination Occurs

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

If, after the date of discrimination, the class member incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged. For example, if the Adjudicator found that USDA discriminated against the class member in denying a Farm Operating Loan in 1994, and the USDA then made a Farm Operating Loan to the class member in 1995, the 1994 and 1995 Operating Loans will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

c. Some Debts Incurred at the Same Time as the Discrimination

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan (EM) Program is a separate program, and so forth.

If the class member incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged. For example, suppose the Adjudicator found that discrimination occurred in 1990 in USDA's servicing of a 1989 Farm Operating Loan. If at the same time in 1990 USDA made a Farm Operating Loan to the class member, the 1990 Farm Operating Loan will be discharged. This is true even though the Adjudicator or Arbitrator did not find discrimination in the making of the 1990 Farm Operating Loan.

d. Important Exception Affecting Debt Relief—Older Lawsuits

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed. For example, if a class member was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the class member, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

e. Loans Made after December 31, 1996—No Debt Discharge

Loans made after the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree. For example, if a class member received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

5. More Information

For more information about the February 7, 2001, Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below.

Anyone who has any question regarding debt relief should call the Monitor toll free at 1-877-924-7483.

Monitor Update: Understanding Who Is Part of the *Pigford* Case

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Understanding Who Is Part of the *Pigford* Case

A. Introduction

People who are interested in being part of the *Pigford* case fall into three groups: (1) people who are in the case, (2) people who might get into the case, and (3) people who will not get into the case. This Update explains the rules that determine who is in each group and gives some statistics about each group (as of November 26, 2002).

B. Definitions

Before explaining the three groups, it is important to explain what some basic terms mean.

1. **What is the "Consent Decree"?** The Consent Decree is the document that explains what the parties agreed to when they settled the case. The Court approved the Consent Decree after a Fairness Hearing.

2. **What is a "Claim Sheet"?** The term "Claim Sheet" refers to the Claim Sheet and Election Form—the package of forms that one fills out to file an official claim in the case. The deadline for filing a timely Claim Sheet was October 12, 1999.

3. **What is a "Petition for Monitor Review"?** Petitions for Monitor Review are the papers that one files to ask the Monitor to review the decision that was made by the Facilitator, Adjudicator, or Arbitrator. There are deadlines for filing Petitions for Monitor Review: people may call the Facilitator's office at 1-800-646-2873 to find out about deadlines.

4. **What is a "Late Claim Application"?** There are many people who did not file a Claim Sheet on time who believe that they should be part of the case. A person cannot file a Claim Sheet after the deadline (after October 12, 1999) without first getting permission to do so from the Arbitrator. A "Late Claim" application asks the Arbitrator for permission to file a late Claim Sheet. This procedure is sometimes called "5(g)" because it is explained in paragraph 5(g) of the Consent Decree. The Arbitrator is allowed to approve a "Late Claim" application only if he determines that a person was unable to file his or her Claim Sheet on time because of extraordinary circumstances beyond his or her control. The deadline for filing "Late Claim" applications was September 15, 2000.

5. **What is "Late Claim Reconsideration"?** If a person filed a "Late Claim" application on time (by September 15, 2000) and the Arbitrator rejected his or her application, the

person has a chance to ask the Arbitrator to reconsider his decision. Requests for reconsideration must generally be filed within 60 days after the date of the Arbitrator's rejection letter.[1]

C. The Three Groups: Who Is In the Case?

1. Group One: People Who Are In the Case

In general, the people who are in the case or have permission to join the case consist of those who:

a. *Filed Claim Sheet On Time.* There are approximately 21,776 people who filed a Claim Sheet by October 12, 1999, and were determined "eligible" by the Facilitator.[2]

b. *Filed "Late Claim" Application, Request Approved.* There are approximately 1,631 people who did not file a Claim Sheet on time but who did file a "Late Claim" application on time and had the "Late Claim" application approved by the Arbitrator.[3] These people have permission to file a late Claim Sheet. The Facilitator either gave them or will give them a deadline for filing a Claim Sheet. Once the Claim Sheet is filed, if the Facilitator finds them eligible, they will be part of the case.

2. Group Two: People Who Might Get Into the Case

In general, the people who might get into the case consist of those who:

a. *Filed Timely "Late Claim" Application, No Decision Yet.* There are approximately 7,341 people who did not file a Claim Sheet on time (by October 12, 1999) but who did file a "Late Claim" application on time (by September 15, 2000) and have not yet received a decision on their "Late Claim" application.

b. *"Late Claim" Application Rejected, Filed "Late Claim" Reconsideration Request.* There are approximately 17,891 people who filed timely requests for reconsideration after they had their "Late Claim" applications rejected by the Arbitrator and have not yet received decisions on their requests for reconsideration.

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1 When the Arbitrator first officially established a reconsideration policy, the deadline was different. Call the Facilitator at 1-800-646-2873 to find out about reconsideration deadlines.

2 Approximately 23,148 people filed timely Claim Sheets. Of those, the Facilitator found that approximately 21,776 are eligible. People in certain categories who were found ineligible have the opportunity to file a Petition for Monitor Review up until their petition deadline. The Facilitator has identified approximately 163 people who have the right to petition the Monitor regarding eligibility determinations. Monitor Update No. 5 explains eligibility and the rules and deadlines in the Monitor petition process as it relates to eligibility (available from the Monitor's office; call toll-free, 1-877-924-7483).

3 Statistics in this Update concerning the "Late Claims" process are current as of October 1, 2002.

3. Group Three: People Who Will Not Get Into the Case

The Consent Decree and Court Orders in this case establish cutoff dates for getting into the case. These Orders provide that the following people will not get into the case:

a. *Did Not File Timely Claim Sheet and Did Not File Timely "Late Claim" Application.* People who did not file a Claim Sheet on time (by October 12, 1999) and did not file a "Late Claim" application on time (by September 15, 2000) will not get into the case. There are approximately 8,025 people who filed "Late Claim" applications after the deadline (after September 15, 2000)—these people will not get into the case. IT IS NOW TOO LATE TO FILE A "LATE CLAIM" APPLICATION.

ACCORDING TO THE RULES IN THIS CASE, ANYONE WHO DID NOT FILE A CLAIM SHEET BY OCTOBER 12, 1999, OR A "LATE CLAIM" APPLICATION BY SEPTEMBER 15, 2000, CANNOT BE PART OF THE CASE.

b. *Filed Timely "Late Claim" Applications, But Lost in "Late Claim" Process.* There are approximately 52,256 people who filed timely "Late Claim" applications that were rejected by the Arbitrator. Some of those people had their deadlines for filing reconsideration requests pass without filing a timely request for reconsideration: those people will not get into the case. Additionally, some people filed timely requests for reconsideration, but the Arbitrator denied their request for reconsideration: those people will not get into the case. There is no Monitor review of decisions in the "Late Claim" process.

D. Results for People Who Are In the Case

Most people who are in the case chose Track A (Adjudication). A chart showing the results for people in Track A is attached to this update. A chart showing the results for people in Track B is available from the Monitor's Office (1-877-924-7483).

People who believe that the decision of the Facilitator, Adjudicator, or Arbitrator in their case is wrong have an opportunity to petition for Monitor review. Deadlines apply in the Monitor review process.[4] Call the Facilitator at 1-800-646-2873 find out about deadlines for petitioning for Monitor review and to request a booklet that explains the Monitor review process.

E. Questions

Individuals may call the Monitor's office toll-free at 1-877-924-7483 with questions.

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[4] The exception is that some decisions made by the Facilitator are not subject to Monitor review. The Facilitator can answer individuals' questions about whether or not they have the right to petition.

Monitor Update:
Resources for *Pigford* Claimants

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Office of the Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)
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Phone (toll-free): 1-877-924-7483

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Resources for *Pigford* Claimants

1. Introduction

Claimants frequently contact the Office of the Monitor and request information and assistance.[1] One of the Monitor's duties is to assist claimants with "other problems" that they are having with regard to the Consent Decree. Many claimants, however, have problems that are not within the authority of the Monitor to solve. This Monitor Update provides a few suggestions for other resources that may be helpful to these claimants.

2. Debt Relief Available Only for Successful Credit Claims

Before using the resources mentioned in this Update, a claimant should be aware of two warnings.

a. Other Resources May Be Helpful

This Update mentions only a few of the possible places that a claimant might turn to for help. There are likely many others that are not mentioned here that could be helpful. If a group or agency is not listed here, this does not mean that the Monitor's Office thinks the group or agency does poor work.

b. Monitor Cannot Vouch for Groups Mentioned

Several groups and agencies are mentioned in this Update. The Monitor's Office cannot vouch for these groups or agencies. Each claimant should investigate the group or organization carefully before taking advice from them.

3. When the Monitor Can Help

The Consent Decree permits the Monitor to help claimants resolve problems that claimants have with the Consent Decree. For example, the Monitor can help solve claimant problems of the following types.

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[1] The Monitor's duties and responsibilities are outlined in the Consent Decree and the Order of Reference. Claimants can receive a copy of the Consent Decree and/or the Order of Reference by calling our toll free number (1-877-924-7483) and requesting a copy.

a. Debt Relief

Successful Track A credit claimants may be entitled to have part or all of their USDA debt forgiven. Debt relief is confusing, however. If a claimant believes that he or she has USDA debt that should be forgiven, the Monitor may be able to help. The Monitor has also written a short guide, "Monitor Update Number 10, Debt Relief." This Update is available by calling the Monitor's toll-free number. Claimants with questions can contact the Monitor's Office for further assistance.

b. Injunctive Relief

Successful Track A credit claimants are entitled to receive Injunctive Relief. This may include, for example, priority consideration for a new USDA loan. If a claimant believes his or her right to Injunctive Relief is being denied, the Monitor may be able to help. Successful non-credit claimants also are entitled to a limited form of Injunctive Relief. A short written guide, "Monitor Update Number 4, Injunctive Relief," may also be of help. This Update is available by calling the Monitor's toll-free number.

c. Other Problems Related to the Consent Decree Settlement

Prevailing claimants may have other problems related to the Consent Decree. These could include, for example, the timing of cash payments, non-credit relief, some tax-related problems, and other matters. Claimants with these types of questions should contact the Monitor.

4. How to Contact the Monitor

a. By Phone – 1-877-924-7483

Claimants may contact the Office of the Monitor by calling toll free 1-877-924-7483. If the operator who answers the call is unable to assist a Claimant, Claimants may make an appointment to speak with a member of the Monitor's legal staff.

b. In Writing

The Monitor can be reached by writing:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

5. When the Monitor Cannot Help

Problems faced by claimants often are not related to the *Pigford* Consent Decree. The Monitor is not allowed to help claimants with these kinds of problems.

For example, many claimants find it hard to develop the cash flow plans and other financial plans that lenders often want to see before a loan is made. Further, some claimants find it difficult to deal with private lenders and other creditors. In both cases, since the problems are not related to the Consent Decree, the Monitor cannot provide the kind of help the claimant may need. The following groups and organizations may, however, be of some help in these situations.

a. University and Extension Programs

A number of colleges and universities have programs that are designed to help farmers. The programs mentioned below actively aim to assist African American farmers.

1) ***Alcorn State Cooperative Extension (Mississippi)***

Alcorn State University Cooperative Extension Program
Small Farm Outreach Training and Technical Assistance Project
1000 A.S.U Dr. # 479
Alcorn State, MS 39096-7500
Phone: 601-877-6128
Fax: 601-877-6694
Web site: none

Service Area: Southwest Mississippi.

2) ***Tuskegee University (Alabama)***

Tuskegee University Cooperative Extension Program
204 Morrison Mayberry Hall
Tuskegee, Alabama 36088
Phone: 334-724-4441
Fax: 334-727-8812
Web site: www.tusk.edu

Service area: State of Alabama.

3) ***North Carolina A & T Small Farm Outreach Training & Technical Assistance Program (North Carolina)***

North Carolina A & T State University
Cooperative Extension Program
Greensboro, NC 27411
Phone: 336-334-7024
Fax: 336-334-7207

Web site: http://www.ag.ncat.edu/extension/programs/sfottap/index.htm

Service Area: State of North Carolina.

4) ***University of Arkansas of Pine Bluff (Arkansas)***

University of Arkansas of Pine Bluff Small Farms Program
1200 North University Drive
UAPB Mail Slot 4906
Pine Bluff AR, 71601
Phone: 870-575-8142, 7246
Fax: 870-543-8035
Web site: none

Service Area: Thirteen Arkansas counties: Jefferson; Lincoln; Drew; Desha; Chicot; Ashley; Crittenden; St. Francis, Woodruff; Lee; Phillips; Monroe; Arkansas.

5) Southern University

Louisiana Family Farm Technical Assistance Project
Southern University
Baton Rouge, LA
Phone: 225-771-3863
Fax: 225-771-5728
Web site: none

Service Area: Nineteen parishes in Northeastern Louisiana.

b. Farm Advocacy Group

The following groups are generally private nonprofit organizations that work closely with African American farmers. They are not part of a college or university.

1) Arkansas Land and Farm Development Corporation

Arkansas Land and Farm Development Corporation
Route 2 Box 291
Brinkley, AR 72021
Phone: 870-734-1140
Fax: 870-734-4197
Web site: none

2) Federation of Southern Cooperatives/Land Assistance Fund

Administrative Office
2769 Church Street
East Point, GA 30344
Phone: 404-765-0991
Fax: 404-765-9178

Georgia Field Office
P.O. Box 3092
Albany, GA 31706
Phone: 912-432-5799
Fax: 912-439-0894

Rural Training & Research Center
P.O. Box 95
Epes, AL 35460
Phone: 205-652-9676
Fax: 205-652-9678
Web site: http://www.federationsoutherncoop.com/

c. Legal Organizations

Claimants may have questions about other legal problems. The Monitor is not allowed to provide legal advice to class members. Claimants experiencing legal problems may wish to contact one of the following nonprofit organizations that assist family farmers, including African American family farmers.

1) ***Land Loss Prevention Project***

Land Loss Prevention Project
P.O. Box 179
Durham, NC 27702
Phone: 919-682-5969
Toll-Free: 1-800-672-5839
Fax: 919-688-5596
Web site: www.landloss.org

Service Area: State of North Carolina.

2) ***Farmers' Legal Action Group, Inc.***

Farmers' Legal Action Group, Inc.
46 E. 4th St., Suite 1301
St. Paul, MN 55101-1109
Phone: 651-223-5400
Fax: 651-223-5335
Web site: www.flaginc.org

Service Area: Nationwide.

d. State Departments of Agriculture

Each state maintains a state Department of Agriculture. Claimants may want to contact their state department of agriculture for additional assistance. A listing of all of the states departments of agriculture can be found on the web at:

http://www.accesskansas.org/kda/stateags.html

e. USDA

USDA maintains the following resources that may be of help to claimants.

1) ***USDA Hot Line for Minority and Socially Disadvantaged Farmers (MSDA)***

The Farm Service Agency (FSA) has established an Office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) to work with minority farmers who have concerns about loan applications filed with local FSA offices. The MSDA Office will operate Monday to Friday, 8 to 5 p.m. Eastern Time.

Office of Minority and Socially Disadvantaged Farmers
Farm Service Agency
USDA
1400 Independence Ave SW
Mail Stop 0501
Washington, DC 20250-0501
Phone: 1-866-538-2610 (toll-free) or 202-720-1584 (local)
FAX: 1-888-211-7286 (toll-free) or 202-690-3432 (local)
E-mail: msda@wdc.usda.gov

2) ***USDA Office of Civil Rights – Discrimination Complaints***

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights
USDA
1400 Independence Avenue SW
Mail Stop 9410
Washington, D C 20250
Phone: 202-720-5964
TTY 202-402- 0216
Fax: None
Web site: http://www.usda.gov/da/cr.html

3) ***Farm Service Agency Appeals***

Farm Service Agency (FSA) applicants may appeal many adverse FSA decisions. To appeal an FSA decision, the applicant must ask for a hearing within thirty days after he or she received notice of the adverse decision. If an applicant receives a letter of denial from FSA, there should be directions about how to go forward with an appeal.

Monitor Update:
The *Pigford* Case Is Closed

Date Issued: **June 28, 2004**
Update 013
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Office of the Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)
Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483

The *Pigford* Case Is Closed: No One Can Get Into the Case If They Did Not Apply by Deadlines

1. Introduction

The Consent Decree and Court Orders set strict cutoff dates for getting into the *Pigford* case. The deadlines have now passed.

2. *Pigford* Is Closed

The *Pigford* case is now closed. Anyone who did not meet one of the two deadlines explained below cannot be a part of the case.

3. Two Deadlines for the Case

Two important deadlines govern whether a person is eligible in the case.

a. Claim Sheet Deadline — October 12, 1999

The deadline to file a Claim Sheet and Election Form was October 12, 1999. Anyone who did not meet this deadline could only get into the case by filing a late claim request.

Processing of claims filed on time continues.

b. Late Claim Request Deadline — September 15, 2000

Anyone who missed the October 12, 1999, Claim Sheet deadline and wanted to be in the case needed to file a late claim request. The deadline to file a late claim request was September 15, 2000.

Those who did file a late claim request will get a response.

c. Two Deadlines Are Final

Anyone who missed both of these deadlines cannot get into the case.

4. Questions

Anyone with questions about these deadlines may call the Monitor's office toll-free at 1-877-924-7483 or may call the Facilitator at 1-800-646-2873. Several other Monitor Updates discuss the case in more detail. See www.pigfordmonitor.org.

Monitor Update:
No Adverse Effect

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Office of the Monitor
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www.pigfordmonitor.org

No Adverse Effect: Future Loans and Future Loan Servicing for Prevailing Class Members

A. Introduction

According to the Consent Decree in the *Pigford* case, debt forgiveness required by the Consent Decree will not "adversely affect" a claimant's eligibility to participate in a USDA loan program or a USDA loan servicing program. This Monitor Update is intended to explain how the no adverse effect part of the Consent Decree works for claimants.

B. Two Types of USDA Debt Forgiveness — Consent Decree and Non-Consent Decree

Many claimants have had USDA debt forgiven, or they will have USDA debt forgiven in the future. There are several different ways that a claimant might receive debt forgiveness, and the difference can be important for the future.

1. Debt Relief Under *Pigford*

As part of the Consent Decree, USDA must discharge many outstanding debts owed by successful claimants. According to the Consent Decree, debts that were incurred under, or affected by, a USDA program that was the subject of the Adjudicator's or Arbitrator's finding of discrimination on credit claims are to be forgiven. A Court Order explains the debt forgiveness rules in more detail. In addition, if the Adjudicator or Arbitrator finds discrimination regarding a particular loan, a claimant is also entitled to discharge of any debt of that loan type incurred at the time of the earliest event on which there is a finding of discrimination through December 31, 1996.

Claimants who have questions about what debts should be forgiven may call the Monitor's toll-free number, 1-877-924-7483. Callers may also request Monitor Update 10, which explains debt relief.

2. Other USDA Debt Forgiveness

The Consent Decree is not the only way that claimants may have received debt forgiveness from USDA. USDA regulations require debts to be forgiven under certain

conditions. In addition, a bankruptcy court can give relief from a USDA debt. One way or another, many claimants have had debt written off outside of the Consent Decree process.

3. Why the Difference Is Important — Future Dealings With USDA

The difference between Consent Decree debt forgiveness and other USDA debt forgiveness is important. The Consent Decree says that debt forgiven because of the Consent Decree shall not adversely affect the eligibility of a claimant who wants to participate in a USDA loan program or a USDA loan servicing program. Other forms of USDA debt forgiveness can make a claimant not eligible for a USDA loan or for USDA loan servicing. The following sections of this Update explain how the difference in the type of debt forgiveness can affect a claimant.

C. Debt Forgiveness and Getting a USDA Loan

Debt forgiveness can affect a borrower's right to a future USDA loan.

1. General Rule — Debt Forgiveness and Future USDA Loans

Applicants who have had USDA debt forgiveness outside of the Consent Decree process may be ineligible by law for a new USDA direct or guaranteed loan. Debt forgiveness, for this purpose, includes the write-down or write-off of a USDA debt. Although there are some exceptions to the rule, in general the majority of applicants who received a write-down from USDA will normally not be eligible for a future USDA loan.

2. Consent Decree Debt Forgiveness and Future USDA Loans

The general rule is changed by the Consent Decree.

a. Debt Discharged Due to Consent Decree

A debt discharged because of the Consent Decree will not hurt a claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got a farm ownership loan in 1994. As a result of the Adjudicator decision, USDA discharged the rest of the loan. This discharge does not affect the claimant's eligibility for a new loan.

b. Debt Write-Down of Loan Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would often mean that the claimant would not be eligible for a new USDA loan. If, however, discrimination was found in a loan that was previously written down or written off, this earlier debt forgiveness will not hurt the claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got an operating loan in 1990 and, due to payment problems, USDA wrote off part of that debt in 1995. If the Adjudicator found that there had been discrimination in the making of the 1990 operating loan,

the fact that the claimant had that write-down in 1995 could not affect the claimant's eligibility for a future USDA loan.

c. Subsequent Debt in Same Program Written Down and Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. This type of write-down also cannot hurt the claimant's eligibility for another FSA loan.

Example:
Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. The 1991 loan had been paid in full, and the balance due on the 1994 loan had been forgiven through FSA's debt write-down process in 1998. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan cannot affect the claimant's eligibility for a future USDA loan.

D. Getting a Loan and USDA's Creditworthiness Test

Creditworthiness can affect a borrower's right to a future USDA loan.

1. The General Rule — Creditworthiness and Future USDA Loans

As a general rule, an applicant must be creditworthy to be eligible for a USDA loan. Credit history is taken into account when USDA considers the creditworthiness of the applicant. Credit history includes the applicant's past loan history with USDA. Therefore, if an applicant has had difficulty making payment on USDA loans in the past, he or she might not meet the USDA creditworthiness requirement for a future USDA loan.

2. Claimant Creditworthiness and Future USDA Loans

If the claimant had an outstanding debt discharged by the Consent Decree, in many cases the farmer will have missed payments on the debt and the debt will have been delinquent. Under the USDA regulations, missing payments on a USDA loan, being delinquent on a USDA loan, and so forth could make the farmer ineligible for another loan.

a. Loan Affected by Discrimination and Future USDA Loan Decisions

The Consent Decree says that the forgiveness of debt because of the Consent Decree shall not affect the claimant's eligibility for a new loan. As a result, if a loan is forgiven because of the Consent Decree, any problems the claimant may have had with that loan in the past, such as missed payments or late payments, should not affect the claimant's creditworthiness for the purpose of getting a new USDA loan.

Example:
Suppose a borrower received an operating loan in 1996 and became delinquent on the loan in 2001. The Adjudicator found discrimination in the making of the 1996 operating loan. The farmer's delinquency on the loan cannot be considered a creditworthiness problem for the farmer when USDA is considering making the claimant a new loan.

b. Subsequent Debt in Same Program Is Forgiven Due to Consent Decree

The same result is true for any debt that is forgiven because of the Consent Decree.

Example:
Suppose a claimant received two operating loans: one in 1994 and one in 1996, and both loans still had a balance. If the Adjudicator found discrimination in the making of the 1994 loan, both loans would be forgiven under the Consent Decree. USDA may not consider payment problems for either loan as a factor in a decision about the making of a new loan.

c. Subsequent Written Off Debt in Same Program Is Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. Payment problems for the loan that is now forgiven cannot affect the creditworthiness of the claimant.

Example:
Suppose a claimant got two operating loans: one in 1994 and one in 1996. The claimant paid the 1994 loan in full, but the agency wrote off the 1996 loan because the claimant had been unable make the payments on that note. If the Adjudicator found discrimination in the making of the 1994 loan, the 1996 loan would also be forgiven under the Consent Decree—except that there is no balance left on the 1996 loan. Any payment problems the claimant had in the past on the 1996 loan would not affect the claimant's future creditworthiness if he or she tried to get a new loan from USDA.

E. Eligibility for Future Loan Servicing

Farmers who have borrowed from USDA sometimes have difficulty making loan payments, or have other problems meeting the requirements of the loan. In such cases, USDA is required to provide borrowers with the chance for what USDA calls loan servicing. If the borrower is eligible, USDA loan servicing can provide a number of ways to help the farmer stay on the land. If the borrower meets certain criteria, the loan servicing can include, for example, a reduced interest rate, a restructuring of the loan, or other measures that help the borrower. The right to future loan servicing—including future write-downs—is affected by past USDA loan servicing.

1. General Rule — Debt Forgiveness and Future Loan Servicing

The eligibility rules for loan servicing take into account the borrower's previous experience with USDA. For example, in general, USDA cannot provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct loan.

2. Claimant Debt Forgiveness and Future Loan Servicing

a. Debt Discharged Because of Consent Decree

In many cases, USDA cannot, by law, provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct or guaranteed loan. USDA regulations contain some limited exceptions to this rule, but for many people USDA rules will prevent a borrower with debt forgiveness from getting certain kinds of loan servicing in the future. A debt discharged under the Consent Decree, however, will not hurt the claimant's eligibility for future USDA loan servicing.

Example:
Suppose a claimant got a farm ownership loan in 1992, the Adjudicator found that USDA had discriminated in making the loan, and, as a result of the Adjudicator decision, USDA discharged the remainder of the loan. This discharge does not affect the claimant's eligibility for loan servicing in the future.

b. Debt Write-Down in Loan Affected by Discrimination, Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would normally mean that the claimant might not be eligible for future loan servicing. If, however, discrimination was found in a loan that was written down or written off before the Adjudicator's decision but after the date of the discriminatory event, this debt forgiveness will not hurt the claimant's eligibility for future loan servicing.

Example:
Suppose a claimant got an operating loan in 1989 and, due to payment problems, USDA wrote off part of that debt in 1991. If the Adjudicator found that there had been discrimination in the making of the 1989 operating loan, the fact that the claimant had a write-down in 1991 should not affect the claimant's eligibility for future USDA loan servicing.

c. Subsequent Debt in Same Program Had Debt Write-Down, Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no more left for the claimant to pay because of a USDA write down. This write-down cannot affect the claimant's right to future loan servicing.

Example:
Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. Suppose a balance remained on the 1991 loan, but nothing was left to be paid on the 1994 loan because USDA forgave the loan in 1995. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan would not affect the claimant's right to future loan servicing.

F. Consent Decree Discharge Can Never Harm Claimant

This Update provides a few examples of the no adverse effect rule found in the Consent Decree. The rule may apply in other ways not illustrated by these examples. The most important rule is that discharge of debt because of the Consent Decree should never harm the claimant in his or her future dealings with the USDA.

G. More Information

For more information call the Monitor's office at 1-877-924-7483 or write to the Monitor at P.O. Box 64511, St. Paul, MN 55164-0511. The Monitor also has a website: www.pigfordmonitor.org.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

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Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

J. L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
Attorney at Law
3050 K Street NW, Suite 400
Washington, DC 20007-5108
Phone: 202-342-8864
Fax: 202-342-8451

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that

in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made his decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases. Monitor Update #8, "Procedural Rules for Track B Cases" addresses the rules for Monitor Review of Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information the government maintains about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

> **9a. If you are represented by Class Counsel.** Class Counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agreed not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that USDA acquired through foreclosure that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is successful, under certain circumstances USDA will refund money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483 to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. Two court orders established deadlines for Petitions for Monitor Review. One order, dated July 14, 2000, established deadlines for Petitions for Monitor Review in Track A and Track B cases. The other Order, dated October 29, 2002, established a deadline for filing Petitions for Monitor review of Facilitator Eligibility determinations.

a. Track A Adjudication or Track B Arbitration

(1) **Decisions dated on or before July 14, 2000.** If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of Petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

(2) **Decisions dated after July 14, 2000.** If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

b. Facilitator Review of Eligibility Determinations

(1) **Decision on or before October 29, 2002—deadline was February 26, 2003.** If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

(2) **Decision after October 29, 2002—deadline 120 days after Decision.** If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) that I found in your file—that letter, along with any documents that I have accepted into the record in your

case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies of the letter will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.

Appendix 5

Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of January 1, 2002, Through December 31, 2003

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, *et al.*, Plaintiffs, v. ANN M. VENEMAN, Secretary, United States Department of Agriculture, Defendant.	Civil Action No. 97-1978 (PLF)
CECIL BREWINGTON, *et al.*, Plaintiffs, v. ANN M. VENEMAN, Secretary, United States Department of Agriculture, Defendant.	Civil Action No. 98-1693 (PLF)

MONITOR'S REPORT AND RECOMMENDATIONS
REGARDING IMPLEMENTATION OF THE CONSENT DECREE
FOR THE PERIOD OF JANUARY 1, 2002, THROUGH DECEMBER 31, 2003

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This is the third in a series of Monitor reports concerning the implementation of the Consent Decree in this case. Prior reports covered the good faith implementation of the Consent Decree from March 1, 2000, through August 31, 2000, and from September 1, 2000, through December 31, 2001.[1] This report provides information regarding claims processing activities, Court orders, Monitor activities and observations, significant Consent Decree implementation issues, and the parties' good faith during the two-year period of January 1, 2002, through December 31, 2003. Current statistics regarding many of the items discussed in this report can be found on the Monitor's web site.[2]

I. EXECUTIVE SUMMARY

During this reporting period, the parties and the neutrals[3] continued to work in good faith to implement the Consent Decree. Highlights of progress during calendar years 2002 and 2003 include:

a. The Adjudicator issued initial adjudication decisions in 21,678 Track A claims as of the end of 2003.

b. The Government paid out $10,500,000 to successful class members in Track A credit matters in 2002 and an additional $13,600,000 to successful class members in Track A credit matters in 2003. Combined with payments in earlier years, Track A cash payments for credit claims totaled $638,350,000 as of the end of 2003.

c. The Government provided debt relief by forgiving approximately $21,930,937 in outstanding debt owed by prevailing class members (principal and interest) as of the end of 2003.

d. The Arbitrator issued decisions in a total of 77 Track B claims as of the end of 2003. The average damage award for prevailing Track B claimants was $545,686.

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1 Prior reports are available on the Monitor's web site at http://www.pigfordmonitor.org/reports/.
2 The web site address is http://www.pigfordmonitor.org.
3 The neutrals include the Facilitator, the Adjudicator, and the Arbitrator.

e. The Arbitrator continued review of the requests for class membership submitted under the process set forth in paragraph 5(g) of the Consent Decree (the "late claims" process). The Arbitrator reported that 2,118 "late claim" applicants had been found eligible to file a "late claim" as of December 2003.

f. The Monitor's Office continued to issue decisions in response to petitions for review. By the end of 2003, the Monitor had issued a total of 2,725 decisions in response to petitions for Monitor review.

g. The Adjudicator began issuing readjudication decisions for Track A claims. The Adjudicator issued 301 readjudication decisions as of the end of 2003.

Notwithstanding this good faith and substantial progress, important implementation challenges remain. This report provides information about both the progress and the challenges that occurred during calendar years 2002 and 2003. The report provides updated statistical information concerning the processing of claims under Track A and Track B during these years, as well as statistical information about the debt relief and injunctive relief provided by the Government from the beginning of the litigation. The report also describes substantive matters addressed by the Court during 2002 and 2003.

After summarizing the Monitor's activities and observations during these two years, the report discusses significant Consent Decree implementation issues, including concerns presented to the Monitor by class members. The report concludes by discussing the parties' good faith efforts to implement the Consent Decree.

II. BACKGROUND

A. Authority to Issue Reports

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports on the good faith implementation of the Consent Decree.[4] This report is submitted pursuant to the March 24, 2003, Stipulation and Order, which states:

> The Monitor shall make periodic written reports to the Court, the Secretary, class counsel, and defendant's counsel on the good faith implementation of the Consent Decree, as specified in paragraph 12(b)(i) of the Consent Decree, regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary.

B. Statistics About Processing of Claims

The Monitor did not independently compile most of the data discussed in this report.[5] The Facilitator[6] provided claims processing data, the Arbitrator[7] provided statistics regarding Track B cases and the "late claims" process, and the United States Department of Agriculture (USDA)[8] provided statistics regarding debt relief and injunctive relief. The Monitor relied on these sources for the information contained in this report.

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[4] In a Stipulation and Order dated April 20, 2004, the Court extended the Monitor's appointment until her duties under the Consent Decree are completed, or until March 1, 2007, whichever occurs first. The Monitor will continue filing reports pursuant to the March 24, 2003, Stipulation and Order through the conclusion of her appointment.

[5] The exception is that the Monitor compiles data regarding Monitor decisions issued in the petition process.

[6] The Facilitator is Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(h)(i).

[7] The Arbitrator is Michael Lewis of ADR Associates and JAMS. *See* Consent Decree, paragraph 1(b).

[8] USDA posts some statistics on the agency web site: http://www.usda.gov/da/status.htm. General information about the litigation is provided by the agency at http://www.usda.gov/da/consent.htm.

1. Track A

Paragraph 9 of the Consent Decree sets forth the process for deciding claims under Track A of the claims process. Prevailing class members with credit claims under Track A are entitled to a cash payment of $50,000, as well as other relief.[9] As of January 5, 2004, the Government had paid $638,350,000 to class members who prevailed in Track A credit claims. Prevailing class members with non-credit claims under Track A are entitled to a cash payment of $3,000.[10] As of January 5, 2004, the Government had paid $1,287,000 to class members who prevailed in non-credit claims under Track A. Additional statistics regarding the number of claimants, adjudication rates and results, and cash relief payment rates for calendar years 2002 and 2003 are summarized in Table 1.[11]

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[9] Credit claims generally involve USDA farm loan programs. In addition to a cash payment of $50,000, claimants who prevail on credit claims are also entitled to debt relief, injunctive relief, and tax relief pursuant to paragraph 9(a) of the Consent Decree.

[10] Non-credit claims generally involve farm benefit or conservation programs. The Consent Decree does not specify the dollar amount of relief for non-credit claims. The parties have stipulated that successful claimants in non-credit Track A claims receive a cash payment of $3,000. *See* Stipulation and Order, dated February 7, 2001, available on the Monitor's web site at http://www.pigfordmonitor.org/ orders/. In addition to the $3,000 cash payment, relief for successful non-credit claims includes some aspects of injunctive relief. See paragraph 9(b) of the Consent Decree.

[11] Statistics for prior reporting periods are summarized in Appendix 1. Additionally, current statistics are available upon request from the Monitor's office (1-877-924-7483) and are updated regularly on the Monitor's web site at http://www.pigfordmonitor.org/stats/.

Table 1: Statistical Report Regarding Track A Claims						
Statistical Report as of:	**End of 2001**[12]		**End of 2002**[13]		**End of 2003**[14]	
	Number	**Percent**	**Number**	**Percent**	**Number**	**Percent**
A. Eligible class members	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	177	1	179	1	178	1
Adjudication Completion Figures						
D. Adjudications complete	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	40	~0	48	~0	420	~2
Adjudication Approval/Denial Rates						
F. Claims approved by Adjudicator[15]	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator[16]	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid						
H. Approved adjudications paid as of specified date[17]	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date[18]	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims[19]	$614,250,000		$624,750,000		$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims	$1,284,000		$1,284,000		$1,287,000	

[12] These statistics are valid as of January 2, 2002.
[13] These statistics are valid as of December 31, 2002.
[14] These statistics are valid as of January 5, 2004.
[15] These numbers include both credit and non-credit claims.
[16] These numbers include both credit and non-credit claims. In row G, the number of claims denied by the Adjudicator decreased from December 31, 2002 to January 5, 2004. This decrease is a result of claims that were originally denied by the Adjudicator, but were later approved by the Adjudicator upon reexamination.
[17] These numbers include both credit and non-credit claims.
[18] These numbers include both credit and non-credit claims.
[19] This figure includes only the cash award component of relief in Track A credit cases. Other monetary relief including tax payments and debt relief are reported in Tables 3 and 4 below.

2. Track B

Paragraph 10 of the Consent Decree sets forth the process for deciding claims under Track B of the claims process. Class members who prevail under Track B are entitled to recover actual damages, as well as other relief.[20] Table 2 provides statistics regarding Track B.[21] Please note that the information about Track B awards refers to Arbitrator decisions that may not be final. Some of these decisions are the subject of petitions for Monitor review that have not yet been decided by the Monitor. The amount of each Track B arbitration award is detailed in Appendix 3. Claimant names and geographic locations are not disclosed.

***Table 2:* Statistical Report Regarding Track B Claims**			
Statistical Report as of:	**End of 2001[22]**	**End of 2002[23]**	**End of 2003[24]**
A. Eligible Track B Claimants	235	236	237
B. Track B Cases Settled	57	61	71
C. Track B Cases Converted to Track A	50	54	55
D. Track B Cases Withdrawn	6	6	6
Arbitrations Complete/Not Complete			
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	122	115	105
F. Arbitration Decisions Issued	51	71	77
G. Arbitration Decisions Not Yet Issued (contested cases in which arbitration was not complete and/or decision was not yet issued)	71	44	28

[20] In addition to recovery of actual damages, successful class members are also entitled to debt relief and injunctive relief under paragraph 10 of the Consent Decree.

[21] Most of these statistics are based on the Arbitrator's records, not the Facilitator's. There are differences between the record-keeping protocols of the Arbitrator and the Facilitator. The statistics are approximate. Statistics from prior reporting periods for Track B claims are set forth in Appendix 2.

[22] These statistics are valid as of January 10, 2002.

[23] These statistics are valid as of January 1, 2003.

[24] These statistics are valid as of January 1, 2004.

Table 2: Statistical Report Regarding Track B Claims			
Statistical Report as of:	**End of 2001**[22]	**End of 2002**[23]	**End of 2003**[24]
Arbitration Results			
H. Claimant Prevailed Before Arbitrator	8	15	17
I. Average Awards to Prevailing Claimants	$531,373	$560,309	$545,686
J. Government Prevailed Before Arbitrator	43	56	60
Posture of Decision:			
J.1. Cases Dismissed Before Hearing	28	34	38
J.2. Full Hearing, Finding of No Liability	15	22	22
Petitions for Monitor Review[25]			
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B Cases	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions (Regarding Class Membership Screening) in Track B Cases	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	7	12

3. Debt Relief

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to prevailing class members. A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief. The following table provides statistics

[25] The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

reported by USDA regarding the debt relief implemented by USDA for prevailing class members. Because this is the first time the Monitor has reported statistics concerning debt relief, the information in Table 3 covers the period from the beginning of the Consent Decree implementation through January 12, 2004.

Table 3: **Statistical Report Regarding Debt Relief**[26]	
Statistical Report as of:	**January 12, 2004**
A. Total Amount of Debt Forgiven	$21,930,937
B. Debt Forgiven for Track A Claimants	$19,583,425
C. Debt Forgiven for Track B Claimants	$2,347,512
D. Number of Track A Claimants Who Received Debt Forgiveness	228
E. Number of Track B Claimants Who Received Debt Forgiveness	25
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	$85,892
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	$93,900

[26] These statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004.

4. Total Track A Monetary Relief

Table 4 details the monetary value of Track A relief provided to class members as of the end of 2003.

Table 4: **Statistical Report Regarding Total Track A Monetary Relief**[27]	
Status of Payments	**Amount**
Cash Awards for Credit Claims ($50,000 per prevailing claim)	$638,350,000
Cash Awards for Non-Credit Claims ($3,000 per prevailing claim)	1,287,000
Estimated Payments Due to IRS as Tax Relief[28]	163,387,500
Debt Relief (Principal and Interest)	19,583,425
Total Track A Relief	$822,607,925

5. Injunctive Relief

Paragraph 11 of the Consent Decree describes the injunctive relief that prevailing class members are entitled to receive from USDA. Generally speaking, this relief requires USDA to consider any new Farm Ownership Loan, Farm Operating Loan, or inventory property application by the prevailing class member in the light most favorable to the class member.[29] It also requires USDA to offer prevailing class members technical assistance from a qualified

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[27] These statistics are based on information provided by the Facilitator regarding cash awards. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004 (principal and interest). The tax relief payments are estimated based on the tax relief payments successful Track A credit claimants are entitled to receive.

[28] Under paragraph 9(a)(iii)(C) of the Consent Decree, successful Track A credit claimants receive a payment, made directly to the Internal Revenue Service, for partial payment of taxes. The amount for each successful claimant is 25 percent of the $50,000 cash award ($12,500) plus 25 percent of the principal amount of any debt that was forgiven. The tax relief in Table 4 was estimated as follows: 25 percent of the $50,000 cash award ($12,500) multiplied by the number of successful Track A credit claims (12,767) (this sub-total equals $159,587,500), plus 25 percent of the approximately $15,200,000 in principal debt that was forgiven for this group of successful claimants (this sub-total equals $3,800,000). The total amount of estimated payments to successful claimants' IRS accounts is $159,587,500 plus $3,800,000, which equals $163,387,500.

[29] Consent Decree, paragraph 11(c).

USDA official who is acceptable to the class member.[30] These two forms of injunctive relief are available to all prevailing class members. In addition, class members who prevail on credit claims are entitled to priority consideration for: one Farm Ownership Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property.[31] Under the Consent Decree, injunctive relief was to be available to prevailing class members for five years from the date of the order approving the Consent Decree.[32] USDA has voluntarily agreed to extend the right to injunctive relief for one additional year through April 14, 2005.[33]

Table 5 provides cumulative statistics reported by USDA concerning requests for priority consideration for Farm Ownership Loans, Farm Operating Loans, and the acquisition of inventory property.

Table 5: **Statistical Report Regarding Injunctive Relief**	
Statistical Report as of:	**January 12, 2004**
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration with Complete Application	56
2. Number of Applications Approved	15
B. Farm Operating Loans	
1. Number of Requests for Priority Consideration with Complete Application	112
2. Number of Applications Approved	39
C. Inventory Property	
1. Number of Requests for Priority Consideration	3
2. Number of Applications Approved	1

[30] Consent Decree, paragraph 11(d).
[31] Consent Decree, paragraph 11(a)-(b).
[32] Consent Decree, paragraph 11(a)-(c). The Consent Decree was signed April 14, 1999. Five years from that date is April 14, 2004.
[33] In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at: http://www.pigfordmonitor.org/flp/.

III. COURT ORDERS

Over the past two years, the Court has been presented with numerous issues relating to the implementation of the Consent Decree. In response to motions and stipulations by the parties, the Court has issued Orders relating to issues including:

A. The Arbitrator's authority to alter deadlines in the Track B arbitration process;

B. The requirements of the Second Supplemental Privacy Act Protective Order;

C. The deadlines for responses by USDA to certain petitions for Monitor review;

D. The request of certain individual class members to be excluded from the case;

E. The request of certain individual class members to vacate the Consent Decree and remove Class Counsel;

F. The deadline for petitioning for Monitor review when the Facilitator has rejected a claim on eligibility grounds;

G. The award of attorneys' fees;

H. The process for recusal of the Monitor;

I. The fate of untimely petitions for Monitor review; and

J. The impact of allegations regarding mail delays in the filing of late claims.

All substantive Orders filed during this reporting period are listed in Table 6.[34]

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
1	589	January 17, 2002	Memorandum Opinion and Order	Granting plaintiff's motion interpreting the Consent Decree to authorize Arbitrators to extend arbitration deadlines where justice requires. An appeal from this order was decided on June 21, 2002. See item #8 below.[35]
2	590	January 17, 2002	Memorandum Opinion and Order	Granting in part and denying in part defendant's motion for enforcement of the Second Amended Supplemental Privacy Act Protective Order and for sanctions; finding Class Counsel violated the Protective Order by providing Track A files to *pro bono* counsel, Covington and Burling, who serve as plaintiff's counsel in 16 Track B cases; finding that Covington and Burling may retain and consult the files under the terms of the Protective Order; permanently enjoining Class Counsel from releasing any similar protected files and directing *pro bono* counsel to seek from the government release of any additional protected files; and holding that the issue of sanctions against Class Counsel for the release of files will be decided at such time as the Court can consider all pending requests for sanctions.
3	595	February 15, 2002	Order	Denying defendant's motion for a stay pending appeal of the Court's January 17, 2002, Order concerning Arbitrators' authority to extend arbitration deadlines in Track B cases.
4	614	May 9, 2002	Order	Approving Arbitrator's second report on the late-claim petition process; posting the report on web site at http://www.dcd.uscourts.gov/district-court-2002.html.

[34] Procedural Orders that set briefing schedules, hearing dates, and the like and Orders relating to approval of the Monitor's budgets and invoices are not included in the list.

[35] On June 21, 2002, the Court's January 17, 2002, Memorandum Opinion and Order was reversed by the Court of Appeals and remanded for further proceedings. The Court of Appeals' opinion is described in more detail in item number 8 of Table 6. *Pigford v. Veneman,* 292 F.3d 918 (D.C. Cir. 2002).

Table 6: Court Orders				
#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
5	615	May 14, 2002	Order	Ordering that petition for late filing under Consent Decree ¶ 5(g) will not be considered by the Court; directing that all putative class members seeking permission to late file under Consent Decree ¶ 5(g) must seek permission directly from the Arbitrator, Michael K. Lewis.
6	622	June 11, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 35-37 of claimant petitions for Monitor review; ordering defendant to file responses to Group 35 petitions on July 5, 2002; Group 36 petitions on July 19, 2002; and Group 37 petitions on August 2, 2002.
7	628	June 20, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 38 and 39 of claimant petitions for Monitor review.
8	—	June 21, 2002	D.C. Circuit Opinion	Reversing and remanding the Court's January 17, 2002 Order interpreting the Consent Decree to allow extension of Track B deadlines; holding counsel's failure to meet critical deadlines amounts to an "unforeseen obstacle" that makes the Consent Decree deadlines "unworkable;" and ordering on remand such further proceedings as may be just, including a "suitably tailored" order under Federal Rule of Civil Procedure 60(b)(5).
9	629	June 27, 2002	Memorandum Opinion and Order	Denying 11 motions by individual class members for exclusion from the certified class of plaintiffs; noting it is nearly two years past the deadline for opting out of the class; finding the individual class members provided no reason other than lack of individual service of process at the commencement of the action for missing the deadline to opt out of the class; and finding the lack of notice, while unfortunate, is not a sufficient reason to permit opt outs after the established period.
10	635	July 18, 2002	Stipulation and Order	Authorizing the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision; authorizing the Monitor to obtain information from USDA regarding a class member's debt in deciding petitions for Monitor review which raise an issue regarding debt relief.

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
11	665	Sept. 11, 2002	Memorandum Opinion and Order	Denying motion to vacate the Consent Decree and denying motion to remove lead Class Counsel.
12	666	September 12, 2002	Order	Denying emergency motion by *pro se* movant to order the government to reopen public facility; stating to the extent that any federal court has jurisdiction to act on this motion, it is the United States District Court for the Eastern District of Arkansas.
13	693	October 29, 2002	Order	Setting 120-day deadline for claimants to petition for Monitor review from adverse Facilitator decisions; establishing a reconsideration process for claimants who cannot petition for Monitor review; permitting the Monitor to consider additional materials with a petition for Monitor review of a Facilitator decision or with a response to such petitions; limiting claimants to one petition for review of the Facilitator's decision.
14	705	November 22, 2002	Order	Granting defendant's motion for a stay of consideration of counsel Conlon, Frantz motion for fees and costs; ordering any and all attorneys who wish to seek fees and/or costs for implementation work performed as Class Counsel or Of Counsel to submit petitions by December 6, 2002; and ordering the matter of fees and costs for implementation consolidated with the pending issue of sanctions.

Table 6: Court Orders				
#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
15	727, 733	December 30, 2002; amended January 14, 2003	Amended Memorandum Opinion and Order	Ordering immediate payment in the amount of $500,000 to Class Counsel for implementation fees and costs; ordering continued negotiation efforts toward settlement of the issues of fees and sanctions; setting forth briefing schedule should settlement not be reached; ordering continued negotiation on the issue of modified deadlines in Track B cases involving claimants who initially were represented by Class Counsel; setting forth process for quarterly filings for fees, costs, and expenses incurred by any Class or Of Counsel after June 30, 2002. An appeal from this order was decided on May 14, 2004.[36]
16	739	January 15, 2003	Memorandum Opinion and Order	Granting in part, denying in part, motion to extend time to pay S500,000 to Class Counsel in fees and costs.
17	770	March 24, 2003	Stipulation and Order	Addressing the timing of the Monitor's obligation to file reports on good faith implementation; establishing a process for the Monitor to recuse herself from rendering decisions regarding petitions for Monitor review in certain situations.
18	771	March 24, 2003	Stipulation and Order	Directing the Arbitrator to timely decide pending motions to dismiss and to schedule hearing in Track B claim of Edith Frazier.
19	790	April 14, 2003	Memorandum Opinion and Order	Granting defendant's motion to strike from the record certain pleadings.
20	800	May 28, 2003	Memorandum Opinion and Order	Denying Class Counsel Chestnut, Sanders' motion for reconsideration of April 14, 2003, Order and denying motion to strike from the record certain pleadings.

[36] The Court's December 30, 2002, Memorandum Opinion and Order was superceded by an Amended Memorandum Opinion and Order issued on January 14, 2003. On January 15, 2003, the Court issued another Memorandum Opinion and Order pertaining to the S500,000 fee payment. On February 2, 2003, USDA appealed these orders to the District of Columbia Court of Appeals. The Court of Appeals dismissed the appeal on May 14, 2004. *Pigford v. Veneman,* 369 F.3d 545 (D.C. Cir. 2004).

Table 6: Court Orders				
#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
21	801	June 2, 2003	Opinion and Order	Denying plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were deemed untimely filed by the Facilitator. Class Counsel moved for reconsideration of the Court's June 2, 2003, Order. On March 10, 2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals. At the time of this filing, that appeal is still pending.
22	804	June 4, 2003	Memorandum Opinion and Order	Denying plaintiffs' motion to reopen all late claims due to allegations of mail delays.
23	805	June 5, 2003	Order	Awarding $2,345 in attorneys' fees and costs on behalf of claimant Cal Greely.
24	810	June 23, 2003	Order	Denying without prejudice motion for attorneys' fees and costs on behalf of claimant Sandy McKinnon; directing that counsel for McKinnon may refile once a final disposition has been reached on the claim.
25	842	September 4, 2003	Order	Denying plaintiffs' motion for sanctions concerning alleged violation of Second Amended Privacy Act Protective Order
26	845	September 11, 2003	Memorandum Opinion and Order	Denying motion for review of Arbitrator's final decision in Track B claim of Clarence Hardy; directing that claimant Hardy may file a petition for Monitor review within 120 days.
27	858	October 8, 2003	Order	Denying plaintiffs' motion for reconsideration of September 4, 2003, Order concerning alleged violation of Second Amended Privacy Act Protective Order.

IV. MONITOR'S ACTIVITY AND OBSERVATIONS

The Consent Decree gives the Monitor four general areas of responsibility:

a. Reporting. Paragraphs 12(a) and 12(b)(i) give the Monitor reporting responsibilities.

b. Resolving Problems. Paragraph 12(b)(ii) gives the Monitor responsibility for attempting to resolve class members' problems relating to the Consent Decree.

c. Directing Reexamination of Claims. Paragraph 12(b)(iii) gives the Monitor responsibility for directing the Adjudicator, Arbitrator, and Facilitator to reexamine claims where the Monitor finds that a clear and manifest error occurred in the screening, adjudication, or arbitration of the claim that has resulted or is likely to result in a fundamental miscarriage of justice.

d. Toll-Free Line. Paragraph 12(b)(iv) gives the Monitor responsibility for being available to class members and the public to facilitate the lodging of any Consent Decree complaints and to expedite their resolution.

An update regarding the Monitor's activity and observations in each of these areas of responsibility follows.

A. Reporting — Paragraphs 12(a) and 12(b)(i) of the Consent Decree

1. Reporting Directly to Secretary of Agriculture

Paragraph 12(a) of the Consent Decree states that the Monitor shall report directly to the Secretary of Agriculture. The Monitor met with the Secretary, Ann M. Veneman, in early 2003. The Monitor also fulfills this Consent Decree requirement in part through work with USDA's Office of General Counsel. The Monitor had many meetings and frequent phone conversations during 2002 and 2003 with James Michael Kelly, who during this reporting period was USDA's Acting General Counsel and then Deputy General Counsel.

2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant's Counsel

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports to the Court, the Secretary, Class Counsel, and defendant's counsel on the good faith implementation of the Consent Decree regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary. The Monitor submits this third report on the good faith implementation of the Consent Decree pursuant to paragraph 12(b)(i), as modified by the March 24, 2003, Stipulation and Order. During the reporting period covered by this report, the

Monitor also filed with the Court a report on late petition filings; a report on good faith implementation of the Consent Decree for the period September 1, 2000, through December 31, 2001; and a report on the notice class members received of the 120-day deadline for filing petitions for Monitor review.[37]

B. "Resolving Any Problems" — Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree states that the Monitor shall:

> Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree . . . .

To fulfill this responsibility, the Monitor's Office works with class members: (1) by phone; (2) through correspondence; (3) in person at meetings sponsored by claimant organizations and/or by USDA; and (4) by sending out "Monitor Updates" to disseminate important information to the whole class or to segments of the class affected by particular issues. Information about the Office of the Monitor's attendance at meetings sponsored by claimant organizations during 2002-2003 is listed in Appendix 4.

Copies of the written materials prepared or revised by the Monitor's Office during 2002 and 2003 are attached as Appendix 5. During this reporting period, the Monitor issued two new Monitor Updates to convey important information to class members and putative class members.

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[37] *See* Monitor's Report on Late Petition Filings, dated February 27, 2002; Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, dated September 4, 2002; and Monitor's Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition for Monitor Review, dated May 30, 2003. The Monitor also filed reports regarding funds in the reserve of the Court Registry from the Monitor's budget. These reports are dated February 12, 2002; August 7, 2002; February 28, 2003; and August 7, 2003. Copies of Monitor reports may be obtained from the Monitor's office (1-877-924-7483). Reports regarding substantive issues are available at the Monitor's web site at http://www.pigfordmonitor.org/reports/.

In November 2002, the Monitor issued an update on "Understanding Who Is Part of the *Pigford* Case" (Update No. 11). This update explains what the deadlines were for becoming a part of the case and explains that certain categories of people will not be able to become part of the case.[38]

In February 2003, the Monitor issued an update entitled "Resources for *Pigford* Claimants" (Update No. 12). This update describes the types of problems the Monitor's Office can help to resolve and the types of problems that the Monitor's Office cannot help to resolve. The update provides contact information for entities that may be able to provide claimants with some types of help that the Monitor cannot provide. Entities listed in Update No. 12 include: university and extension programs, farm advocacy groups, legal organizations, and government entities that may be of assistance to class members.

The Monitor also issued revisions to existing "Monitor Updates" to keep information provided to class members current during this reporting period. In 2002, the Monitor revised the updates on Procedural Rules for the Track B Petition Process (Update No. 8) and on Eligibility and Monitor Review (Update No. 5). In 2003, the Monitor issued revised updates on "late claims" deadlines (Update No. 1); deadlines for petitions for Monitor review (Update No. 3); injunctive relief (Update No. 4); USDA's freeze on accelerations and foreclosures during the petition for Monitor Review process (Update No. 6); claimant and claimant attorney access to USDA documents (Update No. 7); non-credit claims (Update No. 9); and debt relief (Update No.

[38] In telephone calls to the Monitor's toll-free line and in meetings throughout the country, the Monitor's Office has received an increasing number of questions about "reopening" the case. All deadlines for filing a claim, requesting permission to file a late claim, and/or opting out of the class have now passed. Nonetheless, the Monitor continues to receive inquiries from people who wish to join the case or make a claim, but who have missed the deadlines for doing so.

10).[39] The Monitor also revised "Questions and Answers About Monitor Review of Decisions," as an aid to claimants in the petition process in 2002 (Version 2) and in 2003 (Version 3).[40]

Many of the class members who contacted the Monitor's office during this reporting period expressed frustration about problems they were experiencing. Earlier Monitor reports discussed the many concerns brought to the Monitor's attention by class members.[41] Many of these concerns continue. The most significant recurring problems during this reporting period (calendar years 2002 and 2003) are discussed in the "Significant Consent Decree Implementation Issues" section below.

C. Reexamination of Claims — Paragraph 12(b)(iii) of the Consent Decree

Paragraph 12(b)(iii) gives the Monitor responsibility to direct reexamination of a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of a claim that has resulted or is likely to result in a fundamental miscarriage of justice. The Monitor considers whether reexamination is warranted in response to a petition for Monitor review by either a class member or USDA. As of the end of 2003, approximately 5,400 petitions for Monitor review had been filed and the Monitor had issued decisions in response to approximately 2,725 of those petitions.

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[39] Copies of Monitor Updates are available on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[40] Copies of these documents are available on the Monitor's web site at http://www.pigfordmonitor.org/class/.

[41] The Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, detailed these problems. A copy is available on the Monitor's web site at http://www.pigfordmonitor.org/reports.

The vast majority of petitions for Monitor review seek reexamination of Adjudicator decisions in Track A claims. Under paragraph 8 of the Court's Order of Reference,[42] the Monitor may admit into the record supplemental information provided in the petition or petition response when such information addresses a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. Approximately 50 percent of the Track A decisions issued by the Monitor as of December 31, 2003, direct the Adjudicator to reexamine the claim. The Adjudicator began issuing reexamination decisions during 2002 and had issued a total of 301 reexamination decisions as of the end of 2003. Table 7 provides statistics regarding Monitor petition decisions and Adjudicator reexamination decisions issued as of the end of 2002 and the end of 2003.[43]

Table 7: **Statistical Report Regarding Petitions for Monitor Review**		
Statistical Report as of:	**End of 2002**[44]	**End of 2003**[45]
Petitions for Monitor Review		
A. Number of Petitions for Monitor Review	5,160	5,401
A.1. Claimant Petitions	4,560	4,727
A.2. Government Petitions	600	674

[42] The Order of Reference, dated April 4, 2000, addresses many aspects of the Monitor's duties and is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[43] Statistics regarding the Monitor's activity for Track B claims are contained in Table 2 of this report. The Monitor began issuing decisions in response to petitions in the Track B process during 2002 and issued 19 decisions as of the end of 2003 (12 of the 19 were petitions from Arbitrator decisions, and 7 were petitions from Facilitator decisions).

[44] These statistics are valid as of January 2, 2003.

[45] These statistics are valid as of January 2, 2004.

Table 7: **Statistical Report Regarding Petitions for Monitor Review**		
Statistical Report as of:	**End of 2002**[44]	**End of 2003**[45]
Monitor Decisions		
B. Petition Decisions Issued by Monitor	1,743	2,725
B1. Total Number of Petitions Granted	676	1,218
B.1.a. Claimant Petitions Granted	631	1,162
B.1.b. Government Petitions Granted	45	56
B.2. Total Number of Petitions Denied	1,067	1,507
B.2.a. Claimant Petitions Denied	609	1,040
B.2.b. Government Petitions Denied	458	467
Reexamination Decisions		
C. Reexamination Decisions Issued by Adjudicator	39	301
C.1. Reexamination Decisions After Claimant Petition Granted	39	291
C.1.a. Claimant Prevailed on Reexamination	39	279
C.1.b. Claimant Did Not Prevail on Reexamination	0	12
C.2. Reexamination Decisions After Government Petition Granted	0	10
C.2.a. Government Prevailed on Reexamination	0	10
C.2.b. Government Did Not Prevail on Reexamination	0	0

The Court issued several Orders during 2002 and 2003 clarifying the petition process. On July 18, 2002, the Court filed a Stipulation and Order permitting the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision. This Stipulation and Order also authorized the Monitor to obtain information from USDA regarding the status of a class

member's farm loan debt in deciding petitions for Monitor review that raise an issue regarding debt relief.[46]

On October 29, 2002, the Court issued an Order setting a 120-day deadline for claimants to petition from adverse class membership screening decisions made by the Facilitator. Deadlines for petitions from Adjudicator and Arbitrator decisions had previously been set in a Stipulation and Order dated July 14, 2000. These deadlines for petitions for Monitor review are discussed in more detail in the section on "Significant Consent Decree Implementation Issues" below.

During this reporting period, the parties also agreed to a process for designation of the record in Track B petitions for Monitor review. The process is designed to make the Track B review process more efficient. The process is described in Monitor Update No. 8, "Procedural Rules for the Track B Monitor Petition Process." In general, the petitioning party will file a designation of record with the petition for Monitor review. The designation will identify the materials that are part of the record that should be considered by the Monitor in the review process. The responding party may file a designation of record of additional material that should also be considered. The Monitor may, in her discretion, review material in the record before the Arbitrator that was not designated by the parties.

On March 24, 2003, the Court issued an order approving the parties' agreement for a process of recusal for the Monitor. For any claim in which the Monitor determines, in her discretion, that she should not be the decision-maker on a petition for review, the Monitor may

[46] Stipulation and Order, paragraphs 3 and 5. A copy of the July 18, 2002, Stipulation and Order may be found on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

designate Kenneth Saffold of the Office of the Monitor to carry out the Monitor's duties under paragraph 12(b)(iii) of the Consent Decree. The Monitor anticipates Kenneth Saffold will be designated to act as Monitor regarding fewer than five petitions.

D. Calls to Toll-Free Telephone Number — Paragraph 12(b)(iv) of the Consent Decree

Paragraph 12(b)(iv) gives the Monitor the responsibility to staff a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints. The Monitor's Office continues to operate a toll-free telephone number: 1-877-924-7483. Individuals who call this number will reach phone operators who have been trained regarding issues in the case and who have access to a database containing certain factual information about each claimant. The operators are able to answer certain categories of questions at the time the claimant calls. For other categories of questions, including questions about debt relief, injunctive relief, and other complex issues or complaints, the operators may make an appointment for the caller to speak with a lawyer from the Office of the Monitor. The operators also have access to documents that can be sent to individuals upon request, including Court Orders, Farm Loan Program Notices, Monitor Reports, and Monitor Updates.

The Monitor's toll-free line received 20,901 incoming calls during 2002 and 19,235 incoming calls during 2003. Sometimes the operators also made outgoing calls to class members to follow up with callers or to provide additional information. The operators staffing the toll-free line made outgoing calls in this period, bringing the total number of calls staffed by the toll-free line operators to 21,671 during 2002 and 19,932 during 2003. Many of the calls concerned problems discussed more fully below in the "Significant Consent Decree Implementation Issues" section of this report.

V. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

Claimants continued to raise many concerns regarding the implementation of the Consent Decree during this reporting period. Some of these concerns expressed to the Monitor included the following:

a. Concern about the length of time the entire claims process takes and about accumulation of interest on claimants' Farm Service Agency (FSA) loans while they are waiting for their claims to be resolved;

b. Concern about the amount of time the petition for Monitor review process is taking for some claimants;

c. Concern about the amount of time the Adjudicator's reexamination process takes following the approval of a petition for Monitor review;

d. Concern about options for loan servicing for claimants when their claims are resolved;[47]

[47] Paragraph 7 of the Consent Decree provides that USDA must cease actions to foreclose or accelerate a claimant's debt while his or her claim was pending. Once the claimant receives the final decision on his or her Track A or Track B claim, paragraph 7 protections cease. For those who timely file petitions for Monitor review, USDA voluntarily agreed to extend the adverse action freeze through the time of final disposition of the petition.

The loan servicing concern focuses on the fact that the claimants who still owe debt to the agency are accumulating interest while their claims and petitions are being processed. At the end of the *Pigford* claims processing and petitions processing, the amount of accumulated interest could be staggering. Loan servicing is a term of art in FSA loan programs—it refers to a package of mechanisms that FSA can use to restructure debt to make it more manageable. One of the mechanisms would allow write-down or write-off of interest in certain situations.

FSA loan servicing regulations are quite specific about when loan servicing can be offered. Under a strict interpretation, many *Pigford* claimants would have no loan servicing opportunities remaining at the end of the *Pigford* process.

To attempt to address this problem, on October 24, 2002, USDA issued guidance for servicing *Pigford* claimants who are financially distressed or delinquent on their FSA farm loan program debt, but whose loans had not been accelerated by USDA prior to the time they filed a claim under the Consent Decree. USDA has voluntarily agreed to extend loan servicing opportunities for *Pigford* claimants. USDA has stated that County Offices will re-notify claimants of their 1951-S loan servicing rights once a final decision has been rendered on their claim. The letter the County Office must send gives a claimant 60 days from the date of the letter within which to apply for loan servicing. *See* FLP-279, 1951-S Servicing of *Pigford* Cases Whose Claims Have Been Closed and National Office FLP Programmatic Review, Exhibit 1, at 2 (Oct. 24, 2002) (set to expire Nov. 1, 2003, made obsolete on Apr. 3, 2003), and FLP-299, Servicing of Pigford Claimants and National Office FLP Programmatic Review, Exhibit 1, at 2 (Apr. 3, 2003) (set to expire Dec. 1, 2004). These FLPS are available on the Monitor's web site at

e. Concern that many people who otherwise met the class definition failed to sign up for the lawsuit because the advertising campaign described in paragraph 4 of the Consent Decree did not reach them;

f. Concern about the low rate of approvals in the late claims process;

g. Cynicism about whether the appropriate people are being paid—many in the claimant community express suspicion that often individuals who had no real interaction with farming or USDA have been approved for payment, while individuals who had a long and troubled relationship with USDA have been denied relief;

h. Concern about the litigious nature and low claimant success rate in Track B arbitrations;

i. Concern that the FSA county office staff members are not sufficiently knowledgeable about the procedures for providing full injunctive relief to prevailing claimants;

j. Concern about USDA's failure to fully and promptly implement debt relief for prevailing claimants and failure to communicate that debt relief to the claimant's local FSA county office;

k. Concern that there will be retribution by FSA county office staff toward claimants who participated in the Consent Decree process; and

l. Concern about Federal Bureau of Investigation (FBI) investigations in claimant communities.

In general, the Monitor has addressed these concerns by: referring claimants to Class Counsel; making sure that the parties, the Secretary, and the Court are aware of the concerns; explaining how the petition for Monitor review process can be used to seek redress in individual cases in which errors occurred; using "other problem" authority to attempt to resolve individuals' difficulties in the debt relief and injunctive relief processes; explaining how the Consent Decree works; and working with claimants to solve other problems where appropriate.

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http://www.pigfordmonitor.org/flp/. Loan servicing includes actions such as debt write-down, reamortization, rescheduling, reduction of interest rates, and loan deferral. *See* 7 C.F.R. part 1951, subp. S (2004).

Many aspects of the Consent Decree implementation process received significant attention from the parties and the neutrals during this reporting period. The progress made in addressing implementation issues regarding becoming a class member, the claims process, and relief for prevailing class members, along with issues regarding attorneys' fees, are discussed more fully below.

A. Becoming a Class Member

1. 65,900 Late Claims Requests

The Consent Decree required that Claim Sheets be filed by October 12, 1999.[48] Paragraph 5(g) of the Consent Decree provides that claimants may request permission to file a Claim Sheet after the October 12, 1999, deadline if extraordinary circumstances beyond a claimant's control prevented the claimant from filing a completed claim package by the October 12, 1999, deadline. This process is referred to as the "late claims" process. During this reporting period, class members continued to express much anger and frustration regarding the late claims process, including the lack of notice that such a process existed, the high rate of rejection of late claims requests, the length of time required for the late claims process, and the lack of access to legal assistance during the time claimants were completing their late claims requests.

On December 20, 1999, the Court delegated to the Arbitrator the review of "late claims" requests filed pursuant to paragraph 5(g) of the Consent Decree. A Stipulation and Order dated July 14, 2000, set September 15, 2000, as the deadline for filing these requests. The Arbitrator

[48] Paragraph 5(c) of the Consent Decree required completed claim sheets to be filed 180 days from the entry of the Consent Decree. The Consent Decree was approved April 14, 1999.

has reported that approximately 65,900 late claims requests were filed by the September 15, 2000 deadline.[49] By the end of calendar year 2003, the Arbitrator reported that a total of approximately 64,200 requests had been reviewed and decided by the Arbitrator. Of these requests, the Arbitrator has approved a total of approximately 2,100 late claims.[50]

The Arbitrator has established a reconsideration process for claimants whose "late claims" requests are denied. As of December 9, 2003, approximately 20,400 timely requests for reconsideration had been filed, and decisions had been made in a total of 715 reconsideration requests, with 86 requests having been approved in the reconsideration process and 629 having been denied.[51]

On June 4, 2003, the Court issued a Memorandum Opinion and Order denying a motion by Class Counsel J.L. Chestnut on behalf of certain plaintiffs to reopen all late claims due to allegations of mail delays. The Court ruled that the Arbitrator had been given the authority and had established procedures for deciding all requests to file late, including those where the claimant alleges that he or she filed a timely claim through the U.S. mail.[52]

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[49] During this reporting period, the Arbitrator filed reports with the Court on May 3, 2002; November 4, 2002; June 2, 2003; and December 9, 2003. All of the Arbitrator's reports on the late claims process are available on the Monitor's web site at http://www.pigfordmonitor.org/arbrpts/.

[50] After a late claims request is approved by the Arbitrator, the Facilitator sends a Claim Sheet and Election Form, which must be filled out and returned to the Facilitator no later than 60 days from the date of the cover letter that accompanied the Claim Sheet sent by the Facilitator. For more information on the late claims process, see Monitor Update No. 1, "Late Claim Deadline," available on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[51] *See* Arbitrator's Fifth Report on the Late-Claim Petition Process, dated December 9, 2003, pages 5-6.

[52] Memorandum and Order, at 2-3. The Court's June 4, 2004, Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

2. Petition Deadline for Claims Rejected by the Facilitator

Under the Consent Decree, the Facilitator may reject a claim package on the ground that the requirements for class membership have not been met, and a Claimant may seek review of that decision by submitting a petition to the Monitor. In the Monitor's second report on good faith implementation, the Monitor recommended that the parties set a deadline for Petitions for Monitor Review from decisions by the Facilitator. The Monitor further recommended that notice be provided to those persons eligible to petition from a decision by the Facilitator rejecting a completed claim package on eligibility grounds. The parties agreed with the Monitor's recommendation, and on October 29, 2002, the Court issued an Order setting deadlines for petitions from adverse Facilitator eligibility screening decisions.[53] The Court's Order permits the Monitor to consider supplemental information with a petition for Monitor review of a Facilitator class membership screening decision or with a response to such a petition in certain limited circumstances.[54] As of the end of 2003, the Monitor had received 92 petitions for review of eligibility screening decisions. As of the end of 2003, the Monitor had issued decisions in response to nine of those petitions.

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[53] For claimants who filed a completed claim package that was rejected by the Facilitator on or before October 29, 2002, the Order required a petition for Monitor review be postmarked within 120 days of the date of the Order, or by February 26, 2003. For claimants who filed a completed claim package that was rejected by the Facilitator after October 29, 2002, the Order requires a petition for Monitor review be filed within 120 days of the date of the Facilitator's rejection notification. The Order required the Facilitator to mail a copy of the Order to every person rejected by the Facilitator in the screening process. The October 29, 2002 Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[54] The October 29, 2002, Order states that the Monitor may consider additional materials submitted with a petition or a petition response only when such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. The decision to consider additional materials is within the discretion of the Monitor. Order, paragraph 5.

For those claimants rejected by the Facilitator for failure to submit a timely completed claim package, the Order requires the Facilitator to establish a reconsideration process. Through the reconsideration process, claimants may communicate with the Facilitator if they believe the Facilitator committed an error in determining that they failed to timely complete a claim package. The Facilitator reports that as of the end of 2003 it had received 116 requests for reconsideration. Of those 116, four were granted and 112 were denied.

B. The Claims Process

1. Untimely Petitions From Adjudicator and Arbitrator Decisions

In July 2002, Class Counsel filed a motion entitled "Plaintiffs' Motion for Relief for Four Groups of Claimants Who Filed Petitions for Monitor Review."[55] The motion addressed the application of the deadline for petitions for Monitor review to certain specific claimants. The Consent Decree did not provide a deadline for filing petitions for Monitor review. In the July 14, 2000, Stipulation and Order, a deadline was established.[56] For adjudication and arbitration decisions issued prior to July 14, 2000, the deadline for submitting a petition for Monitor review was 120 days from the date of the Order, or November 13, 2000. For adjudication and arbitration decisions issued after July 14, 2000, the deadline was 120 days from the date of the adjudication or arbitration decision.

[55] Plaintiffs initially brought this issue before the Court in a motion filed under seal on December 11, 2001. Plaintiffs withdrew this motion and filed a subsequent motion on July 19, 2002.

[56] A copy of the Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

Notice of the 120-day deadline was provided at various times to segments of the class through at least four different means.[57] However, it was not until November 15, 2001, that the Adjudicator's decision letters in Track A claims began to include notice of the 120-day deadline for petitions for Monitor review.[58] Thousands of claimants whose claims were decided prior to this date received decision letters that did not inform them of the 120-day deadline for filing a petition for Monitor review.

At the time of the second Monitor report on good faith implementation, the parties were in the midst of briefing plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were determined by the Facilitator to be untimely filed.[59] In May 2003, the Monitor filed a report with the Court on notice issues regarding the late petition filings.[60] On June 2, 2003, the Court issued an Opinion and Order denying the plaintiffs' motion for relief. The Court ruled that the deadlines established in prior Court orders govern when petitions for Monitor review must be filed. Class Counsel moved for reconsideration of the Court's June 2, 2003 Order. On March 10,

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[57] First, the July 14, 2000 Stipulation and Order directed the Facilitator to send a copy of the Order to every person who requested a Claim Sheet and Election Form but did not submit a completed Claim Form to the Facilitator within the period prescribed by the Consent Decree. Second, the July 14, 2000, Stipulation and Order required that the Order be posted in a conspicuous public place in every USDA FSA county office. Third, on August 14, 2000, the Monitor's Office disseminated a Monitor Update explaining the July 14, 2000 Order as it applied to petition deadlines. Fourth, in meetings with class members and in phone calls, the Monitor's Office, the Facilitator, and likely Class Counsel orally explained the 120-day deadline to class members.

[58] Although the Arbitrator began to include notice of the 120-day deadline for petitions for Monitor review in Arbitrator decisions shortly after the July 14, 2000 Stipulation and Order, claimants whose claims had been decided by the Arbitrators prior to July 14, 2000, did not receive notification of the 120-day deadline other than through methods listed in the previous footnote.

[59] Plaintiffs originally sought relief for a total of 387 claimants. As the Court's Order of June 2, 2003, sets forth, the parties reached agreement on a number of claims, reducing the total to 350 claimants. Opinion and Order, at 2, footnote 2.

[60] Monitor's Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition For Monitor Review, dated May 30, 2003.

2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals.[61]

2. *Track B Hearing Deadlines*

The issue of the authority of the Arbitrator to modify pre-hearing arbitration deadlines established by the Consent Decree was considered by the Court and the Court of Appeals during this reporting period.[62] In response to a motion by *pro bono* counsel who had recently taken over the representation of a class member in the Track B claims process, the District Court held that the Arbitrator had discretion to revise Consent Decree deadlines in Track B proceedings, so long as justice required the revisions and provided that the burden on the Government was not so great as to outweigh the interests of the claimant in fully presenting his or her claim. The Government appealed this ruling. Finding that the District Court had limited authority to modify Consent Decree deadlines that had been negotiated between the parties, the Court of Appeals reversed and remanded the case to the District Court to consider a modification that would be "suitably tailored," suggesting a proposed modification for the one claim at issue in the appeal.[63]

During this reporting period, the Monitor has reviewed many pending petitions for Monitor review in Track B files. This review suggests that changes in Consent Decree deadlines have been common in Track B claims. In the majority of the approximately fifty Track B petition

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[61] The Court's Opinion and Order, issued June 2, 2003, and the Court's order denying reconsideration on March 10, 2004, are available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[62] Paragraph 10 of the Consent Decree contains deadlines pertaining toTrack B arbitration claims.

[63] The Court of Appeals ruled that the District Court could modify the Consent Decree if the requirements of Federal Rule of Civil Procedure 60(b)(5) were met. *See Pigford v. Veneman,* 292 F.3d 918 (D.C. Cir. 2002).

files received by the Monitor through December 31, 2003, the record received from the Arbitrator shows changes to Consent Decree deadlines during the time the claims were pending before the Arbitrator. Records received from the Arbitrator show that revisions in arbitration schedules have been made due to: the unanticipated number of claims filed, efforts by the parties to explore settlement, discovery or pre-hearing motions and disputes, problems with securing representation for claimants, and/or difficulty encountered by the Government in providing representation for every claim.

The Court has previously ruled that arbitration deadlines may be changed by mutual consent.[64] The parties have submitted additional memoranda to the District Court on the scope of the Court of Appeals' remand and whether it extends to the claims of Track B class members represented by counsel other than class counsel. The Court of Appeals' remand order remains pending with the District Court.

C. Prevailing Class Members

1. Payment of Cash Relief

Prior Monitor reports explained significant delays in the payment of cash relief to prevailing class members, which had occurred early in the Consent Decree implementation process.[65] During this reporting period, the number of prevailing claimants who had to wait more than 180 days to receive their cash award was substantially reduced. A small number of claimants continue to experience payment status problems and to contact the Facilitator and the

[64] In an Order dated March 1, 2000, the Court delegated to the Arbitrator the authority to stay arbitrations or postpone evidentiary hearings beyond the Consent Decree deadlines when both parties consent.

[65] *See* Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 15-17.

Monitor for assistance in attempting to resolve these problems.[66] The Monitor will continue to work with the parties to help solve any remaining problems relating to payment delays to prevailing class members.

2. Tax Issues

While some progress has been made in resolving tax problems arising from implementation of the Consent Decree, class members continue to experience many of the tax-related problems that were explained in prior Monitor reports.[67] These problems are significant and include:

a. General lack of information for the class about the tax consequences of prevailing under the settlement;

b. Difficulties caused by a failure to issue Internal Revenue Service (IRS) Forms 1099 in a timely manner regarding cash relief, debt relief, and tax relief;[68]

c. Difficulties created by the treatment of tax relief as taxable income;[69]

d. The assessment and abatement of penalties against class members who failed to accurately report to the IRS regarding relief or failed to pay taxes owed or on behalf of whom the Government failed to make timely transfers to tax accounts; and

e. Difficulties in providing tax relief to the decedents' estates when successful claims were brought on behalf of deceased class members.

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[66] As of August 4, 2004, the number of claimants who have been waiting more than 180 days to receive a cash award has been reduced to two. Both of these claims are delayed due to paperwork requirements for estate claims.

[67] *See* Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 12-13, 29-30.

[68] For any year in which a class member receives cash relief, debt relief, and/or tax relief, the class member should receive an IRS Form 1099 regarding that cash relief, debt relief, and/or tax relief.

[69] Paragraph 9(a)(iii)(C) of the Consent Decree provides that relief to prevailing Track A credit claimants shall include a payment to the claimant's Internal Revenue Service account as partial payment of the taxes owed by the claimant. The payment is 25% of the principal amount of any debt forgiven under the Consent Decree plus 25% of the $50,000 in cash relief granted pursuant to the Consent Decree provisions.

The parties and neutrals made progress in addressing possible solutions to tax-related problems. The Facilitator continued to be in regular contact with the IRS to attempt to solve tax problems related to individual claimants and was able to work with the IRS to resolve hundreds of claimant problems during this reporting period. Most of the successful resolutions relate to decedents' estate issues. The Monitor met with the National Taxpayer Advocate and with representatives of the Internal Revenue Service in an effort to seek additional assistance for class members with tax issues. Substantial work has been done to expedite issuance of Forms 1099 to claimants who have received cash payments or debt relief and to resolve the tax problems created when Forms 1099 were not promptly issued.

Many tax account problems involved proper identification of estates. The Facilitator has continued to work with the IRS to establish a procedure for processing claims brought on behalf of decedents in Track A. Class members may call the Facilitator at 1-800-646-2873 for information about what to do in this situation and for help with other tax problems associated with implementation of the Consent Decree claims process.

Notwithstanding these successes and the establishment of these procedures, many successful claimants still have unresolved tax-related problems, and there is reason to believe that as implementation progresses, many more tax-related problems will rise to the surface.

3. Debt Relief

The Consent Decree provides for the following debt relief for successful Track A credit claimants:

> USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the

> subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator.[70]

The language for Track B is similar regarding the extent of debt relief.[71]

A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief available to class members.[72] In essence, the Order provides that USDA is to grant debt relief regarding: (a) all loans found to have been affected by discrimination; and (b) all loans in the affected loan program(s) from the date of the discriminatory event through the end of the class period. Certain exceptions apply and are explained in detail in the Order.

During this reporting period, USDA made substantial progress in implementing debt relief. Many successful claimants contacted the Monitor for assistance with obtaining their debt relief awards. The Monitor and the parties worked together to solve many problems in the debt relief implementation process, and, at the end of the reporting period, continued to work on open issues regarding debt relief. USDA reports that as of January 12, 2004, the agency had forgiven $21,930,937 in outstanding debt owed by 253 class members.

4. Injunctive Relief

Under the Consent Decree, class members who prevail are entitled to injunctive relief in addition to other remedies. The majority of claims under the Consent Decree are credit claims. Claimants who prevail on credit claims are entitled to priority consideration for one Farm Ownership Loan, for one Farm Operating Loan, and for one opportunity to acquire farmland

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[70] Consent Decree, paragraph 9(a)(iii)(A).

[71] Consent Decree, paragraph 10(g)(ii) states:
USDA shall discharge all of the class member's outstanding debt to the Farm Service Agency that was incurred under, or affected by, the program(s) that were the subject of the claim(s) resolved in the class member's favor by the arbitrator.

[72] The Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

from USDA inventory property.[73] During 2002 and 2003, however, relatively few farmers made use of their right to priority consideration. According to information provided by USDA, 171 successful claimants requested priority consideration from USDA from the beginning of this litigation through January 12, 2004.[74] These requests resulted in a total of fifteen Farm Ownership Loans, thirty-nine Farm Operating Loans and one lease or purchase of inventory property from USDA.

The Monitor's Office continued to receive questions, requests for assistance, and reports of concern from class members relating to the implementation of injunctive relief during this reporting period. Prior Monitor reports described this concern in detail. Many prevailing claimants are skeptical about whether local Farm Service Agency officials will act in a nondiscriminatory manner. They fear that FSA officials will try to retaliate against them because they prevailed in the Consent Decree claims process. Class members also report difficulty meeting the eligibility requirements for loans. Some claimants are concerned that injunctive relief may expire by the time they ultimately prevail on their claims.

Several factors may be contributing to the relatively low rate of use of injunctive relief. First, it is possible that only a small percentage of successful claimants wish to pursue farming at this time. A second, related factor may be the current difficult agricultural economy. A third

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[73] Consent Decree, paragraph 11(a)-(b). The Consent Decree also requires USDA to consider any new application by a prevailing class member in a light most favorable to the applicant, and to provide technical assistance from a USDA employee who is acceptable to the prevailing class member. Consent Decree, paragraph 11(c)-(d).

[74] Under paragraph 11(a)-(b) of the Consent Decree, class members must notify USDA in writing that they are exercising their right to priority consideration.

factor may be statutory restrictions that make many farmers ineligible for FSA loan programs. Finally, many prevailing class members may lack a detailed understanding of their injunctive relief rights. The Monitor's Office has continued its efforts to give class members information about injunctive relief, both by distributing a Monitor Update on this topic,[75] and by making presentations about injunctive relief at claimant meetings.[76]

To address the concern about the expiration of injunctive relief, in January 2003 USDA announced plans to voluntarily extend the time for prevailing class members to participate in injunctive relief. Under the terms of the Consent Decree, injunctive relief was to expire on April 14, 2004, five years from the date the Consent Decree was approved.[77] USDA has announced that prevailing class members will now have one year longer, until April 14, 2005, to participate in injunctive relief.[78]

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[75] This update, "Injunctive Relief in *Pigford v. Veneman*" (Monitor Update No. 4), is available from the Monitor's office (1-877-924-7483) or on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[76] See Appendix 4 for a listing of the meetings attended by the Office of the Monitor during 2002 and 2003.

[77] *See* Consent Decree, paragraph 11(a)-(c).

[78] This announcement was publicly made in a press release dated January 16, 2003. The press release is available on USDA's web site at http://www.usda.gov/news/releases/2003/01/0017.htm. In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at http://www.pigfordmonitor.org/flp/. In September of 2002, USDA also announced a series of steps to assist minority and disadvantaged farmers, including the creation of the Office of Minority and Socially Disadvantaged Farmer Assistance to work with minority and socially disadvantaged farmers who have concerns and questions about loan applications they have filed in their County Offices. The Office may be contacted toll-free by calling 1-866-538-2610 or sending an email to msda@wdc.usda.gov or writing to Office of Minority and Socially Disadvantaged Farmers, Farm Service Agency, USDA, 1400 Independence Ave SW, Mail Stop 0501, Washington D.C. 20250-0501.

D. Attorneys' Fees and Sanctions

Several Orders issued by the Court and referenced in the second Monitor report on good faith implementation discussed the issue of possible sanctions against Class Counsel. The parties submitted additional briefing on the issue of sanctions during this reporting period, and all sanctions issues were decided by the Court in March 2004.[79]

Some aspects of attorneys' fees issues are still pending. During this reporting period, Class Counsel filed requests for attorneys' fees and costs associated with implementation of the Consent Decree. The Court ordered an interim payment of $500,000 in an Amended Memorandum Opinion and Order, issued January 14, 2003, which the Government appealed. The Court of Appeals dismissed the appeal on May 14, 2004.

On November 25, 2003, the Arbitrator issued Findings and Recommendations to the Court regarding the January 1 through March 31, 2003, fee request of one of the Class Counsel law firms, Conlon, Frantz, Phelan and Pires, for time spent assisting in the implementation of the Consent Decree. Subsequent to the issuance of the Arbitrator's Findings and Recommendations, the parties resolved that fee petition. The issue of fees will be subject to further proceedings.

VI. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

One standard legal dictionary defines good faith as "a state of mind characterized by honest belief, absence of malice or intent to defraud, absence of a design to seek unconscionable advantage or of knowledge that such advantage is likely to occur . . . ."[80] During this reporting period, January 1, 2002, through December 31, 2003, the parties and all three of the neutrals (the

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[79] The Court's Opinion and Order, issued March 10, 2004, is available on the Court's web site at http://www.dcd.uscourts.gov/district-court-2004.html.

[80] West's Legal Thesaurus/Dictionary (William P. Statsky ed., 1986).

Facilitator, the Adjudicator, and the Arbitrator) continued to work to implement the Consent Decree in good faith.

The Monitor notes that despite significant challenges, substantial progress was made during calendar years 2002 and 2003 to implement the Consent Decree claims process and relief provisions. During this reporting period, the Monitor continued to meet and work on an ongoing basis with all of those who are charged by the Court with the responsibility for carrying out implementation of this Consent Decree. The Monitor believes all of the parties involved met the test for good faith during this reporting period.

Dated: August 19, 2004.

Respectfully submitted,

s/Randi Ilyse Roth
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Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS

Statistical Report as of:	Aug. 28, 2000		End of 2001[1]		End of 2002[2]		End 2003[3]	
ITEM	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
A. Eligible class members	21,069	100	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	191	1	177	1	179	1	178	1
Adjudication Completion Figures								
D. Adjudications complete	18,347	88	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	2,531	12	40	~0	48	~0	420	2
Adjudication Approval/Denial Rates								
F. Claims approved by Adjudicator	11,083	60	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator	7,264	40	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid								
H. Approved adjudications paid as of specified date	7,143	64	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date	3,940	36	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims[4]	$357,150,000		$614,250,000		$624,750,000		$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims			$1,284,000		$1,284,000		$1,287,000	

[1] These statistics are valid as of January 2, 2002.

[2] These statistics are valid as of December 31, 2002.

[3] These statistics are valid as of January 5, 2004.

[4] This figure includes cash relief awards in Track A credit cases only. It does not include debt relief, tax relief, awards for non-credit claims, or awards or settlements in Track B cases.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS

Statistical Report as of:	Sept. 18, 2000	End of 2001[1]	End of 2002[2]	End of 2003[3]
A. Eligible Track B Claimants	177	235	236	237
B. Track B Cases Settled	11	57	61	71
C. Track B Cases Converted to Track A	27	50	54	55
D. Track B Cases Withdrawn	5	6	6	6
Arbitrations Complete/Not Complete				
E. Contested Track B Claims in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105
F. Arbitration Decisions Issued	15	51	71	77
G. Contested Cases in Which Arbitration Was Not Complete and/or Decision Was Not Yet Issued	119	71	44	28
Arbitration Results				
H. Claimant Prevailed Before Arbitrator	2	8	15	17
I. Average Awards to Prevailing Claimants	$580,500	$531,373	$560,309	$545,686
J. Government Prevailed Before Arbitrator	13	43	56	60
Posture of Decision:				
J.1. Cases Dismissed Before Hearing	10	28	34	38
J.2. Full Hearing, Finding of No Liability	3	15	22	22
Petitions for Monitor Review[4]				
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B cases	4	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions	0	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	5	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	2	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	0	7	12

[1] These statistics are valid as of January 10, 2002.

[2] These statistics are valid as of January 1, 2003.

[3] These statistics are valid as of January 1, 2004.

[4] The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS

Claimant	**Sept. 18, 2000**	**End of 2001**[1]	**End of 2002**[2]	**End of 2003**[3]
Claimant A	$544,400.00			
Claimant B	616,600.00			
Claimant C	<N/A>	$615,090.00		
Claimant D	<N/A>	100,000.00		
Claimant E	<N/A>	780,000.00		
Claimant F	<N/A>	625,566.00		
Claimant G	<N/A>	507,954.88		
Claimant H	<N/A>	[liability found but damages not awarded as of the end of 2001]	$483,580.50	
Claimant I	<N/A>	<N/A>	$1,447,917.00	
Claimant J	<N/A>	<N/A>	879,920.58	
Claimant K	<N/A>	<N/A>	594,444.00	
Claimant L	<N/A>	<N/A>	557,800.00	
Claimant M	<N/A>	<N/A>	427,363.00	
Claimant N	<N/A>	<N/A>	172,000.00	
Claimant O	<N/A>	<N/A>	52,000.00	
Claimant P	<N/A>	<N/A>	<N/A>	$750,048.00
Claimant Q	<N/A>	<N/A>	<N/A>	121,978.09

[1] These awards were granted in Arbitrator decisions issued as of January 10, 2002.
[2] These awards were granted in Arbitrator decisions issued as of January 1, 2003.
[3] These awards were granted in Arbitrator decisions issued as of January 1, 2004.

Appendix 4

LIST OF MONITOR OFFICE TRAINING EVENTS
JANUARY 1, 2002 – DECEMBER 31, 2003

The Monitor's office appeared at many speaking engagements in this reporting period to meet groups of claimants and Government officials and to explain the rules that govern the Monitor's discharge of her responsibilities (including the rules of the petition process, the injunctive relief process, and the debt relief process). In many cases, several staff attorneys from the Monitor's office attended these events; that made it possible for one or two attorneys to address the large group while the other attorney(s) worked with individuals to address their particular concerns. These speaking engagements included:

Date	Location	Sponsor	Approximate Number of Participants
Feb. 8, 2002	Tuskegee University; Tuskegee, Alabama	Tuskegee University	150
Feb. 9, 2002	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	250
Apr. 10, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	70
Apr. 30, 2002	Bladen County, North Carolina	Congressman McIntyre	250
June 12, 2002	Tchula, Mississippi	Mississippi Family Farmers	150
Aug. 16, 2002	Epes, Alabama	Federation of Southern Cooperatives	200
Aug. 22, 2002	Arlington, Virginia	National Black Farmers Association Meeting	250
Sept. 11, 2002	Washington, D.C.	Congressional Black Caucus	50
Oct. 12, 2002	Alcorn State, Mississippi	Alcorn State University	5
Oct. 18, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	125
Nov. 7, 2002	Fort Valley, Georgia	Fort Valley State University	40
Nov. 23, 2002	Oklahoma City, Oklahoma	Oklahoma Department of Agriculture	700

Date	Location	Sponsor	Approximate Number of Participants
Jan. 11, 2003	Kingstree, South Carolina	United Farmers of South Carolina	205
Jan. 25, 2003	Oklahoma City Langston University Campus	Oklahoma Department of Agriculture	150
Feb. 7, 2003	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	75
Feb.13, 2003	Tallulah, Louisiana	Northeastern Louisiana Farmers and Ranchers	90
Feb. 20, 2003	Tuskegee University; Tuskegee, Alabama	Tuskegee, University	100
Aug. 1, 2003	Arkansas-Pine Bluff University Pine Bluff, Arkansas	Arkansas-Pine Bluff University	125
Aug. 15, 2003	Epes, Alabama	Federation of Southern Cooperatives	150
Nov. 21, 2003	Fort Valley, Georgia	Fort Valley University	75
Nov. 22, 2003	Oklahoma City, Oklahoma	USDA Oklahoma Dept. of Food & Forestry	200

Appendix 5

MONITOR PUBLICATIONS
ISSUED OR REVISED JANUARY 1, 2002 – DECEMBER 31, 2003

- Monitor Update No. 1: Late Claim Deadline, revised October 1, 2003.
- Monitor Update No. 3: Deadlines for Petitions for Monitor Review, revised October 1, 2003.
- Monitor Update No. 4: Injunctive Relief in *Pigford v. Veneman*, revised October 1, 2003.
- Monitor Update No. 5: Eligibility and Monitor Review, revised October 30, 2002.
- Monitor Update No. 6: Freeze on USDA Acceleration and Foreclosures, revised October 1, 2003.
- Monitor Update No. 7: Claimant and Claimant Attorney Access to USDA Documents, revised October 1, 2003.
- Monitor Update No. 8: Procedural Rules for the Track B Monitor Petition Process, revised April 20, 2002.
- Monitor Update No. 9: Non-credit Claims — $3000 for Each Prevailing Class Member, revised October 1, 2003.
- Monitor Update No. 10: Debt Relief for Prevailing Class Members, revised October 1, 2003.
- Monitor Update No. 11: Understanding Who Is Part of the *Pigford* Case, November 27, 2002.
- Monitor Update No. 12: Resources for *Pigford* Claimants, February 3, 2003.
- Questions and Answers About Monitor Review of Decisions (Version 2), June 2003.
- Questions and Answers About Monitor Review of Decisions (Version 3), October 2003.

Monitor Update: Late Claim Deadline

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Date Revised: October 1, 2003
Update 001
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Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected the filing of late claims. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000, Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

3. Some late claims were allowed

In some cases, it was possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allowed a person to be a part of the case if the person could show that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] The Court directed the Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

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[1] This language is found in section 5(g) of the Consent Decree.

4. Judge's Order—deadline to request permission to file a late claim

The Judge's July 14, 2000, Order set a deadline for submitting a written request to file a late claim. **That deadline was September 15, 2000.** In order to meet the deadline, the written request must have been postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

5. How late claims were allowed

Three important rules applied when a claimant filed a late claim.

First, the claimant must have filed with the Claims Facilitator a **written** request for permission to file a late claim.

Second, the written request had to explain the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed.

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant **was** prevented from filing a timely Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a timely Claim Sheet and Election Form because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration.

7. Reconsideration of the Arbitrator's denial

The Arbitrator has established a limited reconsideration policy. When the Arbitrator denies a request for permission to file late, he sends a letter to the claimant. This letter will explain the Arbitrator's policy for reconsidering the request to file late.

8. If the Arbitrator decides in favor of claimant—60 days to file a claim form

If the Arbitrator grants a claimant's request to file a late claim, the claimant will receive a Claim Sheet and Election Form from the Claims Facilitator. The Claim Sheet and Election Form must be filled out and signed by an attorney, and it must be postmarked no later than 60 days from the date of the cover letter that accompanies the Claim Sheet and Election Form. No extension of this 60-day period will be granted for any reason.

9. More information

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

Monitor Update:
Deadlines for Petitions for Monitor Review

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Deadlines for Petitions for Monitor Review

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected petitions for Monitor Review. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This Update explains:

- What petitions for Monitor review are.
- The deadline for petitions for Monitor review.

2. Petitions for Monitor review

In the *Pigford* lawsuit, both Claimants and the Government are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any party who received a wholly or partly adverse final decision in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone may request a copy of the letter and pamphlet (which was updated on June 1, 2003) by calling the Monitor's office toll free at 1-877-924-7483.

3. Judge's Order created a deadline for most petitions for Monitor review

The Judge's Order created a deadline for filing petitions for Monitor review. The deadline worked in two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply. Information about Monitor Review of Facilitator denials can be found in "Monitor Update 5: Eligibility and Monitor Review".)

a. Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Track A Adjudicator or the Track B Arbitrator was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000. (This deadline was affected by the Register process in Orders dated November 8, 2000; April 27, 2001; and May 15, 2001.)

b. Decision after July 14, 2000—deadline 120 Days After Decision

If the decision by the Track A Adjudicator or the Track B Arbitrator was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

4. Deadlines created by the Order are firm

The deadlines explained in this Update are firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. More information from the Monitor

Anyone who has questions for the Monitor's Office regarding deadlines for petitions for Monitor review should call toll-free at 1-877-924-7483.

Monitor Update:
Injunctive Relief in
Pigford v. Veneman

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Injunctive Relief in *Pigford v. Veneman*

I. Introduction and the Monitor's Role

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Veneman*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

II. Only a Brief Summary

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

III. Eligibility for Injunctive Relief

A. Must Prevail in Track A or Track B

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

B. Credit vs. Noncredit Claims—the Difference Matters

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

C. What Law Applies for Injunctive Relief

1. Consent Decree

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a

remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

2. FSA Regulations and Most Favorable Light

The regulations governing FSA programs must be met in providing injunctive relief to class members. For example, in order to get a loan from the Farm Service Agency (FSA), the farmer must still meet FSA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies every time a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

IV. Types of Injunctive Relief

Injunctive relief falls under two main categories—priority consideration and technical assistance.

A. Priority Consideration—Three Types

The Consent Decree provides for priority consideration for three types of FSA benefits.

1. Inventory Property

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. FSA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

2. Farm Ownership Loan

Priority consideration for one FSA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

3. Farm Operating Loans

Priority consideration for one FSA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

Priority consideration is available only to those who had credit claims.

B. Technical Assistance and Service

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

1. Credit and Noncredit Claims

Technical assistance is available both for those with credit claims and noncredit claims.

2. Must Be Requested

The class member must request the technical assistance and service. Class members should consider making this request in writing.

3. Qualified and Acceptable USDA Employees

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

V. Getting an FSA Loan

A. Eligibility and Priority Consideration

Priority consideration does not mean that getting the loan is automatic. FSA eligibility requirements continue to apply.

B. Debt Forgiveness and Loan Eligibility

Many class members will have problems getting a loan because of past debt forgiveness.

1. General Rule—No FSA Direct Loan if Debt Forgiveness

As a general rule, applicants who have had FSA debt forgiveness that resulted in a loss to FSA cannot get an FSA direct loan.

a. Defining Debt Forgiveness

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of an FSA debt. It also includes the discharge of a debt to FSA as a result of bankruptcy. In addition, it includes a loss paid by FSA on a guaranteed loan.

b. Exceptions to the General Rule

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what FSA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

2. Debts Forgiven Under Pigford—or Affected by Discrimination

Many claimants had outstanding FSA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another FSA loan. Further, if discrimination was found in a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another FSA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants.

C. Creditworthiness

An applicant must be creditworthy to be eligible for an FSA loan. Credit history can be taken into account when FSA considers the creditworthiness of the applicant. FSA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

D. Other Requirements for FSA Loans

FSA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

E. Where to go for Assistance

The Monitor's Office has issued an Update that provides information for Class Members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for Pigford Claimants."

VI. If Injunctive Relief Efforts Fail

If those seeking to use the injunctive relief described in this booklet fail in their efforts, they have several options.

A. Contact the Monitor

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

B. FSA Appeals

Any FSA applicant—not just class members—who receives what is known as an adverse decision from FSA may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

C. Civil Rights Complaint

Any person—not just class members—may file a discrimination complaint with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC, 20250-9410.

VII. Timeline for injunctive Relief

Injunctive Relief for Pigford claimants expires on April 14, 2005. Originally, Injunctive Relief was to expire in April of 2004. An internal FSA notice issued on July 21, 2003, formally extended the availability of Injunctive Relief for one year. The Notice, FSA FLP 313, Priority Consideration for Prevailing Claimants, is available from the Monitor. To receive a copy, please call the Monitor's toll-free line and request it.

VII. More Information on Injunctive Relief

The Monitor's Office is in the process of preparing a much more detailed version of this Monitor Update. If you would like a copy of the much longer booklet, call the Monitor's office toll-free at 1-877-924-7483.

Monitor Update:
Eligibility and Monitor Review

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Eligibility and Monitor Review

1. Introduction

Some *Pigford* claimants have been denied relief on the grounds of class eligibility. In other words, they have been found not to be members of the class.

This Monitor Update is intended to:

a. Explain who is eligible to be a member of the class;
b. Describe how eligibility decisions are made; and
c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

In order to be a class member in the *Pigford* case, eligibility requirements must be met. In addition to being African-American, the following three things must be true about a person.

First, he or she had to farm, or attempt to farm, between January 1, 1981, and December 31, 1996.

Second, he or she must have applied to USDA between January 1, 1981, and December 31, 1996, to participate in a federal farm credit or benefit program. He or she must also have believed he or she was discriminated against on the basis of race in USDA's response to that application.

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

A claimant must submit proof that he or she filed a discrimination complaint. Listed below are the four types of proof that may be used by a claimant to show that he or she filed the discrimination complaint.

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

d. Declaration from another person about listening session or verbal complaint

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

If, after reexamination, the Facilitator rules that a claimant is not an eligible member of the class, he or she may not receive any of the relief found in the Consent Decree.

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.

Monitor Update:
Freeze on USDA Acceleration and Foreclosures

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Freeze on USDA Acceleration and Foreclosures

1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to "freeze" some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

a. Acceleration

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a $100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA's right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

b. Foreclosure

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

c. Inventory property

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

d. Other USDA actions—not covered

Other actions that USDA may take on the debt are not covered by the freeze.

3. Who can benefit from the freeze?

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

4. For the freeze to apply, claimant must petition for Monitor review

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

5. When the freeze begins and ends

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

6. Freeze does not stop administrative offsets—but refunds possible

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

7. After the freeze ends

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

8. More information

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Claimant and Claimant Attorney Access to USDA Documents

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Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

This Monitor Update explains how claimants and their attorneys can go about getting copies of these USDA documents.

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

Claimants who are being assisted by Class Counsel or Of-Counsel should not have any problem with access to papers that USDA filed in their *Pigford* claims. Class Counsel should have a copy of these files, and Of-Counsel should be able to get a copy from Class Counsel.

b. Assisted by an Attorney Who Is Not Class Counsel or Of-Counsel

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

Some claimants are not being assisted by an attorney at all. In legal terms, these claimants are acting "pro se"—that is to say, they are acting without legal counsel. Section 4 of this Update explains how these claimants should go about getting papers that USDA filed in their *Pigford* claims.

3. Types of Information Available to Claimant Varies

In general, USDA files used by the Adjudicator in deciding the claimant's case include two types of information. First, files sometimes include information about the claimant. This may include documents from old FmHA files, for example, or the results of USDA interviews about the claimant.

Second, USDA files may include information about people other than the claimant. This may include, for example, information about people named by the claimant as similarly situated white farmers. Information about claimants and similarly situated white farmers that is contained in USDA's responses to Track A claims is covered by the Privacy Act. A claimant can generally obtain private information about him- or herself but cannot obtain private information about other people. Therefore, a claimant who is not represented by a lawyer will not be able to obtain copies of any materials concerning similarly situated white farmers that USDA gave to the Adjudicator.

Therefore, if a claimant is acting pro se, he or she will not receive USDA information about other people.

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

a. Get a Copy of Privacy Order and the Acknowledgement Form

Claimants need to get a copy of the Privacy Order and the Privacy Order Acknowledgment Form. They can have these sent to them by calling toll-free at 1-877-924-7483.

b. Read the Form Closely and Sign It

Claimants should then read the Privacy Order and the Privacy Order Acknowledgment Form very closely and sign the Acknowledgement Form. When signed, that form is a binding legal document. It limits the claimant's right to use, distribute, or publish the information.

c. Send the Signed Form to the Facilitator—and Include Claimant Mailing Address

Claimants should then send the signed Acknowledgement Form to the Facilitator at:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

It is important that the claimant send a current mailing address to the Facilitator along with the signed form.

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

Attorneys need to get a copy of the Second Amended Supplemental Privacy Act Protective Order ("Privacy Order") and the Privacy Order Acknowledgment Form. They can request them by calling toll-free at 1-877-924-7483.

b. Sign Form and Return to USDA

Attorneys then sign the form and return it to USDA through the Facilitator at the following address:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.

Monitor Update:
Procedural Rules for the
Track B Monitor Petition Process

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Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

All of the Court orders referenced below may be found on the Court's web site at http://www.dcd.uscourts.gov.

a. **General Procedures.** The general procedures for the Monitor review process can be found in the Court's April 4, 2000, Order of Reference. Further detail can be found in the Monitor's booklet entitled "Questions and Answers About Monitor Review of Decisions," which is available from the Office of the Monitor.

b. **Deadline for Petitions for Monitor Review.** The deadlines for filing petitions for Monitor review are found in the Court's Order of July 14, 2000. In general, petitions must have been filed by November 13, 2000, or by 120 days from the date of the Arbitrator decision, whichever is later.

c. **Deadline for Responses to Petitions.** The deadline for responding to petitions for Monitor review is found in the Court's Order of September 12, 2000. In general, responses to petitions must be filed within sixty days from the non-petitioning party's receipt of the petition for Monitor review.

2. Filing Petitions for Monitor Review

Under Track B, any party seeking Monitor review of the Arbitrator's decision must:

a. Timely file with the Facilitator an original petition for Monitor review ("petition") and one copy of the petition. Petitions will be deemed "filed" as of the date of postmark. Petitions should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. File with the petition a Designation of Record. The Designation of Record shall include material before the Arbitrator in the petitioning Track B proceeding and shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review.

c. Timely serve one copy of the petition, including the designation of record, on the opposing party. Petitions will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

Under Track B, any party responding to a petition must:

a. Timely file with the Facilitator an original response to the petition for Monitor review ("response") and one copy of the response. Responses will be deemed "filed" as of the date of postmark. Responses should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. In addition, the responding party may file a Designation of Record of additional material not identified by the petitioning party. The Designation of Record of the additional material shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review. The Designation of Record of additional material, if filed, must be filed within sixty days from receipt of the petition for Monitor review.

c. Timely serve a copy of the response, including the responding party's designation of record, if any, on the petitioning party. Responses will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

The Monitor may, in her discretion, review material in the record before the Arbitrator that has not been designated by the parties.

4. Publication of Rules

The Arbitrator shall include copies of these rules whenever he sends to parties copies of decisions in their Arbitration cases. He shall also immediately send copies to all parties who have already received Arbitration decisions. The Arbitrator, the Monitor, and the parties shall also be free to send copies out to the public upon request.

Monitor Update:
Noncredit Claims—$3,000 for Each Prevailing Class Member

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Noncredit Claims—$3,000 for Each Prevailing Class Member

1. Introduction

The Consent Decree divided *Pigford* claims into two types—credit claims and noncredit claims. The vast majority of class members in the case have credit claims. Several hundred class members, however, have both a credit claim and a noncredit claim, or have only a noncredit claim. This Monitor Update describes noncredit claims, and describes the payment that class members with prevailing noncredit claims will receive.

2. Noncredit Claims and Credit Claims—Defining the Difference

In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to receive some other type of benefit, including the payment of money, from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Award for Noncredit Claimants

The amount to be given to class members who prevail on a noncredit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties that was entered as an official Order by the Court fills in many of the details.

a. Consent Decree—Receive Amount Denied

The Consent Decree provides that a class member who prevails on a noncredit claim is to receive the amount of the benefit that was wrongly denied to the class member. In addition, according to the Consent Decree, these payments will only be made if there are certain funds available in the USDA budget.

b. February 7, 2001, Stipulation and Order—$3,000 Payment

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the award that class members will receive in noncredit cases.

The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel believe that deciding the amount that should be paid for noncredit claims for each person would be difficult, if not impossible.

The Government and Class Counsel therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single payment from USDA in the amount of $3,000.

4. Other Details about the $3,000 Payment

Several other details about the $3,000 noncredit payment were explained in the February 7, 2001, Stipulation and Order. These are discussed below.

a. Only One $3,000 Payment Per Class Member

Each class member who prevails on a noncredit claim may receive only one $3,000 payment. This is true even if the class member prevailed on more than one noncredit claim. This means, for example, that if the class member had a successful claim for a disaster payment in both 1990 and 1992, he or she would receive only one payment of $3,000.

b. Credit and Noncredit Claim Combined

If a class member prevailed on both a credit claim and a noncredit claim, the class member will receive a payment for both the credit claim and the noncredit claim. A class member, therefore, could receive both a $50,000 payment for a credit claim and a $3,000 payment for a noncredit claim.

c. No Tax Payments for Noncredit Claims

Class members who receive a $3,000 payment for a noncredit claim will not receive any more funds—either paid to them or paid directly to the Internal Revenue Service—to cover any tax obligations the class member might incur as a result of the $3,000 payment.

5. More Information

Anyone who has any question regarding noncredit payments should feel free to call the Office of the Monitor at 1-877-924-7483. For more information about the Judge's Order, or for a copy of the Order, please call the Monitor's Office.

Monitor Update:
Debt Relief for Prevailing Class Members

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Office of the Monitor
Pigford v. Veneman (D.D.C.)
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This is not a USDA publication.

Debt Relief for Prevailing Class Members

1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief class members will receive.

2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to obtain some other benefit from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Consent Decree and Court Order

Debt relief for class members who prevail on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

a. Consent Decree

The Consent Decree provides that a class member who prevails on a credit claim is to receive a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of the credit claim.

b. February 7, 2001, Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the debt discharge that class members will receive in credit

cases. The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Order.

4. Debts to be Discharged

Certain USDA debts will be discharged as a result of the *Pigford* settlement. These are discussed below. Three types of debts will be discharged. However, an important exception applies to the debt discharge.

a. Debts Affected by Discrimination

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged.

b. Some Debts Incurred After the Discrimination Occurs

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

If, after the date of discrimination, the class member incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged. For example, if the Adjudicator found that USDA discriminated against the class member in denying a Farm Operating Loan in 1994, and the USDA then made a Farm Operating Loan to the class member in 1995, the 1994 and 1995 Operating Loans will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

c. Some Debts Incurred at the Same Time as the Discrimination

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan (EM) Program is a separate program, and so forth.

If the class member incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged. For example, suppose the Adjudicator found that discrimination occurred in 1990 in USDA's servicing of a 1989 Farm Operating Loan. If at the same time in 1990 USDA made a Farm Operating Loan to the class member, the 1990 Farm Operating Loan will be discharged. This is true even though the Adjudicator or Arbitrator did not find discrimination in the making of the 1990 Farm Operating Loan.

d. Important Exception Affecting Debt Relief—Older Lawsuits

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed. For example, if a class member was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the class member, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

e. Loans Made after December 31, 1996—No Debt Discharge

Loans made after the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree. For example, if a class member received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

5. More Information

For more information about the February 7, 2001, Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below.

Anyone who has any question regarding debt relief should call the Monitor toll free at 1-877-924-7483.

Monitor Update: Understanding Who Is Part of the *Pigford* Case

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Understanding Who Is Part of the *Pigford* Case

A. Introduction

People who are interested in being part of the *Pigford* case fall into three groups: (1) people who are in the case, (2) people who might get into the case, and (3) people who will not get into the case. This Update explains the rules that determine who is in each group and gives some statistics about each group (as of November 26, 2002).

B. Definitions

Before explaining the three groups, it is important to explain what some basic terms mean.

1. **What is the "Consent Decree"?** The Consent Decree is the document that explains what the parties agreed to when they settled the case. The Court approved the Consent Decree after a Fairness Hearing.

2. **What is a "Claim Sheet"?** The term "Claim Sheet" refers to the Claim Sheet and Election Form—the package of forms that one fills out to file an official claim in the case. The deadline for filing a timely Claim Sheet was October 12, 1999.

3. **What is a "Petition for Monitor Review"?** Petitions for Monitor Review are the papers that one files to ask the Monitor to review the decision that was made by the Facilitator, Adjudicator, or Arbitrator. There are deadlines for filing Petitions for Monitor Review: people may call the Facilitator's office at 1-800-646-2873 to find out about deadlines.

4. **What is a "Late Claim Application"?** There are many people who did not file a Claim Sheet on time who believe that they should be part of the case. A person cannot file a Claim Sheet after the deadline (after October 12, 1999) without first getting permission to do so from the Arbitrator. A "Late Claim" application asks the Arbitrator for permission to file a late Claim Sheet. This procedure is sometimes called "5(g)" because it is explained in paragraph 5(g) of the Consent Decree. The Arbitrator is allowed to approve a "Late Claim" application only if he determines that a person was unable to file his or her Claim Sheet on time because of extraordinary circumstances beyond his or her control. The deadline for filing "Late Claim" applications was September 15, 2000.

5. **What is "Late Claim Reconsideration"?** If a person filed a "Late Claim" application on time (by September 15, 2000) and the Arbitrator rejected his or her application, the

person has a chance to ask the Arbitrator to reconsider his decision. Requests for reconsideration must generally be filed within 60 days after the date of the Arbitrator's rejection letter.[1]

C. The Three Groups: Who Is In the Case?

1. Group One: People Who Are In the Case

In general, the people who are in the case or have permission to join the case consist of those who:

a. *Filed Claim Sheet On Time.* There are approximately 21,776 people who filed a Claim Sheet by October 12, 1999, and were determined "eligible" by the Facilitator.[2]

b. *Filed "Late Claim" Application, Request Approved.* There are approximately 1,631 people who did not file a Claim Sheet on time but who did file a "Late Claim" application on time and had the "Late Claim" application approved by the Arbitrator.[3] These people have permission to file a late Claim Sheet. The Facilitator either gave them or will give them a deadline for filing a Claim Sheet. Once the Claim Sheet is filed, if the Facilitator finds them eligible, they will be part of the case.

2. Group Two: People Who Might Get Into the Case

In general, the people who might get into the case consist of those who:

a. *Filed Timely "Late Claim" Application, No Decision Yet.* There are approximately 7,341 people who did not file a Claim Sheet on time (by October 12, 1999) but who did file a "Late Claim" application on time (by September 15, 2000) and have not yet received a decision on their "Late Claim" application.

b. *"Late Claim" Application Rejected, Filed "Late Claim" Reconsideration Request.* There are approximately 17,891 people who filed timely requests for reconsideration after they had their "Late Claim" applications rejected by the Arbitrator and have not yet received decisions on their requests for reconsideration.

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1 When the Arbitrator first officially established a reconsideration policy, the deadline was different. Call the Facilitator at 1-800-646-2873 to find out about reconsideration deadlines.

2 Approximately 23,148 people filed timely Claim Sheets. Of those, the Facilitator found that approximately 21,776 are eligible. People in certain categories who were found ineligible have the opportunity to file a Petition for Monitor Review up until their petition deadline. The Facilitator has identified approximately 163 people who have the right to petition the Monitor regarding eligibility determinations. Monitor Update No. 5 explains eligibility and the rules and deadlines in the Monitor petition process as it relates to eligibility (available from the Monitor's office; call toll-free, 1-877-924-7483).

3 Statistics in this Update concerning the "Late Claims" process are current as of October 1, 2002.

3. Group Three: People Who Will Not Get Into the Case

The Consent Decree and Court Orders in this case establish cutoff dates for getting into the case. These Orders provide that the following people will not get into the case:

a. *Did Not File Timely Claim Sheet and Did Not File Timely "Late Claim" Application.* People who did not file a Claim Sheet on time (by October 12, 1999) and did not file a "Late Claim" application on time (by September 15, 2000) will not get into the case. There are approximately 8,025 people who filed "Late Claim" applications after the deadline (after September 15, 2000)—these people will not get into the case. IT IS NOW TOO LATE TO FILE A "LATE CLAIM" APPLICATION.

ACCORDING TO THE RULES IN THIS CASE, ANYONE WHO DID NOT FILE A CLAIM SHEET BY OCTOBER 12, 1999, OR A "LATE CLAIM" APPLICATION BY SEPTEMBER 15, 2000, CANNOT BE PART OF THE CASE.

b. *Filed Timely "Late Claim" Applications, But Lost in "Late Claim" Process.* There are approximately 52,256 people who filed timely "Late Claim" applications that were rejected by the Arbitrator. Some of those people had their deadlines for filing reconsideration requests pass without filing a timely request for reconsideration: those people will not get into the case. Additionally, some people filed timely requests for reconsideration, but the Arbitrator denied their request for reconsideration: those people will not get into the case. There is no Monitor review of decisions in the "Late Claim" process.

D. Results for People Who Are In the Case

Most people who are in the case chose Track A (Adjudication). A chart showing the results for people in Track A is attached to this update. A chart showing the results for people in Track B is available from the Monitor's Office (1-877-924-7483).

People who believe that the decision of the Facilitator, Adjudicator, or Arbitrator in their case is wrong have an opportunity to petition for Monitor review. Deadlines apply in the Monitor review process.[4] Call the Facilitator at 1-800-646-2873 find out about deadlines for petitioning for Monitor review and to request a booklet that explains the Monitor review process.

E. Questions

Individuals may call the Monitor's office toll-free at 1-877-924-7483 with questions.

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[4] The exception is that some decisions made by the Facilitator are not subject to Monitor review. The Facilitator can answer individuals' questions about whether or not they have the right to petition.

Monitor Update:
Resources for *Pigford* Claimants

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Update 0012
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This is not a USDA publication.

Resources for *Pigford* Claimants

1. Introduction

Claimants frequently contact the Office of the Monitor and request information and assistance.[1] One of the Monitor's duties is to assist claimants with "other problems" that they are having with regard to the Consent Decree. Many claimants, however, have problems that are not within the authority of the Monitor to solve. This Monitor Update provides a few suggestions for other resources that may be helpful to these claimants.

2. Debt Relief Available Only for Successful Credit Claims

Before using the resources mentioned in this Update, a claimant should be aware of two warnings.

a. Other Resources May Be Helpful

This Update mentions only a few of the possible places that a claimant might turn to for help. There are likely many others that are not mentioned here that could be helpful. If a group or agency is not listed here, this does not mean that the Monitor's Office thinks the group or agency does poor work.

b. Monitor Cannot Vouch for Groups Mentioned

Several groups and agencies are mentioned in this Update. The Monitor's Office cannot vouch for these groups or agencies. Each claimant should investigate the group or organization carefully before taking advice from them.

3. When the Monitor Can Help

The Consent Decree permits the Monitor to help claimants resolve problems that claimants have with the Consent Decree. For example, the Monitor can help solve claimant problems of the following types.

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[1] The Monitor's duties and responsibilities are outlined in the Consent Decree and the Order of Reference. Claimants can receive a copy of the Consent Decree and/or the Order of Reference by calling our toll free number (1-877-924-7483) and requesting a copy.

a. Debt Relief

Successful Track A credit claimants may be entitled to have part or all of their USDA debt forgiven. Debt relief is confusing, however. If a claimant believes that he or she has USDA debt that should be forgiven, the Monitor may be able to help. The Monitor has also written a short guide, "Monitor Update Number 10, Debt Relief." This Update is available by calling the Monitor's toll-free number. Claimants with questions can contact the Monitor's Office for further assistance.

b. Injunctive Relief

Successful Track A credit claimants are entitled to receive Injunctive Relief. This may include, for example, priority consideration for a new USDA loan. If a claimant believes his or her right to Injunctive Relief is being denied, the Monitor may be able to help. Successful non-credit claimants also are entitled to a limited form of Injunctive Relief. A short written guide, "Monitor Update Number 4, Injunctive Relief," may also be of help. This Update is available by calling the Monitor's toll-free number.

c. Other Problems Related to the Consent Decree Settlement

Prevailing claimants may have other problems related to the Consent Decree. These could include, for example, the timing of cash payments, non-credit relief, some tax-related problems, and other matters. Claimants with these types of questions should contact the Monitor.

4. How to Contact the Monitor

a. By Phone – 1-877-924-7483

Claimants may contact the Office of the Monitor by calling toll free 1-877-924-7483. If the operator who answers the call is unable to assist a Claimant, Claimants may make an appointment to speak with a member of the Monitor's legal staff.

b. In Writing

The Monitor can be reached by writing:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

5. When the Monitor Cannot Help

Problems faced by claimants often are not related to the *Pigford* Consent Decree. The Monitor is not allowed to help claimants with these kinds of problems.

For example, many claimants find it hard to develop the cash flow plans and other financial plans that lenders often want to see before a loan is made. Further, some claimants find it difficult to deal with private lenders and other creditors. In both cases, since the problems are not related to the Consent Decree, the Monitor cannot provide the kind of help the claimant may need. The following groups and organizations may, however, be of some help in these situations.

a. University and Extension Programs

A number of colleges and universities have programs that are designed to help farmers. The programs mentioned below actively aim to assist African American farmers.

1) ***Alcorn State Cooperative Extension (Mississippi)***

Alcorn State University Cooperative Extension Program
Small Farm Outreach Training and Technical Assistance Project
1000 A.S.U Dr. # 479
Alcorn State, MS 39096-7500
Phone: 601-877-6128
Fax: 601-877-6694
Web site: none

Service Area: Southwest Mississippi.

2) ***Tuskegee University (Alabama)***

Tuskegee University Cooperative Extension Program
204 Morrison Mayberry Hall
Tuskegee, Alabama 36088
Phone: 334-724-4441
Fax: 334-727-8812
Web site: www.tusk.edu

Service area: State of Alabama.

3) ***North Carolina A & T Small Farm Outreach Training & Technical Assistance Program (North Carolina)***

North Carolina A & T State University
Cooperative Extension Program
Greensboro, NC 27411
Phone: 336-334-7024
Fax: 336-334-7207

Web site: http://www.ag.ncat.edu/extension/programs/sfottap/index.htm

Service Area: State of North Carolina.

4) ***University of Arkansas of Pine Bluff (Arkansas)***

University of Arkansas of Pine Bluff Small Farms Program
1200 North University Drive
UAPB Mail Slot 4906
Pine Bluff AR, 71601
Phone: 870-575-8142, 7246
Fax: 870-543-8035
Web site: none

Service Area: Thirteen Arkansas counties: Jefferson; Lincoln; Drew; Desha; Chicot; Ashley; Crittenden; St. Francis, Woodruff; Lee; Phillips; Monroe; Arkansas.

5) Southern University

Louisiana Family Farm Technical Assistance Project
Southern University
Baton Rouge, LA
Phone: 225-771-3863
Fax: 225-771-5728
Web site: none

Service Area: Nineteen parishes in Northeastern Louisiana.

b. Farm Advocacy Group

The following groups are generally private nonprofit organizations that work closely with African American farmers. They are not part of a college or university.

1) Arkansas Land and Farm Development Corporation

Arkansas Land and Farm Development Corporation
Route 2 Box 291
Brinkley, AR 72021
Phone: 870-734-1140
Fax: 870-734-4197
Web site: none

2) Federation of Southern Cooperatives/Land Assistance Fund

Administrative Office
2769 Church Street
East Point, GA 30344
Phone: 404-765-0991
Fax: 404-765-9178

Georgia Field Office
P.O. Box 3092
Albany, GA 31706
Phone: 912-432-5799
Fax: 912-439-0894

Rural Training & Research Center
P.O. Box 95
Epes, AL 35460
Phone: 205-652-9676
Fax: 205-652-9678
Web site: http://www.federationsoutherncoop.com/

c. Legal Organizations

Claimants may have questions about other legal problems. The Monitor is not allowed to provide legal advice to class members. Claimants experiencing legal problems may wish to contact one of the following nonprofit organizations that assist family farmers, including African American family farmers.

1) ***Land Loss Prevention Project***

Land Loss Prevention Project
P.O. Box 179
Durham, NC 27702
Phone: 919-682-5969
Toll-Free: 1-800-672-5839
Fax: 919-688-5596
Web site: www.landloss.org

Service Area: State of North Carolina.

2) ***Farmers' Legal Action Group, Inc.***

Farmers' Legal Action Group, Inc.
46 E. 4th St., Suite 1301
St. Paul, MN 55101-1109
Phone: 651-223-5400
Fax: 651-223-5335
Web site: www.flaginc.org

Service Area: Nationwide.

d. State Departments of Agriculture

Each state maintains a state Department of Agriculture. Claimants may want to contact their state department of agriculture for additional assistance. A listing of all of the states departments of agriculture can be found on the web at:

http://www.accesskansas.org/kda/stateags.html

e. USDA

USDA maintains the following resources that may be of help to claimants.

1) ***USDA Hot Line for Minority and Socially Disadvantaged Farmers (MSDA)***

The Farm Service Agency (FSA) has established an Office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) to work with minority farmers who have concerns about loan applications filed with local FSA offices. The MSDA Office will operate Monday to Friday, 8 to 5 p.m. Eastern Time.

Office of Minority and Socially Disadvantaged Farmers
Farm Service Agency
USDA
1400 Independence Ave SW
Mail Stop 0501
Washington, DC 20250-0501
Phone: 1-866-538-2610 (toll-free) or 202-720-1584 (local)
FAX: 1-888-211-7286 (toll-free) or 202-690-3432 (local)
E-mail: msda@wdc.usda.gov

2) ***USDA Office of Civil Rights – Discrimination Complaints***

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights
USDA
1400 Independence Avenue SW
Mail Stop 9410
Washington, D C 20250
Phone: 202-720-5964
TTY 202-402- 0216
Fax: None
Web site: http://www.usda.gov/da/cr.html

3) ***Farm Service Agency Appeals***

Farm Service Agency (FSA) applicants may appeal many adverse FSA decisions. To appeal an FSA decision, the applicant must ask for a hearing within thirty days after he or she received notice of the adverse decision. If an applicant receives a letter of denial from FSA, there should be directions about how to go forward with an appeal.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

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Questions and Answers About Monitor Review of Decisions

Version #2 — June 2002

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of May 2002. Please read this booklet carefully before you prepare your Petition for Monitor Review.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash, and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

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1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

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Phone: 202-637-6624
Fax: 202-637-5910

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that

in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made its decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

9a. If you are represented by Class Counsel. Class counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government

submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agrees not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is

successful, under certain circumstances USDA will refund any money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. A court order dated July 14, 2000, established deadlines for Petitions for Monitor Review.

a. Decisions dated on or before July 14, 2000. If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

b. Decisions dated after July 14, 2000. If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483 and request Monitor Update Number 3.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. I will send you a letter explaining my decision. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest errors that I found in your file—that letter, along with any documents that I have accepted into the record in your case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit.

Monitor Form #1:
Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

Are you represented by a lawyer regarding this Petition for Monitor Review?

☐ Yes ☐ No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

If you check "yes" and give us your lawyer's name and address, we will send your lawyer copies of all of the papers that we send to you.

3. Additional Information or Papers

Are you submitting any additional information or papers along with your Petition for Monitor Review?

☐ Yes ☐ No

If no, go to section 4 below.

If yes, please explain the flaw(s) or mistake(s) in the claims process in your case. (Please feel free to attach more pages.)

_____

_____

Please describe the additional information or papers that you would like the Monitor to review because of the flaw(s) or mistake(s). (Please feel free to attach more pages.)

Please explain why there would be a fundamental miscarriage of justice if the Monitor does not consider the additional information or papers. (Please feel free to attach more pages.)

4. Explain the Error

As explained in the letter and booklet that were sent with this form, the Monitor can only require reexamination of your decision if she finds that the decision was a "clear and manifest error" likely to result in a "fundamental miscarriage of justice." Please explain why the decision in your case was that type of "clear and manifest error." It is very important that you explain in full detail every reason why the decision was a "clear and manifest error." (Please feel free to attach more pages.)

5. Claims Involving Attempts to Apply

If your claim of discrimination involved your attempt to apply for a loan, please answer the following questions. (If your claim is not about an attempt to apply for a loan, please go to part 6.) (Please feel free to attach more pages.)

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

_____

_____

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

_____

_____

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

_____

_____

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

_____

_____

6. Signature

Please sign here. By signing this Petition, you are promising that you believe that everything you are saying in this Petition is true.

_____ _____

Signature Date

7. Submit Your Petition

Submit your completed Petition for Monitor Review to:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

The Monitor's office will send you a letter confirming that they have received this Petition for Monitor Review from you. The letter will include a photocopy of your Petition for Monitor Review for your records.

Monitor Form #1:
Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

Are you represented by a lawyer regarding this Petition for Monitor Review?

☐ Yes ☐ No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

If you check "yes" and give us your lawyer's name and address, we will send your lawyer copies of all of the papers that we send to you.

3. Additional Information or Papers

Are you submitting any additional information or papers along with your Petition for Monitor Review?

☐ Yes ☐ No

If no, go to section 4 below.

If yes, please explain the flaw(s) or mistake(s) in the claims process in your case. (Please feel free to attach more pages.)

_____

_____

Please describe the additional information or papers that you would like the Monitor to review because of the flaw(s) or mistake(s). (Please feel free to attach more pages.)

Please explain why there would be a fundamental miscarriage of justice if the Monitor does not consider the additional information or papers. (Please feel free to attach more pages.)

4. Explain the Error

As explained in the letter and booklet that were sent with this form, the Monitor can only require reexamination of your decision if she finds that the decision was a "clear and manifest error" likely to result in a "fundamental miscarriage of justice." Please explain why the decision in your case was that type of "clear and manifest error." It is very important that you explain in full detail every reason why the decision was a "clear and manifest error." (Please feel free to attach more pages.)

5. Claims Involving Attempts to Apply

If your claim of discrimination involved your attempt to apply for a loan, please answer the following questions. (If your claim is not about an attempt to apply for a loan, please go to part 6.) (Please feel free to attach more pages.)

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

Post Office Box 64511
St. Paul, Minnesota 55164-0511
Phone (toll-free): 1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

J. L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
Attorney at Law
3050 K Street NW, Suite 400
Washington, DC 20007-5108
Phone: 202-342-8864
Fax: 202-342-8451

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

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in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made his decision, or at any other stage of processing the form.

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8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases. Monitor Update #8, "Procedural Rules for Track B Cases" addresses the rules for Monitor Review of Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

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As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

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The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is successful, under certain circumstances USDA will refund money that they recovered from you by offset.

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c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. Two court orders established deadlines for Petitions for Monitor Review. One order, dated July 14, 2000, established deadlines for Petitions for Monitor Review in Track A and Track B cases. The other Order, dated October 29, 2002, established a deadline for filing Petitions for Monitor review of Facilitator Eligibility determinations.

a. Track A Adjudication or Track B Arbitration

(1) **Decisions dated on or before July 14, 2000.** If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of Petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

(2) **Decisions dated after July 14, 2000.** If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

b. Facilitator Review of Eligibility Determinations

(1) **Decision on or before October 29, 2002—deadline was February 26, 2003.** If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

(2) **Decision after October 29, 2002—deadline 120 days after Decision.** If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) that I found in your file—that letter, along with any documents that I have accepted into the record in your

case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies of the letter will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.

Mr. CHABOT. Thank you for your testimony this afternoon, Ms. Roth.

Mr. Lewis, you're recognized for 5 minutes.

STATEMENT OF MICHAEL K. LEWIS, ADJUDICATOR, *PIGFORD* V. *GLICKMAN*

Mr. LEWIS. Thank you, Mr. Chairman Members of the Committee. My name is Michael Lewis. I am the *Pigford* arbitrator. It is a pleasure to be here today. I appreciate the opportunity to testify.

I have had various roles in the progress of the *Pigford* v. *Veneman* case from its inception to its current implementation

stage. I wanted to identify those to the Committee. And based on the opening comments by, I think, all of the Committee Members, I would focus my attention and my remarks on the late claim process, although I have provided written testimony to cover some aspects of my other roles.

I have served as the parties' mediator from late December or early January 1988—1998, I'm sorry, through the entry of the Consent Decree in April 1999, and continued to help them resolve implementation issues as they arose before the appointment of Ms. Roth as the monitor in 2000. In the Consent Decree itself I am identified as the arbitrator responsible for managing the Track B arbitration process that Ms. Roth spoke about. Subsequent to the entry of the Consent Decree, Judge Friedman delegated to me the responsibility for deciding late claim petitions, what is known as paragraph 5(g) of the Consent Decree, and I will focus on those. And my final role is as an aide, as a court appointed referee to help resolve fee disputes between the Government and counsel.

Let me focus on my role in the late claim petition process. And I am going to read to the Committee what paragraph 5(g) of the Consent Decree—how it reads: A claimant who satisfies the definition of the class in paragraph 2(a), above, but who fails to submit a completed claim package within 180 days of entry of this Consent Decree may petition the court to permit him to nonetheless participate in the claims resolution procedures provided in paragraphs 9 and 10 below. The court shall grant such a petition only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.

On December 20, 1999, Judge Friedman delegated to me the responsibility for reviewing petitions filed pursuant to paragraph 5(g); that is, those who sought to file a claim after the October 12, 1999 deadline. On July 14, 2000, the court issued an order providing among other things that no late claim petition would be accepted for consideration if filed after September 15, 2000. As the monitor's Chart 2 illustrates, 65,950 late claim petitions were filed by the September 15, 2000 deadline. An additional 7,742 were filed after the September 15 deadline. Each of the petitioners in the latter category were sent a letter by me informing them that he or she had missed the court imposed deadline. Those, and there were a few, who subsequently showed that there was a misreading of the postmark became part of the 65,950 petitions considered.

I have completed my initial review of all 65,000 petitions. Of that number, I have found 2,268 petitions to have met the "extraordinary circumstances beyond his control" standard contained in paragraph 5(g). All of those whose petitions were approved showed that it was more likely than not that extraordinary circumstances beyond the petitioner's control caused the petitioner to miss the October 12, 1999 deadline. Hurricane Floyd, which resulted among other things in 60 counties in North Carolina being declared disaster areas by FEMA after it struck in mid-September 1999 and medical conditions that rendered an individual or his or her caretaker unable to attend to daily matters, provided the predominant reasons upon which petitions were approved. Any petitioner approved was sent a claim form, with a 60-day filing window. In

other words, they started the claims process at that point, once they were declared to be eligible members of the class.

The overwhelming reason provided by those whose petitions were denied was some form of lack of knowledge: unawareness of the existence of a settlement, disbelief in the settlement's legitimacy, unawareness of deadlines and filing procedures, or disbelief in the petitioner's eligibility under the settlement. This, despite the notice provided under the settlement approved by the court as sufficient under rule 23.

The 5(g) process requires that a farmer provide a written statement, signed under penalty of perjury, indicating why the farmer missed the original filing deadline and the extraordinary circumstances leading to the missed deadline. Because the population of people for whom the late claim process applied might be at a disadvantage by a reliance solely on writing, I employed a cadre of law students and recently minted lawyers, totaling 38 at the high point, as researchers to contact petitioners, to question them about their petitions and to obtain additional information and documentation. Approximately 75 percent of the petitions could be decided on the basis of the petitions themselves. There was some ambiguity in the other approximately 25 percent of the petitions filed. Those petitions were referred to one of the researchers for investigation. Each researcher used as a guide a questionnaire based upon the reason articulated by the farmer provided in each individual petition. Researchers were instructed, however, to deviate from the questionnaire if new information came to light during the interview so that I would have the fullest understanding about why the farmer had missed the October 1999 filing deadline. If the petitioner could not be reached by telephone, a written questionnaire was mailed to him or her.

Although not provided for in the Consent Decree, I created a process permitting late claim petitioners to request reconsideration of my decision to deny their participation in the settlement. The reconsideration process provided petitioners with a 60-day window in which to request reconsideration of the initial decision to deny their late claim petitions. I specifically encouraged petitioners to provide additional information and documentation if available. Approximately 21,000 farmers, constituting about 33 percent of the total number of denied petitions, have timely requested that I reconsider my initial denial of their late claim petition. If upon reconsideration it became clear that my initial decision was incorrect, or that relevant information was not considered, those petitions have been approved. Any request that cast doubt on my initial decision has been referred to a researcher for investigation. All petitions denied upon reconsideration are being sent letters describing in detail how a petitioner has failed to demonstrate, despite all efforts, that his or her situation meets the 5(g) standard.

Greater detail on the late claim process can be found in the six reports I have filed with the court regarding the process since November 2001, copies of which have been provided to the Committee. The reports also are posted on the monitor's website for review by anyone with Internet access.

I think I will stop there, and I am happy to answer any questions the Committee might have.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF MICHAEL K. LEWIS

I have had various roles in the progress of the *Pigford* v. *Veneman* case from its inception to its current implementation stage and would like to describe briefly those roles to you. I have served as the parties' mediator, the Consent Decree Arbitrator, both for the Track B arbitration process and for the ¶5(g) late claim process, and as a court-appointed referee for fee disputes.

A) *Mediator:* My first contact with the parties in the *Pigford* case came in late December 1997 when the parties contacted me regarding my willingness to serve as a mediator in an effort to help them resolve the lawsuit. Beginning in January 1998 through the entry of the Consent Decree in April 1999, I served as the parties' mediator. After the entry of the Decree, especially before the appointment of the Monitor, on a few occasions I attempted to help the parties resolve issues arising in the implementation of the decree.

B) *Arbitrator:* The parties chose me as the arbitrator identified in the consent decree to resolve all claims in which farmers chose Track B—the process that provides for an 8 hour in-person hearing to resolve their claims. Statistics for that process are provided in Randi Roth's Chart 1. There is one additional piece of information I wanted to alert you to in the Track B process, that is that the total number of Track B claims filed totals 237, rather than the 174 identified in Chart 1. The difference between the 174 number mentioned in Chart 1 and the 237 I have just mentioned is that because, even though the consent decree's language in Paragraph 5(d) states that a choice of tracks is irrevocable, USDA generally has been willing to permit farmers to switch from Track B to Track A. Sixty farmers have chosen to switch tracks. In such instances, the Facilitator sends to that farmer a claim form for use in the Track A process, and that claim is processed under the decree's terms for Track A claims. The remainder of the difference is attributable to farmers who withdrew their claims.

C) *Paragraph 5(g), Late Claim Petitions:* Paragraph 5(g) of the consent decree provides that:

> A claimant who satisfies the definition of the class in ¶2(a), above, but who fails to submit a completed claim package within 180 days of entry of this Consent Decree may petition the Court to permit him to nonetheless participate in the claims resolution procedures provided in ¶¶9 & 10, below. The Court shall grant such a petition only where the claimant *demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.*

On December 20, 1999, Judge Friedman delegated to me the responsibility for reviewing petitions filed pursuant to ¶5(g), that is, those who sought to file a claim after the October 12, 1999 deadline. On July 14, 2000, the Court issued an order providing, among other things, that no late claim petition would be accepted for consideration if filed after September 15, 2000. As the Monitor's Chart 2 illustrates, 65,950 late claim petitions were filed by the September 15, 2000 deadline. An additional, 7,742 were filed after the September 15, 2000 deadline. Each of the petitioners in the latter category was sent a letter by me informing them that he or she had missed the court imposed deadline; those who subsequently showed that there was a misreading of the postmark became part of the 65,950 petitions considered.

I have completed my initial review of all 65,950 petitions. Of the 65,950, I have found 2,268 petitions to have met the "extraordinary circumstances beyond his control" standard contained in ¶5(g). All of those whose petitions were approved showed that it was more likely than not that extraordinary circumstances beyond the petitioner's control caused the petitioner to miss the October 12, 1999 deadline. Hurricane Floyd, which resulted, among other things, in 60 counties in North Carolina being declared disaster areas by FEMA after it struck in mid-September 1999, and medical conditions that rendered an individual or his/her caretaker unable to attend to daily matters, provided the predominant reasons upon which petitions were approved. Any petitioner approved was sent a Claim Form, with a sixty-day filing window.

The overwhelming reason provided by those whose petitions were denied was some form of lack of knowledge: unawareness of the existence of the settlement, disbelief in the settlement's legitimacy, unawareness of deadlines and filing procedures, or disbelief in the petitioner's eligibility under the settlement. This, despite the notice provided under the settlement, approved by the Court as "sufficient under Rule 23."

The ¶5(g) process requires that a farmer provide a written statement, signed under the penalty of perjury, indicating why the farmer missed the original filing deadline of October 12, 1999 and the "extraordinary circumstances" leading to the missed deadline. Because the population of people for whom the late claim process applied might be disadvantaged by a reliance solely on writings, I employed a cadre of law students and recently-minted lawyers (totaling 38 at the high point) as researchers to contact petitioners to question them about their petitions, and to obtain additional information and documentation. Approximately 75% of the petitions could be decided on the basis of the petitions themselves. There was ambiguity in the other approximately 25% of the petitions filed. Those petitions were referred to one of the researchers for investigation. Each researcher used as a guide a questionnaire based upon the reason provided in each individual petition. Researchers were instructed, however, to deviate from the questionnaire if new information came to light during the interview so that I would have the fullest understanding about why the farmer had missed the October 1999 filing deadline. If the petitioner could not be reached by telephone, a written questionnaire was mailed to him or her.

Although not provided for in the consent decree, I created a process permitting late claim petitioners to request reconsideration of my decision to deny their participation in the *Pigford* settlement. The reconsideration process provided petitioners with a 60 day window in which to request reconsideration of the initial decision to deny their late claim petitions. I specifically encouraged petitioners to provided additional information and documentation, if available. Approximately 21,011 farmers, constituting approximately 33% of the total number of denied petitions, have timely requested that I reconsider my initial denial of their late claim petition. If upon reconsideration, it became clear that my initial decision was incorrect, or that relevant information was not considered, those petitions have been approved. Any request that casts doubt on my initial decision has been referred to a researcher for investigation. All petitions denied upon reconsideration are being sent letters describing in detail how a petitioner has failed to demonstrate, despite all efforts, that his or her situation meets the 5(g) standard.

Greater detail on the late claim process can be found in the six reports I have filed with the Court regarding the process since November 2001, copies of which have been provided to the Committee. The reports also are posted on the Monitor's website for review by anyone with internet access. On more than one occasion, late claim petitioners have attempted to address the fact of their denial to the Court. On each such occasion of which I am aware, and most recently on September 13, 2004, the Court has upheld the late claim petition process I have described.

D) *Fee Disputes:* On December 30, 2002, the Court referred to me fee disputes arising between class counsel and the government. Under the terms of the Court's order, quarterly fee petitions are to be filed by class counsel, the government responds to those petitions in writing, and my task is then to engage the parties in discussions designed to resolve any outstanding issues. If the parties are successful in resolving their dispute, they so indicate to the Court by filing a stipulation. If the parties are unsuccessful in their efforts, I am required to submit findings and recommendations to the Court on the fees in dispute.

I am happy to answer any questions members of the Committee might have.

Mr. CHABOT. Okay. Thank you very much. And our last witness this afternoon will be Mr. Pires. You're recognized for 5 minutes.

STATEMENT OF ALEXANDER PIRES, CLASS COUNSEL, *PIGFORD* V. *GLICKMAN*

Mr. PIRES. Thank you. Can you hear me?

Mr. CHABOT. Yes.

Mr. PIRES. My name is Alexander Pires. I'm the lead attorney and co-lead counsel in the *Pigford* case. I want to thank you all for inviting me.

Other than 8 years at the Department of Justice I have spent my entire career representing farmers and that's what I do. I sue the Government and I sue companies on behalf of farmers and that's all I do. Discrimination cases are very, very difficult, and *Pigford* was a difficult case.

There was a case prior to *Pigford* called *Williams*. It was a much bigger black farmers case, and it failed. It was in the District of Columbia here. It was filed in 1995 and it was over in 1997. That case was handled by Mr. Myart, who I believe is here, and other lawyers. We studied that case and tried to figure out a way to help black farmers at least in some limited way. And the *Pigford* case grew from the failures of the *Williams* case and our idea was to try to file a black farmers case that would get some relief and would get money.

Since that time I also filed a case for Hispanic farmers, for women farmers, for Native American farmers, and for tobacco farmers. The tobacco farmers case we just settled, and we got a little over a billion dollars in that case. The other cases are tied up in the court still. They are all being handled by very large law firms, very famous law firms with hundreds of lawyers. It's very hard to win these cases.

Point number 2 is the *Pigford* case is a very, very limited case. The idea was to try to take care of the people who had complained about discrimination. When we started we were hoping to represent a thousand farmers. That was our goal. We ended up with 22,000.

Point number three is, when we talked about settling this case, we had four black firms, law firms, and we had four white law firms. And in the Committee discussing it we had Charles Ogletree from Harvard University. And the number one demand of the black lawyers was that black people get money. You need to understand that. It was not about injunctive relief. It was not about getting all kinds of requirements from USDA. Congress does that all the time. You can do that better than a court can do that. You can require them through legislation to do what you want. It was about money.

We studied all of the class action cases and *Pigford* demanded the largest recovery per person in the history of the United States. There was no case in this country where the individual person in a class action case has gotten more money. There are some where there's a thousand people, but I'm talking about a large class action case. So far about 13,500 people have gotten $50,000 tax free. That's about $75,000 in real dollars. We predict it's going to end up being around 16-17,000. It is a very limited case.

The other cases that we studied, the Denny's case that you all know of, the Avis case, even the Japanese internment case, the Coca-Cola case, all those cases got far less than the individual black farmers got in this case. So to that extent it was somewhat successful. But it's had problems because there are so many black farmers that *Pigford* could only take care of a small percentage of them.

I've often said this, that there's about 280 million people in this country and about 13 percent of them are black. You can figure out the math. There are literally millions and millions of black people, particularly in the South, and they all came from the farm in one way or another. This was a rural country. So they associate with farming and they associate with USDA. We went on the road to find them and we—I gave, I think, over 200 talks with J.L. Chestnut and other black leaders in the South. We went to Alabama 42 times to find black farmers. And most people, I've found, love the

life of farming. Most black farmers in the South love that life more than any other life. So when you're looking at why there were so many people who filed late, I don't think it's all that surprising. We only got 22,000 in this case. There are literally thousands of black farmers out there, part time, full-time, who would like to have participated.

Point number 5, who's complaining? The 13,000 who got paid are not complaining. But those who lost and are on appeal, they're complaining, and I understand that. The late filers are complaining. There are 65,000 of them. I understand. In fairness to Michael Lewis, he had his hands somewhat tied. He's limited to what the Consent Decree states. I remember discussions about the late filers and we predicted about 3,000 people would file late.

Pigford is not a reparations case. It is not a black reparations case. But, people associated it with that effort. And that is why I think many, many black farmers are mad, and justifiably so.

What can Congress do? I think there are only three choices for you. There is very little that the monitor can do. There is very little that Michael Lewis can do to help these people. There is very little that I can do in the *Pigford* case.

There are three choices. One is, the Government could consent to let in the 65,000. That is the easiest route. If you happen to know somebody at the White House who could help us, that would be great. We could sign the stipulation and all 65,000 would be in tomorrow. That would be lovely. I would like that.

I don't happen to know Mr. Bush. I don't know the President at all. But that is the fastest way, the Administration agrees and everybody gets in. Option number 2 is, Congress can pass legislation that extends the statute of limitations, waives the statute of limitations for these 65,000, waives the issue of res judicata, and allows them all in; it would be a bill not much different than the original bill we got. Rather difficult for you, I understand, but that is an option.

And the third choice is, that Congress would pass legislation that allows the claims to go administratively to USDA. You would waive statute of limitations, you would waive res judicata, and they could file with the agency. Of course, the third the one I can hear already the chorus at the back saying, we don't want to go to USDA and have them decide our claims, that is where we were before. But, it is an option.

The *Pigford* case is controversial, and always will be. I met Tim *Pigford* so, so long ago, 8 years ago, 9 years ago. He is a very unique man, and has long since dropped out of this process to go back to his life.

But, at the beginning, he was just trying to get some money for a limited group of black farmers that had seen what had happened in *Williams*, and were just trying to get their complaints resolved. It has evolved into obviously something else much bigger than all of us.

I thank you all very much for inviting me, and I hope this was helpful.

[Alexander Pires did not submit written testimony prior to the hearing.]

Mr. CHABOT. Thank you very much. I want to thank all of the witnesses for their testimony here this afternoon.

At this time the Members of the panel that are here will have 5 minutes to question the witnesses. Mr. Bachus has indicated that he is handling a bill over on the floor of the House of Representatives right now and hopes to make it back here, because he has been very concerned about this matter as well. But he is not sure if he is going to be able to make it or not.

I recognize myself for 5 minutes. I will begin with you, if I can, Mr. Haynie. Would you again describe your involvement in the formation of the consent decree and were your views represented? And what were your expectations, especially in terms of discovery, the discovery process, and, do you—what is your view about whether or not black farmers have been adequately notified?

I know that is a lot of questions. You can take them in any order that you like.

Mr. HAYNIE. Okay. In my opinion, the process was chaotic and confusing. And the average black farmer didn't understand it. They were called in to meetings. And what happened, in my opinion, Mr. Pires was understaffed to handle the number of farmers that were involved in this lawsuit. And as a result, they would hold a meeting, and it would be about 200 farmers.

And it would be volunteers or students who—people who weren't—didn't understand the law, weren't competent for filling out applications. And, as a result of this, a lot of farmers were denied, because the people who were filling out the applications didn't understand the process, or weren't attorneys. And so the information was not translated onto the documents correctly, or they were told that they didn't need documents that later on, after they got denied, that they found out that they needed.

We were involved, John Boyd and I were involved in this process, and tried to work this thing out, and hopefully that it would be a settlement, and that there was some things that we would do to protect black farmers. They are an endangered species.

And nothing in this settlement has gone on for the education of black farmers to create opportunities for young people to get in. There has been nothing in the settlement to really put an end to discrimination in the USDA.

I have been the victim of having an official, USDA official have a loaded gun in his office for me. My son has been the victim of discrimination. After they investigated his discrimination, the district director filed an IG report, thus causing a whole other investigation of his complaint.

My wife, who has applied for rural development loans, was the victim of discrimination, and as well as when she was farming, she was the victim of discrimination. So the settlement has done nothing to end the systemic discrimination in USDA. And that is my biggest concern, is that the process has not been fixed and the settlement hasn't corrected any of the problem.

Mr. CHABOT. Thank you very much.

Ms. Roth, let me move to you if I can. When you review petitions for a review of Track A claims that have been denied, what are the types of additional information that you allow to be included in re-

consideration? And, do you direct the adjudicator or arbitrator to consider such additional information?

Ms. ROTH. Thank you, Mr. Chairman. Whether I let information in in the petition process is governed by a court order. The order of reference issued April 4th, 2000, states that I am allowed to let information in if the person—if the party submitting it can show that there was a flaw or mistake in the claims process, and that the failure to let the information in would result in a fundamental miscarriage of justice.

So I apply those two tests to each piece of additional information that is submitted. Typically the kinds of information that are submitted and do get in when the test is met are the names of additional similarly situated white farmers, and just all different kinds of documents about the case.

Mr. CHABOT. Thank you very much.

Mr. Lewis, let me turn to you, if I can now. I have only got about another minute, so I am going to have to be quick, and I would ask if you could be as well.

Mr. LEWIS. I will try.

Mr. CHABOT. Thank you. Based on your experience in handling the late-filed claims, what reasons do you think caused nearly 65,000 potential claimants to file their claims after the filing deadline, and do you believe these farmers knew of the settlement but failed to timely file?

Mr. LEWIS. I know that roughly 50 percent of them did know of the settlement. I mean, because of the reasons that they put forward in their petition. About 50 percent said that they did not know of the settlement.

It is—continues to be a mystery to me as to why there were so many late filers, because the notice that accompanied or that followed Judge Friedman's July 14th, 2000 order which set the deadline of September 15th, 2000, was distributed less broadly than the notice announcing the lawsuit.

And the only thing I have concluded is that the fact that there were real live people who had received real live checks helped to spread knowledge about the lawsuit in a way that simply someone reading a notice announcing the settlement did not. But, that is, Mr. Chairman, just a guess.

Mr. CHABOT. Okay. Thank you. My time has expired. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you. Mr. Lewis, if someone put on their form in the extended—and those that missed the deadline, the original deadline, if they put in their form that they didn't hear about it, would that be—would that disqualify them right off the bat?

Mr. LEWIS. That would disqualify them right off the bat. If—they also were told that they could ask for reconsideration if they wanted to.

Mr. SCOTT. If they put they didn't know, so if, in fact, they didn't know, if they had competent counsel, they wouldn't put that down, would they?

Mr. LEWIS. Probably not, Congressman Scott. But, very few of the petitions, the late-claim petitions—there appeared to be not very much lawyer involvement in the late claim petition process, let me put it that way.

Mr. SCOTT. Well, of all of the people that filed, 75 percent approximately filed late. Is that right?

Mr. LEWIS. I think that is right. Yes.

Mr. SCOTT. 76.

Mr. LEWIS. Somewhere on that order.

Mr. SCOTT. Doesn't that just tell you that there is something wrong with the process?

Mr. LEWIS. Well, there were also 7,700 people who missed the second deadline. So I don't know what the answer is.

Mr. SCOTT. Now, how many of those people have bona fide claims, if you would ever get to the merits?

Mr. LEWIS. I have no idea. The late claim—what was submitted was a late claim petition, that was a two-sided form. It was one page, two sides. So I——

Mr. SCOTT. Is it fair to say that certainly some have valid claims, and, in fact, some don't?

Mr. LEWIS. Oh, that certainly is true. We know that from both—from the folks who have been admitted into the process.

Mr. SCOTT. And, I mean, when all is said and done, wouldn't the fair thing to do to get to—would be to get to the merits, one way or the other. Now, your hands may be tied because of what your orders were from the consent decree; is that right?

Mr. LEWIS. Yes.

Mr. SCOTT. Would you object if we opened it up so that people could actually have their cases heard?

Mr. LEWIS. That is not my decision. Congress can do whatever it wants to do here. But——

Mr. SCOTT. You certainly wouldn't object?

Mr. LEWIS. Certainly not.

Mr. SCOTT. Mr. Pires, did—was there any motion made to open—when the—when people filed late, did you file any motions to have them—to help them get in, or keep them out?

Mr. PIRES. Well, prior to—the first time we found there were people late we had 1,100 of them. And we spent a lot of time trying to get them in. And we actually did get the first 1,100 in, as part of our settlement, as part of a process for which I took—we took quite a beating. We did get the first 1,100 in, for which I was chastised. It is complicated what happened. After that——

Mr. SCOTT. Do you have any conflict of interest? I mean, if others come in, that doesn't hurt the ones that are already in; is that right?

Mr. PIRES. Well, I would like as many as possible. I mean, if you are asking me his question, I would love you to pass a piece of legislation to let everybody in over the next 2 years. That would be——

Mr. SCOTT. Does anybody object to having cases heard on the merits, getting through all of this procedural deadlines, you have got 65,000 people who filed, plus the 20,000. Does anybody object to having cases heard on the merits?

Mr. PIRES. No, sir, not at all. Not that I know of.

Mr. SCOTT. Anybody doubt that that would be a good thing?

Mr. PIRES. It would be a great thing.

Mr. SCOTT. What do we need to do to bring that about?

Mr. PIRES. Can I answer that?

Mr. SCOTT. Sure.

Mr. PIRES. I believe it requires legislation from the House and the Senate, not much more complicated than the original legislation you passed in 1999. A sentence or two that would allow them in. Yes, sir. I think that would be fantastic.

Mr. SCOTT. That would fix it, Mr. Lewis?

Mr. LEWIS. It would—I think it would fix it. I don't know—I don't know what the legal problems would be given that there is—has been or would be—would have been a determination on whether they were eligible——

Mr. SCOTT. We are talking about claims—we are not talking about claims of one individual against another. We are talking about claims against the Government. So we have a little bit more flexibility then we would if we were trying to balance individual against individual.

Mr. LEWIS. My answer was just—I don't know what legal problems there might be in trying to change a consent decree in this manner after the fact. I am not saying it is a bad idea, I just—I don't know the answer to your question, Mr. Scott.

Mr. PIRES. It would have to be very carefully drafted, because both the statute of limitations and the res judicata defenses would be there, and the Justice Department would fight that. You would have to be very careful. But you have got great counsel. You have got legislative counsel. You have the best there is.

So I am sure you can get around that in some way.

Mr. SCOTT. Ms. Roth, if I can ask one additional question.

Mr. CHABOT. The gentleman's time has expired, but the gentleman is, by unanimous consent, granted another minute?

Mr. SCOTT. Thank you.

Ms. Roth, when people appeal to you, having lost the original, what kinds of things do you find that you can have the original decision of denial reversed? What have you done for people? I understand that you have a fairly substantial rate of overturning the original denials so that people actually get money.

What have you done for them that wasn't done originally?

Ms. ROTH. Yes, Congressman Scott. For the most part—I don't have the exact statistics, but I would say in most of the cases, where a farmer prevails at the monitor level, it is because some additional pieces of evidence that were allowed in through our process.

Mr. SCOTT. Is that the similarly situated white farmer issue?

Ms. ROTH. Of those cases, in very many of the cases, yes it is the similarly situated—if I had to say one piece of evidence that most often turns it around in the petition process, it is probably the similarly situated white farmer.

Mr. SCOTT. Have you developed a data bank so that each farmer wouldn't have to reinvent the wheel every time they want to have a case heard, that you have people in each county that might be similarly situated that people look to?

Because, it has been pointed out that some farmers just don't have access to that information.

Ms. ROTH. I understand the question, Congressman Scott. But, I am not allowed to do that, the way my reference order is set up. I am restricted to very particular things from my record, and I

can't go outside of the record of one farmer's case to pick a white farmer and put it in that farmer's case.

So I am restricted to five specific categories of information. I am not allowed to do that.

Mr. CHABOT. The gentleman's time has once again expired. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Ms. Roth, on that same issue. Is that part of the consent—the settlement agreement, or is that part of a judicial order that you—that restricts you?

Ms. ROTH. Yes. Congressman Watt, the rules about what I may and may not do in the petitions process come from a separate order. It is not from the consent decree.

Mr. WATT. So it is not part of the consent decree?

Ms. ROTH. Correct.

Mr. WATT. That order was issued by Judge Friedman?

Ms. ROTH. Yes. By Judge Friedman on April 4th of 2000.

Mr. WATT. Mr. Pires, you represent the class members only after they are determined to be a part of the class. Do you technically represent—do you represent the farmer who have—who filed late? Are they part of your class that you represent, or are they outside of the class technically?

Mr. PIRES. I have always been—taken the assumption that if they are a black farmer, and they meet the definition of the class they are our clients, yes. Now, you are asking me a difficult question, because having filed late, and not having any determination of whether they are eligible, I don't know whether they will ever be able to participate——

Mr. WATT. I guess the question I am asking is, do they have access to your advice in the preparation and filing of their petitions to be waived from being late?

Mr. PIRES. We had a lot of farmers who asked us how to file a late filing, yes. But, like I said earlier, we expected 3,000 to actually file. And——

Mr. WATT. Well, you got 1,100 in?

Mr. PIRES. I got 1,100 in.

Mr. WATT. Are those the people who asked you to represent them?

Mr. PIRES. That was the first group of late filers. We got them in and then there another group, but we were unsuccessful, the Government after that point didn't want to negotiate anymore. And then, of course, it started piling up, and we ended up with I believe 65,000.

Mr. WATT. Okay. I take it that the settlement agreement did not provide for a notice to the class, there was a direct mail notice to potential claimants?

Mr. PIRES. We didn't—we didn't know who they were.

Mr. WATT. Now——

Mr. PIRES. I don't understand how—is there such a list of every black farmer in America? I wish there was.

Mr. WATT. Well, my understanding is that the USDA conducts regular mailings to every farmer. Is that not the case?

Mr. PIRES. I don't think most of the participants in the case ever wanted to trust the USDA's list and USDA's system on a major class action.

Mr. WATT. I am not saying that necessarily would have been the exclusive way to give notice. But wouldn't—wouldn't that have been a reasonable way to give notice to potential class members, to do a mailing by the USDA to all farmers?

Mr. PIRES. I don't think it would have——

Mr. WATT. Does the USDA regularly communicate with farmers about various issues?

Mr. HAYNIE. Yes. And I thank you for asking those questions. The problem was, Mr. Pires waived discovery. Therefore, the black farmers didn't have adequate access to USDA information. And it was one of the requirements why they couldn't fill out these similarly-situated white farmers, because the class counsel waived discovery. And that was a big problem for black farmers in prevailing in this lawsuit.

Mr. WATT. So are you saying discovery might have yielded a list of potential class members?

Mr. HAYNIE. That is correct?

Mr. WATT. As well as information about white farmers who were similarly situated?

Mr. HAYNIE. That is correct. That is why that is a big problem for black farmers.

Mr. WATT. Mr. Pires, have you filed a request to the court or a motion of any kind with USDA or the Department of Justice to seek to change the consent decree?

Mr. PIRES. Many times. But with respect to the late filers, is that what you are referring to?

Mr. WATT. Yes.

Mr. PIRES. No, sir.

Mr. CHABOT. The gentleman's time has expired. Would you like an additional minute?

Mr. WATT. Yes.

Mr. CHABOT. The gentleman is recognized for an additional minute. We are going to go to a second round also. So——

Mr. WATT. Well, if you are going to a second round, I will just wait. Well, but since I am here, let me just pursue this one thing.

Because, one of the things I was struck by was you said that it would be a fairly complicated order to revise the consent decree?

And it seems to me that the appropriate person, the best person, best situated to word that, would be the class counsel. And one place that that would be—could be worded would be in a motion to revise the consent decree which might then be picked up Congressionally, the same language.

Mr. PIRES. No, sir, that is not correct. In a nutshell, I cannot change the consent decree by myself. Without the Government's consent, no matter what I want, I can't do it without the Government, sir.

Mr. WATT. I understand that. But you could file a motion, could you not? You have asked the court to change various aspects of the consent decree, haven't you?

Mr. CHABOT. The gentleman's time has expired. But you can answer the question.

Mr. PIRES. Yes, I have.

Mr. WATT. Okay. All right. I am not trying to cross-examine you about this. I am just trying to figure out how best to get some lan-

guage that would be used as a vehicle by Congress to revise the consent decree.

Mr. PIRES. We have submitted language to you.

Mr. WATT. All right. I yield back.

Mr. CHABOT. Thank you. The gentleman yields back. We are going to go to a second round of questions now, because of the importance of this hearing.

And, Mr. Pires, I hadn't asked you any questions last time, so I will start with you, if I can.

How many black farmers were your clients when the consent decree was negotiated?

Mr. PIRES. I would have to guess. I don't know.

Mr. CHABOT. Roughly.

Mr. PIRES. Gosh, I honestly wouldn't know because——

Mr. CHABOT. Well, let me ask you this then.

Mr. PIRES. Please. I don't want to guess.

Mr. CHABOT. I understand. I appreciate that. How did you acquire the viewpoints of those farmers that you did not represent? And were there objections to the proposed settlement, either by your clients or those that you didn't represent? And how was it that you ultimately decided to accept the settlement.

Mr. PIRES. Yes, sir. That is fair. Mr. Chairman, we had eight law firms involved. We invited any law firm in the country that wanted to join, as long as they didn't charge anything to the clients. That was the rule. So we had eight. None of the major law firms in the United States wanted to work on *Pigford*. We asked them all. *Pigford* was an orphan case, if you know what that means. It is a case that nobody wants.

And we ended up with eight, four black, four white firms. We had some religious leaders who helped us, like Reverend Lowry. We had some legal leaders like J.L. Chestnut. We had Charles Ogletree from Harvard, who was at the final two negotiations, and actually was at the Justice Department table for the final negotiations.

The feeling was that most major class action cases result in meaningless language, injunctive relief, paragraph after paragraph as to what the defendant shall do. And Charles Ogletree, J.L. Chestnut and others felt strongly that that would never fly in the Black community, that they wanted payment, something that was meaningful, and they wanted the largest single recovery in the history of the country.

So when we were at the table, in the Justice Department, the top floor of the building, where the assistant attorney generals and so forth, it was all about a recovery that was significant and that was tax free. The other issues, what was wrong with USDA, I mean everybody knew what was wrong with USDA.

I had already sued USDA by that time probably two dozen times. So it wasn't that I didn't know, and the other lawyers didn't know what was wrong with USDA. But, it was really about quickly getting money and having a system to get to people, not that this would change their lives, but that it was a symbol of what white USDA had done wrong to both Blacks and Hispanics, and of course Hispanics were not included. So it was a consensus.

Mr. CHABOT. Thank you very much. I know you want to answer a question, Mr. Haynie, or comment. Let me ask you in addition to that, could you comment on the notice? That is obviously a very big issue here, and whether or not that you think the notice was adequate? Not what you think, but I would like you to express——

Mr. HAYNIE. The notice was not adequate. I would like to comment on that. I was there at that hearing. And all of the farmers objected to consent decree. And even the farmers that Mr. Pires were representing, they were not allowed to go into this negotiation. So it was mind boggling how everybody there was objecting to the settlement, yet the attorney that was representing everybody moved forward with the settlement.

This settlement, what it does, it takes farmers out of the class and puts them on an individual fight with the Government in trying to prove their discrimination, when the attorney that has represented you has waived discovery in denying you to all of the access, which are the tools you use to defend yourself.

So it is mind boggling how the attorney, who is supposed to be representing black farmers, does not listen to the objections, and moves forward with the settlement when everybody is not in agreement with it. And he didn't have the staff to serve the notice to the number of people, and as a result, everybody was filling out forms for farmers and they came up short.

Mr. CHABOT. Thank you. Let me—my time is almost up here, so let me go back to you, if I can, Mr. Pires. Why was 180 days chosen as the filing deadline?

Mr. PIRES. Which filing deadline, Mr. Chairman? I am sorry.

Mr. CHABOT. The initial——

Mr. PIRES. I believe that was directly in the consent decree, I believe. Yes. I believe it was negotiated in the original consent decree, the 180 days, I believe.

Mr. CHABOT. Do you know why that was, though? I mean, Mr. Lewis, or could you shed any light on that?

Mr. LEWIS. Unfortunately, Mr. Chairman, I cannot. It has been 5 years.

Mr. CHABOT. The witnesses are always able to supplement their testimony. And so, if any of these things, any of the witnesses would like to supplement, you will have the opportunity to do that. And my time has expired. So I will now yield to the gentlemen for Virginia for 5 additional minutes to question.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Pires, did you file a motion last month in court opposing farmers' request to open up the deadline?

Mr. PIRES. There were various motions filed by various people. I mean, there has been hundreds of motions filed. But, there were motions filed by people who were not representing the class that we opposed, yes.

Mr. SCOTT. The answer is yes, you did?

Mr. PIRES. I oppose anything that is not in the interests of the class. That is what I do for a living. So, yes, there were motions, and I did oppose them.

Mr. SCOTT. Ms. Roth, on Track A, when people—when—Mr. Lewis, first. What portion of the Track A claimants actually got some money?

Mr. LEWIS. I am sorry, Mr. Scott. I don't have anything to do with Track A and can't answer that question.

Mr. SCOTT. Okay.

Ms Roth.

Ms. ROTH. Congressman Scott, about 61 percent of the people who went through Track A won on their first time through. Of the 8,000 or so people who lost, about 4,900 or so petitioned for monitor review. The remaining petitions were Government petitions. Of the farmers who have gone through the petition process, about 50 percent are prevailing in that process.

But, I don't have the authority, in the petitions process, to say they won or lost. I only have the authority to remand to the adjudicator in Track A. But the adjudicator in Track A is following my recommendations about 90 percent of the time. So about 13,500 claimants have won.

Mr. SCOTT. Now, to win, you have to find the similarly situated white farmer; is that right?

Ms. ROTH. That is correct.

Mr. SCOTT. How, without the discovery that Mr. Haynie has pointed out, where do they get this information?

Ms. ROTH. Congressman Scott, of course, I don't really know where they get the information. I just know what shows up in the file. But the one thing I can tell you from reading files, is that some people get it by going to the county courthouse and looking for whose names are on, you know, documents that show that a loan happened, a mortgage, or a chattel, a chattel security agreement, and then they submit those names.

Mr. SCOTT. Has that been a problem in people getting compensated, because they cannot get the information—do they have subpoena power to get that information?

Ms. ROTH. Not that I know of. No. You mean, if someone is in the Track A claim process, can they subpoena—in the Track A process? No.

Mr. SCOTT. So that would be a barrier to getting, for a person with a bona fide claim, getting—actually getting paid?

Ms. ROTH. Many of the cases in which people lose, it is because they did not have—they were not able to specifically identify a similarly situated white farmer. That is correct.

Mr. SCOTT. Does that need to be corrected?

Ms. ROTH. That is not something I can comment on.

Mr. SCOTT. Okay. Are you involved in Track B claims?

Ms. ROTH. I review petitions in the Track B process as well.

Mr. SCOTT. Mr. Haynie suggested some problems with the calculations for damages under Track B. Have you seen the same kinds of problems?

Ms. ROTH. I really couldn't say whether I have seen the exact kinds of problems Mr. Haynie described. But, we do carefully review the evidence on both sides of damages questions in Track B and make our decisions. That is really all I can say about that.

Mr. SCOTT. As I understand the consent decree, there was no technical admission of discrimination. Is there any question in anybody's mind that there was, in fact, discrimination in just about every—each and every one of these cases?

Mr. PIRES. I can answer. There were about 3,800 farmers who lost and did not appeal, even though they had access to lawyers. There were some cases where there—they should not have been in the case. But for those, the vast majority of them I felt had legitimate claims. Yes, sir.

Mr. SCOTT. When you look at Track A, I thought the idea was that these are going to be pretty well, straightforward cases. If you are in the class, you ought to get the money without a lot of hassle. And I get the sense that the consent decree did not anticipate some of these procedural and burden of proof problems.

Mr. PIRES. You are bringing up what is, for many people, the most important issue. These are claims against the Treasury. This is—and when we were negotiating what the standard had to be, the issue was, how does an adjudicator, a ruler, a neutral know when there is discrimination against Black folks, Hispanics, women, how do you know? It has to be weighed against something.

So the negotiations were about the elements. You have to be a black farmer. You have to have farmed during that period of time. You had to have applied for a loan or tried to get a loan. You had to be discriminated against. How did you know? How did you know you were discriminated against?

Somebody under similar circumstances got a loan and you didn't. The standard was, which is what the law is, you had to show a white person got better treatment than you did. What was interesting, Congressman Scott, was that for the 13,500 who won, and some of those who lost, they had no trouble naming a white person in their community that had better treatment.

I will admit to you there were people who put down the name of a white person whom they thought had better treatment. They put names of two or three. And they were wrong. And on appeal, we spent an enormous amount of time, months and months trying to get a correct white name. We had two shots at those.

I would admit to you that that was the most difficult part of the case for some people, how to find someone in their community who was treated better than they were, who was white. That was difficult. But, that is also a requirement of the law, this is after all a lawsuit. No one is going to waive that part of it.

Mr. CHABOT. The gentleman's time has expired. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Ms. Roth, in Appendix 1, and we are trying to locate the place, you say that the claims process was flawed. Can you explain what you meant when you said that?

Ms. ROTH. Congressman, what I think you might be referring to, when I explained how we get additional evidence in the petitions or appeals process. And the test for that is that new evidence can come in if the moving party shows a flaw or mistake in the claims process that would result in the fundamental miscarriage of justice if the evidence were not let in. I don't think it actually says it on the chart.

Mr. WATT. Okay. Mr. Pires, you negotiated a consent decree, the settlement that led to the consent decree. Right?

Mr. PIRES. With many others. Yes, sir.

Mr. WATT. With others. Okay. So you represent the class of people who were eligible to be covered by that consent decree?

Mr. PIRES. Yes, sir.

Mr. WATT. What role, then, do you play in processing of the individuals claims and the—and marshalling and presenting evidence on behalf of class members that there was a similarly situated individual, white individual, that they—their treatment didn't measure up to?

Mr. PIRES. Throughout 1999 and into 2000, but mostly 1999, we went out to where the farmers live. I mean, we were gone the whole year. And we went to their local high schools, their local community centers. And we actually met with the black farmers. And most people signed up and filled out the forms in the presence of a lawyer, as Mr. Haynie said, sometimes there weren't enough lawyers. And we helped them fill them out. It had to be signed by a lawyer. Each application had to be signed by a lawyer.

Most, talking about the similarly situated white farmers, most black farmers knew one, two, three names of white people in their community who they thought got preferential treatment. That didn't require——

Mr. SCOTT. That is the people who actually got in the class.

Mr. PIRES. That was all 22,000, sir. That was everybody. Nobody, of the 22,000——

Mr. WATT. I guess the question I am asking is, do you have—does anybody have a responsibility to the people who didn't get in the class? Who has a responsibility to them to either try to get them in the class, or—didn't I hear—did I understand that you opposed a motion to get them into the class?

Mr. PIRES. It is not that simple. I wish it was.

Mr. WATT. Well, I am not trying to simplify it. Either you opposed it or you didn't. I am trying to figure out, obviously, you had a settlement, you negotiated a settlement. Some people you—that settlement then said, each individual then must go and prove something beyond just the settlement. For some of those people, you performed the role of actually marshalling and presenting the evidence.

Mr. PIRES. And we still are. Congressman, what—here is the problem. Because I want to help you help us. We have a lot of responsibilities for the class members. And we are nowhere near done. We are still working for the 22,000. There are a lot of people who haven't been paid. Lots of appeals. Lots of petitions. Lots of problems. We work on them every day.

That is what Judge Friedman wants me to do. He wants me to look out for class members, and take care of them. That is what we do every day.

Mr. WATT. So are you defining the class members as those 22,000 people, and I guess the question I am asking is, is there somebody out there who is advocating and representing the people who didn't get into that 22,000 people, the 65,000 people or so, who didn't meet the deadline?

Mr. PIRES. No, Congressman, that is not what I meant. What I meant is, if tomorrow another 50,000 people came along and said, I also want to file with the court and I would like to get into *Pigford*, I know from 30 years of experience that I cannot by myself reopen *Pigford* and let not only the other 65,000, this 50,000, I

can't do that without the Government's consent. And they will not consent.

I have been working with them for 8 years, and I can tell you they won't. So what do I do? We seek to help them. That is why we are here. You have to help them. We are not going to be able to get them through the *Pigford* case. Judge Friedman is not going to reopen it, because the Government would never consent to it.

Could you get us legislation that would reopen a similar case like this? Yes. But, the Government is never, ever going to consent to reopening *Pigford*. I know that. So I don't want to abuse the system by trying to spend a lot of my energy on something that I know from 31 years will not work. What I do want to do is take care of the people who are in the——

Mr. WATT. The question I am asking is, is there somebody out there who is doing that? I am not suggesting that it should appropriately be you. I am just asking: Is there somebody out there who is representing a large number of those people?

Mr. CHABOT. The gentleman's time has expired. But you may answer.

Mr. PIRES. Those people who have filed, Congressman Watt, they are before Michael Lewis. In other words, they are in the system. I don't——

Mr. WATT. Maybe I should be asking Mr. Lewis that question then. Who represents the most of those people who—the dispossessed class members, I will characterize them in that way, although, I don't mean it.

Mr. LEWIS. Congressman Watt, I am not aware that anyone is representing them in the late claim process.

Mr. WATT. All right.

Mr. CHABOT. The gentleman's time has expired. The gentleman from Alabama is back from the hearing on the floor and is recognized for 5 minutes for questions.

Mr. BACHUS. Thank you. Mr. Pires, you are aware of a lot of wild rumors that have been going around that the attorneys have made more money off this case than the farmers?

Mr. PIRES. Yes.

Mr. BACHUS. Let's address that a minute.

Mr. PIRES. Please.

Mr. BACHUS. You know, clarifying the fee would put an end to those rumors.

Mr. PIRES. Please.

Mr. BACHUS. And I don't know. I am not—are your fees based on a set amount, or upon the number of claimants you represent?

Mr. PIRES. No, sir. It is very simple. It has all been public. We came forward and agreed to represent the class with an agreement that said, we will take none of your money. We were the only ones. Every other firm in the country had an agreement, with the exception of myself and Mr. Fraas, that wanted a percentage.

So when it started, the rule I established was, if you want to help the Black farmers, you can't take any of their money. You can't base it on anything other than the judge will eventually——

Mr. BACHUS. What are they based on?

Mr. PIRES. Let me finish, if I can. Your compensation will depend upon what the judge rules and grants you, period. You are going to have to take your chances and work for free.

So, of the original eight firms, six of them had agreements that said they would get a percentage. They dropped and used ours. And everybody worked. And what happened is, we eventually, in the first round, after working 1997, 1998, 1999, 2000, and I don't know, somewhere around——

Mr. BACHUS. My problem is, I have only got 5 minutes. I am just saying, are you—is your fee based on a set amount per hour, or is it based on the number of claimants? Or what——

Mr. PIRES. I am trying to answer.

Mr. BACHUS. Well, just can you?

Mr. PIRES. The eight law firms, after 4½ years, had $34 million worth of bills, hours and time and fees.

Mr. BACHUS. So 34 million is what you all——

Mr. PIRES. We submitted it. The judge ruled. And to make a long story short, we received $14 million of that amount. When the case started, there was $1 million given to start the case, which was divided up. And after that period of time, the bills have been paid, you know, sporadically.

Mr. BACHUS. What about this, would it make more——

Mr. PIRES. There has never been more in the entire history of the case than I know of than about $15 million, to pay all of the firms for 7 years of work. We averaged about $100 an hour. That is what we got.

Mr. BACHUS. Let me ask you this. Would it make sense for the class counsel to make a public accounting?

Mr. PIRES. It is all public.

Mr. BACHUS. Of the attorney fees received in the case?

Mr. PIRES. It is all public.

Mr. BACHUS. I mean, to do a public accounting and release it?

Mr. PIRES. It is in the docket.

Mr. CHABOT. Would the gentleman yield for just a moment? I want to make sure that I understand. You are saying that there were—there have been over $800 million at this point—that were paid out, is that right, and that the attorneys have made 15 million of the over 800 million. That is accurate?

Mr. PIRES. Yes, sir.

Mr. CHABOT. I just wanted to make sure that I understood.

Mr. BACHUS. Would you object—do you object to a public accounting on the attorney fees?

Mr. PIRES. It is public.

Mr. BACHUS. But is it a public accounting, I mean, to make a public accounting?

Mr. PIRES. It is all in court orders and it is all public, yes.

Mr. CHABOT. I would request that the staff get with the court so that we can verify those.

Mr. BACHUS. Let me shift over. That is sort of a—let me tell you what really—one of the things that bothers me about this whole case, is that for every farmer that filed, there were probably two-thirds more that didn't file.

Now, that indicates to me, if you got, you know, if—somebody is eligible, and they can receive money, and they don't file, I have kind of got to believe that that is because they didn't get notice.

If you tell somebody there is money for you if you file, and you don't file until late, that indicates to me that you didn't know about it. Because, if somebody says there is money out there, you go up and you file. Yet, the judge in this case he said that a natural disaster was a reason for a late filing, or being hospitalized, but he actually, and I think if counsel agreed to this, consented to saying that if you didn't receive notice, that wasn't a reason for a late filing.

Mr. PIRES. That is not true.

Mr. BACHUS. That is not right?

Mr. PIRES. No.

Mr. BACHUS. I have been looking at this. I am just reading from what—it says, lack of notice is not deemed an acceptable reason by the arbitrator because the court made a legal finding that notice was sufficient.

Did all argue against that and oppose that finding?

Mr. PIRES. I don't know which finding you are reading from.

Mr. BACHUS. A finding in the *Pigford* case.

Mr. PIRES. You mean from the claim form?

Mr. BACHUS. Well, it says here—is that true? Did the court make a legal finding that notice was sufficient?

Mr. PIRES. Yes. Notice was done by a professional company that does nothing but give notice.

Mr. BACHUS. But, did you all oppose that? I mean, obviously for every person that filed, there were two-thirds more that didn't.

Mr. PIRES. There was a public hearing about notice, and the judge accepted notice as being adequate.

Mr. BACHUS. Did you vigorously oppose that?

Mr. PIRES. No, I thought notice was adequate.

Mr. BACHUS. So you thought it was adequate too.

Mr. PIRES. I thought it was excellent.

Mr. BACHUS. Doesn't the fact that now, after that thing was set, that two-thirds of the people have missed the filing deadline, does that cause you to maybe believe that in hindsight notice wasn't sufficient?

Mr. PIRES. No. Because I have been doing class actions a long time. And even my tobacco case which just settled, we had thousands of people who were getting checks and they did not file on time.

Mr. BACHUS. Well, but, you know. It——

Mr. PIRES. It is very common.

Mr. CHABOT. The gentleman's time has expired. Would you wish an additional minute to ask——

Mr. BACHUS. I would like an additional minute.

Mr. CHABOT. Without objection.

Mr. BACHUS. You take, in Alabama, for 294 cases that were granted, 14,268 were rejected. And most all of those were because they filed too late. Does that bother you? I mean, does that——

Mr. PIRES. Alabama, there were 42 meetings of farmers in Alabama. And J.L. Chestnut is from Alabama. Alabama was probably

the best serviced of all 50 States. I don't think there is a Black farmer in Alabama who didn't know about the case.

Mr. BACHUS. So 14,268 out of 14,600, or——

Mr. PIRES. There were some Black farmers in Alabama who filed late. But I think there is a different reason for that.

Mr. BACHUS. Well, two-thirds of the applicants were denied entry into the claims process. Is that right?

Mr. PIRES. Sixty-five thousand people who filed late.

Mr. BACHUS. But their claims were never considered on the merits, though?

Mr. PIRES. That is true.

Mr. BACHUS. That is a tremendous number that never got their cases heard on the merits.

Mr. PIRES. That is true. If you gave notice today, you would get another hundred thousand.

Mr. BACHUS. Yeah, but I mean, that is a tremendous percentage.

Mr. PIRES. Yes, it is.

Mr. BACHUS. That doesn't cause you to question that maybe they didn't get notice?

Mr. PIRES. Fifty percent of the people who—Mr. Lewis testified that 50 percent of them that he reviewed admitted they knew about the case. So——

Mr. BACHUS. I guess, I will close with this. I am a lawyer. I finished near the top of my law school class. But I get these notices in these class action cases all of the time. I can't figure out what they are talking about.

Mr. PIRES. I think that is true.

Mr. CHABOT. The gentleman's time has expired. They agree on something.

The distinguished gentleman from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thank you, Chairman Chabot.

Mr. Pires, Attorney Pires, why did you oppose the motion to modify the *Pigford* suit filed by the Black farmers?

Mr. PIRES. Filed by the Black farmers? Mr. Myart motions? I think Mr. Myart's motions are irresponsible. He does not represent the Black farmers in this case. And his motions are irresponsible. That is why I opposed them.

Mr. CONYERS. Okay. Why did you file a motion to enjoin Black farmers from speaking on the *Pigford* v. *Glickman* settlement last week?

Mr. PIRES. In that motion, it is public, Mr. Myart and others ridiculed the court, ridiculed the judicial system, made fun of Judge Friedman and the monitor and others. And I am sworn, as a member of the court, to defend that.

I don't think you get anywhere making fun of the judicial system. And anybody who comes forward and makes fun of Judge Friedman or anyone else, I am going to oppose that. That is my job.

Mr. CONYERS. Well, Counsel, do you still oppose—would you oppose a modification of the time limits for the filing in this case at this point in time?

Mr. PIRES. I don't think the *Pigford* consent decree can be modified, Congressman Conyers. The Government has told us for years

that they will not consent. So I don't see how it can be accomplished.

And I am trying, through legislation, to get what I got 8 years ago, which has helped. I don't think it is worth repeated filings before Judge Friedman that are denied. I think it is a waste of time. I think the most important thing is to get to the heart of the problem and get relief from Congress.

Mr. CONYERS. Well, that is not quite the question that I asked which was, would you object to the court deciding or reconsidering that 65,000 claimants should be allowed to enter?

Mr. PIRES. Would I oppose——

Mr. CONYERS. Would you object? Yes. Would you object if the court determined that this was such a serious miscarriage of the goals of the farmers across all of the years, and that they—that he decided that he would reconsider and create a new way for them to apply?

Mr. PIRES. Judge Friedman does not have that authority.

Mr. CONYERS. Well, I am glad to hear you tell—this is the first time I had a lawyer explain the jurisdiction of a judge. I mean why couldn't he? You are telling me that he could not extend this even if he wanted to?

Mr. PIRES. I do not believe that Judge Friedman, on his own, without the Government's consent, can change a consent decree and change the terms such that there is an extension of time to allow people in. I do not believe that is the law. That would be reversed, and it would be wasting years of time.

Mr. CONYERS. Wait a minute. That, sir, is your hypothetical back to me. I didn't tell you that Federal court would—that the Government wouldn't join in with him.

You know, Al, look, let's face it. You seem to be resisting the 65,000 people getting some relief. That is what it sounds to me.

Mr. PIRES. It is the exact opposite, Congressman Conyers. I want to help them, but I want to help them in a meaningful way.

Mr. CONYERS. Well, if it is the exact opposite, it doesn't come across like that in this hearing. I hate to tell you that.

Mr. PIRES. I understand.

Mr. CONYERS. But, you know, something is amiss here. We have got Mr. Lewis sitting at your left, who could make plenty of sounds about what we could do for those 65,000. And I know we have a legislative remedy that I haven't mentioned, but do you know how many more days are left in this Congress? It is—I think they said about a little more than a week, maybe less than 2 weeks.

So on the for-real side, if the judge heard about this hearing, and heard you explain why he can't do it by himself, that the Government wouldn't join in, that it is too late and that you are working on other issues, to me these are people who would be claimants and would be part of the class action that you are bringing, sir.

Mr. PIRES. Yes.

Mr. CONYERS. I mean, it would seem to me that you would want them in.

Mr. PIRES. I do.

Mr. CONYERS. Well, you have explained to me all of the reasons that they can't come in. I am trying to——

Mr. PIRES. I said to file a motion before Judge Friedman, without the Government's consent is just paper, and it is not going anywhere.

Mr. CONYERS. Well, I am glad you know this. Maybe——

Mr. PIRES. Because I have been doing it for 7 years. I think I have a pretty good idea of how to make the litigation move in a way that provides meaningful relief.

Mr. CONYERS. Well, look, I don't want to tell you what you should be saying before the Committee. I presume you know what to say in front of the court. But, if I leave this hearing, and they ask me how does Pires and Lewis feel about the 65,000 black farmers, I am going to be strapped to explain this based on the answers and the comments that you have given me.

I would like to yield to Mr. Lewis to see what he—what his feelings are on this subject.

Mr. LEWIS. I don't disagree with Mr. Pires, that if there were some way, outside of the context of the consent decree to provide relief to—we have been talking about 65,000, why not include the other 7,700 who missed the final deadline? So we are talking about 72-73,000 people.

All I would say to you, Congressman Conyers, is that there is—what I have before me now is not the 65,000, but are the 21,000 petitions for whom reconsideration requests have been filed.

And I will, you know, I am marching through those as quickly as I can. Because one of the issues here is those folks are starting the claims process once I find that they are eligible to participate.

So we are talking about, you know, a year or two of processing to—before they get some money.

Mr. LEWIS. But what I have for you now——

Mr. CONYERS. You would like to see the decree modified to allow them to come in.

Mr. LEWIS. Frankly I agree with Mr. Pires.

Mr. CONYERS. No, I'm asking you. Forget about the class action lawyer. I can question him. What does Mr. Michael Lewis think?

Mr. LEWIS. I think it would be wonderful if 72,000 people got a shot, as Congressman Scott said, to have their cases heard on the merits. I don't believe that can happen within the context of the *Pigford* consent decree. That's all I'm saying.

Mr. CHABOT. The gentleman's time has expired. All Members shall have 5 legislative days to provide any additional materials for the record.

Mr. BACHUS. Could I have one additional question?

Mr. CHABOT. Make it after this gentleman then. I was going to ask unanimous consent to allow Mr. Scott to ask a question relative to taxes, and then I'll follow up here. But then we're going to wrap it up.

Mr. SCOTT. Thank you. And first, Mr. Chairman, I want to thank you again for calling the hearing.

We've heard uncontested evidence that about 75 percent of the people who've had potential cases are not able to have their cases heard on the merits. And we—certainly I think the fair thing to do is to try to ascertain what can be done so that they can hear their cases on the merits.

I had one kind of technical question. I'm not sure who can best answer it. We've heard questions that some of these payments constitute taxable income, and payments are made to IRS for those taxes. Is the payment to IRS taxable income, too, that might generate an additional tax check? Or is the check large enough to cover both the tax and the additional tax that's generated?

Ms. ROTH. Here's the way it works, Congressman Scott. In a simple Track A case where someone gets $50,000, the IRS—the $50,000 is paid in cash. And then $12,500, which is 25 percent of that amount, is wired to the claimant's IRS account as partial payment toward the taxes on the $50,000. However, our understanding is that the IRS has taken the position that that $12,500 is itself taxable income. And from my perspective, I think that's going to create lots of problems down the line.

Mr. SCOTT. Well, Mr. Chairman, we need to look into that to see if that needs to be worked on, too.

Mr. CHABOT. I agree. Thank you for bringing that up, Mr. Scott.

And, Mr. Bachus, if you could make this brief.

Mr. BACHUS. Thank you. I'm going to ask counsel, or anybody else that wants to answer this, and I have to say that, you know, I'm not—my understanding of civil rights law is probably not what it should be, but this similarly situated white farmer requirement that the claimant, in order to get a settlement, has got to find a similarly situated white farmer, that's not normally the case, is it? Normally don't you just prove that you're discriminated against in a civil rights case? I mean, that's not kind of the spirit of remedying discrimination, is it, in our civil rights law? Don't you just prove you were discriminated against because of your color, and then you get recovered? Do you have to—in other cases do you have to go out and find somebody that was—the same thing happened to them and they were treated different? Mr. Haynie.

Mr. HAYNIE. Yes. You know, the Government admitted to discrimination. And I think this boils down to black farmers having bad counsel, because how can your counsel agree to you having to go out and find similar-situated white farmers when he waives the discovery process? So basically your counsel is why you're failing, because he has shut the door on you getting necessary information for you to prove your discrimination.

Mr. BACHUS. You can't subpoena that information?

Mr. HAYNIE. No.

Mr. BACHUS. Well—and did the USDA have the information—that's who might have some of the information, right?

Mr. HAYNIE. They have all of the information.

Mr. BACHUS. Did they have an absolute obligation to help find a similarly situated white——

Mr. HAYNIE. Once discovery was waived, they did not have to give black farmers this information.

Mr. BACHUS. They could if they wanted to, but they didn't have to?

Mr. HAYNIE. That's correct.

Mr. BACHUS. Yeah. Well, I have—at least our counsel, the Republican counsel, has said that there could be maybe a legislative fix to this, and that's whereby—and I just want, Counsel, maybe to see what you think. We could pass something saying that a spe-

cial master could be appointed to whom the USDA could be mandated to turn over all evidence relative to the *Pigford* settlement consent decree, and this special master, you know, he could protect the privacy of the white farmers, but still provide affidavits to individual black farmers required to identify similarly situated white farmers. And any farmer that was denied recovery on the basis that—you know, that he couldn't find a similarly situated white farmer could resubmit their claims. What would you think about a legislative fix like that?

Mr. PIRES. I think only the monitor knows how many of those cases there are that——

Mr. BACHUS. Well, that's why we'd have a legislative fix. Then we'd find out.

Mr. PIRES. But I think the idea is excellent. I think anything that Congress can do to allow more people to recover would be great.

I did want to answer one of your earlier comments. My understanding of the law is that the only way a black farmer, a black person, in any case in any part of our workforce can prove discrimination is in comparison to a white or another person in the majority. So it is the law. In all of my cases, all five of my class action cases, the comparison to the white is the standard because the white is the majority.

Mr. BACHUS. I guess I just don't see how, you know, a black farmer is able to find—I mean, I just—particularly if the information—the USDA has that information, and this is sort of an adversarial relationship——

Mr. PIRES. Yes, it is.

Mr. WATT. If the gentleman would yield.

Mr. BACHUS. If you go to your adversary to get this information, and they don't have to give it to you, that doesn't sound like a game that you——

Mr. WATT. Would the gentleman yield?

Mr. BACHUS. I would yield.

Mr. WATT. I think the gentleman is finally finding out how difficult it is to prove a race discrimination claim in this country. On that point Mr. Pires is absolutely right. Discrimination is relative to white people in this country. And if you can't prove that you were discriminated against, the definition of discrimination is that you were treated worse than.

Mr. BACHUS. Oh, I understand that. Maybe I was—what I meant was in the normal case you can subpoena information as to what happened to everybody else similarly situated. This case they didn't have the right to discover that.

Mr. SCOTT. Well, they waived discovery.

Mr. BACHUS. Well, their attorney waived it.

Mr. PIRES. Let me answer, because I teach discovery at Georgetown Law School. I know a lot about discovery, and I have learned the hard way that the best way for the defendant, the United States, which is the richest machine in the world, has the most lawyers, I worked there for 8 years, the best way to bring down the case is to get involved with discovery. And if the black farmers' case had gotten involved with years and years of discovery, we never ever would have gotten out of it because that's what's wrong

with a lot of the other cases. And I chose, just like I did in the AT&T case—I chose to have very, very limited discovery.

Mr. BACHUS. Well, I would put that they were under absolute obligation to supply that information, and that wasn't in there.

Mr. PIRES. To some extent, sir, they had it. To some extent they didn't.

Mr. BACHUS. Well, but to some extent they did, and that's a lot of ground.

Mr. CHABOT. Okay. Well, the gentleman's time has expired.

Mr. PIRES. You're right.

Mr. CHABOT. I want to thank all the witnesses for coming this afternoon. I want to also thank the other folks that took their time out to come here and listen to Congress in action. We are, I think on both sides, both the Democratic side and the Republican side, I think we're very interested in trying to see if we could do anything to remedy this situation.

Some suggestions have been made this afternoon. I had stated in my opening statement that it has also come to our attention that there were a number of other people that would have liked to have testified this afternoon. We allow four people. That's been our policy in the Judiciary Committee to only have four people testify. So we were limited, and that's the reason we weren't able to add others. But I also indicated that our staff would work with the parties to pick a date to have another hearing and allow additional witnesses to testify. So that will be accomplished, we hope, in the near future. I can't give an exact date because we just don't know.

But I want to once again thank everyone for coming, and if there's no further business to come before the Committee, the Committee's adjourned. Thank you.

[Whereupon, at 6:11 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Good afternoon. I would like to thank everyone for being here today for this very important hearing. However, I feel that it is necessary to qualify that statement by saying it is unfortunate that we are here. We are here because, time after time, it appears that the wrong choices continue to be made by those in positions of authority.

I trust that today's hearing will enable this Subcommittee to examine those issues that are of the utmost importance and will enable us to make substantive recommendations to remedy the injustices that have occurred.

I would like to take this opportunity to recognize Arianne Callender, of the Environmental Working Group; Mr. John Boyd, with the National Black Farmers Association; Mr. Thomas Burrell; and Shirley Sherrod, with the Federation of Southern Cooperatives, for taking the time to provide us with information.

Through these individuals, and others, it has come to this Subcommittee's attention that a second hearing may be necessary. I've directed my staff to investigate the scheduling of a second hearing in the event one is needed in the near future.

When slavery was ended in the United States, our government made a promise—a restitution of sorts—to the former slaves that they would be given 40 acres and a mule. While we can debate whether this allotment was intended to compensate the freed slaves for their involuntary service, what is clear is that this promise was intended to help freed slaves be independent economically and psychologically, as holders of private property rights.

What also is clear is that the very government that made this promise, the "People's Agency" established in 1862 under President Abraham Lincoln, has sabotaged it by creating conditions that make sovereign and economically-viable farm ownership extremely difficult.

This is the backdrop against which we will examine the issues before us today. We are here to consider the administration of the 1999 Consent Decree, which resulted from the civil rights case of *Pigford* v. *Glickman.*

The Consent Decree was developed to provide some monetary restitution to Black farmers who were victims of racial discrimination carried out by the United States Department of Agriculture, the very institution designated to assist them, in a swift and timely manner.

Rather than help Black farmers, this Agency has been instrumental in causing their decline. Since the early 1900s, the number of Black farmers has decreased from nearly one million to fewer than 18,000.

During this time, when Black farmers tried to seek justice by filing discrimination complaints with the USDA, their claims were either ignored or dismissed—most without an investigation.

Ultimately, several of these Black farmers—all whose claims of racial discrimination had been disregarded by the USDA, filed a class action suit against the Agency.

After extensive negotiations, a settlement was reached that established a "just" process to have all the discrimination claims heard in a timely manner.

Yet, in an ironic twist, the process that was created to provide a forum for those whose claims had been shut out, has itself shut out nearly two-thirds of all who wanted to have their discrimination claims heard. Whether or not each of these claimants would have prevailed on the merits is not the issue before us. The process should have at least allowed them the opportunity to be heard.

We cannot in good conscious allow a settlement that leaves out more potential claimants than it allows in to go unexamined or remain unresolved.

All of the parties involved are responsible for developing a solution—whether it be modifying the Consent Decree, creating a subsequent Consent Decree, or some other process—to stop this destructive cycle from reoccurring.

The first step in this process should be to provide the nearly 65,000 people who were denied entry into the process the opportunity to be heard. We will never be able to put the racially discriminatory practices that have and continue to occur within the USDA behind us until every one of these individuals has at least had the opportunity to be heard.

This is just one of the many problems with the Consent Decree that my colleagues and I hear about nearly every day.

It is my sincerest hope that this hearing will help us all get a better understanding of what precisely the problems are, what potential solutions there may be, and what we can do to ensure that the government never finds itself in a similar situation again. Too much has been lost and too much is at stake for Black farmers to just accept that the solution in 1999 has failed more people than it has helped.

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman. And I would like to take this opportunity to thank you, Judiciary Committee Chairman Sensenbrenner and Ag Committee Chairman Goodlatte for your agreement to develop this hearing and for the open, bi-partisan and productive manner in which you and your staffs have proceeded to do so. I must also acknowledge the work and dedication to developing this hearing by Judiciary Committee Ranking Members Conyers, and Subcommittee Ranking Member Nadler, and your staffs for your hard work and dedication to this effort, as well. And there are several other members and their staffs who have contributed to this effort, as well, including, Rep. Watt, Rep. Thompson, Rep. Towns, Rep. Butterfield, Rep. Bishop and Rep Baca.

Of course, the hearing would not have been possible without the hard work and determination of all the representatives and advocates of Black farmers, too numerous to list, who have worked with us in developing this hearing over the last year. This has truly been a collaborative effort of all I have mentioned, and more.

Ths hearing is about the *Pigford* Settlement. There remain many issues and problems at USDA and there are a number of efforts underway to address those problems. Among them are lawsuits and complaints by Hispanic, women and Native American farmers. There is also a new lawsuit pending by Black farmers alleging continuing discrimination since the period covered by Pigford, as well as continuing allegations and complaints of discrimination by Black USDA employees. I believe all of these civil rights issues warrant oversight by the Judiciary Committee and should be the focus of subsequent hearings.

U.S. farm services programs date back to1862. Throughout their history, the programs have been laden with the pall of racial discrimination, in blatant as well as subtle ways. As the federal government has stepped up its loan and technical assistance programs to farmers in recognition of the growing capital and other needs of farmers to stay viable, Black farmer have been largely been left out due to discrimination and neglect. In the early 1900's there were as many as 1 million Black-owned farms with about 16 million acres. Now there are an estimated 18,000 such farms with less than 3 million acres. Black farmers complained, but no systemic action was taken to remedy the situation. And to add insult to injury, in 1983, the civil rights office at USDA was closed down. Many complained about the rampant discriminatory practices, but others did not even bother, understandably expecting that nothing would be done to redress their complaints.

The Judiciary Committee looked at the issue in 1984 through a hearing held in this Subcommittee which exposed the racially-discriminatory practices then in existence in USDA's loan and assistance programs and its non-existent, civil rights complaints process. Unfortunately, no substantial remedial effort was undertaken by either the Administration or the Congress until Secretary Glickman, in response to the growing and persistent complaints of Black farmers and the disarray in complaint processing, ordered a moratorium on farm foreclosures and a series of reforms while pending complaint investigations. Yet, it took a lawsuit by Black farmers in 1997 to bring about meaningful attention to the problem.

Original estimates of the backlog of pending complaints was a few hundred. Over 1,000 were discovered. Then there were estimated to be about over 2,000 farmers who had suffered discrimination by USDA. By the time the consent decree was entered into the estimates had risen to 4,000 to 5,000. Over 22,000 filed claims

withing the initial deadline. However, as the deadline expired, the court found that claims were still streaming in. In fact, they were coming in so fast that the court extended the deadline and directed the Adjudicator to determine those entitled to be included due to extraordinary circumstances out of their control. To everyone's astonishment, almost 66,000 claimants filed for consideration during the extension. Most of them have been considered by the Adjudicator, and curiously, only about 3% have been allowed in. Moreover, another 7800 filed beyond the extended deadline. That adds up to almost 96,000 claimants.

Mr. Chairman, frankly, I am concerned about the adequacy of a settlement process that leaves 70% of its claimants without a determination on the merits of their claim. I don't know whether the problem is in the sufficiency of the original notice process or in the criteria applied to filers during the extended period, but I am not willing to accept that nearly 66,000 individuals who believe they have legitimate claims of racial discrimination knowingly ignored notice of the initial filing deadline and chose to submit their claims after that deadline for no good reason.

I don't know what percentage of the claimants can show entitlement to relief, but it is likely that some can. As long as 70% of those who believe they are entitled to recover under the settlement are prevented from having a determination on the merit of their claim, I don't see how we can move forward with transforming the image and effectiveness of USDA in serving its minority customers fully. If this situation is allowed to stand, Black farmers will not only have been victimized by the discriminatory practices at USDA, but by the remedy process, as well.

So, Mr. Chairman, I look forward to the testimony of our witnesses for any insights they may provide regarding my questions and concerns about the unfortunate state of affairs of the *Pigford* Settlement. Thank you.

PREPARED STATEMENT OF SANFORD BISHOP

Good afternoon ladies and gentlemen. First I would like to thank the Chairman and Ranking member as well as the Subcommittee on the Constitution for taking the time this afternoon to hold this oversight hearing. I would also like to express my appreciation to the panel for taking time to be with us today. I believe that this hearing and your testimony is an important step in resolving these important issues.

Pigford v. *Glickman* is a historic case and a historic decision. It is historic not only for the African American farmers who found themselves victims of an unjust system, it is historic for the thousands of African Americans today who are looking for equal treatment from the government that represents them. Racial bias is wrong and unconstitutional and it is sad to know that such practices were in place in our very government. But our court system ruled on the side of justice. USDA was wrong and the victims or their representatives should be paid.

But the wheels of justice are slow. Yes, the *Pigford* case represents a moral victory for the black farmer. The burden of proof was high, yet the actions of Mr. Pigford led to the largest class action ever awarded by the USDA and the important admission of years of abuse was vindication for so many. We must not corrupt this victory by failing to do what is right, by failing to recognize the claims of so many based on what amounts to a technicality.

In Georgia alone, the arbitrator under the court-mandated extension denied over 3,000 black farmers. The extension was justly granted since many farmers' attorneys failed to notify their clients of the original deadline for application. Out of the original 69,162 claims filed, over 55,000 were rejected only because they were filed late. This is not justice, this is an outrage. I am here to see that every legitimate claim receives full consideration. These are not people looking to abuse the system and make a quick dollar. These are hard working Americans who have earned our consideration

In Georgia, farming is a proud tradition and I am honored to represent farmers of ever color and background. Today we should be focusing on agriculture, on ways to improve the less than perfect system and provide more opportunities in a field that Thomas Jefferson once called a "pillar" of American prosperity. But we are instead arguing over technicalities and an issue of justice that has not been properly resolved.

The United States needs to close the door on this process and provide the relief to those who rightfully deserve compensation. I want to thank my colleagues here today for their interest in this settlement and look forward to action settling this issue.

ATTACHMENTS TO HEARING TESTIMONY SUBMITTED BY WITNESS RANDI ILYSE ROTH

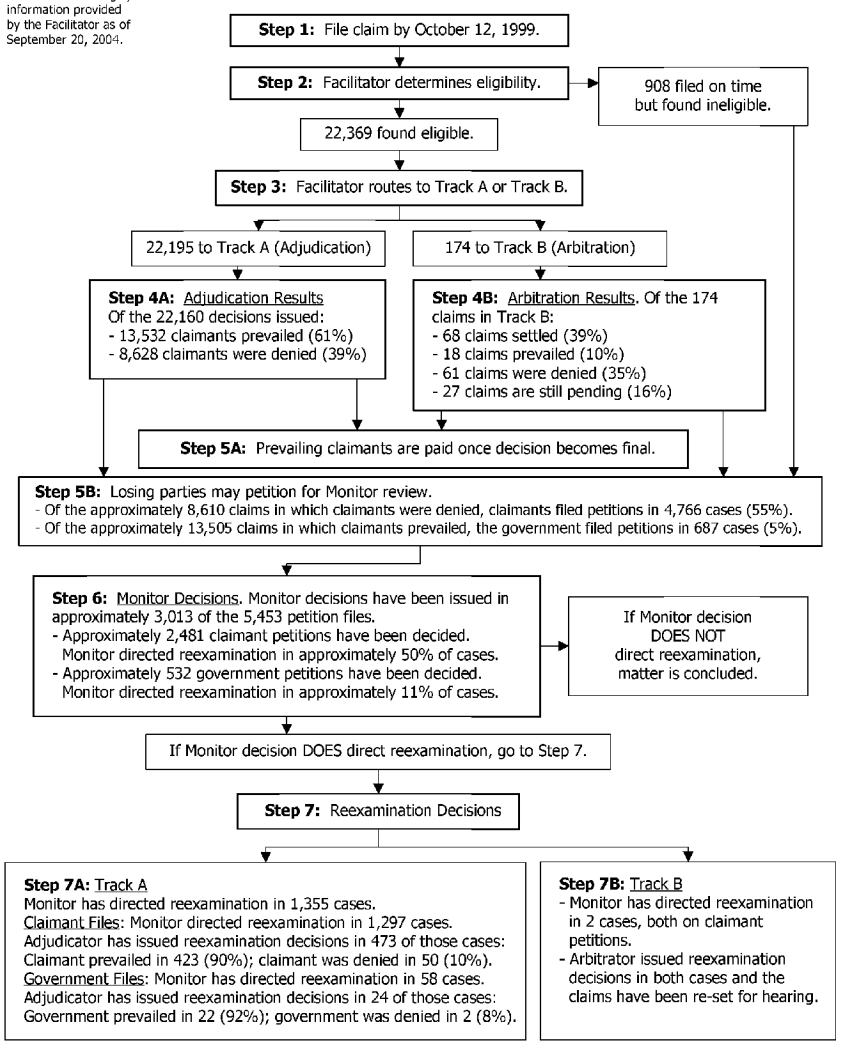
Appendix 1

Chart 1: Steps in *Pigford* Claims Processing for Claimants Who Filed Claim Sheets on Time

Chart 1:
Steps in *Pigford* Claims Processing for Claimants Who Filed Claim Sheets on Time

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 20, 2004.



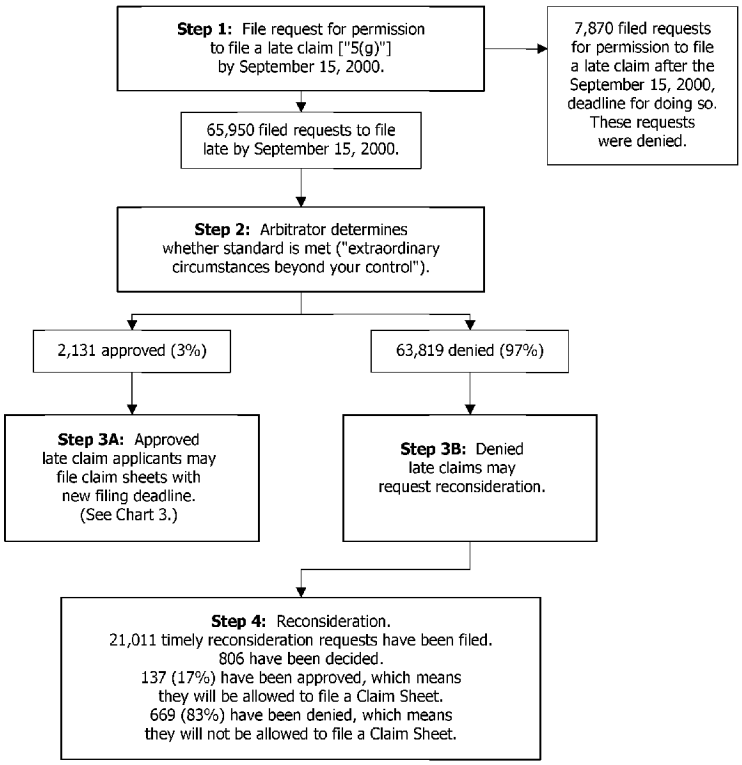
Appendix 2

Chart 2: Steps in *Pigford* Claims Processing for Claimants Who Did Not File Claim Sheets on Time

Chart 2:
Steps in *Pigford* Claims Processing for Claimants Who Did Not File Claim Sheets on Time

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 21, 2004.



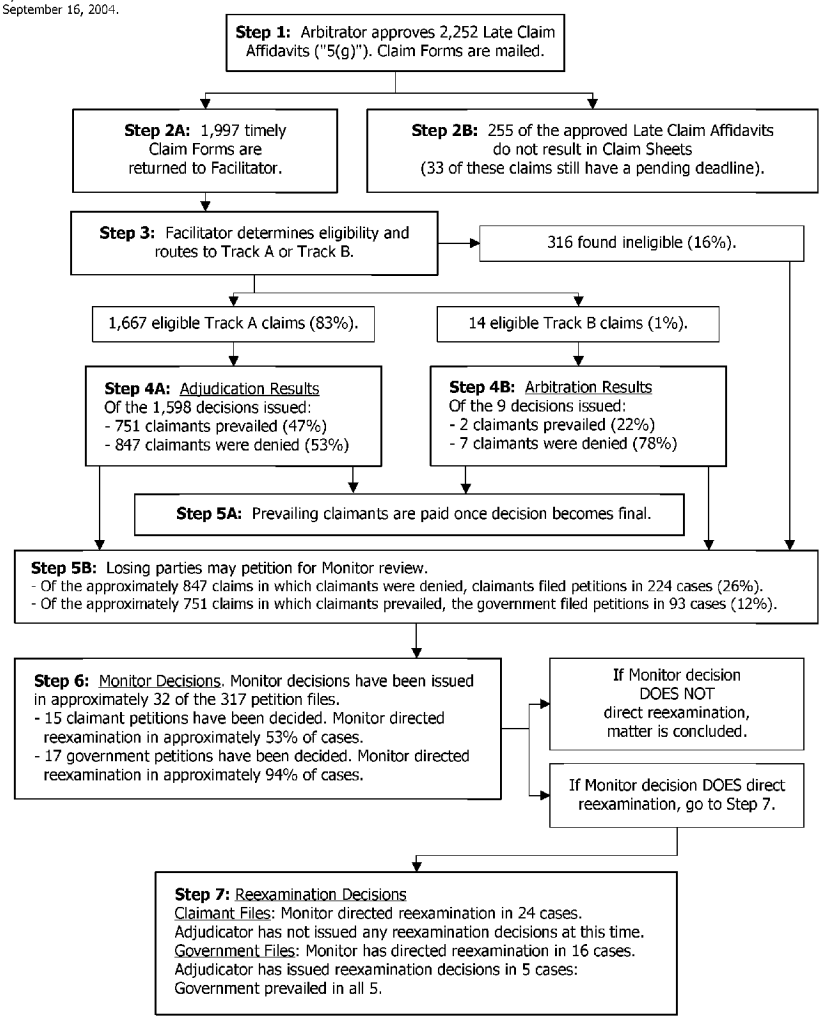
Appendix 3

Chart 3: Steps in *Pigford* Claims Processing for Claimants Who Were Approved in the Late Claim 5(g) Process

Chart 3:
Steps in *Pigford* Claims Processing for Claimants Who Were Approved in the Late Claim 5(g) Process

Prepared by the Office of the Monitor.

Statistics based largely on information provided by the Facilitator as of September 16, 2004.



Appendix 4

Monitor Updates

Questions and Answers About Monitor Review of Decisions

Monitor Update: Late Claim Deadline

Originally Issued: August 14, 2000
Date Revised: October 1, 2003
Update 001
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Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected the filing of late claims. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000, Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

3. Some late claims were allowed

In some cases, it was possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allowed a person to be a part of the case if the person could show that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] The Court directed the Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

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[1] This language is found in section 5(g) of the Consent Decree.

4. Judge's Order—deadline to request permission to file a late claim

The Judge's July 14, 2000, Order set a deadline for submitting a written request to file a late claim. **That deadline was September 15, 2000.** In order to meet the deadline, the written request must have been postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

5. How late claims were allowed

Three important rules applied when a claimant filed a late claim.

First, the claimant must have filed with the Claims Facilitator a **written** request for permission to file a late claim.

Second, the written request had to explain the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed.

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant **was** prevented from filing a timely Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a timely Claim Sheet and Election Form because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration.

7. Reconsideration of the Arbitrator's denial

The Arbitrator has established a limited reconsideration policy. When the Arbitrator denies a request for permission to file late, he sends a letter to the claimant. This letter will explain the Arbitrator's policy for reconsidering the request to file late.

8. If the Arbitrator decides in favor of claimant—60 days to file a claim form

If the Arbitrator grants a claimant's request to file a late claim, the claimant will receive a Claim Sheet and Election Form from the Claims Facilitator. The Claim Sheet and Election Form must be filled out and signed by an attorney, and it must be postmarked no later than 60 days from the date of the cover letter that accompanies the Claim Sheet and Election Form. No extension of this 60-day period will be granted for any reason.

9. More information

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

Monitor Update:
Cured Defective Claims

Date Issued: **August 14, 2000**
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Office of the Monitor
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Cured Defective Claims

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affects cures of defective claims. An Order from the Judge has the force of law.

The Order directs the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- The October 12, 1999, deadline for filing a claim.
- What defective claims are.
- How the October 12, 1999, deadline affects the cure of defective claims.
- The deadline for curing defective claims
- How to get more information from the Monitor.

2. The October 12, 1999, deadline for filing a claim

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that frames the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is therefore a late claim.

3. Defective claim sheet and election forms—sent back and returned

Many people sent in their Claim Sheet and Election Form on time—but failed to fill out the form completely, or made a mistake in filling out the form. For example, some people simply forgot to sign the claim form. In this case, the Facilitator notified the person of a problem with the way the Claim Sheet and Election Form was filled out, and asked the person to fix the problem.

a. Corrected form returned—by the October 12, 1999, deadline

If the person returned the corrected claim form to the Facilitator by the October 12, 1999, deadline, there was no problem. These people became claimants who are eligible for a Track A adjudication or a Track B arbitration.

b. Corrected form returned—after October 12, 1999, deadline

Many people, however, returned the corrected claim form to the Facilitator but did not do so until after the October 12, 1999, deadline. Until the Judge issued his recent Order, there had been a question as to whether these people would become claimants who are eligible for a Track A adjudication or a Track B arbitration. The Judge's Order settles this question. People who filed on time and then corrected their Claim Sheet and Election Form and submitted the correction to the Facilitator will be considered to have filed and completed their forms on time—even if they submitted the correction after the October 12, 1999, deadline.

4. Deadline for correcting defective claim sheet and election forms—July 14, 2000

The Judge's new Order sets a deadline for correcting defective Claim Sheets and Election Forms. As a result of the Judge's Order, a defective claim that was corrected by July 14, 2000, will be treated as if it was filed on time. In other words, if a person sent in a timely Claim Sheet and Election Form that was defective, the Facilitator asked that the form be corrected, and the person then corrected the defective claim form, that correction must have been postmarked by **July 14, 2000.** If the correction was not postmarked by then, the person is not a claimant and is not eligible for Track A adjudication or Track B arbitration.

5. If the Claim Sheet and Election Form were not corrected by July 14, 2000

A person who did not file a corrected Claim Sheet and Election Form by July 14, 2000, may, in "extraordinary circumstances," still have a chance to participate in the settlement. In order to do so, the person will need to file a written request for permission to file a late claim. Permission will be granted only in cases in which the Arbitrator determines that the need to file late was caused by extraordinary circumstances that were beyond the person's control. Please note that the deadline for submitting written requests for permission to file a late claim is **September 15, 2000**. The process for filing written requests for permission to file a late claim is described in Monitor Update #1: Late Claim Deadline. To get a copy of Monitor Update #1, call the Monitor's office toll-free at 1-877-924-7483.

6. More Information from the Monitor

Anyone who has questions regarding the problem of curing defective claims should feel free to call the Facilitator toll free at 1-800-646-2873 or the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Deadlines for Petitions for Monitor Review

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Deadlines for Petitions for Monitor Review

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected petitions for Monitor Review. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This Update explains:

- What petitions for Monitor review are.
- The deadline for petitions for Monitor review.

2. Petitions for Monitor review

In the *Pigford* lawsuit, both Claimants and the Government are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any party who received a wholly or partly adverse final decision in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone may request a copy of the letter and pamphlet (which was updated on June 1, 2003) by calling the Monitor's office toll free at 1-877-924-7483.

3. Judge's Order created a deadline for most petitions for Monitor review

The Judge's Order created a deadline for filing petitions for Monitor review. The deadline worked in two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply. Information about Monitor Review of Facilitator denials can be found in "Monitor Update 5: Eligibility and Monitor Review".)

a. Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Track A Adjudicator or the Track B Arbitrator was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000. (This deadline was affected by the Register process in Orders dated November 8, 2000; April 27, 2001; and May 15, 2001.)

b. Decision after July 14, 2000—deadline 120 Days After Decision

If the decision by the Track A Adjudicator or the Track B Arbitrator was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

4. Deadlines created by the Order are firm

The deadlines explained in this Update are firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. More information from the Monitor

Anyone who has questions for the Monitor's Office regarding deadlines for petitions for Monitor review should call toll-free at 1-877-924-7483.

Monitor Update:
Injunctive Relief in
Pigford v. Veneman

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Injunctive Relief in *Pigford v. Veneman*

I. Introduction and the Monitor's Role

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Veneman*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

II. Only a Brief Summary

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

III. Eligibility for Injunctive Relief

A. Must Prevail in Track A or Track B

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

B. Credit vs. Noncredit Claims—the Difference Matters

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

C. What Law Applies for Injunctive Relief

1. Consent Decree

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a

remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

2. FSA Regulations and Most Favorable Light

The regulations governing FSA programs must be met in providing injunctive relief to class members. For example, in order to get a loan from the Farm Service Agency (FSA), the farmer must still meet FSA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies every time a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

IV. Types of Injunctive Relief

Injunctive relief falls under two main categories—priority consideration and technical assistance.

A. Priority Consideration—Three Types

The Consent Decree provides for priority consideration for three types of FSA benefits.

1. Inventory Property

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. FSA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

2. Farm Ownership Loan

Priority consideration for one FSA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

3. Farm Operating Loans

Priority consideration for one FSA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

Priority consideration is available only to those who had credit claims.

B. Technical Assistance and Service

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

1. Credit and Noncredit Claims

Technical assistance is available both for those with credit claims and noncredit claims.

2. Must Be Requested

The class member must request the technical assistance and service. Class members should consider making this request in writing.

3. Qualified and Acceptable USDA Employees

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

V. Getting an FSA Loan

A. Eligibility and Priority Consideration

Priority consideration does not mean that getting the loan is automatic. FSA eligibility requirements continue to apply.

B. Debt Forgiveness and Loan Eligibility

Many class members will have problems getting a loan because of past debt forgiveness.

1. General Rule—No FSA Direct Loan if Debt Forgiveness

As a general rule, applicants who have had FSA debt forgiveness that resulted in a loss to FSA cannot get an FSA direct loan.

a. Defining Debt Forgiveness

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of an FSA debt. It also includes the discharge of a debt to FSA as a result of bankruptcy. In addition, it includes a loss paid by FSA on a guaranteed loan.

b. Exceptions to the General Rule

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what FSA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

2. Debts Forgiven Under Pigford—or Affected by Discrimination

Many claimants had outstanding FSA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another FSA loan. Further, if discrimination was found in a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another FSA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants.

C. Creditworthiness

An applicant must be creditworthy to be eligible for an FSA loan. Credit history can be taken into account when FSA considers the creditworthiness of the applicant. FSA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

D. Other Requirements for FSA Loans

FSA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

E. Where to go for Assistance

The Monitor's Office has issued an Update that provides information for Class Members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for Pigford Claimants."

VI. If Injunctive Relief Efforts Fail

If those seeking to use the injunctive relief described in this booklet fail in their efforts, they have several options.

A. Contact the Monitor

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

B. FSA Appeals

Any FSA applicant—not just class members—who receives what is known as an adverse decision from FSA may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

C. Civil Rights Complaint

Any person—not just class members—may file a discrimination complaint with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC, 20250-9410.

VII. Timeline for injunctive Relief

Injunctive Relief for Pigford claimants expires on April 14, 2005. Originally, Injunctive Relief was to expire in April of 2004. An internal FSA notice issued on July 21, 2003, formally extended the availability of Injunctive Relief for one year. The Notice, FSA FLP 313, Priority Consideration for Prevailing Claimants, is available from the Monitor. To receive a copy, please call the Monitor's toll-free line and request it.

VII. More Information on Injunctive Relief

The Monitor's Office is in the process of preparing a much more detailed version of this Monitor Update. If you would like a copy of the much longer booklet, call the Monitor's office toll-free at 1-877-924-7483.

Monitor Update:
Eligibility and Monitor Review

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Eligibility and Monitor Review

1. Introduction

Some *Pigford* claimants have been denied relief on the grounds of class eligibility. In other words, they have been found not to be members of the class.

This Monitor Update is intended to:

a. Explain who is eligible to be a member of the class;
b. Describe how eligibility decisions are made; and
c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

In order to be a class member in the *Pigford* case, eligibility requirements must be met. In addition to being African-American, the following three things must be true about a person.

First, he or she had to farm, or attempt to farm, between January 1, 1981, and December 31, 1996.

Second, he or she must have applied to USDA between January 1, 1981, and December 31, 1996, to participate in a federal farm credit or benefit program. He or she must also have believed he or she was discriminated against on the basis of race in USDA's response to that application.

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

A claimant must submit proof that he or she filed a discrimination complaint. Listed below are the four types of proof that may be used by a claimant to show that he or she filed the discrimination complaint.

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

d. Declaration from another person about listening session or verbal complaint

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

If, after reexamination, the Facilitator rules that a claimant is not an eligible member of the class, he or she may not receive any of the relief found in the Consent Decree.

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.

Monitor Update:
Freeze on USDA Acceleration and Foreclosures

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Freeze on USDA Acceleration and Foreclosures

1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to "freeze" some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

a. Acceleration

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a $100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA's right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

b. Foreclosure

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

c. Inventory property

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

d. Other USDA actions—not covered

Other actions that USDA may take on the debt are not covered by the freeze.

3. Who can benefit from the freeze?

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

4. For the freeze to apply, claimant must petition for Monitor review

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

5. When the freeze begins and ends

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

6. Freeze does not stop administrative offsets—but refunds possible

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

7. After the freeze ends

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

8. More information

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Claimant and Claimant Attorney Access to USDA Documents

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Office of the Monitor
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Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

This Monitor Update explains how claimants and their attorneys can go about getting copies of these USDA documents.

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

Claimants who are being assisted by Class Counsel or Of-Counsel should not have any problem with access to papers that USDA filed in their *Pigford* claims. Class Counsel should have a copy of these files, and Of-Counsel should be able to get a copy from Class Counsel.

b. Assisted by an Attorney Who Is Not Class Counsel or Of-Counsel

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

Some claimants are not being assisted by an attorney at all. In legal terms, these claimants are acting "pro se"—that is to say, they are acting without legal counsel. Section 4 of this Update explains how these claimants should go about getting papers that USDA filed in their *Pigford* claims.

3. Types of Information Available to Claimant Varies

In general, USDA files used by the Adjudicator in deciding the claimant's case include two types of information. First, files sometimes include information about the claimant. This may include documents from old FmHA files, for example, or the results of USDA interviews about the claimant.

Second, USDA files may include information about people other than the claimant. This may include, for example, information about people named by the claimant as similarly situated white farmers. Information about claimants and similarly situated white farmers that is contained in USDA's responses to Track A claims is covered by the Privacy Act. A claimant can generally obtain private information about him- or herself but cannot obtain private information about other people. Therefore, a claimant who is not represented by a lawyer will not be able to obtain copies of any materials concerning similarly situated white farmers that USDA gave to the Adjudicator.

Therefore, if a claimant is acting pro se, he or she will not receive USDA information about other people.

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

a. Get a Copy of Privacy Order and the Acknowledgement Form

Claimants need to get a copy of the Privacy Order and the Privacy Order Acknowledgment Form. They can have these sent to them by calling toll-free at 1-877-924-7483.

b. Read the Form Closely and Sign It

Claimants should then read the Privacy Order and the Privacy Order Acknowledgment Form very closely and sign the Acknowledgement Form. When signed, that form is a binding legal document. It limits the claimant's right to use, distribute, or publish the information.

c. Send the Signed Form to the Facilitator—and Include Claimant Mailing Address

Claimants should then send the signed Acknowledgement Form to the Facilitator at:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

It is important that the claimant send a current mailing address to the Facilitator along with the signed form.

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

Attorneys need to get a copy of the Second Amended Supplemental Privacy Act Protective Order ("Privacy Order") and the Privacy Order Acknowledgment Form. They can request them by calling toll-free at 1-877-924-7483.

b. Sign Form and Return to USDA

Attorneys then sign the form and return it to USDA through the Facilitator at the following address:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.

Monitor Update:
Procedural Rules for the
Track B Monitor Petition Process

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Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

All of the Court orders referenced below may be found on the Court's web site at http://www.dcd.uscourts.gov.

a. **General Procedures.** The general procedures for the Monitor review process can be found in the Court's April 4, 2000, Order of Reference. Further detail can be found in the Monitor's booklet entitled "Questions and Answers About Monitor Review of Decisions," which is available from the Office of the Monitor.

b. **Deadline for Petitions for Monitor Review.** The deadlines for filing petitions for Monitor review are found in the Court's Order of July 14, 2000. In general, petitions must have been filed by November 13, 2000, or by 120 days from the date of the Arbitrator decision, whichever is later.

c. **Deadline for Responses to Petitions.** The deadline for responding to petitions for Monitor review is found in the Court's Order of September 12, 2000. In general, responses to petitions must be filed within sixty days from the non-petitioning party's receipt of the petition for Monitor review.

2. Filing Petitions for Monitor Review

Under Track B, any party seeking Monitor review of the Arbitrator's decision must:

a. Timely file with the Facilitator an original petition for Monitor review ("petition") and one copy of the petition. Petitions will be deemed "filed" as of the date of postmark. Petitions should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. File with the petition a Designation of Record. The Designation of Record shall include material before the Arbitrator in the petitioning Track B proceeding and shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review.

c. Timely serve one copy of the petition, including the designation of record, on the opposing party. Petitions will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

Under Track B, any party responding to a petition must:

a. Timely file with the Facilitator an original response to the petition for Monitor review ("response") and one copy of the response. Responses will be deemed "filed" as of the date of postmark. Responses should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. In addition, the responding party may file a Designation of Record of additional material not identified by the petitioning party. The Designation of Record of the additional material shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review. The Designation of Record of additional material, if filed, must be filed within sixty days from receipt of the petition for Monitor review.

c. Timely serve a copy of the response, including the responding party's designation of record, if any, on the petitioning party. Responses will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

The Monitor may, in her discretion, review material in the record before the Arbitrator that has not been designated by the parties.

4. Publication of Rules

The Arbitrator shall include copies of these rules whenever he sends to parties copies of decisions in their Arbitration cases. He shall also immediately send copies to all parties who have already received Arbitration decisions. The Arbitrator, the Monitor, and the parties shall also be free to send copies out to the public upon request.

Monitor Update:
Noncredit Claims—$3,000 for Each Prevailing Class Member

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Noncredit Claims—$3,000 for Each Prevailing Class Member

1. Introduction

The Consent Decree divided *Pigford* claims into two types—credit claims and noncredit claims. The vast majority of class members in the case have credit claims. Several hundred class members, however, have both a credit claim and a noncredit claim, or have only a noncredit claim. This Monitor Update describes noncredit claims, and describes the payment that class members with prevailing noncredit claims will receive.

2. Noncredit Claims and Credit Claims—Defining the Difference

In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to receive some other type of benefit, including the payment of money, from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Award for Noncredit Claimants

The amount to be given to class members who prevail on a noncredit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties that was entered as an official Order by the Court fills in many of the details.

a. Consent Decree—Receive Amount Denied

The Consent Decree provides that a class member who prevails on a noncredit claim is to receive the amount of the benefit that was wrongly denied to the class member. In addition, according to the Consent Decree, these payments will only be made if there are certain funds available in the USDA budget.

b. February 7, 2001, Stipulation and Order—$3,000 Payment

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the award that class members will receive in noncredit cases.

The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel believe that deciding the amount that should be paid for noncredit claims for each person would be difficult, if not impossible.

The Government and Class Counsel therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single payment from USDA in the amount of $3,000.

4. Other Details about the $3,000 Payment

Several other details about the $3,000 noncredit payment were explained in the February 7, 2001, Stipulation and Order. These are discussed below.

a. Only One $3,000 Payment Per Class Member

Each class member who prevails on a noncredit claim may receive only one $3,000 payment. This is true even if the class member prevailed on more than one noncredit claim. This means, for example, that if the class member had a successful claim for a disaster payment in both 1990 and 1992, he or she would receive only one payment of $3,000.

b. Credit and Noncredit Claim Combined

If a class member prevailed on both a credit claim and a noncredit claim, the class member will receive a payment for both the credit claim and the noncredit claim. A class member, therefore, could receive both a $50,000 payment for a credit claim and a $3,000 payment for a noncredit claim.

c. No Tax Payments for Noncredit Claims

Class members who receive a $3,000 payment for a noncredit claim will not receive any more funds—either paid to them or paid directly to the Internal Revenue Service—to cover any tax obligations the class member might incur as a result of the $3,000 payment.

5. More Information

Anyone who has any question regarding noncredit payments should feel free to call the Office of the Monitor at 1-877-924-7483. For more information about the Judge's Order, or for a copy of the Order, please call the Monitor's Office.

Monitor Update:
Debt Relief for Prevailing Class Members

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Debt Relief for Prevailing Class Members

1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief class members will receive.

2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to obtain some other benefit from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Consent Decree and Court Order

Debt relief for class members who prevail on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

a. Consent Decree

The Consent Decree provides that a class member who prevails on a credit claim is to receive a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of the credit claim.

b. February 7, 2001, Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the debt discharge that class members will receive in credit

cases. The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Order.

4. Debts to be Discharged

Certain USDA debts will be discharged as a result of the *Pigford* settlement. These are discussed below. Three types of debts will be discharged. However, an important exception applies to the debt discharge.

a. Debts Affected by Discrimination

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged.

b. Some Debts Incurred After the Discrimination Occurs

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

If, after the date of discrimination, the class member incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged. For example, if the Adjudicator found that USDA discriminated against the class member in denying a Farm Operating Loan in 1994, and the USDA then made a Farm Operating Loan to the class member in 1995, the 1994 and 1995 Operating Loans will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

c. Some Debts Incurred at the Same Time as the Discrimination

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan (EM) Program is a separate program, and so forth.

If the class member incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged. For example, suppose the Adjudicator found that discrimination occurred in 1990 in USDA's servicing of a 1989 Farm Operating Loan. If at the same time in 1990 USDA made a Farm Operating Loan to the class member, the 1990 Farm Operating Loan will be discharged. This is true even though the Adjudicator or Arbitrator did not find discrimination in the making of the 1990 Farm Operating Loan.

d. Important Exception Affecting Debt Relief—Older Lawsuits

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed. For example, if a class member was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the class member, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

e. Loans Made after December 31, 1996—No Debt Discharge

Loans made after the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree. For example, if a class member received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

5. More Information

For more information about the February 7, 2001, Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below.

Anyone who has any question regarding debt relief should call the Monitor toll free at 1-877-924-7483.

Monitor Update: Understanding Who Is Part of the *Pigford* Case

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Understanding Who Is Part of the *Pigford* Case

A. Introduction

People who are interested in being part of the *Pigford* case fall into three groups: (1) people who are in the case, (2) people who might get into the case, and (3) people who will not get into the case. This Update explains the rules that determine who is in each group and gives some statistics about each group (as of November 26, 2002).

B. Definitions

Before explaining the three groups, it is important to explain what some basic terms mean.

1. **What is the "Consent Decree"?** The Consent Decree is the document that explains what the parties agreed to when they settled the case. The Court approved the Consent Decree after a Fairness Hearing.

2. **What is a "Claim Sheet"?** The term "Claim Sheet" refers to the Claim Sheet and Election Form—the package of forms that one fills out to file an official claim in the case. The deadline for filing a timely Claim Sheet was October 12, 1999.

3. **What is a "Petition for Monitor Review"?** Petitions for Monitor Review are the papers that one files to ask the Monitor to review the decision that was made by the Facilitator, Adjudicator, or Arbitrator. There are deadlines for filing Petitions for Monitor Review: people may call the Facilitator's office at 1-800-646-2873 to find out about deadlines.

4. **What is a "Late Claim Application"?** There are many people who did not file a Claim Sheet on time who believe that they should be part of the case. A person cannot file a Claim Sheet after the deadline (after October 12, 1999) without first getting permission to do so from the Arbitrator. A "Late Claim" application asks the Arbitrator for permission to file a late Claim Sheet. This procedure is sometimes called "5(g)" because it is explained in paragraph 5(g) of the Consent Decree. The Arbitrator is allowed to approve a "Late Claim" application only if he determines that a person was unable to file his or her Claim Sheet on time because of extraordinary circumstances beyond his or her control. The deadline for filing "Late Claim" applications was September 15, 2000.

5. **What is "Late Claim Reconsideration"?** If a person filed a "Late Claim" application on time (by September 15, 2000) and the Arbitrator rejected his or her application, the

person has a chance to ask the Arbitrator to reconsider his decision. Requests for reconsideration must generally be filed within 60 days after the date of the Arbitrator's rejection letter.[1]

C. The Three Groups: Who Is In the Case?

1. Group One: People Who Are In the Case

In general, the people who are in the case or have permission to join the case consist of those who:

a. *Filed Claim Sheet On Time.* There are approximately 21,776 people who filed a Claim Sheet by October 12, 1999, and were determined "eligible" by the Facilitator.[2]

b. *Filed "Late Claim" Application, Request Approved.* There are approximately 1,631 people who did not file a Claim Sheet on time but who did file a "Late Claim" application on time and had the "Late Claim" application approved by the Arbitrator.[3] These people have permission to file a late Claim Sheet. The Facilitator either gave them or will give them a deadline for filing a Claim Sheet. Once the Claim Sheet is filed, if the Facilitator finds them eligible, they will be part of the case.

2. Group Two: People Who Might Get Into the Case

In general, the people who might get into the case consist of those who:

a. *Filed Timely "Late Claim" Application, No Decision Yet.* There are approximately 7,341 people who did not file a Claim Sheet on time (by October 12, 1999) but who did file a "Late Claim" application on time (by September 15, 2000) and have not yet received a decision on their "Late Claim" application.

b. *"Late Claim" Application Rejected, Filed "Late Claim" Reconsideration Request.* There are approximately 17,891 people who filed timely requests for reconsideration after they had their "Late Claim" applications rejected by the Arbitrator and have not yet received decisions on their requests for reconsideration.

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1 When the Arbitrator first officially established a reconsideration policy, the deadline was different. Call the Facilitator at 1-800-646-2873 to find out about reconsideration deadlines.

2 Approximately 23,148 people filed timely Claim Sheets. Of those, the Facilitator found that approximately 21,776 are eligible. People in certain categories who were found ineligible have the opportunity to file a Petition for Monitor Review up until their petition deadline. The Facilitator has identified approximately 163 people who have the right to petition the Monitor regarding eligibility determinations. Monitor Update No. 5 explains eligibility and the rules and deadlines in the Monitor petition process as it relates to eligibility (available from the Monitor's office; call toll-free, 1-877-924-7483).

3 Statistics in this Update concerning the "Late Claims" process are current as of October 1, 2002.

3. Group Three: People Who Will Not Get Into the Case

The Consent Decree and Court Orders in this case establish cutoff dates for getting into the case. These Orders provide that the following people will not get into the case:

a. *Did Not File Timely Claim Sheet and Did Not File Timely "Late Claim" Application.* People who did not file a Claim Sheet on time (by October 12, 1999) and did not file a "Late Claim" application on time (by September 15, 2000) will not get into the case. There are approximately 8,025 people who filed "Late Claim" applications after the deadline (after September 15, 2000)—these people will not get into the case. IT IS NOW TOO LATE TO FILE A "LATE CLAIM" APPLICATION.

ACCORDING TO THE RULES IN THIS CASE, ANYONE WHO DID NOT FILE A CLAIM SHEET BY OCTOBER 12, 1999, OR A "LATE CLAIM" APPLICATION BY SEPTEMBER 15, 2000, CANNOT BE PART OF THE CASE.

b. *Filed Timely "Late Claim" Applications, But Lost in "Late Claim" Process.* There are approximately 52,256 people who filed timely "Late Claim" applications that were rejected by the Arbitrator. Some of those people had their deadlines for filing reconsideration requests pass without filing a timely request for reconsideration: those people will not get into the case. Additionally, some people filed timely requests for reconsideration, but the Arbitrator denied their request for reconsideration: those people will not get into the case. There is no Monitor review of decisions in the "Late Claim" process.

D. Results for People Who Are In the Case

Most people who are in the case chose Track A (Adjudication). A chart showing the results for people in Track A is attached to this update. A chart showing the results for people in Track B is available from the Monitor's Office (1-877-924-7483).

People who believe that the decision of the Facilitator, Adjudicator, or Arbitrator in their case is wrong have an opportunity to petition for Monitor review. Deadlines apply in the Monitor review process.[4] Call the Facilitator at 1-800-646-2873 find out about deadlines for petitioning for Monitor review and to request a booklet that explains the Monitor review process.

E. Questions

Individuals may call the Monitor's office toll-free at 1-877-924-7483 with questions.

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[4] The exception is that some decisions made by the Facilitator are not subject to Monitor review. The Facilitator can answer individuals' questions about whether or not they have the right to petition.

Monitor Update:
Resources for *Pigford* Claimants

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Resources for *Pigford* Claimants

1. Introduction

Claimants frequently contact the Office of the Monitor and request information and assistance.[1] One of the Monitor's duties is to assist claimants with "other problems" that they are having with regard to the Consent Decree. Many claimants, however, have problems that are not within the authority of the Monitor to solve. This Monitor Update provides a few suggestions for other resources that may be helpful to these claimants.

2. Debt Relief Available Only for Successful Credit Claims

Before using the resources mentioned in this Update, a claimant should be aware of two warnings.

a. Other Resources May Be Helpful

This Update mentions only a few of the possible places that a claimant might turn to for help. There are likely many others that are not mentioned here that could be helpful. If a group or agency is not listed here, this does not mean that the Monitor's Office thinks the group or agency does poor work.

b. Monitor Cannot Vouch for Groups Mentioned

Several groups and agencies are mentioned in this Update. The Monitor's Office cannot vouch for these groups or agencies. Each claimant should investigate the group or organization carefully before taking advice from them.

3. When the Monitor Can Help

The Consent Decree permits the Monitor to help claimants resolve problems that claimants have with the Consent Decree. For example, the Monitor can help solve claimant problems of the following types.

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[1] The Monitor's duties and responsibilities are outlined in the Consent Decree and the Order of Reference. Claimants can receive a copy of the Consent Decree and/or the Order of Reference by calling our toll free number (1-877-924-7483) and requesting a copy.

a. Debt Relief

Successful Track A credit claimants may be entitled to have part or all of their USDA debt forgiven. Debt relief is confusing, however. If a claimant believes that he or she has USDA debt that should be forgiven, the Monitor may be able to help. The Monitor has also written a short guide, "Monitor Update Number 10, Debt Relief." This Update is available by calling the Monitor's toll-free number. Claimants with questions can contact the Monitor's Office for further assistance.

b. Injunctive Relief

Successful Track A credit claimants are entitled to receive Injunctive Relief. This may include, for example, priority consideration for a new USDA loan. If a claimant believes his or her right to Injunctive Relief is being denied, the Monitor may be able to help. Successful non-credit claimants also are entitled to a limited form of Injunctive Relief. A short written guide, "Monitor Update Number 4, Injunctive Relief," may also be of help. This Update is available by calling the Monitor's toll-free number.

c. Other Problems Related to the Consent Decree Settlement

Prevailing claimants may have other problems related to the Consent Decree. These could include, for example, the timing of cash payments, non-credit relief, some tax-related problems, and other matters. Claimants with these types of questions should contact the Monitor.

4. How to Contact the Monitor

a. By Phone – 1-877-924-7483

Claimants may contact the Office of the Monitor by calling toll free 1-877-924-7483. If the operator who answers the call is unable to assist a Claimant, Claimants may make an appointment to speak with a member of the Monitor's legal staff.

b. In Writing

The Monitor can be reached by writing:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

5. When the Monitor Cannot Help

Problems faced by claimants often are not related to the *Pigford* Consent Decree. The Monitor is not allowed to help claimants with these kinds of problems.

For example, many claimants find it hard to develop the cash flow plans and other financial plans that lenders often want to see before a loan is made. Further, some claimants find it difficult to deal with private lenders and other creditors. In both cases, since the problems are not related to the Consent Decree, the Monitor cannot provide the kind of help the claimant may need. The following groups and organizations may, however, be of some help in these situations.

a. University and Extension Programs

A number of colleges and universities have programs that are designed to help farmers. The programs mentioned below actively aim to assist African American farmers.

1) ***Alcorn State Cooperative Extension (Mississippi)***

Alcorn State University Cooperative Extension Program
Small Farm Outreach Training and Technical Assistance Project
1000 A.S.U Dr. # 479
Alcorn State, MS 39096-7500
Phone: 601-877-6128
Fax: 601-877-6694
Web site: none

Service Area: Southwest Mississippi.

2) ***Tuskegee University (Alabama)***

Tuskegee University Cooperative Extension Program
204 Morrison Mayberry Hall
Tuskegee, Alabama 36088
Phone: 334-724-4441
Fax: 334-727-8812
Web site: www.tusk.edu

Service area: State of Alabama.

3) ***North Carolina A & T Small Farm Outreach Training & Technical Assistance Program (North Carolina)***

North Carolina A & T State University
Cooperative Extension Program
Greensboro, NC 27411
Phone: 336-334-7024
Fax: 336-334-7207

Web site: http://www.ag.ncat.edu/extension/programs/sfottap/index.htm

Service Area: State of North Carolina.

4) ***University of Arkansas of Pine Bluff (Arkansas)***

University of Arkansas of Pine Bluff Small Farms Program
1200 North University Drive
UAPB Mail Slot 4906
Pine Bluff AR, 71601
Phone: 870-575-8142, 7246
Fax: 870-543-8035
Web site: none

Service Area: Thirteen Arkansas counties: Jefferson; Lincoln; Drew; Desha; Chicot; Ashley; Crittenden; St. Francis, Woodruff; Lee; Phillips; Monroe; Arkansas.

5) Southern University

Louisiana Family Farm Technical Assistance Project
Southern University
Baton Rouge, LA
Phone: 225-771-3863
Fax: 225-771-5728
Web site: none

Service Area: Nineteen parishes in Northeastern Louisiana.

b. Farm Advocacy Group

The following groups are generally private nonprofit organizations that work closely with African American farmers. They are not part of a college or university.

1) Arkansas Land and Farm Development Corporation

Arkansas Land and Farm Development Corporation
Route 2 Box 291
Brinkley, AR 72021
Phone: 870-734-1140
Fax: 870-734-4197
Web site: none

2) Federation of Southern Cooperatives/Land Assistance Fund

Administrative Office
2769 Church Street
East Point, GA 30344
Phone: 404-765-0991
Fax: 404-765-9178

Georgia Field Office
P.O. Box 3092
Albany, GA 31706
Phone: 912-432-5799
Fax: 912-439-0894

Rural Training & Research Center
P.O. Box 95
Epes, AL 35460
Phone: 205-652-9676
Fax: 205-652-9678
Web site: http://www.federationsoutherncoop.com/

c. Legal Organizations

Claimants may have questions about other legal problems. The Monitor is not allowed to provide legal advice to class members. Claimants experiencing legal problems may wish to contact one of the following nonprofit organizations that assist family farmers, including African American family farmers.

1) Land Loss Prevention Project

Land Loss Prevention Project
P.O. Box 179
Durham, NC 27702
Phone: 919-682-5969
Toll-Free: 1-800-672-5839
Fax: 919-688-5596
Web site: www.landloss.org

Service Area: State of North Carolina.

2) Farmers' Legal Action Group, Inc.

Farmers' Legal Action Group, Inc.
46 E. 4th St., Suite 1301
St. Paul, MN 55101-1109
Phone: 651-223-5400
Fax: 651-223-5335
Web site: www.flaginc.org

Service Area: Nationwide.

d. State Departments of Agriculture

Each state maintains a state Department of Agriculture. Claimants may want to contact their state department of agriculture for additional assistance. A listing of all of the states departments of agriculture can be found on the web at:

http://www.accesskansas.org/kda/stateags.html

e. USDA

USDA maintains the following resources that may be of help to claimants.

1) USDA Hot Line for Minority and Socially Disadvantaged Farmers (MSDA)

The Farm Service Agency (FSA) has established an Office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) to work with minority farmers who have concerns about loan applications filed with local FSA offices. The MSDA Office will operate Monday to Friday, 8 to 5 p.m. Eastern Time.

Office of Minority and Socially Disadvantaged Farmers
Farm Service Agency
USDA
1400 Independence Ave SW
Mail Stop 0501
Washington, DC 20250-0501
Phone: 1-866-538-2610 (toll-free) or 202-720-1584 (local)
FAX: 1-888-211-7286 (toll-free) or 202-690-3432 (local)
E-mail: msda@wdc.usda.gov

2) ***USDA Office of Civil Rights – Discrimination Complaints***

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights
USDA
1400 Independence Avenue SW
Mail Stop 9410
Washington, D C 20250
Phone: 202-720-5964
TTY 202-402- 0216
Fax: None
Web site: http://www.usda.gov/da/cr.html

3) ***Farm Service Agency Appeals***

Farm Service Agency (FSA) applicants may appeal many adverse FSA decisions. To appeal an FSA decision, the applicant must ask for a hearing within thirty days after he or she received notice of the adverse decision. If an applicant receives a letter of denial from FSA, there should be directions about how to go forward with an appeal.

Monitor Update:
The *Pigford* Case Is Closed

Date Issued: **June 28, 2004**
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Office of the Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)
Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483

The *Pigford* Case Is Closed: No One Can Get Into the Case If They Did Not Apply by Deadlines

1. Introduction

The Consent Decree and Court Orders set strict cutoff dates for getting into the *Pigford* case. The deadlines have now passed.

2. *Pigford* Is Closed

The *Pigford* case is now closed. Anyone who did not meet one of the two deadlines explained below cannot be a part of the case.

3. Two Deadlines for the Case

Two important deadlines govern whether a person is eligible in the case.

a. Claim Sheet Deadline — October 12, 1999

The deadline to file a Claim Sheet and Election Form was October 12, 1999. Anyone who did not meet this deadline could only get into the case by filing a late claim request.

Processing of claims filed on time continues.

b. Late Claim Request Deadline — September 15, 2000

Anyone who missed the October 12, 1999, Claim Sheet deadline and wanted to be in the case needed to file a late claim request. The deadline to file a late claim request was September 15, 2000.

Those who did file a late claim request will get a response.

c. Two Deadlines Are Final

Anyone who missed both of these deadlines cannot get into the case.

4. Questions

Anyone with questions about these deadlines may call the Monitor's office toll-free at 1-877-924-7483 or may call the Facilitator at 1-800-646-2873. Several other Monitor Updates discuss the case in more detail. See www.pigfordmonitor.org.

Monitor Update:
No Adverse Effect

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www.pigfordmonitor.org

No Adverse Effect: Future Loans and Future Loan Servicing for Prevailing Class Members

A. Introduction

According to the Consent Decree in the *Pigford* case, debt forgiveness required by the Consent Decree will not "adversely affect" a claimant's eligibility to participate in a USDA loan program or a USDA loan servicing program. This Monitor Update is intended to explain how the no adverse effect part of the Consent Decree works for claimants.

B. Two Types of USDA Debt Forgiveness — Consent Decree and Non-Consent Decree

Many claimants have had USDA debt forgiven, or they will have USDA debt forgiven in the future. There are several different ways that a claimant might receive debt forgiveness, and the difference can be important for the future.

1. Debt Relief Under *Pigford*

As part of the Consent Decree, USDA must discharge many outstanding debts owed by successful claimants. According to the Consent Decree, debts that were incurred under, or affected by, a USDA program that was the subject of the Adjudicator's or Arbitrator's finding of discrimination on credit claims are to be forgiven. A Court Order explains the debt forgiveness rules in more detail. In addition, if the Adjudicator or Arbitrator finds discrimination regarding a particular loan, a claimant is also entitled to discharge of any debt of that loan type incurred at the time of the earliest event on which there is a finding of discrimination through December 31, 1996.

Claimants who have questions about what debts should be forgiven may call the Monitor's toll-free number, 1-877-924-7483. Callers may also request Monitor Update 10, which explains debt relief.

2. Other USDA Debt Forgiveness

The Consent Decree is not the only way that claimants may have received debt forgiveness from USDA. USDA regulations require debts to be forgiven under certain

conditions. In addition, a bankruptcy court can give relief from a USDA debt. One way or another, many claimants have had debt written off outside of the Consent Decree process.

3. Why the Difference Is Important — Future Dealings With USDA

The difference between Consent Decree debt forgiveness and other USDA debt forgiveness is important. The Consent Decree says that debt forgiven because of the Consent Decree shall not adversely affect the eligibility of a claimant who wants to participate in a USDA loan program or a USDA loan servicing program. Other forms of USDA debt forgiveness can make a claimant not eligible for a USDA loan or for USDA loan servicing. The following sections of this Update explain how the difference in the type of debt forgiveness can affect a claimant.

C. Debt Forgiveness and Getting a USDA Loan

Debt forgiveness can affect a borrower's right to a future USDA loan.

1. General Rule — Debt Forgiveness and Future USDA Loans

Applicants who have had USDA debt forgiveness outside of the Consent Decree process may be ineligible by law for a new USDA direct or guaranteed loan. Debt forgiveness, for this purpose, includes the write-down or write-off of a USDA debt. Although there are some exceptions to the rule, in general the majority of applicants who received a write-down from USDA will normally not be eligible for a future USDA loan.

2. Consent Decree Debt Forgiveness and Future USDA Loans

The general rule is changed by the Consent Decree.

a. Debt Discharged Due to Consent Decree

A debt discharged because of the Consent Decree will not hurt a claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got a farm ownership loan in 1994. As a result of the Adjudicator decision, USDA discharged the rest of the loan. This discharge does not affect the claimant's eligibility for a new loan.

b. Debt Write-Down of Loan Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would often mean that the claimant would not be eligible for a new USDA loan. If, however, discrimination was found in a loan that was previously written down or written off, this earlier debt forgiveness will not hurt the claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got an operating loan in 1990 and, due to payment problems, USDA wrote off part of that debt in 1995. If the Adjudicator found that there had been discrimination in the making of the 1990 operating loan,

the fact that the claimant had that write-down in 1995 could not affect the claimant's eligibility for a future USDA loan.

c. Subsequent Debt in Same Program Written Down and Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. This type of write-down also cannot hurt the claimant's eligibility for another FSA loan.

Example:
Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. The 1991 loan had been paid in full, and the balance due on the 1994 loan had been forgiven through FSA's debt write-down process in 1998. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan cannot affect the claimant's eligibility for a future USDA loan.

D. Getting a Loan and USDA's Creditworthiness Test

Creditworthiness can affect a borrower's right to a future USDA loan.

1. The General Rule — Creditworthiness and Future USDA Loans

As a general rule, an applicant must be creditworthy to be eligible for a USDA loan. Credit history is taken into account when USDA considers the creditworthiness of the applicant. Credit history includes the applicant's past loan history with USDA. Therefore, if an applicant has had difficulty making payment on USDA loans in the past, he or she might not meet the USDA creditworthiness requirement for a future USDA loan.

2. Claimant Creditworthiness and Future USDA Loans

If the claimant had an outstanding debt discharged by the Consent Decree, in many cases the farmer will have missed payments on the debt and the debt will have been delinquent. Under the USDA regulations, missing payments on a USDA loan, being delinquent on a USDA loan, and so forth could make the farmer ineligible for another loan.

a. Loan Affected by Discrimination and Future USDA Loan Decisions

The Consent Decree says that the forgiveness of debt because of the Consent Decree shall not affect the claimant's eligibility for a new loan. As a result, if a loan is forgiven because of the Consent Decree, any problems the claimant may have had with that loan in the past, such as missed payments or late payments, should not affect the claimant's creditworthiness for the purpose of getting a new USDA loan.

Example:
Suppose a borrower received an operating loan in 1996 and became delinquent on the loan in 2001. The Adjudicator found discrimination in the making of the 1996 operating loan. The farmer's delinquency on the loan cannot be considered a creditworthiness problem for the farmer when USDA is considering making the claimant a new loan.

b. Subsequent Debt in Same Program Is Forgiven Due to Consent Decree

The same result is true for any debt that is forgiven because of the Consent Decree.

Example:
Suppose a claimant received two operating loans: one in 1994 and one in 1996, and both loans still had a balance. If the Adjudicator found discrimination in the making of the 1994 loan, both loans would be forgiven under the Consent Decree. USDA may not consider payment problems for either loan as a factor in a decision about the making of a new loan.

c. Subsequent Written Off Debt in Same Program Is Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. Payment problems for the loan that is now forgiven cannot affect the creditworthiness of the claimant.

Example:
Suppose a claimant got two operating loans: one in 1994 and one in 1996. The claimant paid the 1994 loan in full, but the agency wrote off the 1996 loan because the claimant had been unable make the payments on that note. If the Adjudicator found discrimination in the making of the 1994 loan, the 1996 loan would also be forgiven under the Consent Decree—except that there is no balance left on the 1996 loan. Any payment problems the claimant had in the past on the 1996 loan would not affect the claimant's future creditworthiness if he or she tried to get a new loan from USDA.

E. Eligibility for Future Loan Servicing

Farmers who have borrowed from USDA sometimes have difficulty making loan payments, or have other problems meeting the requirements of the loan. In such cases, USDA is required to provide borrowers with the chance for what USDA calls loan servicing. If the borrower is eligible, USDA loan servicing can provide a number of ways to help the farmer stay on the land. If the borrower meets certain criteria, the loan servicing can include, for example, a reduced interest rate, a restructuring of the loan, or other measures that help the borrower. The right to future loan servicing—including future write-downs—is affected by past USDA loan servicing.

1. General Rule — Debt Forgiveness and Future Loan Servicing

The eligibility rules for loan servicing take into account the borrower's previous experience with USDA. For example, in general, USDA cannot provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct loan.

2. Claimant Debt Forgiveness and Future Loan Servicing

a. Debt Discharged Because of Consent Decree

In many cases, USDA cannot, by law, provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct or guaranteed loan. USDA regulations contain some limited exceptions to this rule, but for many people USDA rules will prevent a borrower with debt forgiveness from getting certain kinds of loan servicing in the future. A debt discharged under the Consent Decree, however, will not hurt the claimant's eligibility for future USDA loan servicing.

Example:
Suppose a claimant got a farm ownership loan in 1992, the Adjudicator found that USDA had discriminated in making the loan, and, as a result of the Adjudicator decision, USDA discharged the remainder of the loan. This discharge does not affect the claimant's eligibility for loan servicing in the future.

b. Debt Write-Down in Loan Affected by Discrimination, Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would normally mean that the claimant might not be eligible for future loan servicing. If, however, discrimination was found in a loan that was written down or written off before the Adjudicator's decision but after the date of the discriminatory event, this debt forgiveness will not hurt the claimant's eligibility for future loan servicing.

Example:
Suppose a claimant got an operating loan in 1989 and, due to payment problems, USDA wrote off part of that debt in 1991. If the Adjudicator found that there had been discrimination in the making of the 1989 operating loan, the fact that the claimant had a write-down in 1991 should not affect the claimant's eligibility for future USDA loan servicing.

c. Subsequent Debt in Same Program Had Debt Write-Down, Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no more left for the claimant to pay because of a USDA write down. This write-down cannot affect the claimant's right to future loan servicing.

Example:
Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. Suppose a balance remained on the 1991 loan, but nothing was left to be paid on the 1994 loan because USDA forgave the loan in 1995. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan would not affect the claimant's right to future loan servicing.

F. Consent Decree Discharge Can Never Harm Claimant

This Update provides a few examples of the no adverse effect rule found in the Consent Decree. The rule may apply in other ways not illustrated by these examples. The most important rule is that discharge of debt because of the Consent Decree should never harm the claimant in his or her future dealings with the USDA.

G. More Information

For more information call the Monitor's office at 1-877-924-7483 or write to the Monitor at P.O. Box 64511, St. Paul, MN 55164-0511. The Monitor also has a website: www.pigfordmonitor.org.

Office of the Monitor
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Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

2) ***USDA Office of Civil Rights – Discrimination Complaints***

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights
USDA
1400 Independence Avenue SW
Mail Stop 9410
Washington, D C 20250
Phone: 202-720-5964
TTY 202-402- 0216
Fax: None
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The *Pigford* Case Is Closed

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The *Pigford* Case Is Closed: No One Can Get Into the Case If They Did Not Apply by Deadlines

1. Introduction

The Consent Decree and Court Orders set strict cutoff dates for getting into the *Pigford* case. The deadlines have now passed.

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The *Pigford* case is now closed. Anyone who did not meet one of the two deadlines explained below cannot be a part of the case.

3. Two Deadlines for the Case

Two important deadlines govern whether a person is eligible in the case.

a. Claim Sheet Deadline — October 12, 1999

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B. Two Types of USDA Debt Forgiveness — Consent Decree and Non-Consent Decree

Many claimants have had USDA debt forgiven, or they will have USDA debt forgiven in the future. There are several different ways that a claimant might receive debt forgiveness, and the difference can be important for the future.

1. Debt Relief Under *Pigford*

As part of the Consent Decree, USDA must discharge many outstanding debts owed by successful claimants. According to the Consent Decree, debts that were incurred under, or affected by, a USDA program that was the subject of the Adjudicator's or Arbitrator's finding of discrimination on credit claims are to be forgiven. A Court Order explains the debt forgiveness rules in more detail. In addition, if the Adjudicator or Arbitrator finds discrimination regarding a particular loan, a claimant is also entitled to discharge of any debt of that loan type incurred at the time of the earliest event on which there is a finding of discrimination through December 31, 1996.

Claimants who have questions about what debts should be forgiven may call the Monitor's toll-free number, 1-877-924-7483. Callers may also request Monitor Update 10, which explains debt relief.

2. Other USDA Debt Forgiveness

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conditions. In addition, a bankruptcy court can give relief from a USDA debt. One way or another, many claimants have had debt written off outside of the Consent Decree process.

3. Why the Difference Is Important — Future Dealings With USDA

The difference between Consent Decree debt forgiveness and other USDA debt forgiveness is important. The Consent Decree says that debt forgiven because of the Consent Decree shall not adversely affect the eligibility of a claimant who wants to participate in a USDA loan program or a USDA loan servicing program. Other forms of USDA debt forgiveness can make a claimant not eligible for a USDA loan or for USDA loan servicing. The following sections of this Update explain how the difference in the type of debt forgiveness can affect a claimant.

C. Debt Forgiveness and Getting a USDA Loan

Debt forgiveness can affect a borrower's right to a future USDA loan.

1. General Rule — Debt Forgiveness and Future USDA Loans

Applicants who have had USDA debt forgiveness outside of the Consent Decree process may be ineligible by law for a new USDA direct or guaranteed loan. Debt forgiveness, for this purpose, includes the write-down or write-off of a USDA debt. Although there are some exceptions to the rule, in general the majority of applicants who received a write-down from USDA will normally not be eligible for a future USDA loan.

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The general rule is changed by the Consent Decree.

a. Debt Discharged Due to Consent Decree

A debt discharged because of the Consent Decree will not hurt a claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got a farm ownership loan in 1994. As a result of the Adjudicator decision, USDA discharged the rest of the loan. This discharge does not affect the claimant's eligibility for a new loan.

b. Debt Write-Down of Loan Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would often mean that the claimant would not be eligible for a new USDA loan. If, however, discrimination was found in a loan that was previously written down or written off, this earlier debt forgiveness will not hurt the claimant's eligibility for another USDA loan.

Example:
Suppose a claimant got an operating loan in 1990 and, due to payment problems, USDA wrote off part of that debt in 1995. If the Adjudicator found that there had been discrimination in the making of the 1990 operating loan,

the fact that the claimant had that write-down in 1995 could not affect the claimant's eligibility for a future USDA loan.

c. Subsequent Debt in Same Program Written Down and Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. This type of write-down also cannot hurt the claimant's eligibility for another FSA loan.

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D. Getting a Loan and USDA's Creditworthiness Test

Creditworthiness can affect a borrower's right to a future USDA loan.

1. The General Rule — Creditworthiness and Future USDA Loans

As a general rule, an applicant must be creditworthy to be eligible for a USDA loan. Credit history is taken into account when USDA considers the creditworthiness of the applicant. Credit history includes the applicant's past loan history with USDA. Therefore, if an applicant has had difficulty making payment on USDA loans in the past, he or she might not meet the USDA creditworthiness requirement for a future USDA loan.

2. Claimant Creditworthiness and Future USDA Loans

If the claimant had an outstanding debt discharged by the Consent Decree, in many cases the farmer will have missed payments on the debt and the debt will have been delinquent. Under the USDA regulations, missing payments on a USDA loan, being delinquent on a USDA loan, and so forth could make the farmer ineligible for another loan.

a. Loan Affected by Discrimination and Future USDA Loan Decisions

The Consent Decree says that the forgiveness of debt because of the Consent Decree shall not affect the claimant's eligibility for a new loan. As a result, if a loan is forgiven because of the Consent Decree, any problems the claimant may have had with that loan in the past, such as missed payments or late payments, should not affect the claimant's creditworthiness for the purpose of getting a new USDA loan.

Example:
Suppose a borrower received an operating loan in 1996 and became delinquent on the loan in 2001. The Adjudicator found discrimination in the making of the 1996 operating loan. The farmer's delinquency on the loan cannot be considered a creditworthiness problem for the farmer when USDA is considering making the claimant a new loan.

b. Subsequent Debt in Same Program Is Forgiven Due to Consent Decree

The same result is true for any debt that is forgiven because of the Consent Decree.

Example:
Suppose a claimant received two operating loans: one in 1994 and one in 1996, and both loans still had a balance. If the Adjudicator found discrimination in the making of the 1994 loan, both loans would be forgiven under the Consent Decree. USDA may not consider payment problems for either loan as a factor in a decision about the making of a new loan.

c. Subsequent Written Off Debt in Same Program Is Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. Payment problems for the loan that is now forgiven cannot affect the creditworthiness of the claimant.

Example:
Suppose a claimant got two operating loans: one in 1994 and one in 1996. The claimant paid the 1994 loan in full, but the agency wrote off the 1996 loan because the claimant had been unable make the payments on that note. If the Adjudicator found discrimination in the making of the 1994 loan, the 1996 loan would also be forgiven under the Consent Decree—except that there is no balance left on the 1996 loan. Any payment problems the claimant had in the past on the 1996 loan would not affect the claimant's future creditworthiness if he or she tried to get a new loan from USDA.

E. Eligibility for Future Loan Servicing

Farmers who have borrowed from USDA sometimes have difficulty making loan payments, or have other problems meeting the requirements of the loan. In such cases, USDA is required to provide borrowers with the chance for what USDA calls loan servicing. If the borrower is eligible, USDA loan servicing can provide a number of ways to help the farmer stay on the land. If the borrower meets certain criteria, the loan servicing can include, for example, a reduced interest rate, a restructuring of the loan, or other measures that help the borrower. The right to future loan servicing—including future write-downs—is affected by past USDA loan servicing.

1. General Rule — Debt Forgiveness and Future Loan Servicing

The eligibility rules for loan servicing take into account the borrower's previous experience with USDA. For example, in general, USDA cannot provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct loan.

2. Claimant Debt Forgiveness and Future Loan Servicing

a. Debt Discharged Because of Consent Decree

In many cases, USDA cannot, by law, provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct or guaranteed loan. USDA regulations contain some limited exceptions to this rule, but for many people USDA rules will prevent a borrower with debt forgiveness from getting certain kinds of loan servicing in the future. A debt discharged under the Consent Decree, however, will not hurt the claimant's eligibility for future USDA loan servicing.

Example:
Suppose a claimant got a farm ownership loan in 1992, the Adjudicator found that USDA had discriminated in making the loan, and, as a result of the Adjudicator decision, USDA discharged the remainder of the loan. This discharge does not affect the claimant's eligibility for loan servicing in the future.

b. Debt Write-Down in Loan Affected by Discrimination, Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would normally mean that the claimant might not be eligible for future loan servicing. If, however, discrimination was found in a loan that was written down or written off before the Adjudicator's decision but after the date of the discriminatory event, this debt forgiveness will not hurt the claimant's eligibility for future loan servicing.

Example:
Suppose a claimant got an operating loan in 1989 and, due to payment problems, USDA wrote off part of that debt in 1991. If the Adjudicator found that there had been discrimination in the making of the 1989 operating loan, the fact that the claimant had a write-down in 1991 should not affect the claimant's eligibility for future USDA loan servicing.

c. Subsequent Debt in Same Program Had Debt Write-Down, Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no more left for the claimant to pay because of a USDA write down. This write-down cannot affect the claimant's right to future loan servicing.

Example:
Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. Suppose a balance remained on the 1991 loan, but nothing was left to be paid on the 1994 loan because USDA forgave the loan in 1995. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan would not affect the claimant's right to future loan servicing.

F. Consent Decree Discharge Can Never Harm Claimant

This Update provides a few examples of the no adverse effect rule found in the Consent Decree. The rule may apply in other ways not illustrated by these examples. The most important rule is that discharge of debt because of the Consent Decree should never harm the claimant in his or her future dealings with the USDA.

G. More Information

For more information call the Monitor's office at 1-877-924-7483 or write to the Monitor at P.O. Box 64511, St. Paul, MN 55164-0511. The Monitor also has a website: www.pigfordmonitor.org.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

Post Office Box 64511
St. Paul, Minnesota 55164-0511
Phone (toll-free): 1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

J. L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
Attorney at Law
3050 K Street NW, Suite 400
Washington, DC 20007-5108
Phone: 202-342-8864
Fax: 202-342-8451

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that

in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made his decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases. Monitor Update #8, "Procedural Rules for Track B Cases" addresses the rules for Monitor Review of Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information the government maintains about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

> **9a. If you are represented by Class Counsel.** Class Counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agreed not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that USDA acquired through foreclosure that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is successful, under certain circumstances USDA will refund money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483 to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. Two court orders established deadlines for Petitions for Monitor Review. One order, dated July 14, 2000, established deadlines for Petitions for Monitor Review in Track A and Track B cases. The other Order, dated October 29, 2002, established a deadline for filing Petitions for Monitor review of Facilitator Eligibility determinations.

a. Track A Adjudication or Track B Arbitration

(1) **Decisions dated on or before July 14, 2000.** If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of Petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

(2) **Decisions dated after July 14, 2000.** If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

b. Facilitator Review of Eligibility Determinations

(1) **Decision on or before October 29, 2002—deadline was February 26, 2003.** If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

(2) **Decision after October 29, 2002—deadline 120 days after Decision.** If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) that I found in your file—that letter, along with any documents that I have accepted into the record in your

case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies of the letter will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.

Appendix 5

Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of January 1, 2002, Through December 31, 2003

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, *et al.*, Plaintiffs, v. ANN M. VENEMAN, Secretary, United States Department of Agriculture, Defendant.	Civil Action No. 97-1978 (PLF)

CECIL BREWINGTON, *et al.*, Plaintiffs, v. ANN M. VENEMAN, Secretary, United States Department of Agriculture, Defendant.	Civil Action No. 98-1693 (PLF)

MONITOR'S REPORT AND RECOMMENDATIONS
REGARDING IMPLEMENTATION OF THE CONSENT DECREE
FOR THE PERIOD OF JANUARY 1, 2002, THROUGH DECEMBER 31, 2003

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Appendix 5 – Monitor Publications

This is the third in a series of Monitor reports concerning the implementation of the Consent Decree in this case. Prior reports covered the good faith implementation of the Consent Decree from March 1, 2000, through August 31, 2000, and from September 1, 2000, through December 31, 2001.[1] This report provides information regarding claims processing activities, Court orders, Monitor activities and observations, significant Consent Decree implementation issues, and the parties' good faith during the two-year period of January 1, 2002, through December 31, 2003. Current statistics regarding many of the items discussed in this report can be found on the Monitor's web site.[2]

I. EXECUTIVE SUMMARY

During this reporting period, the parties and the neutrals[3] continued to work in good faith to implement the Consent Decree. Highlights of progress during calendar years 2002 and 2003 include:

a. The Adjudicator issued initial adjudication decisions in 21,678 Track A claims as of the end of 2003.

b. The Government paid out $10,500,000 to successful class members in Track A credit matters in 2002 and an additional $13,600,000 to successful class members in Track A credit matters in 2003. Combined with payments in earlier years, Track A cash payments for credit claims totaled $638,350,000 as of the end of 2003.

c. The Government provided debt relief by forgiving approximately $21,930,937 in outstanding debt owed by prevailing class members (principal and interest) as of the end of 2003.

d. The Arbitrator issued decisions in a total of 77 Track B claims as of the end of 2003. The average damage award for prevailing Track B claimants was $545,686.

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1 Prior reports are available on the Monitor's web site at http://www.pigfordmonitor.org/reports/.

2 The web site address is http://www.pigfordmonitor.org.

3 The neutrals include the Facilitator, the Adjudicator, and the Arbitrator.

e. The Arbitrator continued review of the requests for class membership submitted under the process set forth in paragraph 5(g) of the Consent Decree (the "late claims" process). The Arbitrator reported that 2,118 "late claim" applicants had been found eligible to file a "late claim" as of December 2003.

f. The Monitor's Office continued to issue decisions in response to petitions for review. By the end of 2003, the Monitor had issued a total of 2,725 decisions in response to petitions for Monitor review.

g. The Adjudicator began issuing readjudication decisions for Track A claims. The Adjudicator issued 301 readjudication decisions as of the end of 2003.

Notwithstanding this good faith and substantial progress, important implementation challenges remain. This report provides information about both the progress and the challenges that occurred during calendar years 2002 and 2003. The report provides updated statistical information concerning the processing of claims under Track A and Track B during these years, as well as statistical information about the debt relief and injunctive relief provided by the Government from the beginning of the litigation. The report also describes substantive matters addressed by the Court during 2002 and 2003.

After summarizing the Monitor's activities and observations during these two years, the report discusses significant Consent Decree implementation issues, including concerns presented to the Monitor by class members. The report concludes by discussing the parties' good faith efforts to implement the Consent Decree.

II. BACKGROUND

A. Authority to Issue Reports

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports on the good faith implementation of the Consent Decree.[4] This report is submitted pursuant to the March 24, 2003, Stipulation and Order, which states:

> The Monitor shall make periodic written reports to the Court, the Secretary, class counsel, and defendant's counsel on the good faith implementation of the Consent Decree, as specified in paragraph 12(b)(i) of the Consent Decree, regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary.

B. Statistics About Processing of Claims

The Monitor did not independently compile most of the data discussed in this report.[5] The Facilitator[6] provided claims processing data, the Arbitrator[7] provided statistics regarding Track B cases and the "late claims" process, and the United States Department of Agriculture (USDA)[8] provided statistics regarding debt relief and injunctive relief. The Monitor relied on these sources for the information contained in this report.

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[4] In a Stipulation and Order dated April 20, 2004, the Court extended the Monitor's appointment until her duties under the Consent Decree are completed, or until March 1, 2007, whichever occurs first. The Monitor will continue filing reports pursuant to the March 24, 2003, Stipulation and Order through the conclusion of her appointment.

[5] The exception is that the Monitor compiles data regarding Monitor decisions issued in the petition process.

[6] The Facilitator is Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(h)(i).

[7] The Arbitrator is Michael Lewis of ADR Associates and JAMS. *See* Consent Decree, paragraph 1(b).

[8] USDA posts some statistics on the agency web site: http://www.usda.gov/da/status.htm. General information about the litigation is provided by the agency at http://www.usda.gov/da/consent.htm.

1. Track A

Paragraph 9 of the Consent Decree sets forth the process for deciding claims under Track A of the claims process. Prevailing class members with credit claims under Track A are entitled to a cash payment of $50,000, as well as other relief.[9] As of January 5, 2004, the Government had paid $638,350,000 to class members who prevailed in Track A credit claims. Prevailing class members with non-credit claims under Track A are entitled to a cash payment of $3,000.[10] As of January 5, 2004, the Government had paid $1,287,000 to class members who prevailed in non-credit claims under Track A. Additional statistics regarding the number of claimants, adjudication rates and results, and cash relief payment rates for calendar years 2002 and 2003 are summarized in Table 1.[11]

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[9] Credit claims generally involve USDA farm loan programs. In addition to a cash payment of $50,000, claimants who prevail on credit claims are also entitled to debt relief, injunctive relief, and tax relief pursuant to paragraph 9(a) of the Consent Decree.

[10] Non-credit claims generally involve farm benefit or conservation programs. The Consent Decree does not specify the dollar amount of relief for non-credit claims. The parties have stipulated that successful claimants in non-credit Track A claims receive a cash payment of $3,000. *See* Stipulation and Order, dated February 7, 2001, available on the Monitor's web site at http://www.pigfordmonitor.org/ orders/. In addition to the $3,000 cash payment, relief for successful non-credit claims includes some aspects of injunctive relief. See paragraph 9(b) of the Consent Decree.

[11] Statistics for prior reporting periods are summarized in Appendix 1. Additionally, current statistics are available upon request from the Monitor's office (1-877-924-7483) and are updated regularly on the Monitor's web site at http://www.pigfordmonitor.org/stats/.

Table 1: Statistical Report Regarding Track A Claims						
Statistical Report as of:	**End of 2001**[12]		**End of 2002**[13]		**End of 2003**[14]	
	Number	**Percent**	**Number**	**Percent**	**Number**	**Percent**
A. Eligible class members	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	177	1	179	1	178	1
Adjudication Completion Figures						
D. Adjudications complete	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	40	~0	48	~0	420	~2
Adjudication Approval/Denial Rates						
F. Claims approved by Adjudicator[15]	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator[16]	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid						
H. Approved adjudications paid as of specified date[17]	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date[18]	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims[19]	$614,250,000		$624,750,000		$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims	$1,284,000		$1,284,000		$1,287,000	

[12] These statistics are valid as of January 2, 2002.

[13] These statistics are valid as of December 31, 2002.

[14] These statistics are valid as of January 5, 2004.

[15] These numbers include both credit and non-credit claims.

[16] These numbers include both credit and non-credit claims. In row G, the number of claims denied by the Adjudicator decreased from December 31, 2002 to January 5, 2004. This decrease is a result of claims that were originally denied by the Adjudicator, but were later approved by the Adjudicator upon reexamination.

[17] These numbers include both credit and non-credit claims.

[18] These numbers include both credit and non-credit claims.

[19] This figure includes only the cash award component of relief in Track A credit cases. Other monetary relief including tax payments and debt relief are reported in Tables 3 and 4 below.

2. Track B

Paragraph 10 of the Consent Decree sets forth the process for deciding claims under Track B of the claims process. Class members who prevail under Track B are entitled to recover actual damages, as well as other relief.[20] Table 2 provides statistics regarding Track B.[21] Please note that the information about Track B awards refers to Arbitrator decisions that may not be final. Some of these decisions are the subject of petitions for Monitor review that have not yet been decided by the Monitor. The amount of each Track B arbitration award is detailed in Appendix 3. Claimant names and geographic locations are not disclosed.

***Table 2:* Statistical Report Regarding Track B Claims**

Statistical Report as of:	**End of 2001**[22]	**End of 2002**[23]	**End of 2003**[24]
A. Eligible Track B Claimants	235	236	237
B. Track B Cases Settled	57	61	71
C. Track B Cases Converted to Track A	50	54	55
D. Track B Cases Withdrawn	6	6	6
Arbitrations Complete/Not Complete			
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	122	115	105
F. Arbitration Decisions Issued	51	71	77
G. Arbitration Decisions Not Yet Issued (contested cases in which arbitration was not complete and/or decision was not yet issued)	71	44	28

[20] In addition to recovery of actual damages, successful class members are also entitled to debt relief and injunctive relief under paragraph 10 of the Consent Decree.

[21] Most of these statistics are based on the Arbitrator's records, not the Facilitator's. There are differences between the record-keeping protocols of the Arbitrator and the Facilitator. The statistics are approximate. Statistics from prior reporting periods for Track B claims are set forth in Appendix 2.

[22] These statistics are valid as of January 10, 2002.

[23] These statistics are valid as of January 1, 2003.

[24] These statistics are valid as of January 1, 2004.

Table 2: **Statistical Report Regarding Track B Claims**			
Statistical Report as of:	**End of 2001**[22]	**End of 2002**[23]	**End of 2003**[24]
Arbitration Results			
H. Claimant Prevailed Before Arbitrator	8	15	17
I. Average Awards to Prevailing Claimants	$531,373	$560,309	$545,686
J. Government Prevailed Before Arbitrator	43	56	60
Posture of Decision:			
J.1. Cases Dismissed Before Hearing	28	34	38
J.2. Full Hearing, Finding of No Liability	15	22	22
Petitions for Monitor Review[25]			
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B Cases	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions (Regarding Class Membership Screening) in Track B Cases	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	7	12

3. Debt Relief

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to prevailing class members. A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief. The following table provides statistics

[25] The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

reported by USDA regarding the debt relief implemented by USDA for prevailing class members. Because this is the first time the Monitor has reported statistics concerning debt relief, the information in Table 3 covers the period from the beginning of the Consent Decree implementation through January 12, 2004.

Table 3: **Statistical Report Regarding Debt Relief**[26]	
Statistical Report as of:	**January 12, 2004**
A. Total Amount of Debt Forgiven	$21,930,937
B. Debt Forgiven for Track A Claimants	$19,583,425
C. Debt Forgiven for Track B Claimants	$2,347,512
D. Number of Track A Claimants Who Received Debt Forgiveness	228
E. Number of Track B Claimants Who Received Debt Forgiveness	25
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	$85,892
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	$93,900

[26] These statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004.

4. Total Track A Monetary Relief

Table 4 details the monetary value of Track A relief provided to class members as of the end of 2003.

Table 4: **Statistical Report Regarding Total Track A Monetary Relief**[27]	
Status of Payments	**Amount**
Cash Awards for Credit Claims ($50,000 per prevailing claim)	$638,350,000
Cash Awards for Non-Credit Claims ($3,000 per prevailing claim)	1,287,000
Estimated Payments Due to IRS as Tax Relief[28]	163,387,500
Debt Relief (Principal and Interest)	19,583,425
Total Track A Relief	$822,607,925

5. Injunctive Relief

Paragraph 11 of the Consent Decree describes the injunctive relief that prevailing class members are entitled to receive from USDA. Generally speaking, this relief requires USDA to consider any new Farm Ownership Loan, Farm Operating Loan, or inventory property application by the prevailing class member in the light most favorable to the class member.[29] It also requires USDA to offer prevailing class members technical assistance from a qualified

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[27] These statistics are based on information provided by the Facilitator regarding cash awards. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004 (principal and interest). The tax relief payments are estimated based on the tax relief payments successful Track A credit claimants are entitled to receive.

[28] Under paragraph 9(a)(iii)(C) of the Consent Decree, successful Track A credit claimants receive a payment, made directly to the Internal Revenue Service, for partial payment of taxes. The amount for each successful claimant is 25 percent of the $50,000 cash award ($12,500) plus 25 percent of the principal amount of any debt that was forgiven. The tax relief in Table 4 was estimated as follows: 25 percent of the $50,000 cash award ($12,500) multiplied by the number of successful Track A credit claims (12,767) (this sub-total equals $159,587,500), plus 25 percent of the approximately $15,200,000 in principal debt that was forgiven for this group of successful claimants (this sub-total equals $3,800,000). The total amount of estimated payments to successful claimants' IRS accounts is $159,587,500 plus $3,800,000, which equals $163,387,500.

[29] Consent Decree, paragraph 11(c).

USDA official who is acceptable to the class member.[30] These two forms of injunctive relief are available to all prevailing class members. In addition, class members who prevail on credit claims are entitled to priority consideration for: one Farm Ownership Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property.[31] Under the Consent Decree, injunctive relief was to be available to prevailing class members for five years from the date of the order approving the Consent Decree.[32] USDA has voluntarily agreed to extend the right to injunctive relief for one additional year through April 14, 2005.[33]

Table 5 provides cumulative statistics reported by USDA concerning requests for priority consideration for Farm Ownership Loans, Farm Operating Loans, and the acquisition of inventory property.

Table 5: **Statistical Report Regarding Injunctive Relief**	
Statistical Report as of:	**January 12, 2004**
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration with Complete Application	56
2. Number of Applications Approved	15
B. Farm Operating Loans	
1. Number of Requests for Priority Consideration with Complete Application	112
2. Number of Applications Approved	39
C. Inventory Property	
1. Number of Requests for Priority Consideration	3
2. Number of Applications Approved	1

[30] Consent Decree, paragraph 11(d).
[31] Consent Decree, paragraph 11(a)-(b).
[32] Consent Decree, paragraph 11(a)-(c). The Consent Decree was signed April 14, 1999. Five years from that date is April 14, 2004.
[33] In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at: http://www.pigfordmonitor.org/flp/.

III. COURT ORDERS

Over the past two years, the Court has been presented with numerous issues relating to the implementation of the Consent Decree. In response to motions and stipulations by the parties, the Court has issued Orders relating to issues including:

A. The Arbitrator's authority to alter deadlines in the Track B arbitration process;

B. The requirements of the Second Supplemental Privacy Act Protective Order;

C. The deadlines for responses by USDA to certain petitions for Monitor review;

D. The request of certain individual class members to be excluded from the case;

E. The request of certain individual class members to vacate the Consent Decree and remove Class Counsel;

F. The deadline for petitioning for Monitor review when the Facilitator has rejected a claim on eligibility grounds;

G. The award of attorneys' fees;

H. The process for recusal of the Monitor;

I. The fate of untimely petitions for Monitor review; and

J. The impact of allegations regarding mail delays in the filing of late claims.

All substantive Orders filed during this reporting period are listed in Table 6.[34]

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
1	589	January 17, 2002	Memorandum Opinion and Order	Granting plaintiff's motion interpreting the Consent Decree to authorize Arbitrators to extend arbitration deadlines where justice requires. An appeal from this order was decided on June 21, 2002. See item #8 below.[35]
2	590	January 17, 2002	Memorandum Opinion and Order	Granting in part and denying in part defendant's motion for enforcement of the Second Amended Supplemental Privacy Act Protective Order and for sanctions; finding Class Counsel violated the Protective Order by providing Track A files to *pro bono* counsel, Covington and Burling, who serve as plaintiff's counsel in 16 Track B cases; finding that Covington and Burling may retain and consult the files under the terms of the Protective Order; permanently enjoining Class Counsel from releasing any similar protected files and directing *pro bono* counsel to seek from the government release of any additional protected files; and holding that the issue of sanctions against Class Counsel for the release of files will be decided at such time as the Court can consider all pending requests for sanctions.
3	595	February 15, 2002	Order	Denying defendant's motion for a stay pending appeal of the Court's January 17, 2002, Order concerning Arbitrators' authority to extend arbitration deadlines in Track B cases.
4	614	May 9, 2002	Order	Approving Arbitrator's second report on the late-claim petition process; posting the report on web site at http://www.dcd.uscourts.gov/district-court-2002.html.

[34] Procedural Orders that set briefing schedules, hearing dates, and the like and Orders relating to approval of the Monitor's budgets and invoices are not included in the list.

[35] On June 21, 2002, the Court's January 17, 2002, Memorandum Opinion and Order was reversed by the Court of Appeals and remanded for further proceedings. The Court of Appeals' opinion is described in more detail in item number 8 of Table 6. *Pigford v. Veneman,* 292 F.3d 918 (D.C. Cir. 2002).

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
5	615	May 14, 2002	Order	Ordering that petition for late filing under Consent Decree ¶ 5(g) will not be considered by the Court; directing that all putative class members seeking permission to late file under Consent Decree ¶ 5(g) must seek permission directly from the Arbitrator, Michael K. Lewis.
6	622	June 11, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 35-37 of claimant petitions for Monitor review; ordering defendant to file responses to Group 35 petitions on July 5, 2002; Group 36 petitions on July 19, 2002; and Group 37 petitions on August 2, 2002.
7	628	June 20, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 38 and 39 of claimant petitions for Monitor review.
8	—	June 21, 2002	D.C. Circuit Opinion	Reversing and remanding the Court's January 17, 2002 Order interpreting the Consent Decree to allow extension of Track B deadlines; holding counsel's failure to meet critical deadlines amounts to an "unforeseen obstacle" that makes the Consent Decree deadlines "unworkable;" and ordering on remand such further proceedings as may be just, including a "suitably tailored" order under Federal Rule of Civil Procedure 60(b)(5).
9	629	June 27, 2002	Memorandum Opinion and Order	Denying 11 motions by individual class members for exclusion from the certified class of plaintiffs; noting it is nearly two years past the deadline for opting out of the class; finding the individual class members provided no reason other than lack of individual service of process at the commencement of the action for missing the deadline to opt out of the class; and finding the lack of notice, while unfortunate, is not a sufficient reason to permit opt outs after the established period.
10	635	July 18, 2002	Stipulation and Order	Authorizing the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision; authorizing the Monitor to obtain information from USDA regarding a class member's debt in deciding petitions for Monitor review which raise an issue regarding debt relief.

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
11	665	Sept. 11, 2002	Memorandum Opinion and Order	Denying motion to vacate the Consent Decree and denying motion to remove lead Class Counsel.
12	666	September 12, 2002	Order	Denying emergency motion by *pro se* movant to order the government to reopen public facility; stating to the extent that any federal court has jurisdiction to act on this motion, it is the United States District Court for the Eastern District of Arkansas.
13	693	October 29, 2002	Order	Setting 120-day deadline for claimants to petition for Monitor review from adverse Facilitator decisions; establishing a reconsideration process for claimants who cannot petition for Monitor review; permitting the Monitor to consider additional materials with a petition for Monitor review of a Facilitator decision or with a response to such petitions; limiting claimants to one petition for review of the Facilitator's decision.
14	705	November 22, 2002	Order	Granting defendant's motion for a stay of consideration of counsel Conlon, Frantz motion for fees and costs; ordering any and all attorneys who wish to seek fees and/or costs for implementation work performed as Class Counsel or Of Counsel to submit petitions by December 6, 2002; and ordering the matter of fees and costs for implementation consolidated with the pending issue of sanctions.

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
15	727, 733	December 30, 2002; amended January 14, 2003	Amended Memorandum Opinion and Order	Ordering immediate payment in the amount of $500,000 to Class Counsel for implementation fees and costs; ordering continued negotiation efforts toward settlement of the issues of fees and sanctions; setting forth briefing schedule should settlement not be reached; ordering continued negotiation on the issue of modified deadlines in Track B cases involving claimants who initially were represented by Class Counsel; setting forth process for quarterly filings for fees, costs, and expenses incurred by any Class or Of Counsel after June 30, 2002. An appeal from this order was decided on May 14, 2004.[36]
16	739	January 15, 2003	Memorandum Opinion and Order	Granting in part, denying in part, motion to extend time to pay $500,000 to Class Counsel in fees and costs.
17	770	March 24, 2003	Stipulation and Order	Addressing the timing of the Monitor's obligation to file reports on good faith implementation; establishing a process for the Monitor to recuse herself from rendering decisions regarding petitions for Monitor review in certain situations.
18	771	March 24, 2003	Stipulation and Order	Directing the Arbitrator to timely decide pending motions to dismiss and to schedule hearing in Track B claim of Edith Frazier.
19	790	April 14, 2003	Memorandum Opinion and Order	Granting defendant's motion to strike from the record certain pleadings.
20	800	May 28, 2003	Memorandum Opinion and Order	Denying Class Counsel Chestnut, Sanders' motion for reconsideration of April 14, 2003, Order and denying motion to strike from the record certain pleadings.

[36] The Court's December 30, 2002, Memorandum Opinion and Order was superceded by an Amended Memorandum Opinion and Order issued on January 14, 2003. On January 15, 2003, the Court issued another Memorandum Opinion and Order pertaining to the $500,000 fee payment. On February 2, 2003, USDA appealed these orders to the District of Columbia Court of Appeals. The Court of Appeals dismissed the appeal on May 14, 2004. *Pigford v. Veneman,* 369 F.3d 545 (D.C. Cir. 2004).

Table 6: **Court Orders**				
#	**Court Docket Number**	**Date Filed**	**Title of Order**	**Major Issues Addressed Include:**
21	801	June 2, 2003	Opinion and Order	Denying plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were deemed untimely filed by the Facilitator. Class Counsel moved for reconsideration of the Court's June 2, 2003, Order. On March 10, 2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals. At the time of this filing, that appeal is still pending.
22	804	June 4, 2003	Memorandum Opinion and Order	Denying plaintiffs' motion to reopen all late claims due to allegations of mail delays.
23	805	June 5, 2003	Order	Awarding $2,345 in attorneys' fees and costs on behalf of claimant Cal Greely.
24	810	June 23, 2003	Order	Denying without prejudice motion for attorneys' fees and costs on behalf of claimant Sandy McKinnon; directing that counsel for McKinnon may refile once a final disposition has been reached on the claim.
25	842	September 4, 2003	Order	Denying plaintiffs' motion for sanctions concerning alleged violation of Second Amended Privacy Act Protective Order
26	845	September 11, 2003	Memorandum Opinion and Order	Denying motion for review of Arbitrator's final decision in Track B claim of Clarence Hardy; directing that claimant Hardy may file a petition for Monitor review within 120 days.
27	858	October 8, 2003	Order	Denying plaintiffs' motion for reconsideration of September 4, 2003, Order concerning alleged violation of Second Amended Privacy Act Protective Order.

IV. MONITOR'S ACTIVITY AND OBSERVATIONS

The Consent Decree gives the Monitor four general areas of responsibility:

a. Reporting. Paragraphs 12(a) and 12(b)(i) give the Monitor reporting responsibilities.

b. Resolving Problems. Paragraph 12(b)(ii) gives the Monitor responsibility for attempting to resolve class members' problems relating to the Consent Decree.

c. Directing Reexamination of Claims. Paragraph 12(b)(iii) gives the Monitor responsibility for directing the Adjudicator, Arbitrator, and Facilitator to reexamine claims where the Monitor finds that a clear and manifest error occurred in the screening, adjudication, or arbitration of the claim that has resulted or is likely to result in a fundamental miscarriage of justice.

d. Toll-Free Line. Paragraph 12(b)(iv) gives the Monitor responsibility for being available to class members and the public to facilitate the lodging of any Consent Decree complaints and to expedite their resolution.

An update regarding the Monitor's activity and observations in each of these areas of responsibility follows.

A. Reporting — Paragraphs 12(a) and 12(b)(i) of the Consent Decree

1. Reporting Directly to Secretary of Agriculture

Paragraph 12(a) of the Consent Decree states that the Monitor shall report directly to the Secretary of Agriculture. The Monitor met with the Secretary, Ann M. Veneman, in early 2003. The Monitor also fulfills this Consent Decree requirement in part through work with USDA's Office of General Counsel. The Monitor had many meetings and frequent phone conversations during 2002 and 2003 with James Michael Kelly, who during this reporting period was USDA's Acting General Counsel and then Deputy General Counsel.

2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant's Counsel

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports to the Court, the Secretary, Class Counsel, and defendant's counsel on the good faith implementation of the Consent Decree regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary. The Monitor submits this third report on the good faith implementation of the Consent Decree pursuant to paragraph 12(b)(i), as modified by the March 24, 2003, Stipulation and Order. During the reporting period covered by this report, the

Monitor also filed with the Court a report on late petition filings; a report on good faith implementation of the Consent Decree for the period September 1, 2000, through December 31, 2001; and a report on the notice class members received of the 120-day deadline for filing petitions for Monitor review.[37]

B. "Resolving Any Problems" — Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree states that the Monitor shall:

> Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree . . . .

To fulfill this responsibility, the Monitor's Office works with class members: (1) by phone; (2) through correspondence; (3) in person at meetings sponsored by claimant organizations and/or by USDA; and (4) by sending out "Monitor Updates" to disseminate important information to the whole class or to segments of the class affected by particular issues. Information about the Office of the Monitor's attendance at meetings sponsored by claimant organizations during 2002-2003 is listed in Appendix 4.

Copies of the written materials prepared or revised by the Monitor's Office during 2002 and 2003 are attached as Appendix 5. During this reporting period, the Monitor issued two new Monitor Updates to convey important information to class members and putative class members.

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[37] *See* Monitor's Report on Late Petition Filings, dated February 27, 2002; Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, dated September 4, 2002; and Monitor's Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition for Monitor Review, dated May 30, 2003. The Monitor also filed reports regarding funds in the reserve of the Court Registry from the Monitor's budget. These reports are dated February 12, 2002; August 7, 2002; February 28, 2003; and August 7, 2003. Copies of Monitor reports may be obtained from the Monitor's office (1-877-924-7483). Reports regarding substantive issues are available at the Monitor's web site at http://www.pigfordmonitor.org/reports/.

In November 2002, the Monitor issued an update on "Understanding Who Is Part of the *Pigford* Case" (Update No. 11). This update explains what the deadlines were for becoming a part of the case and explains that certain categories of people will not be able to become part of the case.[38]

In February 2003, the Monitor issued an update entitled "Resources for *Pigford* Claimants" (Update No. 12). This update describes the types of problems the Monitor's Office can help to resolve and the types of problems that the Monitor's Office cannot help to resolve. The update provides contact information for entities that may be able to provide claimants with some types of help that the Monitor cannot provide. Entities listed in Update No. 12 include: university and extension programs, farm advocacy groups, legal organizations, and government entities that may be of assistance to class members.

The Monitor also issued revisions to existing "Monitor Updates" to keep information provided to class members current during this reporting period. In 2002, the Monitor revised the updates on Procedural Rules for the Track B Petition Process (Update No. 8) and on Eligibility and Monitor Review (Update No. 5). In 2003, the Monitor issued revised updates on "late claims" deadlines (Update No. 1); deadlines for petitions for Monitor review (Update No. 3); injunctive relief (Update No. 4); USDA's freeze on accelerations and foreclosures during the petition for Monitor Review process (Update No. 6); claimant and claimant attorney access to USDA documents (Update No. 7); non-credit claims (Update No. 9); and debt relief (Update No.

[38] In telephone calls to the Monitor's toll-free line and in meetings throughout the country, the Monitor's Office has received an increasing number of questions about "reopening" the case. All deadlines for filing a claim, requesting permission to file a late claim, and/or opting out of the class have now passed. Nonetheless, the Monitor continues to receive inquiries from people who wish to join the case or make a claim, but who have missed the deadlines for doing so.

10).[39] The Monitor also revised "Questions and Answers About Monitor Review of Decisions," as an aid to claimants in the petition process in 2002 (Version 2) and in 2003 (Version 3).[40]

Many of the class members who contacted the Monitor's office during this reporting period expressed frustration about problems they were experiencing. Earlier Monitor reports discussed the many concerns brought to the Monitor's attention by class members.[41] Many of these concerns continue. The most significant recurring problems during this reporting period (calendar years 2002 and 2003) are discussed in the "Significant Consent Decree Implementation Issues" section below.

C. Reexamination of Claims — Paragraph 12(b)(iii) of the Consent Decree

Paragraph 12(b)(iii) gives the Monitor responsibility to direct reexamination of a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of a claim that has resulted or is likely to result in a fundamental miscarriage of justice. The Monitor considers whether reexamination is warranted in response to a petition for Monitor review by either a class member or USDA. As of the end of 2003, approximately 5,400 petitions for Monitor review had been filed and the Monitor had issued decisions in response to approximately 2,725 of those petitions.

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[39] Copies of Monitor Updates are available on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[40] Copies of these documents are available on the Monitor's web site at http://www.pigfordmonitor.org/class/.

[41] The Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, detailed these problems. A copy is available on the Monitor's web site at http://www.pigfordmonitor.org/reports.

The vast majority of petitions for Monitor review seek reexamination of Adjudicator decisions in Track A claims. Under paragraph 8 of the Court's Order of Reference,[42] the Monitor may admit into the record supplemental information provided in the petition or petition response when such information addresses a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. Approximately 50 percent of the Track A decisions issued by the Monitor as of December 31, 2003, direct the Adjudicator to reexamine the claim. The Adjudicator began issuing reexamination decisions during 2002 and had issued a total of 301 reexamination decisions as of the end of 2003. Table 7 provides statistics regarding Monitor petition decisions and Adjudicator reexamination decisions issued as of the end of 2002 and the end of 2003.[43]

Table 7: **Statistical Report Regarding Petitions for Monitor Review**		
Statistical Report as of:	**End of 2002**[44]	**End of 2003**[45]
Petitions for Monitor Review		
A. Number of Petitions for Monitor Review	5,160	5,401
A.1. Claimant Petitions	4,560	4,727
A.2. Government Petitions	600	674

[42] The Order of Reference, dated April 4, 2000, addresses many aspects of the Monitor's duties and is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[43] Statistics regarding the Monitor's activity for Track B claims are contained in Table 2 of this report. The Monitor began issuing decisions in response to petitions in the Track B process during 2002 and issued 19 decisions as of the end of 2003 (12 of the 19 were petitions from Arbitrator decisions, and 7 were petitions from Facilitator decisions).

[44] These statistics are valid as of January 2, 2003.

[45] These statistics are valid as of January 2, 2004.

Table 7: **Statistical Report Regarding Petitions for Monitor Review**		
Statistical Report as of:	**End of 2002**[44]	**End of 2003**[45]
Monitor Decisions		
B. Petition Decisions Issued by Monitor	1,743	2,725
B1. Total Number of Petitions Granted	676	1,218
B.1.a. Claimant Petitions Granted	631	1,162
B.1.b. Government Petitions Granted	45	56
B.2. Total Number of Petitions Denied	1,067	1,507
B.2.a. Claimant Petitions Denied	609	1,040
B.2.b. Government Petitions Denied	458	467
Reexamination Decisions		
C. Reexamination Decisions Issued by Adjudicator	39	301
C.1. Reexamination Decisions After Claimant Petition Granted	39	291
C.1.a. Claimant Prevailed on Reexamination	39	279
C.1.b. Claimant Did Not Prevail on Reexamination	0	12
C.2. Reexamination Decisions After Government Petition Granted	0	10
C.2.a. Government Prevailed on Reexamination	0	10
C.2.b. Government Did Not Prevail on Reexamination	0	0

The Court issued several Orders during 2002 and 2003 clarifying the petition process. On July 18, 2002, the Court filed a Stipulation and Order permitting the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision. This Stipulation and Order also authorized the Monitor to obtain information from USDA regarding the status of a class

member's farm loan debt in deciding petitions for Monitor review that raise an issue regarding debt relief.[46]

On October 29, 2002, the Court issued an Order setting a 120-day deadline for claimants to petition from adverse class membership screening decisions made by the Facilitator. Deadlines for petitions from Adjudicator and Arbitrator decisions had previously been set in a Stipulation and Order dated July 14, 2000. These deadlines for petitions for Monitor review are discussed in more detail in the section on "Significant Consent Decree Implementation Issues" below.

During this reporting period, the parties also agreed to a process for designation of the record in Track B petitions for Monitor review. The process is designed to make the Track B review process more efficient. The process is described in Monitor Update No. 8, "Procedural Rules for the Track B Monitor Petition Process." In general, the petitioning party will file a designation of record with the petition for Monitor review. The designation will identify the materials that are part of the record that should be considered by the Monitor in the review process. The responding party may file a designation of record of additional material that should also be considered. The Monitor may, in her discretion, review material in the record before the Arbitrator that was not designated by the parties.

On March 24, 2003, the Court issued an order approving the parties' agreement for a process of recusal for the Monitor. For any claim in which the Monitor determines, in her discretion, that she should not be the decision-maker on a petition for review, the Monitor may

[46] Stipulation and Order, paragraphs 3 and 5. A copy of the July 18, 2002, Stipulation and Order may be found on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

designate Kenneth Saffold of the Office of the Monitor to carry out the Monitor's duties under paragraph 12(b)(iii) of the Consent Decree. The Monitor anticipates Kenneth Saffold will be designated to act as Monitor regarding fewer than five petitions.

D. Calls to Toll-Free Telephone Number — Paragraph 12(b)(iv) of the Consent Decree

Paragraph 12(b)(iv) gives the Monitor the responsibility to staff a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints. The Monitor's Office continues to operate a toll-free telephone number: 1-877-924-7483. Individuals who call this number will reach phone operators who have been trained regarding issues in the case and who have access to a database containing certain factual information about each claimant. The operators are able to answer certain categories of questions at the time the claimant calls. For other categories of questions, including questions about debt relief, injunctive relief, and other complex issues or complaints, the operators may make an appointment for the caller to speak with a lawyer from the Office of the Monitor. The operators also have access to documents that can be sent to individuals upon request, including Court Orders, Farm Loan Program Notices, Monitor Reports, and Monitor Updates.

The Monitor's toll-free line received 20,901 incoming calls during 2002 and 19,235 incoming calls during 2003. Sometimes the operators also made outgoing calls to class members to follow up with callers or to provide additional information. The operators staffing the toll-free line made outgoing calls in this period, bringing the total number of calls staffed by the toll-free line operators to 21,671 during 2002 and 19,932 during 2003. Many of the calls concerned problems discussed more fully below in the "Significant Consent Decree Implementation Issues" section of this report.

V. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

Claimants continued to raise many concerns regarding the implementation of the Consent Decree during this reporting period. Some of these concerns expressed to the Monitor included the following:

a. Concern about the length of time the entire claims process takes and about accumulation of interest on claimants' Farm Service Agency (FSA) loans while they are waiting for their claims to be resolved;

b. Concern about the amount of time the petition for Monitor review process is taking for some claimants;

c. Concern about the amount of time the Adjudicator's reexamination process takes following the approval of a petition for Monitor review;

d. Concern about options for loan servicing for claimants when their claims are resolved;[47]

[47] Paragraph 7 of the Consent Decree provides that USDA must cease actions to foreclose or accelerate a claimant's debt while his or her claim was pending. Once the claimant receives the final decision on his or her Track A or Track B claim, paragraph 7 protections cease. For those who timely file petitions for Monitor review, USDA voluntarily agreed to extend the adverse action freeze through the time of final disposition of the petition.

The loan servicing concern focuses on the fact that the claimants who still owe debt to the agency are accumulating interest while their claims and petitions are being processed. At the end of the *Pigford* claims processing and petitions processing, the amount of accumulated interest could be staggering. Loan servicing is a term of art in FSA loan programs—it refers to a package of mechanisms that FSA can use to restructure debt to make it more manageable. One of the mechanisms would allow write-down or write-off of interest in certain situations.

FSA loan servicing regulations are quite specific about when loan servicing can be offered. Under a strict interpretation, many *Pigford* claimants would have no loan servicing opportunities remaining at the end of the *Pigford* process.

To attempt to address this problem, on October 24, 2002, USDA issued guidance for servicing *Pigford* claimants who are financially distressed or delinquent on their FSA farm loan program debt, but whose loans had not been accelerated by USDA prior to the time they filed a claim under the Consent Decree. USDA has voluntarily agreed to extend loan servicing opportunities for *Pigford* claimants. USDA has stated that County Offices will re-notify claimants of their 1951-S loan servicing rights once a final decision has been rendered on their claim. The letter the County Office must send gives a claimant 60 days from the date of the letter within which to apply for loan servicing. *See* FLP-279, 1951-S Servicing of *Pigford* Cases Whose Claims Have Been Closed and National Office FLP Programmatic Review, Exhibit 1, at 2 (Oct. 24, 2002) (set to expire Nov. 1, 2003, made obsolete on Apr. 3, 2003), and FLP-299, Servicing of Pigford Claimants and National Office FLP Programmatic Review, Exhibit 1, at 2 (Apr. 3, 2003) (set to expire Dec. 1, 2004). These FLPS are available on the Monitor's web site at

e. Concern that many people who otherwise met the class definition failed to sign up for the lawsuit because the advertising campaign described in paragraph 4 of the Consent Decree did not reach them;

f. Concern about the low rate of approvals in the late claims process;

g. Cynicism about whether the appropriate people are being paid—many in the claimant community express suspicion that often individuals who had no real interaction with farming or USDA have been approved for payment, while individuals who had a long and troubled relationship with USDA have been denied relief;

h. Concern about the litigious nature and low claimant success rate in Track B arbitrations;

i. Concern that the FSA county office staff members are not sufficiently knowledgeable about the procedures for providing full injunctive relief to prevailing claimants;

j. Concern about USDA's failure to fully and promptly implement debt relief for prevailing claimants and failure to communicate that debt relief to the claimant's local FSA county office;

k. Concern that there will be retribution by FSA county office staff toward claimants who participated in the Consent Decree process; and

l. Concern about Federal Bureau of Investigation (FBI) investigations in claimant communities.

In general, the Monitor has addressed these concerns by: referring claimants to Class Counsel; making sure that the parties, the Secretary, and the Court are aware of the concerns; explaining how the petition for Monitor review process can be used to seek redress in individual cases in which errors occurred; using "other problem" authority to attempt to resolve individuals' difficulties in the debt relief and injunctive relief processes; explaining how the Consent Decree works; and working with claimants to solve other problems where appropriate.

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http://www.pigfordmonitor.org/flp/. Loan servicing includes actions such as debt write-down, reamortization, rescheduling, reduction of interest rates, and loan deferral. *See* 7 C.F.R. part 1951, subp. S (2004).

Many aspects of the Consent Decree implementation process received significant attention from the parties and the neutrals during this reporting period. The progress made in addressing implementation issues regarding becoming a class member, the claims process, and relief for prevailing class members, along with issues regarding attorneys' fees, are discussed more fully below.

A. Becoming a Class Member

1. 65,900 Late Claims Requests

The Consent Decree required that Claim Sheets be filed by October 12, 1999.[48] Paragraph 5(g) of the Consent Decree provides that claimants may request permission to file a Claim Sheet after the October 12, 1999, deadline if extraordinary circumstances beyond a claimant's control prevented the claimant from filing a completed claim package by the October 12, 1999, deadline. This process is referred to as the "late claims" process. During this reporting period, class members continued to express much anger and frustration regarding the late claims process, including the lack of notice that such a process existed, the high rate of rejection of late claims requests, the length of time required for the late claims process, and the lack of access to legal assistance during the time claimants were completing their late claims requests.

On December 20, 1999, the Court delegated to the Arbitrator the review of "late claims" requests filed pursuant to paragraph 5(g) of the Consent Decree. A Stipulation and Order dated July 14, 2000, set September 15, 2000, as the deadline for filing these requests. The Arbitrator

[48] Paragraph 5(c) of the Consent Decree required completed claim sheets to be filed 180 days from the entry of the Consent Decree. The Consent Decree was approved April 14, 1999.

has reported that approximately 65,900 late claims requests were filed by the September 15, 2000 deadline.[49] By the end of calendar year 2003, the Arbitrator reported that a total of approximately 64,200 requests had been reviewed and decided by the Arbitrator. Of these requests, the Arbitrator has approved a total of approximately 2,100 late claims.[50]

The Arbitrator has established a reconsideration process for claimants whose "late claims" requests are denied. As of December 9, 2003, approximately 20,400 timely requests for reconsideration had been filed, and decisions had been made in a total of 715 reconsideration requests, with 86 requests having been approved in the reconsideration process and 629 having been denied.[51]

On June 4, 2003, the Court issued a Memorandum Opinion and Order denying a motion by Class Counsel J.L. Chestnut on behalf of certain plaintiffs to reopen all late claims due to allegations of mail delays. The Court ruled that the Arbitrator had been given the authority and had established procedures for deciding all requests to file late, including those where the claimant alleges that he or she filed a timely claim through the U.S. mail.[52]

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[49] During this reporting period, the Arbitrator filed reports with the Court on May 3, 2002; November 4, 2002; June 2, 2003; and December 9, 2003. All of the Arbitrator's reports on the late claims process are available on the Monitor's web site at http://www.pigfordmonitor.org/arbrpts/.

[50] After a late claims request is approved by the Arbitrator, the Facilitator sends a Claim Sheet and Election Form, which must be filled out and returned to the Facilitator no later than 60 days from the date of the cover letter that accompanied the Claim Sheet sent by the Facilitator. For more information on the late claims process, see Monitor Update No. 1, "Late Claim Deadline," available on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[51] *See* Arbitrator's Fifth Report on the Late-Claim Petition Process, dated December 9, 2003, pages 5-6.

[52] Memorandum and Order, at 2-3. The Court's June 4, 2004, Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

2. Petition Deadline for Claims Rejected by the Facilitator

Under the Consent Decree, the Facilitator may reject a claim package on the ground that the requirements for class membership have not been met, and a Claimant may seek review of that decision by submitting a petition to the Monitor. In the Monitor's second report on good faith implementation, the Monitor recommended that the parties set a deadline for Petitions for Monitor Review from decisions by the Facilitator. The Monitor further recommended that notice be provided to those persons eligible to petition from a decision by the Facilitator rejecting a completed claim package on eligibility grounds. The parties agreed with the Monitor's recommendation, and on October 29, 2002, the Court issued an Order setting deadlines for petitions from adverse Facilitator eligibility screening decisions.[53] The Court's Order permits the Monitor to consider supplemental information with a petition for Monitor review of a Facilitator class membership screening decision or with a response to such a petition in certain limited circumstances.[54] As of the end of 2003, the Monitor had received 92 petitions for review of eligibility screening decisions. As of the end of 2003, the Monitor had issued decisions in response to nine of those petitions.

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[53] For claimants who filed a completed claim package that was rejected by the Facilitator on or before October 29, 2002, the Order required a petition for Monitor review be postmarked within 120 days of the date of the Order, or by February 26, 2003. For claimants who filed a completed claim package that was rejected by the Facilitator after October 29, 2002, the Order requires a petition for Monitor review be filed within 120 days of the date of the Facilitator's rejection notification. The Order required the Facilitator to mail a copy of the Order to every person rejected by the Facilitator in the screening process. The October 29, 2002 Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[54] The October 29, 2002, Order states that the Monitor may consider additional materials submitted with a petition or a petition response only when such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. The decision to consider additional materials is within the discretion of the Monitor. Order, paragraph 5.

For those claimants rejected by the Facilitator for failure to submit a timely completed claim package, the Order requires the Facilitator to establish a reconsideration process. Through the reconsideration process, claimants may communicate with the Facilitator if they believe the Facilitator committed an error in determining that they failed to timely complete a claim package. The Facilitator reports that as of the end of 2003 it had received 116 requests for reconsideration. Of those 116, four were granted and 112 were denied.

B. The Claims Process

1. Untimely Petitions From Adjudicator and Arbitrator Decisions

In July 2002, Class Counsel filed a motion entitled "Plaintiffs' Motion for Relief for Four Groups of Claimants Who Filed Petitions for Monitor Review."[55] The motion addressed the application of the deadline for petitions for Monitor review to certain specific claimants. The Consent Decree did not provide a deadline for filing petitions for Monitor review. In the July 14, 2000, Stipulation and Order, a deadline was established.[56] For adjudication and arbitration decisions issued prior to July 14, 2000, the deadline for submitting a petition for Monitor review was 120 days from the date of the Order, or November 13, 2000. For adjudication and arbitration decisions issued after July 14, 2000, the deadline was 120 days from the date of the adjudication or arbitration decision.

[55] Plaintiffs initially brought this issue before the Court in a motion filed under seal on December 11, 2001. Plaintiffs withdrew this motion and filed a subsequent motion on July 19, 2002.

[56] A copy of the Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

Notice of the 120-day deadline was provided at various times to segments of the class through at least four different means.[57] However, it was not until November 15, 2001, that the Adjudicator's decision letters in Track A claims began to include notice of the 120-day deadline for petitions for Monitor review.[58] Thousands of claimants whose claims were decided prior to this date received decision letters that did not inform them of the 120-day deadline for filing a petition for Monitor review.

At the time of the second Monitor report on good faith implementation, the parties were in the midst of briefing plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were determined by the Facilitator to be untimely filed.[59] In May 2003, the Monitor filed a report with the Court on notice issues regarding the late petition filings.[60] On June 2, 2003, the Court issued an Opinion and Order denying the plaintiffs' motion for relief. The Court ruled that the deadlines established in prior Court orders govern when petitions for Monitor review must be filed. Class Counsel moved for reconsideration of the Court's June 2, 2003 Order. On March 10,

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[57] First, the July 14, 2000 Stipulation and Order directed the Facilitator to send a copy of the Order to every person who requested a Claim Sheet and Election Form but did not submit a completed Claim Form to the Facilitator within the period prescribed by the Consent Decree. Second, the July 14, 2000, Stipulation and Order required that the Order be posted in a conspicuous public place in every USDA FSA county office. Third, on August 14, 2000, the Monitor's Office disseminated a Monitor Update explaining the July 14, 2000 Order as it applied to petition deadlines. Fourth, in meetings with class members and in phone calls, the Monitor's Office, the Facilitator, and likely Class Counsel orally explained the 120-day deadline to class members.

[58] Although the Arbitrator began to include notice of the 120-day deadline for petitions for Monitor review in Arbitrator decisions shortly after the July 14, 2000 Stipulation and Order, claimants whose claims had been decided by the Arbitrators prior to July 14, 2000, did not receive notification of the 120-day deadline other than through methods listed in the previous footnote.

[59] Plaintiffs originally sought relief for a total of 387 claimants. As the Court's Order of June 2, 2003, sets forth, the parties reached agreement on a number of claims, reducing the total to 350 claimants. Opinion and Order, at 2, footnote 2.

[60] Monitor's Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition For Monitor Review, dated May 30, 2003.

2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals.[61]

2. Track B Hearing Deadlines

The issue of the authority of the Arbitrator to modify pre-hearing arbitration deadlines established by the Consent Decree was considered by the Court and the Court of Appeals during this reporting period.[62] In response to a motion by *pro bono* counsel who had recently taken over the representation of a class member in the Track B claims process, the District Court held that the Arbitrator had discretion to revise Consent Decree deadlines in Track B proceedings, so long as justice required the revisions and provided that the burden on the Government was not so great as to outweigh the interests of the claimant in fully presenting his or her claim. The Government appealed this ruling. Finding that the District Court had limited authority to modify Consent Decree deadlines that had been negotiated between the parties, the Court of Appeals reversed and remanded the case to the District Court to consider a modification that would be "suitably tailored," suggesting a proposed modification for the one claim at issue in the appeal.[63]

During this reporting period, the Monitor has reviewed many pending petitions for Monitor review in Track B files. This review suggests that changes in Consent Decree deadlines have been common in Track B claims. In the majority of the approximately fifty Track B petition

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[61] The Court's Opinion and Order, issued June 2, 2003, and the Court's order denying reconsideration on March 10, 2004, are available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

[62] Paragraph 10 of the Consent Decree contains deadlines pertaining toTrack B arbitration claims.

[63] The Court of Appeals ruled that the District Court could modify the Consent Decree if the requirements of Federal Rule of Civil Procedure 60(b)(5) were met. *See Pigford v. Veneman,* 292 F.3d 918 (D.C. Cir. 2002).

files received by the Monitor through December 31, 2003, the record received from the Arbitrator shows changes to Consent Decree deadlines during the time the claims were pending before the Arbitrator. Records received from the Arbitrator show that revisions in arbitration schedules have been made due to: the unanticipated number of claims filed, efforts by the parties to explore settlement, discovery or pre-hearing motions and disputes, problems with securing representation for claimants, and/or difficulty encountered by the Government in providing representation for every claim.

The Court has previously ruled that arbitration deadlines may be changed by mutual consent.[64] The parties have submitted additional memoranda to the District Court on the scope of the Court of Appeals' remand and whether it extends to the claims of Track B class members represented by counsel other than class counsel. The Court of Appeals' remand order remains pending with the District Court.

C. Prevailing Class Members

1. Payment of Cash Relief

Prior Monitor reports explained significant delays in the payment of cash relief to prevailing class members, which had occurred early in the Consent Decree implementation process.[65] During this reporting period, the number of prevailing claimants who had to wait more than 180 days to receive their cash award was substantially reduced. A small number of claimants continue to experience payment status problems and to contact the Facilitator and the

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[64] In an Order dated March 1, 2000, the Court delegated to the Arbitrator the authority to stay arbitrations or postpone evidentiary hearings beyond the Consent Decree deadlines when both parties consent.

[65] *See* Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 15-17.

Monitor for assistance in attempting to resolve these problems.[66] The Monitor will continue to work with the parties to help solve any remaining problems relating to payment delays to prevailing class members.

2. Tax Issues

While some progress has been made in resolving tax problems arising from implementation of the Consent Decree, class members continue to experience many of the tax-related problems that were explained in prior Monitor reports.[67] These problems are significant and include:

a. General lack of information for the class about the tax consequences of prevailing under the settlement;

b. Difficulties caused by a failure to issue Internal Revenue Service (IRS) Forms 1099 in a timely manner regarding cash relief, debt relief, and tax relief;[68]

c. Difficulties created by the treatment of tax relief as taxable income;[69]

d. The assessment and abatement of penalties against class members who failed to accurately report to the IRS regarding relief or failed to pay taxes owed or on behalf of whom the Government failed to make timely transfers to tax accounts; and

e. Difficulties in providing tax relief to the decedents' estates when successful claims were brought on behalf of deceased class members.

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[66] As of August 4, 2004, the number of claimants who have been waiting more than 180 days to receive a cash award has been reduced to two. Both of these claims are delayed due to paperwork requirements for estate claims.

[67] *See* Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 12-13, 29-30.

[68] For any year in which a class member receives cash relief, debt relief, and/or tax relief, the class member should receive an IRS Form 1099 regarding that cash relief, debt relief, and/or tax relief.

[69] Paragraph 9(a)(iii)(C) of the Consent Decree provides that relief to prevailing Track A credit claimants shall include a payment to the claimant's Internal Revenue Service account as partial payment of the taxes owed by the claimant. The payment is 25% of the principal amount of any debt forgiven under the Consent Decree plus 25% of the $50,000 in cash relief granted pursuant to the Consent Decree provisions.

The parties and neutrals made progress in addressing possible solutions to tax-related problems. The Facilitator continued to be in regular contact with the IRS to attempt to solve tax problems related to individual claimants and was able to work with the IRS to resolve hundreds of claimant problems during this reporting period. Most of the successful resolutions relate to decedents' estate issues. The Monitor met with the National Taxpayer Advocate and with representatives of the Internal Revenue Service in an effort to seek additional assistance for class members with tax issues. Substantial work has been done to expedite issuance of Forms 1099 to claimants who have received cash payments or debt relief and to resolve the tax problems created when Forms 1099 were not promptly issued.

Many tax account problems involved proper identification of estates. The Facilitator has continued to work with the IRS to establish a procedure for processing claims brought on behalf of decedents in Track A. Class members may call the Facilitator at 1-800-646-2873 for information about what to do in this situation and for help with other tax problems associated with implementation of the Consent Decree claims process.

Notwithstanding these successes and the establishment of these procedures, many successful claimants still have unresolved tax-related problems, and there is reason to believe that as implementation progresses, many more tax-related problems will rise to the surface.

3. Debt Relief

The Consent Decree provides for the following debt relief for successful Track A credit claimants:

> USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the

> subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator.[70]

The language for Track B is similar regarding the extent of debt relief.[71]

A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief available to class members.[72] In essence, the Order provides that USDA is to grant debt relief regarding: (a) all loans found to have been affected by discrimination; and (b) all loans in the affected loan program(s) from the date of the discriminatory event through the end of the class period. Certain exceptions apply and are explained in detail in the Order.

During this reporting period, USDA made substantial progress in implementing debt relief. Many successful claimants contacted the Monitor for assistance with obtaining their debt relief awards. The Monitor and the parties worked together to solve many problems in the debt relief implementation process, and, at the end of the reporting period, continued to work on open issues regarding debt relief. USDA reports that as of January 12, 2004, the agency had forgiven $21,930,937 in outstanding debt owed by 253 class members.

4. Injunctive Relief

Under the Consent Decree, class members who prevail are entitled to injunctive relief in addition to other remedies. The majority of claims under the Consent Decree are credit claims. Claimants who prevail on credit claims are entitled to priority consideration for one Farm Ownership Loan, for one Farm Operating Loan, and for one opportunity to acquire farmland

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[70] Consent Decree, paragraph 9(a)(iii)(A).

[71] Consent Decree, paragraph 10(g)(ii) states:
USDA shall discharge all of the class member's outstanding debt to the Farm Service Agency that was incurred under, or affected by, the program(s) that were the subject of the claim(s) resolved in the class member's favor by the arbitrator.

[72] The Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/.

from USDA inventory property.[73] During 2002 and 2003, however, relatively few farmers made use of their right to priority consideration. According to information provided by USDA, 171 successful claimants requested priority consideration from USDA from the beginning of this litigation through January 12, 2004.[74] These requests resulted in a total of fifteen Farm Ownership Loans, thirty-nine Farm Operating Loans and one lease or purchase of inventory property from USDA.

The Monitor's Office continued to receive questions, requests for assistance, and reports of concern from class members relating to the implementation of injunctive relief during this reporting period. Prior Monitor reports described this concern in detail. Many prevailing claimants are skeptical about whether local Farm Service Agency officials will act in a nondiscriminatory manner. They fear that FSA officials will try to retaliate against them because they prevailed in the Consent Decree claims process. Class members also report difficulty meeting the eligibility requirements for loans. Some claimants are concerned that injunctive relief may expire by the time they ultimately prevail on their claims.

Several factors may be contributing to the relatively low rate of use of injunctive relief. First, it is possible that only a small percentage of successful claimants wish to pursue farming at this time. A second, related factor may be the current difficult agricultural economy. A third

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[73] Consent Decree, paragraph 11(a)-(b). The Consent Decree also requires USDA to consider any new application by a prevailing class member in a light most favorable to the applicant, and to provide technical assistance from a USDA employee who is acceptable to the prevailing class member. Consent Decree, paragraph 11(c)-(d).

[74] Under paragraph 11(a)-(b) of the Consent Decree, class members must notify USDA in writing that they are exercising their right to priority consideration.

factor may be statutory restrictions that make many farmers ineligible for FSA loan programs. Finally, many prevailing class members may lack a detailed understanding of their injunctive relief rights. The Monitor's Office has continued its efforts to give class members information about injunctive relief, both by distributing a Monitor Update on this topic,[75] and by making presentations about injunctive relief at claimant meetings.[76]

To address the concern about the expiration of injunctive relief, in January 2003 USDA announced plans to voluntarily extend the time for prevailing class members to participate in injunctive relief. Under the terms of the Consent Decree, injunctive relief was to expire on April 14, 2004, five years from the date the Consent Decree was approved.[77] USDA has announced that prevailing class members will now have one year longer, until April 14, 2005, to participate in injunctive relief.[78]

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[75] This update, "Injunctive Relief in *Pigford v. Veneman*" (Monitor Update No. 4), is available from the Monitor's office (1-877-924-7483) or on the Monitor's web site at http://www.pigfordmonitor.org/updates/.

[76] See Appendix 4 for a listing of the meetings attended by the Office of the Monitor during 2002 and 2003.

[77] *See* Consent Decree, paragraph 11(a)-(c).

[78] This announcement was publicly made in a press release dated January 16, 2003. The press release is available on USDA's web site at http://www.usda.gov/news/releases/2003/01/0017.htm. In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at http://www.pigfordmonitor.org/flp/. In September of 2002, USDA also announced a series of steps to assist minority and disadvantaged farmers, including the creation of the Office of Minority and Socially Disadvantaged Farmer Assistance to work with minority and socially disadvantaged farmers who have concerns and questions about loan applications they have filed in their County Offices. The Office may be contacted toll-free by calling 1-866-538-2610 or sending an email to msda@wdc.usda.gov or writing to Office of Minority and Socially Disadvantaged Farmers, Farm Service Agency, USDA, 1400 Independence Ave SW, Mail Stop 0501, Washington D.C. 20250-0501.

D. Attorneys' Fees and Sanctions

Several Orders issued by the Court and referenced in the second Monitor report on good faith implementation discussed the issue of possible sanctions against Class Counsel. The parties submitted additional briefing on the issue of sanctions during this reporting period, and all sanctions issues were decided by the Court in March 2004.[79]

Some aspects of attorneys' fees issues are still pending. During this reporting period, Class Counsel filed requests for attorneys' fees and costs associated with implementation of the Consent Decree. The Court ordered an interim payment of $500,000 in an Amended Memorandum Opinion and Order, issued January 14, 2003, which the Government appealed. The Court of Appeals dismissed the appeal on May 14, 2004.

On November 25, 2003, the Arbitrator issued Findings and Recommendations to the Court regarding the January 1 through March 31, 2003, fee request of one of the Class Counsel law firms, Conlon, Frantz, Phelan and Pires, for time spent assisting in the implementation of the Consent Decree. Subsequent to the issuance of the Arbitrator's Findings and Recommendations, the parties resolved that fee petition. The issue of fees will be subject to further proceedings.

VI. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

One standard legal dictionary defines good faith as "a state of mind characterized by honest belief, absence of malice or intent to defraud, absence of a design to seek unconscionable advantage or of knowledge that such advantage is likely to occur . . . ."[80] During this reporting period, January 1, 2002, through December 31, 2003, the parties and all three of the neutrals (the

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[79] The Court's Opinion and Order, issued March 10, 2004, is available on the Court's web site at http://www.dcd.uscourts.gov/district-court-2004.html.

[80] West's Legal Thesaurus/Dictionary (William P. Statsky ed., 1986).

Facilitator, the Adjudicator, and the Arbitrator) continued to work to implement the Consent Decree in good faith.

The Monitor notes that despite significant challenges, substantial progress was made during calendar years 2002 and 2003 to implement the Consent Decree claims process and relief provisions. During this reporting period, the Monitor continued to meet and work on an ongoing basis with all of those who are charged by the Court with the responsibility for carrying out implementation of this Consent Decree. The Monitor believes all of the parties involved met the test for good faith during this reporting period.

Dated: August 19, 2004.

Respectfully submitted,

s/Randi Ilyse Roth
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877-924-7483

Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS

Statistical Report as of:	Aug. 28, 2000		End of 2001[1]		End of 2002[2]		End 2003[3]	
ITEM	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
A. Eligible class members	21,069	100	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	191	1	177	1	179	1	178	1
Adjudication Completion Figures								
D. Adjudications complete	18,347	88	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	2,531	12	40	~0	48	~0	420	2
Adjudication Approval/Denial Rates								
F. Claims approved by Adjudicator	11,083	60	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator	7,264	40	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid								
H. Approved adjudications paid as of specified date	7,143	64	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date	3,940	36	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims[4]	$357,150,000		$614,250,000		$624,750,000		$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims			$1,284,000		$1,284,000		$1,287,000	

[1] These statistics are valid as of January 2, 2002.

[2] These statistics are valid as of December 31, 2002.

[3] These statistics are valid as of January 5, 2004.

[4] This figure includes cash relief awards in Track A credit cases only. It does not include debt relief, tax relief, awards for non-credit claims, or awards or settlements in Track B cases.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS

Statistical Report as of:	**Sept. 18, 2000**	**End of 2001**[1]	**End of 2002**[2]	**End of 2003**[3]
A. Eligible Track B Claimants	177	235	236	237
B. Track B Cases Settled	11	57	61	71
C. Track B Cases Converted to Track A	27	50	54	55
D. Track B Cases Withdrawn	5	6	6	6
Arbitrations Complete/Not Complete				
E. Contested Track B Claims in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105
F. Arbitration Decisions Issued	15	51	71	77
G. Contested Cases in Which Arbitration Was Not Complete and/or Decision Was Not Yet Issued	119	71	44	28
Arbitration Results				
H. Claimant Prevailed Before Arbitrator	2	8	15	17
I. Average Awards to Prevailing Claimants	$580,500	$531,373	$560,309	$545,686
J. Government Prevailed Before Arbitrator	13	43	56	60
Posture of Decision:				
J.1. Cases Dismissed Before Hearing	10	28	34	38
J.2. Full Hearing, Finding of No Liability	3	15	22	22
Petitions for Monitor Review[4]				
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B cases	4	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions	0	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	5	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	2	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	0	7	12

[1] These statistics are valid as of January 10, 2002.

[2] These statistics are valid as of January 1, 2003.

[3] These statistics are valid as of January 1, 2004.

[4] The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS

Claimant	**Sept. 18, 2000**	**End of 2001**[1]	**End of 2002**[2]	**End of 2003**[3]
Claimant A	$544,400.00			
Claimant B	616,600.00			
Claimant C	<N/A>	$615,090.00		
Claimant D	<N/A>	100,000.00		
Claimant E	<N/A>	780,000.00		
Claimant F	<N/A>	625,566.00		
Claimant G	<N/A>	507,954.88		
Claimant H	<N/A>	[liability found but damages not awarded as of the end of 2001]	$483,580.50	
Claimant I	<N/A>	<N/A>	$1,447,917.00	
Claimant J	<N/A>	<N/A>	879,920.58	
Claimant K	<N/A>	<N/A>	594,444.00	
Claimant L	<N/A>	<N/A>	557,800.00	
Claimant M	<N/A>	<N/A>	427,363.00	
Claimant N	<N/A>	<N/A>	172,000.00	
Claimant O	<N/A>	<N/A>	52,000.00	
Claimant P	<N/A>	<N/A>	<N/A>	$750,048.00
Claimant Q	<N/A>	<N/A>	<N/A>	121,978.09

[1] These awards were granted in Arbitrator decisions issued as of January 10, 2002.
[2] These awards were granted in Arbitrator decisions issued as of January 1, 2003.
[3] These awards were granted in Arbitrator decisions issued as of January 1, 2004.

Appendix 4

LIST OF MONITOR OFFICE TRAINING EVENTS
JANUARY 1, 2002 – DECEMBER 31, 2003

The Monitor's office appeared at many speaking engagements in this reporting period to meet groups of claimants and Government officials and to explain the rules that govern the Monitor's discharge of her responsibilities (including the rules of the petition process, the injunctive relief process, and the debt relief process). In many cases, several staff attorneys from the Monitor's office attended these events; that made it possible for one or two attorneys to address the large group while the other attorney(s) worked with individuals to address their particular concerns. These speaking engagements included:

Date	Location	Sponsor	Approximate Number of Participants
Feb. 8, 2002	Tuskegee University; Tuskegee, Alabama	Tuskegee University	150
Feb. 9, 2002	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	250
Apr. 10, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	70
Apr. 30, 2002	Bladen County, North Carolina	Congressman McIntyre	250
June 12, 2002	Tchula, Mississippi	Mississippi Family Farmers	150
Aug. 16, 2002	Epes, Alabama	Federation of Southern Cooperatives	200
Aug. 22, 2002	Arlington, Virginia	National Black Farmers Association Meeting	250
Sept. 11, 2002	Washington, D.C.	Congressional Black Caucus	50
Oct. 12, 2002	Alcorn State, Mississippi	Alcorn State University	5
Oct. 18, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	125
Nov. 7, 2002	Fort Valley, Georgia	Fort Valley State University	40
Nov. 23, 2002	Oklahoma City, Oklahoma	Oklahoma Department of Agriculture	700

Date	Location	Sponsor	Approximate Number of Participants
Jan. 11, 2003	Kingstree, South Carolina	United Farmers of South Carolina	205
Jan. 25, 2003	Oklahoma City Langston University Campus	Oklahoma Department of Agriculture	150
Feb. 7, 2003	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	75
Feb.13, 2003	Tallulah, Louisiana	Northeastern Louisiana Farmers and Ranchers	90
Feb. 20, 2003	Tuskegee University; Tuskegee, Alabama	Tuskegee, University	100
Aug. 1, 2003	Arkansas-Pine Bluff University Pine Bluff, Arkansas	Arkansas-Pine Bluff University	125
Aug. 15, 2003	Epes, Alabama	Federation of Southern Cooperatives	150
Nov. 21, 2003	Fort Valley, Georgia	Fort Valley University	75
Nov. 22, 2003	Oklahoma City, Oklahoma	USDA Oklahoma Dept. of Food & Forestry	200

Appendix 5

MONITOR PUBLICATIONS
ISSUED OR REVISED JANUARY 1, 2002 – DECEMBER 31, 2003

- Monitor Update No. 1: Late Claim Deadline, revised October 1, 2003.
- Monitor Update No. 3: Deadlines for Petitions for Monitor Review, revised October 1, 2003.
- Monitor Update No. 4: Injunctive Relief in *Pigford v. Veneman*, revised October 1, 2003.
- Monitor Update No. 5: Eligibility and Monitor Review, revised October 30, 2002.
- Monitor Update No. 6: Freeze on USDA Acceleration and Foreclosures, revised October 1, 2003.
- Monitor Update No. 7: Claimant and Claimant Attorney Access to USDA Documents, revised October 1, 2003.
- Monitor Update No. 8: Procedural Rules for the Track B Monitor Petition Process, revised April 20, 2002.
- Monitor Update No. 9: Non-credit Claims — $3000 for Each Prevailing Class Member, revised October 1, 2003.
- Monitor Update No. 10: Debt Relief for Prevailing Class Members, revised October 1, 2003.
- Monitor Update No. 11: Understanding Who Is Part of the *Pigford* Case, November 27, 2002.
- Monitor Update No. 12: Resources for *Pigford* Claimants, February 3, 2003.
- Questions and Answers About Monitor Review of Decisions (Version 2), June 2003.
- Questions and Answers About Monitor Review of Decisions (Version 3), October 2003.

Monitor Update: Late Claim Deadline

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Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected the filing of late claims. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000, Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

3. Some late claims were allowed

In some cases, it was possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allowed a person to be a part of the case if the person could show that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] The Court directed the Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

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[1] This language is found in section 5(g) of the Consent Decree.

4. Judge's Order—deadline to request permission to file a late claim

The Judge's July 14, 2000, Order set a deadline for submitting a written request to file a late claim. **That deadline was September 15, 2000.** In order to meet the deadline, the written request must have been postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

5. How late claims were allowed

Three important rules applied when a claimant filed a late claim.

First, the claimant must have filed with the Claims Facilitator a **written** request for permission to file a late claim.

Second, the written request had to explain the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed.

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant **was** prevented from filing a timely Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a timely Claim Sheet and Election Form because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration.

7. Reconsideration of the Arbitrator's denial

The Arbitrator has established a limited reconsideration policy. When the Arbitrator denies a request for permission to file late, he sends a letter to the claimant. This letter will explain the Arbitrator's policy for reconsidering the request to file late.

8. If the Arbitrator decides in favor of claimant—60 days to file a claim form

If the Arbitrator grants a claimant's request to file a late claim, the claimant will receive a Claim Sheet and Election Form from the Claims Facilitator. The Claim Sheet and Election Form must be filled out and signed by an attorney, and it must be postmarked no later than 60 days from the date of the cover letter that accompanies the Claim Sheet and Election Form. No extension of this 60-day period will be granted for any reason.

9. More information

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

Monitor Update:
Deadlines for Petitions for Monitor Review

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Deadlines for Petitions for Monitor Review

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected petitions for Monitor Review. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This Update explains:

- What petitions for Monitor review are.
- The deadline for petitions for Monitor review.

2. Petitions for Monitor review

In the *Pigford* lawsuit, both Claimants and the Government are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any party who received a wholly or partly adverse final decision in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone may request a copy of the letter and pamphlet (which was updated on June 1, 2003) by calling the Monitor's office toll free at 1-877-924-7483.

3. Judge's Order created a deadline for most petitions for Monitor review

The Judge's Order created a deadline for filing petitions for Monitor review. The deadline worked in two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply. Information about Monitor Review of Facilitator denials can be found in "Monitor Update 5: Eligibility and Monitor Review".)

a. Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Track A Adjudicator or the Track B Arbitrator was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000. (This deadline was affected by the Register process in Orders dated November 8, 2000; April 27, 2001; and May 15, 2001.)

b. Decision after July 14, 2000—deadline 120 Days After Decision

If the decision by the Track A Adjudicator or the Track B Arbitrator was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

4. Deadlines created by the Order are firm

The deadlines explained in this Update are firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. More information from the Monitor

Anyone who has questions for the Monitor's Office regarding deadlines for petitions for Monitor review should call toll-free at 1-877-924-7483.

Monitor Update:
Injunctive Relief in
Pigford v. Veneman

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Injunctive Relief in *Pigford v. Veneman*

I. Introduction and the Monitor's Role

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Veneman*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

II. Only a Brief Summary

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

III. Eligibility for Injunctive Relief

A. Must Prevail in Track A or Track B

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

B. Credit vs. Noncredit Claims—the Difference Matters

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

C. What Law Applies for Injunctive Relief

1. Consent Decree

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a

remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

2. FSA Regulations and Most Favorable Light

The regulations governing FSA programs must be met in providing injunctive relief to class members. For example, in order to get a loan from the Farm Service Agency (FSA), the farmer must still meet FSA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies every time a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

IV. Types of Injunctive Relief

Injunctive relief falls under two main categories—priority consideration and technical assistance.

A. Priority Consideration—Three Types

The Consent Decree provides for priority consideration for three types of FSA benefits.

1. Inventory Property

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. FSA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

2. Farm Ownership Loan

Priority consideration for one FSA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

3. Farm Operating Loans

Priority consideration for one FSA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

Priority consideration is available only to those who had credit claims.

B. Technical Assistance and Service

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

1. Credit and Noncredit Claims

Technical assistance is available both for those with credit claims and noncredit claims.

2. Must Be Requested

The class member must request the technical assistance and service. Class members should consider making this request in writing.

3. Qualified and Acceptable USDA Employees

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

V. Getting an FSA Loan

A. Eligibility and Priority Consideration

Priority consideration does not mean that getting the loan is automatic. FSA eligibility requirements continue to apply.

B. Debt Forgiveness and Loan Eligibility

Many class members will have problems getting a loan because of past debt forgiveness.

1. General Rule—No FSA Direct Loan if Debt Forgiveness

As a general rule, applicants who have had FSA debt forgiveness that resulted in a loss to FSA cannot get an FSA direct loan.

a. Defining Debt Forgiveness

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of an FSA debt. It also includes the discharge of a debt to FSA as a result of bankruptcy. In addition, it includes a loss paid by FSA on a guaranteed loan.

b. Exceptions to the General Rule

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what FSA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

2. Debts Forgiven Under Pigford—or Affected by Discrimination

Many claimants had outstanding FSA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another FSA loan. Further, if discrimination was found in a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another FSA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants.

C. Creditworthiness

An applicant must be creditworthy to be eligible for an FSA loan. Credit history can be taken into account when FSA considers the creditworthiness of the applicant. FSA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

D. Other Requirements for FSA Loans

FSA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

E. Where to go for Assistance

The Monitor's Office has issued an Update that provides information for Class Members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for Pigford Claimants."

VI. If Injunctive Relief Efforts Fail

If those seeking to use the injunctive relief described in this booklet fail in their efforts, they have several options.

A. Contact the Monitor

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

B. FSA Appeals

Any FSA applicant—not just class members—who receives what is known as an adverse decision from FSA may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

C. Civil Rights Complaint

Any person—not just class members—may file a discrimination complaint with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC, 20250-9410.

VII. Timeline for injunctive Relief

Injunctive Relief for Pigford claimants expires on April 14, 2005. Originally, Injunctive Relief was to expire in April of 2004. An internal FSA notice issued on July 21, 2003, formally extended the availability of Injunctive Relief for one year. The Notice, FSA FLP 313, Priority Consideration for Prevailing Claimants, is available from the Monitor. To receive a copy, please call the Monitor's toll-free line and request it.

VII. More Information on Injunctive Relief

The Monitor's Office is in the process of preparing a much more detailed version of this Monitor Update. If you would like a copy of the much longer booklet, call the Monitor's office toll-free at 1-877-924-7483.

Monitor Update:
Eligibility and Monitor Review

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Eligibility and Monitor Review

1. Introduction

Some *Pigford* claimants have been denied relief on the grounds of class eligibility. In other words, they have been found not to be members of the class.

This Monitor Update is intended to:

a. Explain who is eligible to be a member of the class;
b. Describe how eligibility decisions are made; and
c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

In order to be a class member in the *Pigford* case, eligibility requirements must be met. In addition to being African-American, the following three things must be true about a person.

First, he or she had to farm, or attempt to farm, between January 1, 1981, and December 31, 1996.

Second, he or she must have applied to USDA between January 1, 1981, and December 31, 1996, to participate in a federal farm credit or benefit program. He or she must also have believed he or she was discriminated against on the basis of race in USDA's response to that application.

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

A claimant must submit proof that he or she filed a discrimination complaint. Listed below are the four types of proof that may be used by a claimant to show that he or she filed the discrimination complaint.

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

d. Declaration from another person about listening session or verbal complaint

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

If, after reexamination, the Facilitator rules that a claimant is not an eligible member of the class, he or she may not receive any of the relief found in the Consent Decree.

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.

Monitor Update:
Freeze on USDA Acceleration and Foreclosures

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Freeze on USDA Acceleration and Foreclosures

1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to "freeze" some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

a. Acceleration

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a $100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA's right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

b. Foreclosure

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

c. Inventory property

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

d. Other USDA actions—not covered

Other actions that USDA may take on the debt are not covered by the freeze.

3. Who can benefit from the freeze?

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

4. For the freeze to apply, claimant must petition for Monitor review

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

5. When the freeze begins and ends

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

6. Freeze does not stop administrative offsets—but refunds possible

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

7. After the freeze ends

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

8. More information

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.

Monitor Update:
Claimant and Claimant Attorney Access to USDA Documents

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Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

This Monitor Update explains how claimants and their attorneys can go about getting copies of these USDA documents.

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

Claimants who are being assisted by Class Counsel or Of-Counsel should not have any problem with access to papers that USDA filed in their *Pigford* claims. Class Counsel should have a copy of these files, and Of-Counsel should be able to get a copy from Class Counsel.

b. Assisted by an Attorney Who Is Not Class Counsel or Of-Counsel

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

Some claimants are not being assisted by an attorney at all. In legal terms, these claimants are acting "pro se"—that is to say, they are acting without legal counsel. Section 4 of this Update explains how these claimants should go about getting papers that USDA filed in their *Pigford* claims.

3. Types of Information Available to Claimant Varies

In general, USDA files used by the Adjudicator in deciding the claimant's case include two types of information. First, files sometimes include information about the claimant. This may include documents from old FmHA files, for example, or the results of USDA interviews about the claimant.

Second, USDA files may include information about people other than the claimant. This may include, for example, information about people named by the claimant as similarly situated white farmers. Information about claimants and similarly situated white farmers that is contained in USDA's responses to Track A claims is covered by the Privacy Act. A claimant can generally obtain private information about him- or herself but cannot obtain private information about other people. Therefore, a claimant who is not represented by a lawyer will not be able to obtain copies of any materials concerning similarly situated white farmers that USDA gave to the Adjudicator.

Therefore, if a claimant is acting pro se, he or she will not receive USDA information about other people.

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

a. Get a Copy of Privacy Order and the Acknowledgement Form

Claimants need to get a copy of the Privacy Order and the Privacy Order Acknowledgment Form. They can have these sent to them by calling toll-free at 1-877-924-7483.

b. Read the Form Closely and Sign It

Claimants should then read the Privacy Order and the Privacy Order Acknowledgment Form very closely and sign the Acknowledgement Form. When signed, that form is a binding legal document. It limits the claimant's right to use, distribute, or publish the information.

c. Send the Signed Form to the Facilitator—and Include Claimant Mailing Address

Claimants should then send the signed Acknowledgement Form to the Facilitator at:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

It is important that the claimant send a current mailing address to the Facilitator along with the signed form.

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

Attorneys need to get a copy of the Second Amended Supplemental Privacy Act Protective Order ("Privacy Order") and the Privacy Order Acknowledgment Form. They can request them by calling toll-free at 1-877-924-7483.

b. Sign Form and Return to USDA

Attorneys then sign the form and return it to USDA through the Facilitator at the following address:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.

Monitor Update:
Procedural Rules for the
Track B Monitor Petition Process

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Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

All of the Court orders referenced below may be found on the Court's web site at http://www.dcd.uscourts.gov.

a. **General Procedures.** The general procedures for the Monitor review process can be found in the Court's April 4, 2000, Order of Reference. Further detail can be found in the Monitor's booklet entitled "Questions and Answers About Monitor Review of Decisions," which is available from the Office of the Monitor.

b. **Deadline for Petitions for Monitor Review.** The deadlines for filing petitions for Monitor review are found in the Court's Order of July 14, 2000. In general, petitions must have been filed by November 13, 2000, or by 120 days from the date of the Arbitrator decision, whichever is later.

c. **Deadline for Responses to Petitions.** The deadline for responding to petitions for Monitor review is found in the Court's Order of September 12, 2000. In general, responses to petitions must be filed within sixty days from the non-petitioning party's receipt of the petition for Monitor review.

2. Filing Petitions for Monitor Review

Under Track B, any party seeking Monitor review of the Arbitrator's decision must:

a. Timely file with the Facilitator an original petition for Monitor review ("petition") and one copy of the petition. Petitions will be deemed "filed" as of the date of postmark. Petitions should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. File with the petition a Designation of Record. The Designation of Record shall include material before the Arbitrator in the petitioning Track B proceeding and shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review.

c. Timely serve one copy of the petition, including the designation of record, on the opposing party. Petitions will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

Under Track B, any party responding to a petition must:

a. Timely file with the Facilitator an original response to the petition for Monitor review ("response") and one copy of the response. Responses will be deemed "filed" as of the date of postmark. Responses should be sent to:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

b. In addition, the responding party may file a Designation of Record of additional material not identified by the petitioning party. The Designation of Record of the additional material shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review. The Designation of Record of additional material, if filed, must be filed within sixty days from receipt of the petition for Monitor review.

c. Timely serve a copy of the response, including the responding party's designation of record, if any, on the petitioning party. Responses will be deemed "served" as of the date of postmark.

d. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

The Monitor may, in her discretion, review material in the record before the Arbitrator that has not been designated by the parties.

4. Publication of Rules

The Arbitrator shall include copies of these rules whenever he sends to parties copies of decisions in their Arbitration cases. He shall also immediately send copies to all parties who have already received Arbitration decisions. The Arbitrator, the Monitor, and the parties shall also be free to send copies out to the public upon request.

Monitor Update:
Noncredit Claims—$3,000 for Each Prevailing Class Member

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Noncredit Claims—$3,000 for Each Prevailing Class Member

1. Introduction

The Consent Decree divided *Pigford* claims into two types—credit claims and noncredit claims. The vast majority of class members in the case have credit claims. Several hundred class members, however, have both a credit claim and a noncredit claim, or have only a noncredit claim. This Monitor Update describes noncredit claims, and describes the payment that class members with prevailing noncredit claims will receive.

2. Noncredit Claims and Credit Claims—Defining the Difference

In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to receive some other type of benefit, including the payment of money, from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Award for Noncredit Claimants

The amount to be given to class members who prevail on a noncredit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties that was entered as an official Order by the Court fills in many of the details.

a. Consent Decree—Receive Amount Denied

The Consent Decree provides that a class member who prevails on a noncredit claim is to receive the amount of the benefit that was wrongly denied to the class member. In addition, according to the Consent Decree, these payments will only be made if there are certain funds available in the USDA budget.

b. February 7, 2001, Stipulation and Order—$3,000 Payment

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the award that class members will receive in noncredit cases.

The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel believe that deciding the amount that should be paid for noncredit claims for each person would be difficult, if not impossible.

The Government and Class Counsel therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single payment from USDA in the amount of $3,000.

4. Other Details about the $3,000 Payment

Several other details about the $3,000 noncredit payment were explained in the February 7, 2001, Stipulation and Order. These are discussed below.

a. Only One $3,000 Payment Per Class Member

Each class member who prevails on a noncredit claim may receive only one $3,000 payment. This is true even if the class member prevailed on more than one noncredit claim. This means, for example, that if the class member had a successful claim for a disaster payment in both 1990 and 1992, he or she would receive only one payment of $3,000.

b. Credit and Noncredit Claim Combined

If a class member prevailed on both a credit claim and a noncredit claim, the class member will receive a payment for both the credit claim and the noncredit claim. A class member, therefore, could receive both a $50,000 payment for a credit claim and a $3,000 payment for a noncredit claim.

c. No Tax Payments for Noncredit Claims

Class members who receive a $3,000 payment for a noncredit claim will not receive any more funds—either paid to them or paid directly to the Internal Revenue Service—to cover any tax obligations the class member might incur as a result of the $3,000 payment.

5. More Information

Anyone who has any question regarding noncredit payments should feel free to call the Office of the Monitor at 1-877-924-7483. For more information about the Judge's Order, or for a copy of the Order, please call the Monitor's Office.

Monitor Update:
Debt Relief for Prevailing Class Members

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Debt Relief for Prevailing Class Members

1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief class members will receive.

2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to obtain some other benefit from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

3. Consent Decree and Court Order

Debt relief for class members who prevail on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

a. Consent Decree

The Consent Decree provides that a class member who prevails on a credit claim is to receive a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of the credit claim.

b. February 7, 2001, Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the debt discharge that class members will receive in credit

cases. The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Order.

4. Debts to be Discharged

Certain USDA debts will be discharged as a result of the *Pigford* settlement. These are discussed below. Three types of debts will be discharged. However, an important exception applies to the debt discharge.

a. Debts Affected by Discrimination

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged.

b. Some Debts Incurred After the Discrimination Occurs

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

If, after the date of discrimination, the class member incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged. For example, if the Adjudicator found that USDA discriminated against the class member in denying a Farm Operating Loan in 1994, and the USDA then made a Farm Operating Loan to the class member in 1995, the 1994 and 1995 Operating Loans will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

c. Some Debts Incurred at the Same Time as the Discrimination

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan (EM) Program is a separate program, and so forth.

If the class member incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged. For example, suppose the Adjudicator found that discrimination occurred in 1990 in USDA's servicing of a 1989 Farm Operating Loan. If at the same time in 1990 USDA made a Farm Operating Loan to the class member, the 1990 Farm Operating Loan will be discharged. This is true even though the Adjudicator or Arbitrator did not find discrimination in the making of the 1990 Farm Operating Loan.

d. Important Exception Affecting Debt Relief—Older Lawsuits

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed. For example, if a class member was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the class member, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

e. Loans Made after December 31, 1996—No Debt Discharge

Loans made after the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree. For example, if a class member received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

5. More Information

For more information about the February 7, 2001, Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below.

Anyone who has any question regarding debt relief should call the Monitor toll free at 1-877-924-7483.

Monitor Update:
Understanding Who Is Part of the *Pigford* Case

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Understanding Who Is Part of the *Pigford* Case

A. Introduction

People who are interested in being part of the *Pigford* case fall into three groups: (1) people who are in the case, (2) people who might get into the case, and (3) people who will not get into the case. This Update explains the rules that determine who is in each group and gives some statistics about each group (as of November 26, 2002).

B. Definitions

Before explaining the three groups, it is important to explain what some basic terms mean.

1. **What is the "Consent Decree"?** The Consent Decree is the document that explains what the parties agreed to when they settled the case. The Court approved the Consent Decree after a Fairness Hearing.

2. **What is a "Claim Sheet"?** The term "Claim Sheet" refers to the Claim Sheet and Election Form—the package of forms that one fills out to file an official claim in the case. The deadline for filing a timely Claim Sheet was October 12, 1999.

3. **What is a "Petition for Monitor Review"?** Petitions for Monitor Review are the papers that one files to ask the Monitor to review the decision that was made by the Facilitator, Adjudicator, or Arbitrator. There are deadlines for filing Petitions for Monitor Review: people may call the Facilitator's office at 1-800-646-2873 to find out about deadlines.

4. **What is a "Late Claim Application"?** There are many people who did not file a Claim Sheet on time who believe that they should be part of the case. A person cannot file a Claim Sheet after the deadline (after October 12, 1999) without first getting permission to do so from the Arbitrator. A "Late Claim" application asks the Arbitrator for permission to file a late Claim Sheet. This procedure is sometimes called "5(g)" because it is explained in paragraph 5(g) of the Consent Decree. The Arbitrator is allowed to approve a "Late Claim" application only if he determines that a person was unable to file his or her Claim Sheet on time because of extraordinary circumstances beyond his or her control. The deadline for filing "Late Claim" applications was September 15, 2000.

5. **What is "Late Claim Reconsideration"?** If a person filed a "Late Claim" application on time (by September 15, 2000) and the Arbitrator rejected his or her application, the

person has a chance to ask the Arbitrator to reconsider his decision. Requests for reconsideration must generally be filed within 60 days after the date of the Arbitrator's rejection letter.[1]

C. The Three Groups: Who Is In the Case?

1. Group One: People Who Are In the Case

In general, the people who are in the case or have permission to join the case consist of those who:

a. *Filed Claim Sheet On Time.* There are approximately 21,776 people who filed a Claim Sheet by October 12, 1999, and were determined "eligible" by the Facilitator.[2]

b. *Filed "Late Claim" Application, Request Approved.* There are approximately 1,631 people who did not file a Claim Sheet on time but who did file a "Late Claim" application on time and had the "Late Claim" application approved by the Arbitrator.[3] These people have permission to file a late Claim Sheet. The Facilitator either gave them or will give them a deadline for filing a Claim Sheet. Once the Claim Sheet is filed, if the Facilitator finds them eligible, they will be part of the case.

2. Group Two: People Who Might Get Into the Case

In general, the people who might get into the case consist of those who:

a. *Filed Timely "Late Claim" Application, No Decision Yet.* There are approximately 7,341 people who did not file a Claim Sheet on time (by October 12, 1999) but who did file a "Late Claim" application on time (by September 15, 2000) and have not yet received a decision on their "Late Claim" application.

b. *"Late Claim" Application Rejected, Filed "Late Claim" Reconsideration Request.* There are approximately 17,891 people who filed timely requests for reconsideration after they had their "Late Claim" applications rejected by the Arbitrator and have not yet received decisions on their requests for reconsideration.

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1 When the Arbitrator first officially established a reconsideration policy, the deadline was different. Call the Facilitator at 1-800-646-2873 to find out about reconsideration deadlines.

2 Approximately 23,148 people filed timely Claim Sheets. Of those, the Facilitator found that approximately 21,776 are eligible. People in certain categories who were found ineligible have the opportunity to file a Petition for Monitor Review up until their petition deadline. The Facilitator has identified approximately 163 people who have the right to petition the Monitor regarding eligibility determinations. Monitor Update No. 5 explains eligibility and the rules and deadlines in the Monitor petition process as it relates to eligibility (available from the Monitor's office; call toll-free, 1-877-924-7483).

3 Statistics in this Update concerning the "Late Claims" process are current as of October 1, 2002.

3. Group Three: People Who Will Not Get Into the Case

The Consent Decree and Court Orders in this case establish cutoff dates for getting into the case. These Orders provide that the following people will not get into the case:

a. *Did Not File Timely Claim Sheet and Did Not File Timely "Late Claim" Application.* People who did not file a Claim Sheet on time (by October 12, 1999) and did not file a "Late Claim" application on time (by September 15, 2000) will not get into the case. There are approximately 8,025 people who filed "Late Claim" applications after the deadline (after September 15, 2000)—these people will not get into the case. IT IS NOW TOO LATE TO FILE A "LATE CLAIM" APPLICATION.

   ACCORDING TO THE RULES IN THIS CASE, ANYONE WHO DID NOT FILE A CLAIM SHEET BY OCTOBER 12, 1999, OR A "LATE CLAIM" APPLICATION BY SEPTEMBER 15, 2000, CANNOT BE PART OF THE CASE.

b. *Filed Timely "Late Claim" Applications, But Lost in "Late Claim" Process.* There are approximately 52,256 people who filed timely "Late Claim" applications that were rejected by the Arbitrator. Some of those people had their deadlines for filing reconsideration requests pass without filing a timely request for reconsideration: those people will not get into the case. Additionally, some people filed timely requests for reconsideration, but the Arbitrator denied their request for reconsideration: those people will not get into the case. There is no Monitor review of decisions in the "Late Claim" process.

D. Results for People Who Are In the Case

Most people who are in the case chose Track A (Adjudication). A chart showing the results for people in Track A is attached to this update. A chart showing the results for people in Track B is available from the Monitor's Office (1-877-924-7483).

People who believe that the decision of the Facilitator, Adjudicator, or Arbitrator in their case is wrong have an opportunity to petition for Monitor review. Deadlines apply in the Monitor review process.[4] Call the Facilitator at 1-800-646-2873 find out about deadlines for petitioning for Monitor review and to request a booklet that explains the Monitor review process.

E. Questions

Individuals may call the Monitor's office toll-free at 1-877-924-7483 with questions.

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[4] The exception is that some decisions made by the Facilitator are not subject to Monitor review. The Facilitator can answer individuals' questions about whether or not they have the right to petition.

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Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483

This is not a USDA publication.

Resources for *Pigford* Claimants

1. Introduction

Claimants frequently contact the Office of the Monitor and request information and assistance.[1] One of the Monitor's duties is to assist claimants with "other problems" that they are having with regard to the Consent Decree. Many claimants, however, have problems that are not within the authority of the Monitor to solve. This Monitor Update provides a few suggestions for other resources that may be helpful to these claimants.

2. Debt Relief Available Only for Successful Credit Claims

Before using the resources mentioned in this Update, a claimant should be aware of two warnings.

a. Other Resources May Be Helpful

This Update mentions only a few of the possible places that a claimant might turn to for help. There are likely many others that are not mentioned here that could be helpful. If a group or agency is not listed here, this does not mean that the Monitor's Office thinks the group or agency does poor work.

b. Monitor Cannot Vouch for Groups Mentioned

Several groups and agencies are mentioned in this Update. The Monitor's Office cannot vouch for these groups or agencies. Each claimant should investigate the group or organization carefully before taking advice from them.

3. When the Monitor Can Help

The Consent Decree permits the Monitor to help claimants resolve problems that claimants have with the Consent Decree. For example, the Monitor can help solve claimant problems of the following types.

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[1] The Monitor's duties and responsibilities are outlined in the Consent Decree and the Order of Reference. Claimants can receive a copy of the Consent Decree and/or the Order of Reference by calling our toll free number (1-877-924-7483) and requesting a copy.

a. Debt Relief

Successful Track A credit claimants may be entitled to have part or all of their USDA debt forgiven. Debt relief is confusing, however. If a claimant believes that he or she has USDA debt that should be forgiven, the Monitor may be able to help. The Monitor has also written a short guide, "Monitor Update Number 10, Debt Relief." This Update is available by calling the Monitor's toll-free number. Claimants with questions can contact the Monitor's Office for further assistance.

b. Injunctive Relief

Successful Track A credit claimants are entitled to receive Injunctive Relief. This may include, for example, priority consideration for a new USDA loan. If a claimant believes his or her right to Injunctive Relief is being denied, the Monitor may be able to help. Successful non-credit claimants also are entitled to a limited form of Injunctive Relief. A short written guide, "Monitor Update Number 4, Injunctive Relief," may also be of help. This Update is available by calling the Monitor's toll-free number.

c. Other Problems Related to the Consent Decree Settlement

Prevailing claimants may have other problems related to the Consent Decree. These could include, for example, the timing of cash payments, non-credit relief, some tax-related problems, and other matters. Claimants with these types of questions should contact the Monitor.

4. How to Contact the Monitor

a. By Phone – 1-877-924-7483

Claimants may contact the Office of the Monitor by calling toll free 1-877-924-7483. If the operator who answers the call is unable to assist a Claimant, Claimants may make an appointment to speak with a member of the Monitor's legal staff.

b. In Writing

The Monitor can be reached by writing:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

5. When the Monitor Cannot Help

Problems faced by claimants often are not related to the *Pigford* Consent Decree. The Monitor is not allowed to help claimants with these kinds of problems.

For example, many claimants find it hard to develop the cash flow plans and other financial plans that lenders often want to see before a loan is made. Further, some claimants find it difficult to deal with private lenders and other creditors. In both cases, since the problems are not related to the Consent Decree, the Monitor cannot provide the kind of help the claimant may need. The following groups and organizations may, however, be of some help in these situations.

a. University and Extension Programs

A number of colleges and universities have programs that are designed to help farmers. The programs mentioned below actively aim to assist African American farmers.

1) ***Alcorn State Cooperative Extension (Mississippi)***

Alcorn State University Cooperative Extension Program
Small Farm Outreach Training and Technical Assistance Project
1000 A.S.U Dr. # 479
Alcorn State, MS 39096-7500
Phone: 601-877-6128
Fax: 601-877-6694
Web site: none

Service Area: Southwest Mississippi.

2) ***Tuskegee University (Alabama)***

Tuskegee University Cooperative Extension Program
204 Morrison Mayberry Hall
Tuskegee, Alabama 36088
Phone: 334-724-4441
Fax: 334-727-8812
Web site: www.tusk.edu

Service area: State of Alabama.

3) ***North Carolina A & T Small Farm Outreach Training & Technical Assistance Program (North Carolina)***

North Carolina A & T State University
Cooperative Extension Program
Greensboro, NC 27411
Phone: 336-334-7024
Fax: 336-334-7207

Web site: http://www.ag.ncat.edu/extension/programs/sfottap/index.htm

Service Area: State of North Carolina.

4) ***University of Arkansas of Pine Bluff (Arkansas)***

University of Arkansas of Pine Bluff Small Farms Program
1200 North University Drive
UAPB Mail Slot 4906
Pine Bluff AR, 71601
Phone: 870-575-8142, 7246
Fax: 870-543-8035
Web site: none

Service Area: Thirteen Arkansas counties: Jefferson; Lincoln; Drew; Desha; Chicot; Ashley; Crittenden; St. Francis, Woodruff; Lee; Phillips; Monroe; Arkansas.

5) Southern University

Louisiana Family Farm Technical Assistance Project
Southern University
Baton Rouge, LA
Phone: 225-771-3863
Fax: 225-771-5728
Web site: none

Service Area: Nineteen parishes in Northeastern Louisiana.

b. Farm Advocacy Group

The following groups are generally private nonprofit organizations that work closely with African American farmers. They are not part of a college or university.

1) Arkansas Land and Farm Development Corporation

Arkansas Land and Farm Development Corporation
Route 2 Box 291
Brinkley, AR 72021
Phone: 870-734-1140
Fax: 870-734-4197
Web site: none

2) Federation of Southern Cooperatives/Land Assistance Fund

Administrative Office
2769 Church Street
East Point, GA 30344
Phone: 404-765-0991
Fax: 404-765-9178

Georgia Field Office
P.O. Box 3092
Albany, GA 31706
Phone: 912-432-5799
Fax: 912-439-0894

Rural Training & Research Center
P.O. Box 95
Epes, AL 35460
Phone: 205-652-9676
Fax: 205-652-9678
Web site: http://www.federationsoutherncoop.com/

c. Legal Organizations

Claimants may have questions about other legal problems. The Monitor is not allowed to provide legal advice to class members. Claimants experiencing legal problems may wish to contact one of the following nonprofit organizations that assist family farmers, including African American family farmers.

1) Land Loss Prevention Project

Land Loss Prevention Project
P.O. Box 179
Durham, NC 27702
Phone: 919-682-5969
Toll-Free: 1-800-672-5839
Fax: 919-688-5596
Web site: www.landloss.org

Service Area: State of North Carolina.

2) Farmers' Legal Action Group, Inc.

Farmers' Legal Action Group, Inc.
46 E. 4th St., Suite 1301
St. Paul, MN 55101-1109
Phone: 651-223-5400
Fax: 651-223-5335
Web site: www.flaginc.org

Service Area: Nationwide.

d. State Departments of Agriculture

Each state maintains a state Department of Agriculture. Claimants may want to contact their state department of agriculture for additional assistance. A listing of all of the states departments of agriculture can be found on the web at:

http://www.accesskansas.org/kda/stateags.html

e. USDA

USDA maintains the following resources that may be of help to claimants.

1) USDA Hot Line for Minority and Socially Disadvantaged Farmers (MSDA)

The Farm Service Agency (FSA) has established an Office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) to work with minority farmers who have concerns about loan applications filed with local FSA offices. The MSDA Office will operate Monday to Friday, 8 to 5 p.m. Eastern Time.

Office of Minority and Socially Disadvantaged Farmers
Farm Service Agency
USDA
1400 Independence Ave SW
Mail Stop 0501
Washington, DC 20250-0501
Phone: 1-866-538-2610 (toll-free) or 202-720-1584 (local)
FAX: 1-888-211-7286 (toll-free) or 202-690-3432 (local)
E-mail: msda@wdc.usda.gov

2) USDA Office of Civil Rights – Discrimination Complaints

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights
USDA
1400 Independence Avenue SW
Mail Stop 9410
Washington, D C 20250
Phone: 202-720-5964
TTY 202-402- 0216
Fax: None
Web site: http://www.usda.gov/da/cr.html

3) Farm Service Agency Appeals

Farm Service Agency (FSA) applicants may appeal many adverse FSA decisions. To appeal an FSA decision, the applicant must ask for a hearing within thirty days after he or she received notice of the adverse decision. If an applicant receives a letter of denial from FSA, there should be directions about how to go forward with an appeal.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

Post Office Box 64511
St. Paul, Minnesota 55164-0511
Phone (toll-free): 1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #2 — June 2002

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of May 2002. Please read this booklet carefully before you prepare your Petition for Monitor Review.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash, and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

J.L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
555 13th Street NW
Washington, DC 20004
Phone: 202-637-6624
Fax: 202-637-5910

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that

in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made its decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

9a. If you are represented by Class Counsel. Class counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government

submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agrees not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is

successful, under certain circumstances USDA will refund any money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. A court order dated July 14, 2000, established deadlines for Petitions for Monitor Review.

a. Decisions dated on or before July 14, 2000. If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

b. Decisions dated after July 14, 2000. If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483 and request Monitor Update Number 3.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. I will send you a letter explaining my decision. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest errors that I found in your file—that letter, along with any documents that I have accepted into the record in your case, w the Facilitator, Adjudicator, or Arbitrator, and copies will be sent to yc government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit.

Monitor Form #1:
Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

Are you represented by a lawyer regarding this Petition for Monitor Review?

☐ Yes ☐ No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

If you check "yes" and give us your lawyer's name and address, we will send your lawyer copies of all of the papers that we send to you.

3. Additional Information or Papers

Are you submitting any additional information or papers along with your Petition for Monitor Review?

☐ Yes ☐ No

If no, go to section 4 below.

If yes, please explain the flaw(s) or mistake(s) in the claims process in your case. (Please feel free to attach more pages.)

_____

_____

Please describe the additional information or papers that you would like the Monitor to review because of the flaw(s) or mistake(s). (Please feel free to attach more pages.)

Please explain why there would be a fundamental miscarriage of justice if the Monitor does not consider the additional information or papers. (Please feel free to attach more pages.)

4. Explain the Error

As explained in the letter and booklet that were sent with this form, the Monitor can only require reexamination of your decision if she finds that the decision was a "clear and manifest error" likely to result in a "fundamental miscarriage of justice." Please explain why the decision in your case was that type of "clear and manifest error." It is very important that you explain in full detail every reason why the decision was a "clear and manifest error." (Please feel free to attach more pages.)

5. Claims Involving Attempts to Apply

If your claim of discrimination involved your attempt to apply for a loan, please answer the following questions. (If your claim is not about an attempt to apply for a loan, please go to part 6.) (Please feel free to attach more pages.)

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

_____

_____

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

_____

_____

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

_____

_____

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

_____

_____

6. Signature

Please sign here. By signing this Petition, you are promising that you believe that everything you are saying in this Petition is true.

_____ _____

Signature Date

7. Submit Your Petition

Submit your completed Petition for Monitor Review to:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

The Monitor's office will send you a letter confirming that they have received this Petition for Monitor Review from you. The letter will include a photocopy of your Petition for Monitor Review for your records.

Monitor Form #1:
Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

Are you represented by a lawyer regarding this Petition for Monitor Review?

☐ Yes ☐ No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

If you check "yes" and give us your lawyer's name and address, we will send your lawyer copies of all of the papers that we send to you.

3. Additional Information or Papers

Are you submitting any additional information or papers along with your Petition for Monitor Review?

☐ Yes ☐ No

If no, go to section 4 below.

If yes, please explain the flaw(s) or mistake(s) in the claims process in your case. (Please feel free to attach more pages.)

_____

_____

Please describe the additional information or papers that you would like the Monitor to review because of the flaw(s) or mistake(s). (Please feel free to attach more pages.)

Please explain why there would be a fundamental miscarriage of justice if the Monitor does not consider the additional information or papers. (Please feel free to attach more pages.)

4. Explain the Error

As explained in the letter and booklet that were sent with this form, the Monitor can only require reexamination of your decision if she finds that the decision was a "clear and manifest error" likely to result in a "fundamental miscarriage of justice." Please explain why the decision in your case was that type of "clear and manifest error." It is very important that you explain in full detail every reason why the decision was a "clear and manifest error." (Please feel free to attach more pages.)

5. Claims Involving Attempts to Apply

If your claim of discrimination involved your attempt to apply for a loan, please answer the following questions. (If your claim is not about an attempt to apply for a loan, please go to part 6.) (Please feel free to attach more pages.)

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

Office of the Monitor
Pigford v. Veneman (D.D.C.)
Brewington v. Veneman (D.D.C.)

Post Office Box 64511
St. Paul, Minnesota 55164-0511
Phone (toll-free): 1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you $50,000 in cash and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form #1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050
Fax: 202-331-9306

J. L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
Attorney at Law
3050 K Street NW, Suite 400
Washington, DC 20007-5108
Phone: 202-342-8864
Fax: 202-342-8451

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to "direct their reexamination" by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator's office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that

in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made his decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases. Monitor Update #8, "Procedural Rules for Track B Cases" addresses the rules for Monitor Review of Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information the government maintains about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

9a. If you are represented by Class Counsel. Class Counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" update free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agreed not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that USDA acquired through foreclosure that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is successful, under certain circumstances USDA will refund money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483 to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you've already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor's office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

14. Is there a deadline for Petitioning for Monitor Review?

Yes. Two court orders established deadlines for Petitions for Monitor Review. One order, dated July 14, 2000, established deadlines for Petitions for Monitor Review in Track A and Track B cases. The other Order, dated October 29, 2002, established a deadline for filing Petitions for Monitor review of Facilitator Eligibility determinations.

a. Track A Adjudication or Track B Arbitration

(1) **Decisions dated on or before July 14, 2000.** If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of Petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).

(2) **Decisions dated after July 14, 2000.** If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

b. Facilitator Review of Eligibility Determinations

(1) **Decision on or before October 29, 2002—deadline was February 26, 2003.** If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

(2) **Decision after October 29, 2002—deadline 120 days after Decision.** If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483.

15. What are the steps in the Monitor review process?

In general, there are three steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) that I found in your file—that letter, along with any documents that I have accepted into the record in your

case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies of the letter will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.

PREPARED STATEMENT AND ATTACHMENTS FROM ARIANNE CALLENDER

Pigford Revisited[1]

Testimony of Arianne Callender
General Counsel
Environmental Working Group

Before the Subcommittee on Constitution
House Judiciary Committee

Washington, D.C.
September 28, 2004

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify today. My name is Arianne Callender, and I am General Counsel to the Environmental Working Group (EWG), a nonprofit research and advocacy organization based here in Washington, DC. Environmental Working Group teamed up with John Boyd, President of the National Black Farmers' Association (NBFA), to conduct a study of the landmark settlement between black family farmers and the United States Department of Agriculture (USDA), in the case known as Pigford v. Glickman. Mr. Chairman, I want to acknowledge Mr. Boyd, who is here today, for the invaluable contributions he and his organization have made to EWG in conducting our research, and more importantly, for the courage, persistence and skill with which he has sought to regain justice for black family farmers, and through those efforts, to redeem the very essence of justice for all Americans. After reading reports of farmers facing unexpected opposition within the Pigford settlement process, and we set out to learn and report on the state of play of the settlement. We analyzed court documents and settlement statistics, interviewed farmers and attorneys involved in the settlement, talked to the settlement's governing bodies, and reviewed expense reports and timesheets from the United States Department of Justice (DOJ). The results of the study are available on the EWG website, www.ewg.org.

EWG and NBFA Report Findings.

Four major findings arose from our study.

- Nine in ten black family farmers who came forward with complaints of discrimination were denied access to the settlement funds.

- The settlement was estimated to be worth 2.3 billion dollars in compensation to black family farmers before the size of the class was determined. Depending on the actual size of the class, the value of the settlement could have gone much higher. Ultimately, the size of the class was larger than expected, but black family farmers received only 25% of the settlement's estimated value in direct payments awarded through the settlement--$650 million.

[1] A copy of all of the Appendixes has been provided to the Subcommittee Clerk and are available upon request.

- USDA withheld vital information that was required of black family farmers in order to prove their settlement claims.

- USDA spent twelve million dollars to pay for 56,000 staff hours of legal work by the Department of Justice to challenge black family farmers' settlement claims one-by-one.

Fundamental Civil Trial Protections Were Absent from the Pigford Settlement.

A major concern arising from these findings is that secrecy and a biased procedural structure have made black family farmers vulnerable to the same inequities that led to the lawsuit in the first place. In particular, several key protections of civil trials have not been provided in the settlement.

For one, the settlement proceedings are conducted in secret, and do not have the transparency of civil trials, which have public proceedings and a public docket. In the Pigford settlement, hearings are held in secret, all of the parties are required to sign confidentiality agreements, all documents are confidential, and in some instances, farmers must make special requests to obtain written rulings in their own cases. This lack of transparency substantially limits the potential for public accountability and scrutiny of the conduct and decision-making of USDA, DOJ, the arbitrator, the adjudicators or the monitor. It's worth noting that it was only as a result of public accountability and scrutiny that USDA was forced to confront and document its history of discrimination to begin with, and ultimately enter into the Pigford settlement.

Another key civil trial protection absent in the Pigford settlement is the right to discovery. In court, both parties in a case have the right to demand information from their opponent that is relevant to the allegations of the lawsuit. The Pigford settlement provided for no such discovery rights. Although the Track B arbitration process called for the disclosure of witnesses, the settlement's consent decree included no other provisions for information exchange between the parties. This created a formidable burden for all farmers in the Pigford case, who had to prove discrimination without the benefit of access to information held in USDA files, particularly information about similarly situated white farmers. This is precisely the type of information USDA's Civil Rights Action Team used in it's landmark 1997 report to document the widespread discrimination that the department ultimately acknowledged.

The farmers in the settlement routinely found themselves, instead of in a room full of documents produced through discovery, face-to-face with the same individuals who were responsible for the discrimination that gave rise to their claim in the first place, asking for the information on white farmers that was necessary to prove their claims. Thus, the settlement's lack of structure and procedure provided yet another opportunity for USDA or Farm Services employees to continue to discriminate against black family farmers.

The Pigford settlement also failed to provide for the right to an appeal. In court, parties have the opportunity to appeal decisions to a neutral body that has the power to overturn unfair or incorrect decisions of the lower court. In the Pigford settlement, the only way to challenge the decisions is to ask the Monitor to instruct the original

decision-maker to reconsider the ruling. In addition, all of the decision-makers in the Pigford settlement are private parties. Thus, the Pigford class members not only have no way to obtain a reversal, but without any accountability to the public or an appeal body, the decision-makers in the settlement have diminished incentive to ensure that their decisions are correct and just.

Finally, the Pigford settlement failed to establish rules of procedure or provide definitions for the standards created in the settlement. These family farmers went into the settlement process expecting a simple, benign bureaucratic encounter, seeking to claim what the court described as a "*virtually automatic* cash payment of $50,000" with little or no documentation required--something almost as easy as applying for a driver's license. *See* Pigford v. Glickman, 182 F.R.D. 82, 95 (D.D.C. 1999), attached herein as Appendix C, emphasis added. Instead, they faced a hostile, complex process for which they simply were not prepared.

For instance, section 5(g) of the consent decree provided that a farmer could obtain entry into the settlement after the original deadline by proving that "the failure to submit a timely claim was due to extraordinary circumstances beyond his control." *See* Pigford v. Glickman Consent Decree, attached herein as Appendix E. Although the consent decree provided no further information about this standard beyond this vague statement, 64,000 applicants were denied late entry for the failure to satisfy this requirement. This provision had the unique power to take away these citizens' right to enforce civil rights standards, to protect a property interest, and to obtain a merit-based review of an actionable claim. With such fundamental rights at stake, a clearly defined standard is necessary to prevent arbitrary or unfair application of the rule. The result, according to the arbitrator's interpretation of the standard, was that any farmer who claimed that his or her tardiness was due to lack of notice of the deadline or the lawsuit was denied late entry into the class. The term "extraordinary circumstances beyond [one's] control" gives no indication that it is meant to exclude those who did not receive notice of the lawsuit or the deadline. Because the standard was not defined in the consent decree, those 64,000 farmers with discrimination complaints were subject to a vague standard that left room for arbitrary or unfair interpretation and cost them the chance to have their claims heard on the merits.

Another vague standard that proved to be a barrier for farmers in the settlement was the standard for proving discrimination. For applicants who pursued the Track A adjudication process, the consent decree provided that they had to prove that they were treated differently than "specifically identified, similarly situated white farmers." *See* Pigford v. Glickman Consent Decree at ¶9(a)(i)(C), attached herein as Appendix E. Although the Court's fairness opinion explained that the standard of proof set forth in the consent decree required that the farmers show more than a "mere scintilla" of evidence to support their claim, no actual definition of the standard or its requirements was provided. *See* Pigford v. Glickman, 182 F.R.D. 82, 96 (D.D.C. 1999), attached herein as Appendix C.

For those family farmers proceeding under the arbitration process known as Track B, the consent decree stated only that the arbitrator would decide whether the farmer had shown that it is more likely than not that "he was the victim of racial discrimination and that he suffered damages." *See* Pigford v. Glickman Consent Decree ¶10(g),

attached herein as Appendix E. Again, nothing further was provided to define or delineate the requirements for satisfying the standard. As a result, in the settlement process, USDA had free reign to contest farmers' claims and argue that the farmers were required to prove highly specific details about the similarly situated white farmers to succeed. The farmers could face challenges for failure to identify a white farmer with a farm that was the exact same size, or who applied for the exact same specific program in the same year, or who had the same credit history as the farmer bringing the claim. The failure to clearly define the standard at the outset gave USDA and DOJ an opportunity to, in effect, devise their own requirements, which could not be contested or appealed within the settlement process. The result was to raise the bar so high that many farmers would find it impossible to prove their claims.

The Track B process was created without establishing any rules of procedure. In absence of clearly defined procedure, USDA and DOJ were free to concoct their own rules. USDA and DOJ could seek dismissal of farmers' claims prior to a hearing, file "motions" challenging every decision of the arbitrator--final or intermediate. They could halt proceedings pending decisions on their "motions," seek recusal of the arbitrator after receiving an adverse ruling, and agree to extensions to deadlines, then later seek to dismiss the same case for the failure to meet the deadline that had been extended. Without procedural rules, farmers in the settlement did not have the tools at their disposal to effectively anticipate or respond to USDA or DOJ tactics. This allowed USDA and DOJ to take advantage of the consent decree's ambiguity to invent their own procedures as they challenged farmers' claims one-by-one.

Statistics Reveal that 81,000 Aggrieved Black Family Farmers Received Nothing from the Settlement.

Turning to the statistical breakdown of the outcome, the overall result was that 94,000 black family farmers came forward with complaints of discrimination and 81,000 received nothing from the settlement. Denials came in two forms: late claim denials and class member denials.

A total of 63,816 farmers who filed timely late claims applications were rejected for failure to prove that extraordinary circumstances caused their tardiness, a standard that was not defined in the consent decree. All farmers who sought late entry because they were not notified of the settlement or deadline were rejected and never had their claims heard on the merits. An additional 7,800 were rejected because they did not file timely late claims applications.

Seventy-four thousand is much larger than original estimates of the size of the class. This raises the question of how the USDA could have had such a low estimate of the number of potential claimants at the time of the settlement, compared to the number who came forward. Here are the factors we have identified:

- The class period spanned 1981 through1996, and the 1982 Census of Agriculture census shows 54,000 black-owned farms, a number that declined in subsequent counts. Census-enumerated 'farms' do not, however, translate into potential claimants, because there can be multiple operators with legitimate claims on each farm.

- In addition, that 1982 census figure was likely an undercount, because according to the 2002 Census, the Department has significantly undercounted black family farmers over the years. *See* 2002 Introduction to Census of Agriculture Preliminary Report and National Table of Principle Operators by Race, attached herein as Appendix L. The improved techniques of the 2002 census, for example, enumerated some 29,000 black-operated farms in that year, compared to only 19,000 originally enumerated in the previous, 1997 census. *See* Appendix L.

- The Pigford class includes a number of individuals who are not represented in USDA census numbers. It includes those would have farmed in the absence of USDA's discrimination as well as heirs of deceased class members who had valid claims.

We believe that these factors, taken together, help explain why the class size was severely underestimated throughout the Pigford case and its settlement.

Turning to class member denials, 8,610 Pigford class members were denied awards that the court itself described as "virtually automatic" payments of $50,000. A major obstacle for all farmers was that they had to prove that they fared worse than specifically identified, similarly situated white farmers and USDA and DOJ denied access to this vital information, at the same time, arguing that black farmers had to meet exacting standards in proving this aspect of their claim. The procedure was designed to provide farmers with a payment for their suffering in exchange for giving up their right to resolve their case in court. Expecting a good faith resolution and a simplified procedure for obtaining "virtually automatic" payment, the farmers forfeited their rights to a trial before a judge or jury of their peers. Indeed, the court and the parties acknowledge that the farmers in the class would have very little documentation to support their claims. Despite all of this, 40 percent of the farmers who proved that they met the class definition were denied compensation.

Even when farmers won, USDA and DOJ challenged farmers, prompting the court to comment on the surprisingly large number of objections to successful claims. Of the 200 farmers who chose forgo the $50,000 option and seek higher payment, USDA and DOJ challenged 14 of the 18 farmers who succeeded after a hearing. Monitor and facilitator statistics show that USDA and DOJ filed at least 672 additional challenges against farmers who were awarded compensation the settlement. Also, DOJ records show that they were paid at least $12 million to spend some 56,000 legal staff hours challenging farmers' claims after the settlement was reached.

Congressional Action is the Only Way to Ensure Just Restitution for Black Family Farmers.

Five years have passed, 40 percent of the class was denied "automatic payment", and 64,000 more black family farmers were turned away with no chance to have their cases heard on the merits. It is useful to seek to understand more about what has gone wrong with this process, but not at the expense of the black family farmers who were denied relief. We recommend a fair, common-sense legislative solution that would provide black farmers with access to the information on white farmers that is necessary to prove their claims, a chance to have this new evidence considered in their cases, and

a chance to have their claims heard on the merits. Finally, we recommend independent oversight to ensure accountability, monitoring and enforcement of the civil rights laws that USDA has defied for decades.

Mr. Chairman, while we have conducted rigorous review of the settlement's statistical outcome, we think that the most important matter that is raised by all of this is the moral conscience of the federal government. Civil rights laws were created out of a sense of morality about how our society ought to operate. We place great confidence in the expectation that our government will do what is right, and will be motivated by the best interests of its citizens.

Pigford is not just any settlement, and USDA is not just a 'client' of the Justice Department. The wrongs underlying this settlement are some of the most disgraceful acts of discrimination that any federal agency has engaged in, particularly since civil rights laws have been passed. USDA was entrusted by Congress with directly disbursing billions of dollars to farmers, and they have expressly admitted, in the Civil Rights Action Team Report and National Commission on Small Farms Report, that they have not only systematically discriminated against black farmers with these funds, but they have also contributed to the tremendous land loss that black family farmers have suffered. *See* Civil Rights Action Team Report, attached herein as Appendix J. *See also* National Commission on Small Farms Report, attached herein as Appendix K. After admitting this wrong and agreeing to pay farmers a symbolic payment for their damages and suffering, USDA hired DOJ to challenge farmers every step of the way.

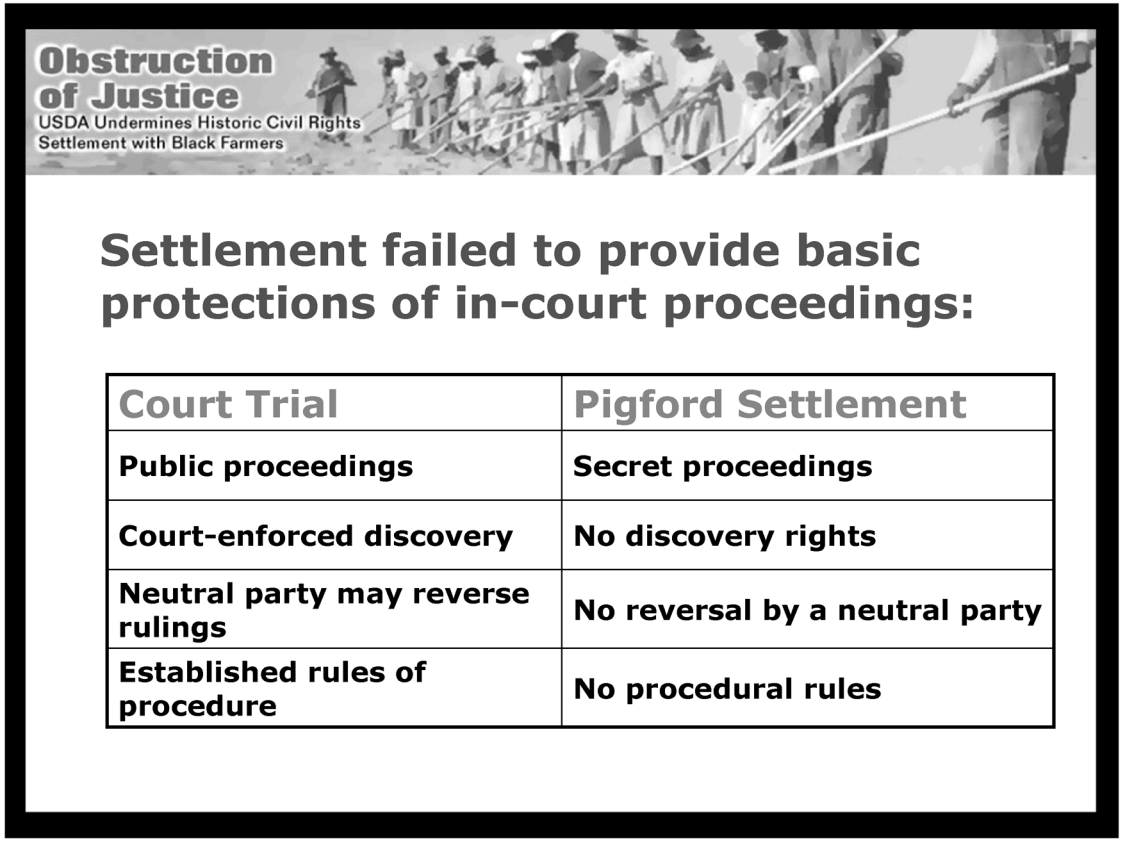
In 1996, Congress stepped in to allow this settlement to proceed, to ensure that black family farmers received compensation, and to make a statement that this type of blatant discrimination will not be tolerated in the federal government. The hostility and opposition, and ultimately continued discrimination that black farmers unwittingly met when they entered into the Pigford process was precisely the opposite of what Congress, the farmers and even Judge Friedman, intended. It was an affront to the farmers, to the spirit of the Consent Decree, to Congress, and to all citizens who rely on our federal government to treat citizens fairly. The Pigford settlement is a continuing disgrace to a Department of Agriculture that is charged by Congress with providing billions of dollars of assistance to family farmers every year. We are looking to the Honorable members of this body today to consider not just the legal obligations of our government, but its conscience. We ask you to examine what has happened in light of the moral values of fairness and equitable treatment that serve as the basis of our constitution and our public trust, and to condemn any actions that support defiance of these values, regardless of the justification.

Black family farmers have persevered in this struggle. They embody the interests of fairness, of defense of property rights, and of honest, color-blind government. They may never be made whole. But we hope that you will work to ensure that their rights are vigorously defended and that they are provided a fair chance at obtaining the restitution that they so clearly deserve.

APPENDIX A

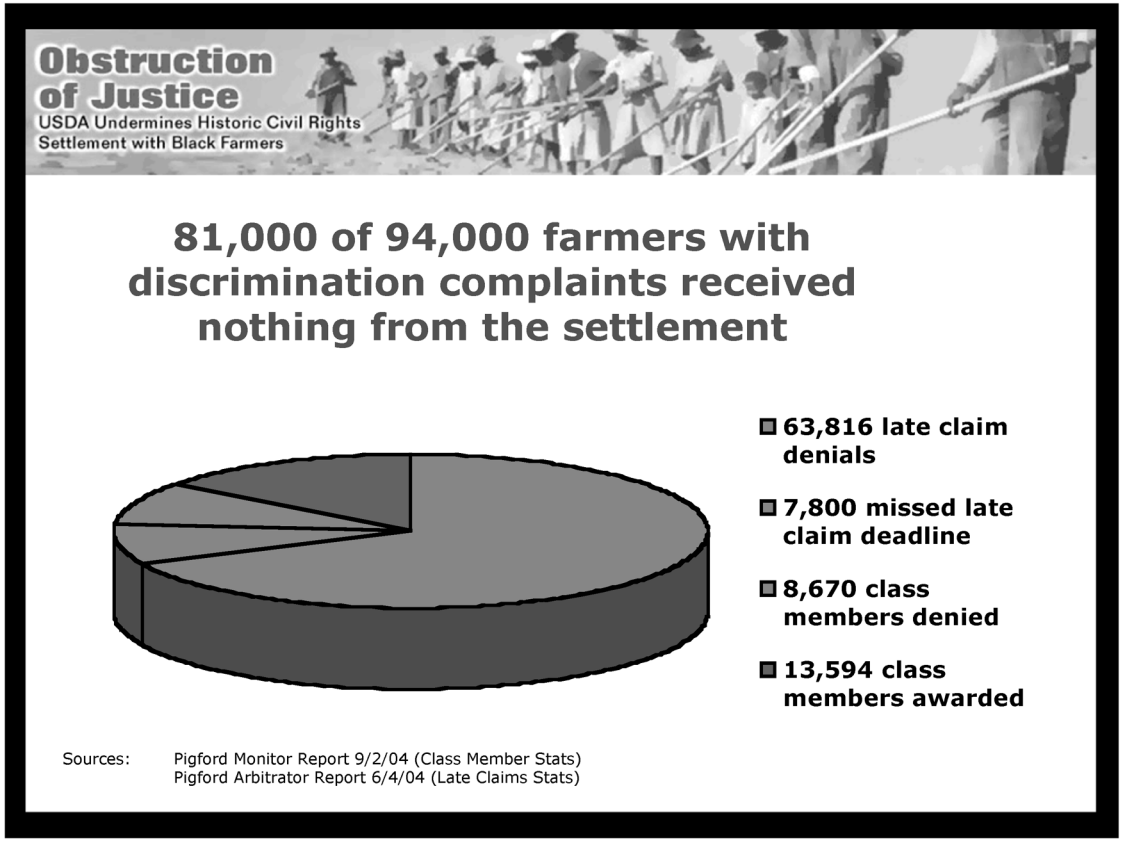
Obstruction of Justice
USDA Undermines Historic Civil Rights Settlement with Black Farmers
Arianne Callender, General Counsel
Environmental Working Group

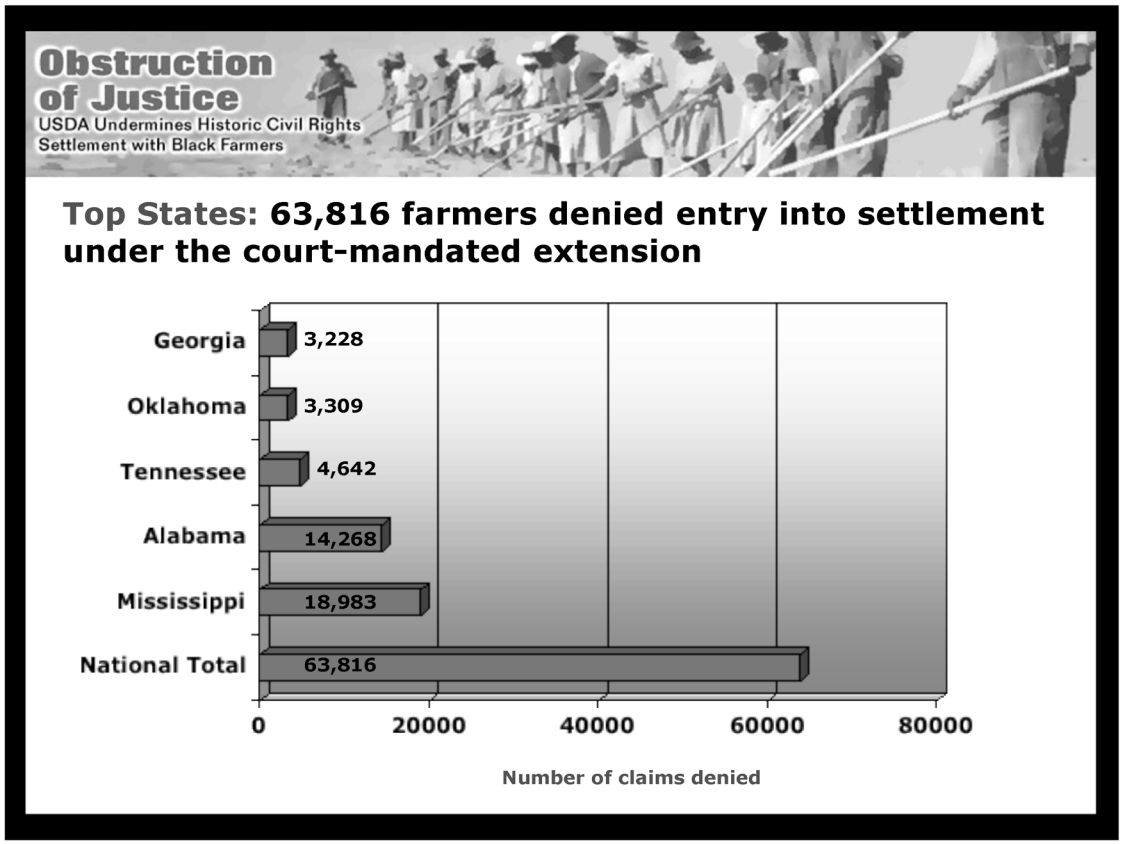

Obstruction
of Justice
USDA Undermines Historic Civil Rights
Settlement with Black Farmers
Findings:
• 9 in 10 farmers' claims were denied
• Farmers received only 25% of the settlement's estimated value
• $12 million spent on 56,000 hours of legal staff time to fight claims
• USDA withheld vital information

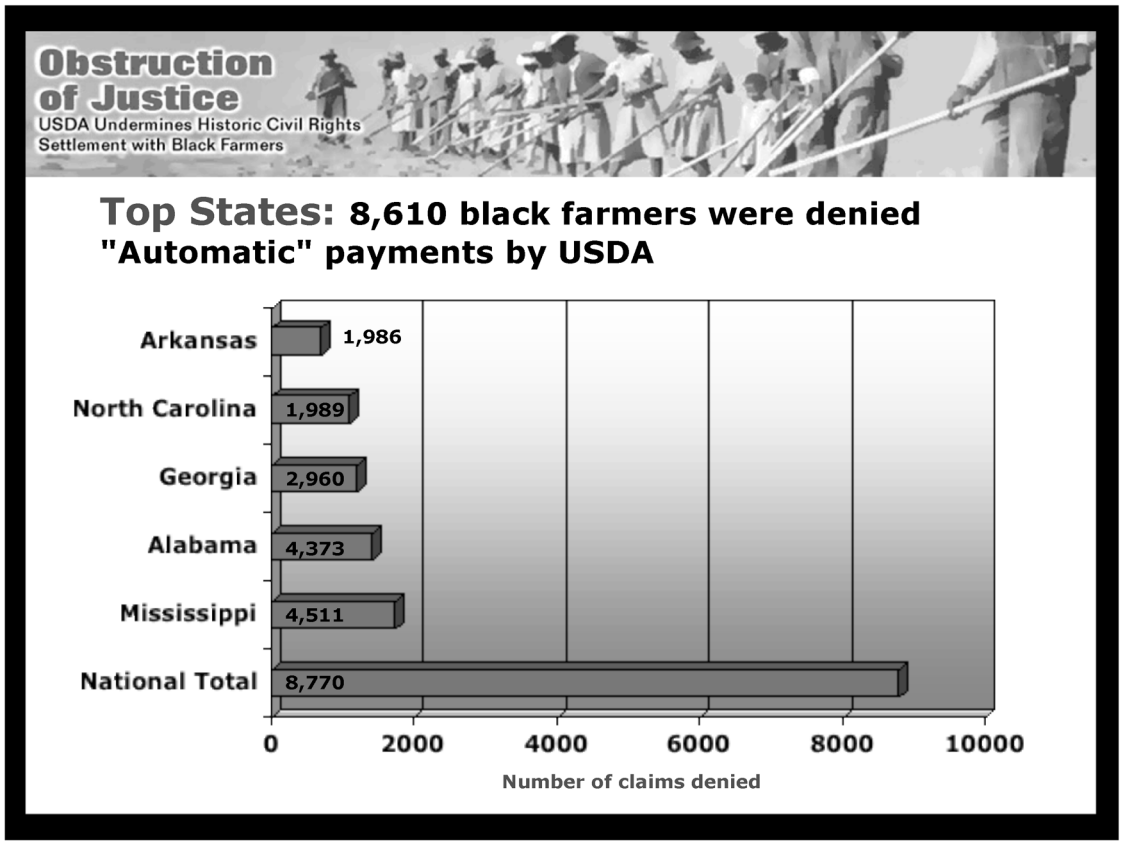


Settlement failed to provide basic protections of in-court proceedings:

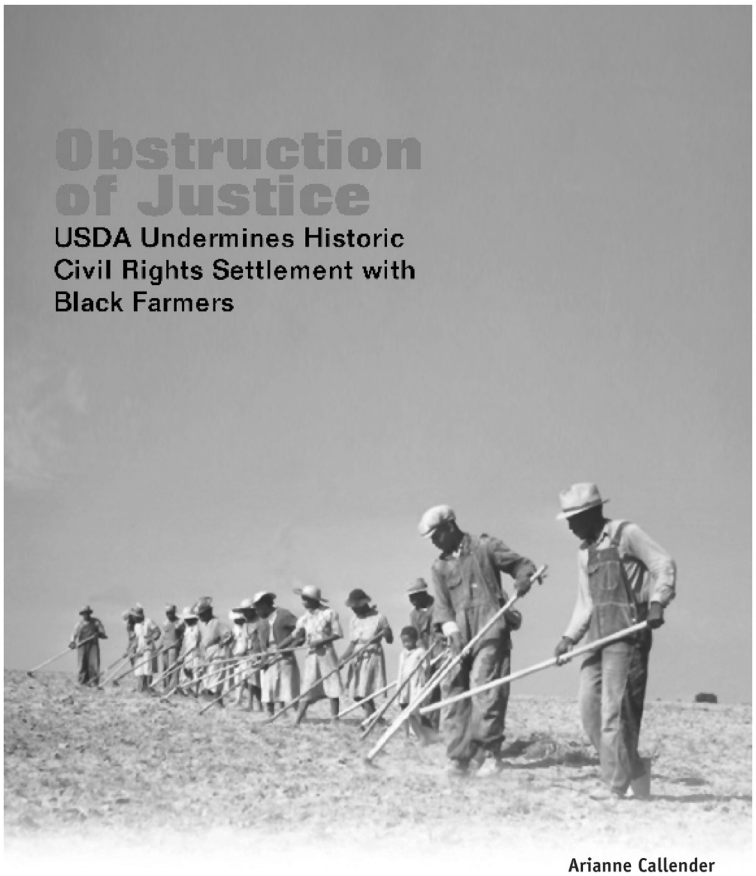
Court Trial	Pigford Settlement
Public proceedings	Secret proceedings
Court-enforced discovery	No discovery rights
Neutral party may reverse rulings	No reversal by a neutral party
Established rules of procedure	No procedural rules


Obstruction
of Justice
USDA Undermines Historic Civil Rights
Settlement with Black Farmers
81,000 of 94,000 farmers with discrimination complaints received nothing from the settlement
63,816 late claim denials
7,800 missed late claim deadline
8,670 class members denied
13,594 class members awarded
Sources: Pigford Monitor Report 9/2/04 (Class Member Stats)
Pigford Arbitrator Report 6/4/04 (Late Claims Stats)


Obstruction of Justice
USDA Undermines Historic Civil Rights Settlement with Black Farmers
Top States: 63,816 farmers denied entry into settlement under the court-mandated extension
Georgia
3,228
Oklahoma
3,309
Tennessee
4,642
Alabama
14,268
Mississippi
18,983
National Total
63,816
0
20000
40000
60000
80000
Number of claims denied


Obstruction of Justice
USDA Undermines Historic Civil Rights Settlement with Black Farmers
Top States: 8,610 black farmers were denied "Automatic" payments by USDA
Arkansas
1,986
North Carolina
1,989
Georgia
2,960
Alabama
4,373
Mississippi
4,511
National Total
8,770
0
2000
4000
6000
8000
10000
Number of claims denied

APPENDIX B


Obstruction of Justice
USDA Undermines Historic Civil Rights Settlement with Black Farmers
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ENVIRONMENTAL WORKING GROUP
THE POWER OF INFORMATION
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EWG is a nonprofit research organization with offices in Washington, DC and Oakland, CA. EWG uses the power of information to educate the public and decision-makers about a wide range of environmental issues, especially those affecting public health.

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Executive Summary:

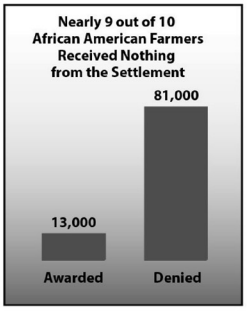
USDA Stonewalls African American Farmers in Landmark Civil Rights Settlement

A new investigation by Environmental Working Group (EWG) and the National Black Farmers' Association (NBFA) finds that the United States Department of Agriculture (USDA) willfully obstructed justice by deliberately undermining the terms of a 1997 landmark civil rights settlement with African American farmers. As a result, the vast majority of African American farmers have been denied compensation that the court, in approving the settlement, described as "automatic." For the 81,000 farmers denied compensation, there is no future opportunity to obtain relief. Even though USDA has admitted to civil rights abuses, it withheld some three quarters of the $2.3 billion that the settlement was worth. Without intervention by the United States Congress, these farmers will never receive the compensation they so clearly deserve (Attached herein as Appendix C).

> "I never even got the chance to start the chicken farm like I wanted. I just gave up."
>
> **—Leroy McCray, Sumter County, SC farmer**

Specifically we found that:

- Nearly nine out of ten denied restitution. USDA denied payment to 86 percent, or 81,000 out of 94,000, African American farmers who came forward seeking restitution.
- 56,000 hours spent fighting farmers. USDA aggressively fought claims by African American farmers, contracting with United States Department of Justice lawyers who spent at least 56,000 staff hours and $12 million contesting individual farmer claims for compensation.



The 81,000 denials took two forms:

- Deadline barred 64,000 claims, despite lack of notice. The settlement-funded arbitrator rejected 64,000 farmers who came forward with claims during the late claims process established by the court. The late claims process was necessary because the farmers' attorneys, whose representation was characterized by the court as "bordering on legal malpractice," failed to notify the farmers of the original deadline for application. The settlement-funded arbitrator rejected these 64,000 farmers simply on the basis of their tardiness for the original deadline, even though all 64,000 rejected claims were submitted within the court established late claims period. An additional 7,800 farmers failed to file before the late claims deadline expired and were also denied entry to the class.

- 9,000 denied "automatic" award. Of the 22,000 farmers granted access to the class, in what the court referred to as "automatic" payment status, USDA denied payment to 40 percent, or 9,000 farmers. Entry to the class was not guaranteed, but depended on a farmer proving that he/she applied for a USDA loan between 1981 and 1996, that USDA's response was racially discriminatory, and that the individual filed a discrimination complaint arising from USDA's treatment of the application. All of the 9,000 farmers denied payment by USDA met these criteria, but received nothing.

In this historic civil rights case, known as *Pigford v. Veneman*, USDA promised to pay billions to African American farmers who claimed that the USDA had systematically discriminated against them for decades, denying them access to essential crop loans that were made readily available to "similarly situated" white farmers in their communities. The settlement was largely based on USDA's own admission of discrimination in its 1997 civil rights study, and the Reagan Administration elimination of the USDA's Office of Civil Rights in 1983, effectively denying African American farmers any recourse for claims of discrimination from 1983 through 1996, when the Office was reestablished. In part due to lack of equal access to USDA loans, the number of farms operated by African Americans has declined dramatically over the past 20 years, plummeting from 54,367 in 1982 to just 29,090 in 2002.

TABLE: Farmers seeking entry under court-mandated extension

State	Rejected	Granted	Total
Alabama	14,268	294	14,562
Alaska	126	0	126
Arizona	75	0	75
Arkansas	1,430	70	1,500
California	1,495	30	1,525
Colorado	53	1	54
Connecticut	137	1	138
Delaware	7	0	7
District Of Columbia	72	7	79
Florida	908	34	942
Georgia	3,228	81	3,309
Hawaii	8	0	8
Idaho	0	0	0
Illinois	2,864	29	2,893
Indiana	350	1	351
Iowa	71	1	72
Kansas	125	1	126
Kentucky	77	3	80
Louisiana	2,312	21	2,333
Maine	0	0	0
Maryland	241	11	252
Massachusetts	84	2	86
Michigan	1,219	11	1,230
Minnesota	33	4	37
Mississippi	18,983	286	19,269
Missouri	299	2	301
Montana	0	0	0
Nebraska	33	0	33
Nevada	65	6	71
New Hampshire	0	0	0
New Jersey	389	6	395
New Mexico	13	0	13
New York	550	14	564
North Carolina	2,448	1,012	3,460
North Dakota	3	0	3
Ohio	410	10	420
Oklahoma	3,309	51	3,360
Oregon	14	0	14
Outside U.S.	74	1	75
Pennsylvania	133	4	137
Rhode Island	2	0	2
South Carolina	1,826	70	1,896
South Dakota	0	0	0
Tennessee	4,642	24	4,666
Texas	853	21	874
Utah	28	0	28
Vermont	0	0	0
Virginia	252	18	270
Washington	25	2	27
West Virginia	1	0	1
Wisconsin	280	2	282
Wyoming	1	0	1
National Total	**63,816**	**2,131**	**65,947**

Note: Data in this table is based upon information received from the Office of the Monitor on April 23, 2004.

Recommendations

This willful obstruction of justice by the USDA demands immediate action on the part of the U.S. Congress. Only the Congress can make whole the farmers who were denied restitution arbitrarily, after the USDA had agreed, in settling the case, that their discrimination claims were valid.

EWG and NBFA recommend that USDA and the U.S. Congress immediately take action to remedy these inequities by taking the following measures:

(1) Congress should order USDA to provide full compensation to the nearly 9,000 farmers who were denied relief after being accepted into the settlement class;

(2) Congress should order USDA to re-evaluate the merits of the nearly 64,000 farmers' claims that were shut out due to lack of notice of the settlement. All African American farmers who meet the preliminary requirements to qualify as a member of the *Pigford* class should receive the $50,000 payment and debt relief provided by the settlement;

(3) Congress should direct the USDA to institute accountability measures to monitor and enforce civil rights standards throughout the Agency, requiring that in the future the USDA shall exert best efforts to ensure compliance with all applicable statutes and regulations prohibiting discrimination; and

(4) Congress should ensure the full implementation of outreach and financial assistance programs that support minority farmers.

TABLE: Nearly 9,000 Black farmers were denied "Automatic" payments by USDA

		Receiving Automatic Awards		Denied Automatic Awards	
	Number Eligible	Number Receiving Awards	Percent Receiving Awards	Number Denied Awards	Percent Denied Awards
Alabama	4,511	3,095	68%	1,415	31%
Alaska	2	2	100%	0	0%
Arizona	6	2	33%	4	67%
Arkansas	1,886	1,393	65%	493	26%
California	232	127	55%	105	45%
Colorado	11	4	36%	7	64%
Connecticut	10	3	30%	7	70%
Delaware	3	2	67%	1	33%
District Of Columbia	26	13	50%	13	50%
Florida	472	248	53%	224	48%
Georgia	2,860	1,787	59%	1,205	41%
Hawaii	1	1	100%	0	0%
Idaho	1	1	100%	0	0%
Illinois	282	144	51%	138	49%
Indiana	29	13	33%	26	67%
Iowa	1	0	0%	1	100%
Kansas	48	24	50%	24	50%
Kentucky	158	54	41%	64	54%
Louisiana	991	478	48%	513	52%
Maine	0	0	0%	0	100%
Maryland	66	32	49%	34	52%
Massachusetts	6	3	50%	3	50%
Michigan	148	72	49%	76	51%
Minnesota	15	5	33%	10	67%
Mississippi	6,823	3,693	50%	1,730	40%
Missouri	147	80	54%	67	46%
Montana	9	9	0%	0	100%
Nebraska	2	2	100%	0	0%
Nevada	0	0	67%	3	99%
New Hampshire	0	0	0%	0	100%
New Jersey	57	34	60%	23	40%
New Mexico	3	0	0%	3	100%
New York	58	33	57%	25	43%
North Carolina	1,989	910	46%	1,079	54%
North Dakota	0	0	0%	0	100%
Ohio	42	20	48%	22	52%
Oklahoma	794	541	68%	253	32%
Oregon	1	1	100%	0	0%
Outside U.S.	36	26	72%	10	28%
Pennsylvania	42	18	43%	0	43%
Rhode Island	0	0	0%	0	100%
South Carolina	1,274	795	62%	484	38%
South Dakota	0	0	0%	0	100%
Tennessee	843	462	61%	381	39%
Texas	427	282	66%	150	34%
Utah	2	1	50%	1	50%
Vermont	0	0	0%	0	100%
Virginia	292	146	50%	146	50%
Washington	6	4	67%	2	33%
West Virginia	0	0	0%	0	100%
Wisconsin	25	13	52%	12	48%
Wyoming	0	0	0%	0	100%
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

* Note: Information in this table is based upon data received from the Office of the Monitor on 1/26/2006. The 7/13/2006 report from the Office of the Monitor states that the total number of awards received is now 13,429.

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Part 1:

A Century of USDA's Institutionalized Racism Subjects African American Farmers to Dramatic Land Loss

In 1920, one in every seven farms was African American owned. Today, only 1 in 100 farms is African American owned (USDA 1998, at 16). The decline of the African American farmer has taken place at a rate that is three times that of white farmers (USDA 1998, at 16-17).

Though many causes contribute to the decline of the African American farmer, the racial disparity is unmistakable. Institutionalized racism within the United States Department of Agriculture (USDA) played a major part in this phenomenon. Indeed, the USDA Commission on Small Farms admitted that "[t]he history of discrimination by the U.S. Department of Agriculture ... is well documented." finding that "indifference and blatant discrimination experienced by minority farmers in their interactions with USDA programs and staff ... has been a contributing factor to the dramatic decline of Black farmers over the last several decades" (NCSF 1998).

Although the civil rights movement successfully eradicated facially discriminatory laws, institutionalized racism remained and carried on the legacy of racial discrimination. In the USDA, it took the form of all-white county committees and apathetic federal offices failing to address the problem. Further, in 1983, due to Reagan Administration budget cuts, the USDA Office of Civil Rights was dismantled, and USDA stopped processing all discrimination claims until 1996, when the office re-opened (*Pigford* 1999, at 85). During this period, the USDA Office of Civil Rights Enforcement and Adjudication (OCREA) "simply threw discrimination complaints in the trash without ever responding to or investigating them," and in some cases, "even if there was a finding of discrimination, the farmer never received any relief."

"The way it usually works is that you would file for FSA assistance in February. You're supposed to get your money in March or April in order to have enough resources to plant on time to reach harvest before the fall rains and frost come. White farmers were getting their money on time, every time. But not the black farmers."

—Leon Pulley, Butler County, MO farmer

In 1996, USDA set out to address this problem, forming the Civil Rights Action Team, which was charged with making recommendations for eradicating racial discrimination within the USDA (*Pigford* 1999, at 88). The Civil Rights Action Team report exposed a history of discrimination that persisted even in 1996, finding that "minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by [USDA]." It found racial disparities in disapproval rates for loans and processing times, extreme lack of diversity on the county committees responsible for administering USDA programs, and revealed a civil rights complaints system that had been effectively inoperative since its inception. The report made numerous recommendations for addressing these problems—many have yet to be implemented

14

Part 2:

African American Farmers Sue USDA for Racial Discrimination

Pigford v. Veneman — African American Farmers Turn to the Courts for Justice

When the USDA failed to implement its own recommendations for addressing the persistent racism in the administration of its programs, African American farmers turned to the courts in hopes of finally addressing this monumental injustice. Among these lawsuits was *Pigford*, et al. v. Veneman, 97 Civ. 1978, 98 Civ. 1693 (PLF), a case brought by three farmers on behalf of all African American farmers who had been victims of racial discrimination at the hands of the USDA. *Pigford* would prove to be a landmark case, and, unfortunately, a study on how a federal agency can evade accountability despite admitting to wrongdoing and agreeing to compensate its victims.

On August 28, 1997, farmer Timothy Pigford filed a class action lawsuit in the United States District Court for the District of Columbia against the Secretary of Agriculture, Dan Glickman, alleging that USDA discriminated against African American farmers by denying or delaying applications for benefit programs and by mishandling the discrimination complaints filed with the Department (Attached herein as Appendix D). The case was assigned to Judge Paul Friedman, who, on October 9, 1998, certified the *Pigford* class, allowing the case to move forward as a class action.

Concerns about the expiration of the statute of limitations loomed over the case, threatening to bar the farmers' claims from ever being heard in court. After African American farmers and their supporters presented testimony before Congress, a bill was passed suspending the statute of limitations, which President Clinton signed into law on October 21, 1998.

With this matter resolved, the African American farmers and the USDA continued in their settlement discussions. From the beginning of the case, the parties had discussed settlement

"You got to choose one or the other track, your choices are simple, you either take the $50,000 or you gamble that you might get more and wait it out. It wasn't an easy decision, I didn't want to just take the $50,000. I wanted to go for the $5 million they had denied me, but it seemed like it would never be resolved if I did that."

—Leroy McCray, Sumter County, SC farmer

under the direction of a mediator. They faced several struggles in the settlement process. A key point of controversy between the farmers and the USDA involved the structure of the potential settlement. The parties engaged in contentious debate, both before the mediator and before Judge Friedman, over whether to structure an agreement which settled all of the farmers' claims at once or whether to construct a process which would resolve the claims on a case-by-case basis. The attorneys for the farmers were concerned that a case-by-case process would drag on for years and further delay justice for the farmers. After much debate, nearly two years after the complaint was filed, the parties entered into a settlement, filing their version of the agreement, the Consent Decree, with the Court on March 19, 1999 (Attached herein as Appendix E).

The Consent Decree set forth a revised class definition and a two-track system for resolving claims on a case-by-case basis. All individuals who fit within the following definition were considered members of the class:

> All African American farmers who:
>
> (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996;
>
> (2) applied to 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 (Attached herein as Appendix E at pages 5-6).

The system designed by the parties for resolving claims took the form of a two-track dispute resolution mechanism, with two separate processes through which African American farmers in the class could pursue claims. Under the more streamlined process, Track A, a farmer could prevail with minimal documentation, but recovery is limited to $50,000. The alternative process, Track B, would be more like a civil trial, requiring more extensive documentary evidence, but providing farmers with the opportunity to obtain cash payments based on actual damages without a cap on the award.

Successful farmers in both tracks would also be eligible for non-cash relief, including tax assistance, debt forgiveness, foreclosure termination, technical assistance and one-time priority loan

consideration. Both tracks presented all-or-nothing options -- if you won you got relief, if you lost, you got nothing. The Consent Decree did not provide any appeal right, therefore, if a farmer lost the claim, the farmer had no right to have that decision overturned by a neutral party. Instead, a losing party could request that the court-appointed Monitor direct the original decision-maker to re-examine the decision. Those who did not want to accept the terms of the settlement were legally entitled to opt out of the settlement and pursue lawsuits of their own.

Pigford's Two Track Settlement Process, Tracks A and B

Track A - "Automatic" $50,000 Award

Track A was designed to provide limited relief quickly for farmers with minimal or no documentary proof. The process was to take a total of 110 days, or just over 3 months, from start to finish. The Court described this track as a "dispute resolution mechanism that provides those class members with little or no documentary evidence with a virtually automatic cash payment of $50,000" (*Pigford* 1999, at 95).

Farmers who are alleging racial discrimination in loan or subsidy programs are eligible for this track. In order to succeed, farmers had to present substantial evidence showing that he/she was subjected to racial discrimination by the USDA and suffered economic damages as a result. Substantial evidence was defined by the Court as, "a reasonable basis for [finding] that discrimination happened." Successful farmers would receive a $50,000 cash payment for loan-based claims or $3,000 for subsidy-based claims as well as debt relief. Loan programs, or credit benefits programs, include loans offered by the Farmers Home Administration (FmHA), now part of the Farm Services Agency (FSA). Subsidy programs, or non-credit benefits programs, include commodity programs, disaster programs, and conservation programs, formerly administered by the Agricultural Stabilization and Conservation Service (ASCS), also now administered by the FSA.

Under Track A, the process should proceed as follows:

* farmer submits a claim package to Facilitator, choosing Track A. Claim packages must include all documentation and evidence supporting class membership and proving claim.

* Within 20 days of receiving the package, Facilitator determines whether farmer is a class member and assigns

a track, then forwards notice to the Adjudicator, USDA and class counsel.

* Within 60 days of receiving notice USDA may submit information relevant to liability or damages to Adjudicator and class counsel.

* Within 30 days of receiving material from farmer and USDA, Adjudicator decides whether claim is supported by substantial evidence, stating the reasons for the decision. Adjudicator must evaluate whether the farmer has presented substantial evidence to show the following:

(1) farmer owned or leased, or attempted to own or lease farm land,

(2) farmer applied for a loan or subsidy transaction at a USDA office between January 1, 1981 and December 31, 1996,

(3) the application was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate service,

(4) treatment received was less favorable than that accorded to a specifically identified, similarly situated white farmer, and

(5) USDA's treatment caused farmer economic damages.

* Successful loan program claimant receives $50,000 payment and debt relief from USDA. Successful subsidy program claimant receives $3,000 payment and debt relief from USDA. (Losing party may request that the Monitor direct the Adjudicator to re-examine claim where clear, manifest error has occured that has resulted or is likely to result in a fundamental miscarriage of justice.)

* Maximum time from submission of claim to decision: 110 days.

Track B — Evidence-Based Proceeding to Recover Actual Damages

Track B was designed to offer an abbreviated trial procedure and an accurate damages award for farmers with superior documentation of their claim. This process, though expanded, was designed to take a maximum of 240 days, or 8 months, from claim submission to decision. Only farmers with claims arising from loan, or credit program, transactions were eligible for this track. Track B farmers had to prove their claims and actual damages by

the standard civil litigation burden of proof, "preponderance of the evidence," showing that it is more likely than not that their claim was valid (*Pigford* 1999, at 95). Successful farmers would be entitled to receive monetary damages as proven, and non-cash relief.

Under Track B, the process should proceed as follows:

* Farmer submits a claim package to Facilitator, choosing Track B.

* Within 20 days of receiving the package, Facilitator determines whether farmer is a class member and assigns a track, then forwards notice to Arbitrator, USDA and class counsel.

* Within 10 days of receiving claim package, Arbitrator notifies farmer and USDA of date of evidentiary hearing. Hearing date to be set within 150 days of sending notice, but may not be set for less than 120 days after notice is sent.

* 90 days prior to hearing date, parties serve on each other witness lists, statements of intended testimony of witnesses, and copies of exhibits to be presented at arbitration hearing.

* 45 days prior to hearing date, parties complete depositions of opposing party's witnesses.

* 30 days prior to hearing, parties file with Arbitrator and serve on each other written versions of direct testimony of witnesses.

* 21 days prior to hearing date, parties notify each other of witnesses whom they intend to cross-examine at trial. Also by this date, parties file memoranda of law and fact with Arbitrator.

* Hearing (eight hours)—four hours of cross-examination of opponent's witnesses and presenting legal arguments for each party.

* Within 60 days of hearing, Arbitrator issues written decision as to whether farmer has demonstrated by a preponderance of the evidence that farmer was a victim of racial discrimination and suffered damages as a result.

* Successful farmer receives actual damages from USDA. (Losing party may request that the Monitor direct Adjudicator to reexamine claim where clear, manifest error has occurred that has resulted or is likely to result in a fundamental miscarriage of justice.)

* Maximum time from submission to decision: 240 days.

Court's Fairness Review and Consent Decree Approval

The Court reviewed the settlement for fairness, considering objections and responses of the African American farmers and USDA, and approved the Consent Decree in an opinion dated April 14, 1999. Numerous class members, civil rights organizations and farmer organizations filed objections to the Consent Decree and testified at the fairness hearing (Attached herein as Appendix F). Overall, the Court received objections from 15 organizations and 27 individuals, including two named plaintiffs, Timothy Pigford and Cecil Brewington. Farmers voiced concerns about many aspects of the Consent Decree, including the amount of recovery provided to the farmers in the settlement, the structure of the dispute resolution mechanism, and the lack of forward-looking relief. After considering the objections and comparing the settlement outcome with the likelihood of prevailing at trial, the Court determined that the settlement would provide a fair, efficient tool for redressing the farmers' grievances.

Much of the Court's analysis hinged on the fair and efficient administration of the settlement process. In discussing the fairness of the amount of recovery provided in the settlement, the Court reasoned that farmers largely lacked documentary evidence to prove their claims and that "the settlement negotiated by the parties provides for a relatively prompt recovery" compared to trial, where, "it is unlikely that any class member would have received any recovery for his injury for many years" (Attached herein as Appendix C; *Pigford* 1999, at 104-105).

In addressing objections to the requirement that Track A farmers show proof that they fared worse than "a specifically identified, similarly situated" white farmer, the Court found that the requirement was not overly burdensome because the plaintiffs' lawyers had obtained information on a number of white and African American farmers from USDA (*Pigford* 1999, at 106). Thus, the Court opined, "class counsel should be able to provide most farmers with the evidence they need" (*Pigford* 1999, at 106).

When the Court considered objections to Track B's lack of a discovery procedure requiring parties to exchange documents, the Court maintained that this was a fair concession since "the Track B mechanism ... resolves the claim much more quickly than an ordinary civil case would be resolved, in large part because of the shortened discovery period" (*Pigford* 1999, at 106). In resolving that the lack of an appeal procedure was fair, the Court focused on the expectation that most farmers would succeed

in the settlement, stating, "[s]ince it is anticipated that most class members will prevail under the structure of the settlement, the Court concludes that the forfeit of the appeal rights was a reasonable compromise" (*Pigford* 1999, at 108).

The Court was "surprised and disappoint[ed]" by USDA's refusal to include the following sentence in the Consent Decree: "In the future the USDA shall exert best efforts to ensure compliance with all applicable statutes and regulations prohibiting discrimination" (*Pigford* 1999, at 111-112). Though the Court acknowledged that the farmers "legitimately fear that they will continue to face...discrimination in the future," the Court reasoned that the settlement was fair because "USDA is obligated to pay billions of dollars to African American farmers who have suffered discrimination...those billions of dollars will serve as a reminder to the Department of Agriculture that its actions were unacceptable and should serve to deter it from engaging in the same conduct in the future" (*Pigford* 1999, at 111). Finally, the Court determined that future discrimination would be curtailed because USDA would be under intensified scrutiny of the Courts, Congress, and the African American farmers as a group, all of which are equipped, according to the Court, to address future discriminatory practices discovered within USDA.

In approving the Consent Decree, the Court had described the settlement as an agreement that would "achieve much of what was sought without the need for lengthy litigation or uncertain results" (*Pigford* 1999, at 95).

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Part 3:

USDA Settlement Fails Black Farmers

Denials and Delays Prevail

The current state of play in the settlement presents a far different picture than the predictable, efficient process envisioned by the Court. Instead of predictable results and shortened process, the settlement has yielded a remarkably high rate of rejection for farmers who chose Track A and a contentious, protracted proceeding for those who elected Track B.

Overall, of the nearly 100,000 farmers who came forward with racial discrimination complaints, 9 out of 10 were denied any recovery from the settlement. As a result, instead of the $2.3 billion, USDA only provided $650 million in direct payments to farmers. The outcome of the settlement suggests that the farmers who had the best chance at achieving justice were the 230 who opted out of the settlement.

The settlement looks quite different than originally expected. Prior to advertising the lawsuit to reach potential class members, the farmers' attorneys had predicted that the class would number 2,000. This estimation was far from accurate, largely because USDA kept such poor records of civil rights complaints. There are now 22,354 farmers who have been accepted into the settlement class, 22,181 in Track A and 173 in Track B (*Pigford* Monitor 2004). There are even more, some 73,747 farmers, who sought entry into the settlement through a late-claims process (*Pigford* Arbitrator 2004, at 2-3).

African American farmers have faced high rates of denial in both tracks. Of the 22,181 farmers assigned to Track A, 8,562 or 40 percent, have been denied (*Pigford* Monitor 2004). As for Track B, of the 173 eligible farmers, 18 farmers, a mere 10 percent, have prevailed after a hearing (*Pigford* Monitor 2004a). Sixty-eight settled with USDA prior to obtaining a decision. Thirty-nine farmers had their cases dismissed without a hearing. Another 22 lost after a hearing.

> "It was common knowledge that certain white farmers got better treatment. Everyone knew that the white farmers were getting loans while we weren't. They were not far from us, just down the road, and it was just generally known that they were getting money from FSA but we weren't."
>
> **—Calvin King, Lunenburg County, VA farmer**

Table. Denials and delays in Track B Outcomes

Farmer Status*	Number of Farmers
Farmers	
Total Number of Farmers in Track B	173**
Farmers Who Won After Hearing	18
Farmers Who Were Dismissed	61
- Dismissed Prior to Hearing	39
- Dismissed After Hearing	22
Farmers Awaiting Initial Hearing	20
Farmers Awaiting Arbitrator Decision	3
Farmers Receiving Negotiated Settlement Compensation Prior to Hearing	68

*This Farmer Status information is based on information received from the Office of the Monitor on June 21, 2004.

**This Total Number of Farmers in Track B figure is based on the *Pigford* Monitor Report of July 17, 2004.

According to the Office of the Monitor, 190 Track A farmers (*Pigford* Monitor 2004) and 23 Track B farmers are still awaiting decisions, 20 of whom have not yet had even an initial hearing (*Pigford* Monitor 2004a), over 5 years after the Consent Decree was entered.

Lack of Notice Prevents 72,000 Farmers from Joining Settlement

When thousands of farmers came forward with claims of discrimination after the settlement-imposed deadline, it became evident that notice of the settlement was insufficient to reach the majority of potential class members. To address this issue, the Court allowed farmers to seek entry into the class after the initial deadline. Farmers had difficulty meeting deadlines in all aspects of the settlement, largely due to the failure of their lawyers to comply with the required timelines and communicate with the

farmers. The Court admonished the farmers' lawyers for their failure to meet deadlines, even going so far as to state at one point that their representation "border[ed] on legal malpractice" (*Pigford* 2002, at 922).

The farmers' lawyers were responsible for providing adequate notice to all putative class members. The flood of late claims indicates that the notice failed to reach thousands of farmers with claims against USDA. The Court's extension provided for entry into the settlement process upon demonstrating extraordinary circumstances that prevented the farmer from meeting the original deadline. Acceptable reasons for late filings included natural disasters and being homebound (*Pigford* Arbitrator 2001, at 4), but not lack of notice of the settlement.

A flood of farmers, numbering 73,747, sought late entry into the settlement process (*Pigford* Arbitrator 2004, at 2-3). Of this 73,747, 65,947 farmers filed their applications on time (*Pigford* Arbitrator 2004, at 2-3). The overwhelming majority of the farmers who did apply on time, some 63,816 farmers, were ultimately denied entry into the settlement because they did not receive notice of the initial deadline (*Pigford* Arbitrator 2004). Their claims were never heard on the merits, and they will never again have a chance to seek relief for their discrimination complaints.

USDA Pays DOJ Millions to Fight Farmers' Claims

USDA contracted with the United States Department of Justice (DOJ) to provide legal representation in the settlement. DOJ internal documents reveal that the Civil Division spent 56,000 hours of attorney and paralegal time challenging 129 farmers' claims [Attached herein as Appendix G]. This amounts to an average of 460 hours, or nearly 3 months of time, devoted to contesting each individual farmers' claim. Assuming an average salary of $60,000, if this amount of time was spent attacking the claims of all 22,000 farmers in the class, this represents a potential cost of $330 million to taxpayers. That is equivalent to the cost of providing Track A relief for 6,600 farmers.

Overall, USDA spent $12 million by 2002 for DOJ's assistance in disputing individual farmers' claims [Attached herein as Appendix H]. These numbers are extraordinarily high for a settlement that was intended to provide a "virtually automatic" payment to farmers through an abbreviated procedure. Instead, it appears that African American farmers were treated as adversaries rather than as partners in a cooperative settlement.

Proceedings Lack Transparency and Accountability

Much of the transparency provided in traditional legal proceedings was lost in the *Pigford* matter because the case settled out of court. While the terms of the settlement agreement are public and the amounts of most settlement payments are public, details about the settlement proceedings are largely confidential.

Traditionally public documents such as transcripts of proceedings, motions of the parties and rulings of the decision-makers are not made available to the public. Farmers' attorneys have even faced difficulty in obtaining written rulings in their own cases. All attorneys who sign privacy agreements are entitled to obtain information in their farmer's case, however, because of the USDA's obstructive practices, information relating to white farmers may be omitted from the documents. This poses a serious problem, because proving the existence of a white farmer who received better treatment is vital to obtaining payment in both tracks. The farmers proceeding pro se, without legal representation, are not permitted to obtain any materials that include information on similarly situated white farmers (*Pigford* Monitor 2003). Without the accountability offered by transparent proceedings, plaintiffs are more vulnerable to inequities that may arise in the course of the proceedings.

Court Trial	USDA Settlement
Public hearings	Closed hearings
Right to discovery documents, court-enforced information sharing	No discovery process
Right to appeal by neutral party	No appeal, only request for re-examination by original decision maker
Public transcripts, motion papers and court rulings	Farmers' attorneys must specially request transcripts, USDA filings and rulings in their own case; without confidentiality agreements, farmers prohibited from seeing any documents; All farmers' attorneys must sign confidentiality agreements; pertinent information on case redacted by USDA
Publicly appointed or elected judges make decisions	Private, for-profit companies employ judges-for-hire to make decisions on claims

USDA Conceals Key Data from Farmers

> "[T]he thing I'm frustrated about...is the farmers...believed at the time of the settlement that most of them were going to get something...because we thought finding similarly situated white farmers wasn't going to be a problem. And then it turned out to be a problem."
>
> — Judge Paul Friedman, 4/19/2001, *Pigford* Status Hearing

USDA constructed a major obstacle by refusing to provide African American farmers with information from its own files regarding "specifically identified, similarly situated white farmers" in their interactions with USDA. This was a key element required for relief in both tracks, and became the basis for denial of numerous claims.

USDA's practice of concealing this data left most farmers facing the task of obtaining information on similarly situated white farmers on their own. This meant tracking down a specific farmer in their county who applied for the same benefit program at the same time, with the same acreage, the same type of crop, the same credit history, and received a higher payment or better treatment than the African American farmer. This is a feat that even the most sophisticated lawyer would not be able to achieve based on public information alone. When farmers turned to USDA for information, USDA's lawyers often refused, relying on the fact that they had no obligation under the terms of the Consent Decree to release information on similarly situated white farmers to class members.

USDA repeatedly denied Freedom of Information Act (FOIA) requests from farmers. Thus, the African American farmers in the settlement would endeavor to obtain information using a piecemeal approach, which would provide some, but not all of the needed information. Typically, what would happen is a farmer would try to remember the names of neighboring white farmers who were farming when he/she had filed for benefits. This would provide the general pronunciation, but not necessarily the correct spelling of, the names of white farmers. Then, the farmer's attorney would run the name through public records, searching for property information such as deeds and USDA liens, which would fill in some of the information gaps. This process, however, was often inadequate, as state data systems are not uniform, and detailed information is not widely available through public avenues. Furthermore, this process is time-consuming, and often could not be accomplished within the abbreviated timeline provided by the settlement.

> "This same situation has happened to a lot of farmers. They [USDA] find discrimination but they won't pay. They'll fight each one to the end. They'll use taxpayer money to fight against you. The good old boy system is still in place, and working well."
>
> **—Linwood Brown, Brunswick County, VA farmer**

Throughout the course of the settlement, some measures have addressed the problem, but only to a substantially limited degree. Class counsel attorneys, since they represent large numbers of African American farmers, have been able to engage in a limited information exchange based on data gleaned from USDA responses to Track A claims. Arbitrators in Track B cases have started requiring USDA lawyers to provide information on at least three of five white farmers specifically named by farmers in the class. Of course, this still left farmers with the problem of naming such farmers on the basis of non-USDA sources.

If the cases were being litigated in civil court, there would have been rooms full of information on white farmers obtained through discovery. In the absence of documentary discovery, however, cooperation of the USDA was the only option for most farmers in the lawsuit to obtain complete information. Such cooperation was withheld. Without the assistance of USDA, the farmers have found it nearly impossible to obtain enough evidence to prove their claims.

USDA Utilizes Hard-Nosed Tactics in Track B Cases

> "When we were negotiating with Counsel for the Government for the consent settlement, had I had any inkling that each claim would be litigated almost as if it was a class action unto itself, I never would have agreed to it."
>
> — J.L. Chestnut, Attorney for African American Farmers, 4/19/2001, *Pigford* Status Hearing [Attached herein as Appendix I]

The Track B mechanism described in the Consent Decree is a procedural shell. It included some basic provisions and deadlines, but provided scarce guidance on procedure. The Court did not adopt the Federal Rules of Civil Procedure or any official set of procedural guidelines. The process essentially relied on an honors system—if both parties agreed to play fair, claimants would reap the benefits of a short, fair settlement procedure superior to the alternative of a civil trial. African American farmers in the settlement and their attorneys had no such luck.

Reports from the Office of the Monitor, which oversees all claims, note that claimants consistently complain about the "litigious nature of Track B arbitrations" (*Pigford* Monitor 2002, at 18). Judge Friedman even noted that USDA's conduct was not what was anticipated in the settlement, stating "I think that we all believed from the beginning...[that] the government wasn't

going to file that many petitions." [Attached herein as Appendix I] A petition is a challenge to a decision made in a settlement case. The USDA filed 672 challenges to decisions made in the settlements, engaging in a pattern of litigious handling of settlement claims (*Pigford* Facilitator 2003). During a status hearing, an attorney for the farmers expressed outrage at USDA's duplicity, "If I had known I was negotiating a situation whereby in Track B cases we would have these monumental struggles over discovery, lengthy Hornbook motions to dismiss, I never would have agreed to that." [Attached herein as Appendix I]

Attorneys from large law firms in the Washington D.C. area took on a large number of *Pigford* cases on a pro bono basis to assist the farmers' original attorneys in processing claims. They expected a streamlined mediation process, not a trial. What they got was an elaborate motions practice, USDA appeals that repeatedly interrupted the cases, numerous evidentiary objections, delay, and aggressive litigation tactics—contentious litigation at its worst (Legal Times 2002). Attorneys found themselves spending hundreds of hours processing a single African American farmer's claim (Legal Times 2002, 2002a). The firms have devoted thousands of pro bono hours litigating this "settlement" Legal Times 2002a).

During the settlement, USDA adopted the position that farmers who missed any deadlines in their cases should face automatic rejection of their claims. In some cases, USDA lawyers would file numerous motions, causing delays in the arbitration process and missed deadlines. Once such deadlines had passed, USDA lawyers would file a motion to dismiss the case for failure to meet the deadlines.

The USDA asserted its strict deadline position in the case of Earl Kitchen, whose case was ultimately heard before Judge Friedman and then the Court of Appeals. USDA argued that the Arbitrator did not have the power to extend deadlines in settlement proceedings, thus, if a class member missed a deadline, his/her case ought to be summarily dismissed. Judge Friedman rejected this argument, finding that Arbitrators had discretion to extend deadlines (*Pigford* 2002a). Kitchen ultimately lost, when the Court of Appeals overruled this decision, holding that the Court can modify the deadlines only to the extent that it is justified by significantly changed circumstances (*Pigford* 2002).

Lawyers for the farmers also faced frivolous motions, or petitions, and hard-nosed litigation tactics at the hands of USDA's attorneys. Such tactics included agreeing to postponements then seeking dismissal for failure to prosecute. Another tactic was to seek recusal of the Arbitrator when faced with sanctions or adverse rulings. USDA has sought to overturn Arbitrator rulings in 12 of

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Part 4:

Conclusion & Recommendations

As an agency with an annual budget of $100 billion, with nearly $40 billion (USDA 2003) designated for financial assistance to farmers, this contentious battle over paying farmers in a settled case is unjustifiable. Congressional intervention is the only solution that remains for these farmers. The U.S. Congress should step in and ensure that this discrimination comes to an end immediately. EWG and NBFA recommend that Congress remedy these inequities by taking the following measures:

(1) Congress should order USDA to provide full compensation to the nearly 9,000 farmers who were denied relief after being accepted into the settlement class;

(2) Congress should order USDA to re-evaluate the merits of the nearly 64,000 farmers' claims that were shut out due to lack of notice of the settlement. All African American farmers who meet the preliminary requirements to qualify as a member of the *Pigford* class should receive the $50,000 payment and debt relief provided by the settlement;

(3) Congress should direct the USDA to institute accountability measures to monitor and enforce civil rights standards throughout the Agency, requiring that in the future the USDA shall exert best efforts to ensure compliance with all applicable statutes and regulations prohibiting discrimination; and

(4) Congress should ensure the full implementation of outreach and financial assistance programs that support minority farmers.

The history of discrimination that led to the *Pigford* suit tells the tale of deeply entrenched institutionalized racism. The discrimination that led to the suit still persists in many forms, including even the administration of a civil rights settlement. Instead of a fair facilitation of the settlement, the victimization continues with delay tactics and aggressive litigation strategies. A settlement is a cooperative process, not a small-scale litigation

battle. Ultimately, the farmers have not fared substantially better than they would have at a civil trial. A startling 86% of the farmers with discrimination complaints have been unsuccessful and walked away from the settlement with no money and no ability to redress their grievances in a court of law. As for Track B claimants, lengthy litigation and uncertain results are the reality of this settlement. Only 18 claimants of nearly 200 have been successful before the Arbitrator and 20 still await the initial hearing over five years after the settlement was reached. This is not a favorable alternative to civil trial. On the contrary, it is a continuation of the disenfranchisement of the African American farmer at the hands of the USDA.

Small farmers, the group of farmers to which most African American farmers belong, are the backbone of our sustainable agricultural future. By contributing a heightened awareness of the needs of the land, utilizing sustainable practices such as multicropping, and by supporting the growth and wealth of their local communities, small farmers provide an invaluable resource to the agricultural system. Government-subsidized loans and grants are designed to support the small farmer, and provide vital resources to this important segment of the farming industry. In order for this system to operate effectively, it must operate equitably. To discriminate against small farmers, and to further marginalize particular small farmers with racially discriminatory practices in the administration of financial assistance, contravenes the spirit and purpose of these USDA programs.

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Testimonials:

African American Farmers' Accounts of USDA Discrimination

CALVIN KING
USDA Refused to Even Provide Mr. King with an Application

Calvin King visited USDA's local Lunenburg County Farm Services Agency (FSA) office in Kenbridge, VA in January 1981 to apply for a loan to purchase 27 acres of timber land adjacent to the farm where his parents had been sharecroppers since the early 1900s. The FSA official refused to even provide King with an application, telling him that no funds were available for his loan. "It was common knowledge that certain white farmers got better treatment. Everyone knew that the white farmers were getting loans while [black farmers] weren't. They were not far from us, just down the road, and it was just generally known that they were getting money from [USDA] but we weren't," says King.

King Joins the Civil Rights Settlement and is Denied the "Automatic" Payment, Appeal Still Pending More Than Five Years Later

After learning of the *Pigford v. Veneman* class action settlement, King sought restitution by joining the settlement in June 1999. He was assigned to Track A, the "automatic" $50,000 track, but his claim was ultimately denied. USDA's refusal to provide King with an application became a major obstacle in his case. He was left with no record that he applied for a loan, "If they'd offered an application, at least they'd have something on file. When you buy a car or go for a job at least they give you an application to fill out."

USDA's practice of withholding information on similarly situated white farmers who received loans also became an insurmountable hurdle for King. USDA refused to provide any information to King, despite having the data within its own files. King attempted to navigate the maze of public documents to prove his case, but

failed. King named two similarly situated white farmers in his claim, one of whom he was certain was receiving loans, and another whom he was reasonably sure received loans and owned a large farm several miles from his parents' farm. He later learned that one of the farmers was actually leasing the farm to a white neighbor who operated the next farm over and several other farms in the area, "Had I listed [the other farmer] I would've been ok, but since I named [the land owner], I got denied. That was a mistake I made with the name, and that resulted in the denial. It seemed logical at the time that I assumed [the landowner] was receiving the [USDA] loans. But it's hard to tell in this area where one farm begins and another ends or who is farming what or who owns what. There are no clear boundaries like in the suburbs."

Calvin went back to the Kenbridge, VA FSA office in May 2000 attempting to define the boundaries between the farms, and met with further obstruction. "I wanted to demonstrate to them that the two farm operations were connected just to show how I had gotten the name confused. In the process, the FSA office denied me some basic information that should've been released, such as whether or not the farms were connected, and how. And who was the farmer that farmed the land that year," says King. He explains, "It seems to me that they withheld information that they should not have withheld from me ... but I was not given anything." Ironically, says King, "the FSA office in Fredericksburg, VA ... provid[ed] me with information ... about two black farmers ... if the black farmers' information was released to me, the white farmers' information should have also been released."

In November 2000, King challenged the denial of his claim. Although his settlement claim was filed over five years ago, no decision has been made on his appeal, and Calvin's case remains unresolved today.

King Files New Complaint for Retaliation by USDA for his Participation in the Settlement

King faced retaliation due to his participation in the *Pigford* civil rights settlement, and filed a subsequent discrimination complaint with USDA. King explains, "I filed an additional complaint against USDA because of ongoing discrimination I experienced after the *Pigford* suit, and probably because of my involvement in the *Pigford* suit. After *Pigford*, I was continually discriminated against." King's experience is that "USDA is not applying the same standard to black farmers that it is applying to white farmers, and that constitutes an act of discrimination against me and all black farmers. USDA law is the same all over the country. The law is the law, and it should be applied equally throughout the land."

LINWOOD BROWN
USDA's Late Payments Caused Crop Yields to Dwindle

Linwood Brown sought assistance from the Farm Services Agency (FSA) in Brunswick County, VA, from 1980 through 1994. Brown's farm, at the time, consisted of about 80 acres, upon which he grew corn, soybeans and tobacco. Brown is the fifth generation to farm his land, which his relatives worked as slaves. "The old slave house is still here on the property," says Brown.

In Brown's experience in applying for USDA crop loans, USDA would withhold payments until it was too late to harvest the crops, creating a cycle that continually decreased the size of his yields, "I'd apply for assistance around the first of the year, but wouldn't receive the money until June or July. That wasn't enough time to plant the seeds, put the fertilizer and chemicals on at the right time, do all the things you needed to do. So then your yields would suffer, and you'd only get, say, 80% of your crop. Then they'd use that against you in future years saying your yields were low so you can't get the money you need to farm the land." Though he applied for assistance at the same time as area white farmers, Brown's checks would arrive months later, while his white counterparts received faster turnaround. Brown states, "it was a constant struggle for us."

In Brunswick County, African American farmers were required to report to a supervisor to obtain payments expense-by-expense while white farmers were paid in a lump sum. As Brown explains "the black farmers had a supervisor of their [FSA] bank account, where you had to take your bills and receipts to prove that you needed the money. You could only go to the supervisor's office on Wednesday. The white farmers just picked up their check and put it in their pocket, they had no supervision, no questions asked."

Civil Rights Settlement Failed to Provide Restitution

Linwood Brown was part of the *Pigford v. Veneman* lawsuit, but chose to opt out.

"That process left the burden on the farmer to prove his case. You had to have hard facts to prove you were discriminated against. I went through that and won a partial settlement. But it's not fully resolved. USDA was supposed to come back and pay for the other years that they discriminated against me, but that never took place." Linwood explains, "this same situation has happened to a lot of farmers. They [USDA] find discrimination but they won't pay. They'll fight each one to the end. They'll use taxpayer money

to fight against you. The good old boy system is still in place, and working well."

Brown laments the land loss that has plagued African American farmers denied USDA loans and subsidies, "the saddest days of my life I spent watching USDA selling these people's farms. To see that, it was unexplainable. I went and saw some of the sales, when they auction off the black farms. USDA would literally sell the farm and leave the family sitting there under the tree, watching somebody move onto their farms they've been living and working on for generations, some since slavery. Now they don't have a place to call home. When you witness what they are doing here, it doesn't look like you live in America. You just won't believe that this kind of thing, this discrimination, is happening to poor struggling farmers here in America. But it has... it still is. It's still the same today."

LEON PULLEY
Local USDA Office Repeatedly Turned Away African American Farmer and Delayed Fulfillment of Loan

Leon Pulley owns a farm in Butler County, Missouri, where he has grown milo and soybeans for two decades. Between 1994 and 1996, USDA repeatedly delayed loan payments, severely limiting the profitability of his crops. "The way it usually works is that you would file for Farm Service Agency (FSA) assistance in February. You're supposed to get your money in March or April in order to have enough resources to plant on time to reach harvest before the fall rains and frost come. White farmers were getting their money on time, every time. But not the black farmers," says Pulley. USDA delayed payment until as late as September for several consecutive years.

Pulley also experienced obsfucation at the hands of local USDA FSA representatives, "You'd go in, they'd tell you they were busy, to come back later, and so you would come back later and they'd say the same thing again. I got told that every time," Pulley explained. Pulley believes these practices were only aimed at African American farmers, "They [FSA representatives] weren't letting some people get money at all, and others would get the money too late so they couldn't set up in time to harvest so got bad or no crops." Pulley knew of two or three white farmers in similar farm situations who got their money on time, and contends that discrimination is to blame for the disparity.

Pulley signed up for the class action lawsuit in 1994 and was admitted to Track B. To his disappointment, his case was never heard. He says that his lawyers were inadequate and his case "just fell through the cracks."

Unfair Treatment by USDA Continues

Leon has continued to seek help through USDA programs. Last year, he was turned away and told there was no money. This year, he applied and was also rejected. Leon has reduced the amount of land he actively farms to 20 acres, and has put the remainder of his farm into the wetlands conservation program. Ever since 1996, he has been paying USDA $154 a month toward the debts he has accumulated over the years, debt which, ironically, was accrued largely due to USDA's unjust delays of his loans.

LEROY McCRAY
Rejected Twice by USDA, McCray Nearly Gave up on Farming Altogether

Leroy McCray applied to the Farm Services Agency (FSA) around 1990, requesting $5 million in working capital and equipment loans to set up a chicken farm in Sumter County, SC. The local USDA FSA official met with McCray, telling him that no money was available. "They told me to go look for a private loan," he recalls. This story was not what his white neighbors were told, "I knew there were 7-8 white farmers in my area with chicken farms who were getting the money, the same type of loan that I wanted. And they only had high school education and limited or no farming experience when they got their loans. I was a college graduate with lots of experience with different farm animals and operations, and I was getting denied. It didn't make any sense." USDA denials stifled McCray, "I never even got the chance to start the chicken farm like I wanted. I just gave up." Several years later, he applied for another loan, McCray says, "They didn't even take the application I had filled out because they just said there was no money available."

Settlement Presented Difficult Compromise

McCray learned of the civil rights settlement with USDA, and chose to pursue relief through Track A, though he felt that it would not make him whole. "It wasn't an easy decision, I didn't want to just take the $50,000. I wanted to go for the $5 million they had denied me, but it seemed like it would never be resolved if I did that." McCray is one of the few farmers who received relief

under the settlement. Despite his success, McCray does not expect USDA's treatment of African American farmers to change. "It's not any better, it's still the same as it was. It's the same plot."

ALAN DIGGS
Local USDA Officials Used Common Tactic of Withholding Paperwork to Delay Loans

Alan Diggs and his brother Milton Diggs farm together as the Diggs Bros. Partnership in Southampton County, VA farm. Their story of discrimination is similar to many other African American farmers' accounts: complicated mountains of paperwork, processing delays, and late payments.

Diggs would witness his white neighbors being treated differently by USDA's local FSA officials. "The FSA officer would trickle the paperwork out one piece at a time to black farmers, there'd be 10-15 days in between communications, then another piece of paperwork would be in the mail, 3-4 days lag time, then you fill it out and keep coming back and then there's another paper to fill out. Another figure, another number they needed from you. White farmers were already getting their work done, they weren't getting the extra paperwork we did. They'd get a full package, fill it out, and in ten days to two weeks they'd have their money."

Diggs has survived in farming while many African American farmers have been forced out of farming, "We might be the only black farmers of size doing this any more, a lot of people have dropped out of farming because it's such a hassle, some of the white supervisors in the office try to make it hard. If USDA had made it easier for the black farmers, they might still be in business now. In a sense they just ran them out of business."

USDA Failed to Live up to Promises Made in Settlement

Alan Diggs received $50,000 in the *Pigford* settlement, but remains disappointed by the treatment he received from USDA throughout the process. Diggs explains, "When the settlement came out, USDA said you were entitled to $50K and they would write off all your debt. I got the $50K but they only wrote off a portion of the debt I owed. During the Monitor review, when I put in an appeal, they tried to tell me that the years that they did not write off were years I wasn't discriminated against. But that's not what they said they were going to do. They said they'd

write off all your debt. But they didn't." Diggs believes that priorities shifted during the course of the settlement, "The Bush Administration put this thing on the back burner when they took office. When Bill Clinton was in office, it was a front burner issue. But that changed when Bush got in there."

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APPENDIX C

TIMOTHY PIGFORD, et al., Plaintiffs, v. DAN GLICKMAN, Secretary, United States Department of Agriculture, Defendant. CECIL BREWINGTON, et al., Plaintiffs, v. DAN GLICKMAN, Secretary, United States Department of Agriculture, Defendant.

Civil Action No. 97-1978 (PLF), Civil Action No. 98-1693 (PLF)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

185 F.R.D. 82; 1999 U.S. Dist. LEXIS 5220

April 14, 1999, Decided
April 14, 1999, Filed

DISPOSITION: [**1] Consent Decree approved and entered.

CORE TERMS: consent decree, farmer, settlement, claimant, track, objector, class member, discovery, statute of limitations, facilitator, arbitrator, preponderance, class action, discriminated, documentation, notice, revised, package, farm, prevail, opt, civil rights, injunctive relief, decree, negotiation, substantial evidence, recommendation, adjudicator, putative, similarly situated

LexisNexis(R) Headnotes

COUNSEL: For Plaintiffs: Alexander J. Pires, Jr., Conlon Frantz Phelan & Pires, Washington, DC.

For Plaintiffs: Philip L. Fraas, Washington, DC.

For Defendant: Michael Sitcov, Philip Bartz, U.S. Dept. Of Justice, Washington, DC.

JUDGES: PAUL L. FRIEDMAN, United States District Judge.

OPINIONBY: PAUL L. FRIEDMAN

OPINION:

[*85] OPINION

Forty acres and a mule. As the Civil War drew to a close, the United States government created the Freedmen's Bureau to provide assistance to former slaves. The government promised to sell or lease to farmers parcels of unoccupied land and land that had been confiscated by the Union during the war, and it promised the loan of a federal government mule to plow that land. Some African Americans took advantage of these programs and either bought or leased parcels of land. During Reconstruction, however, President Andrew Johnson vetoed a bill to enlarge the powers and activities of the Freedmen's Bureau, and he reversed many of the policies of the Bureau. Much of the promised land that had been leased to African American farmers was taken away and returned to Confederate loyalists. For most African Americans, the promise of forty [**2] acres and a mule was never kept. Despite the government's failure to live up to its promise, African American farmers persevered. By 1910, they had acquired approximately 16 million acres of farmland. By 1920, there were 925,000 African American farms in the United States.

On May 15, 1862, as Congress was debating the issue of providing land for freed former slaves, the United States Department of Agriculture was created. The statute creating the Department charged it with acquiring and preserving "all information concerning agriculture" and collecting "new and valuable seeds and plants; to test, by cultivation, the value of such of them as may require such tests, to propagate such as may be worthy of propagation, and to distribute them among agriculturists." An Act to establish a Department of Agriculture, ch. 71, 12 Stat. 387 (1862). In 1889, the Department of Agriculture achieved full cabinet department status. Today, it has an annual budget of $ 67.5 billion and administers farm loans and guarantees worth $ 2.8 billion.

As the Department of Agriculture has grown, the number of African American farmers has declined dramatically. Today, there are fewer than 18,000 African American [**3] farms in the United States, and African American farmers now own less then 3 million acres of land. The United States Department of Agriculture and the county commissioners to whom it has delegated so much power bear much of the responsibility for this

dramatic decline. The Department itself has recognized that there has always been a disconnect between what President Lincoln envisioned as "the people's department," serving all of the people, and the widespread belief that the Department is "the last plantation," a department "perceived as playing a key role in what some see as a conspiracy to force minority and disadvantaged farmers off their land through discriminatory loan practices." See Pls' Motion for Class Certification, Exh. B, Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team (Feb. 1997) ("CRAT Report") at 2.

For decades, despite its promise that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial [**4] assistance from the Department of Agriculture," 7 C.F.R. ß 15.1, the Department of Agriculture and the county commissioners discriminated against African American farmers when they denied, delayed or otherwise frustrated the applications of those farmers for farm loans and other credit and benefit programs. Further compounding the problem, in 1983 the Department of Agriculture disbanded its Office of Civil Rights and stopped responding to claims of discrimination. These events were the culmination of a string of broken promises that had been made to African American farmers for well over a century.

It is difficult to resist the impulse to try to undo all the broken promises and years of discrimination that have led to the precipitous decline in the number of African American farmers in the United States. The Court has before it a proposed settlement of a class action lawsuit that will not undo all that has been done. Despite that fact, however, the Court finds that the settlement is a fair resolution of the claims brought in this case [*86] and a good first step towards assuring that the kind of discrimination that has been visited on African American farmers since Reconstruction will [**5] not continue into the next century. The Court therefore will approve the settlement.

I. BACKGROUND OF THE CASE

The plaintiffs in this case allege (1) that the United States Department of Agriculture ("USDA") willfully discriminated against them and other similarly situated African American farmers on the basis of their race when it denied their applications for credit and/or benefit programs or delayed processing their applications, and (2) that when plaintiffs filed complaints of discrimination with the USDA, the USDA failed properly to investigate and resolve those complaints. See Seventh Amended Complaint at 4-5. Plaintiffs allege that defendant's actions violated a number of statutes and the Constitution, but both sides agree that this case essentially is brought under the Equal Credit Opportunity Act, 15 U.S.C. ß 1691 ("ECOA"). See Transcript of Hearing of March 2, 1999, at 19. n1

n1 Most of the class members are complaining about racial discrimination in the USDA's credit programs. ECOA provides the statutory basis for claims of discrimination in credit transactions. See 15 U.S.C. ß 1691. A small number of class members, approximately 5% of the class, complain about the USDA's administration of its benefit programs, especially its disaster relief programs. See Seventh Amended Complaint at P 76. The benefit programs are not subject to ECOA, and the claims against the USDA for alleged acts of discrimination in these programs are brought under the Administrative Procedure Act, 5 U.S.C. ß 706. The differences between the two types of claims lead to slight variations in the burdens of proof and the relief provided.

[**6]

The Court certified this case as a class action on October 9, 1998, and preliminarily approved a Consent Decree on January 5, 1999. After a hearing held on March 2, 1999, the parties made some revisions to the proposed Consent Decree and filed a revised proposed Consent Decree with the Court on March 19, 1999. The Court now concludes that the revised proposed Consent Decree is fair, adequate and reasonable.

A. Factual Background

Farming is a hard way to make a living. Small farmers operate at the whim of conditions completely beyond their control; weather conditions from year to year and marketable prices of crops to a large extent determine whether an individual farmer will make a profit, barely break even or lose money. As a result, many farmers depend heavily on the credit and benefit programs of the United States Department of Agriculture to take them from one year to the next. n2 For instance, if an early freeze kills three-quarters of a farmer's crop one year, he may not have sufficient resources to buy seeds to plant in the following season. Or if a farmer needs to modernize his operations and buy a new grain harvester in order to make his operations profitable, he often [**7] cannot afford to buy the harvester without an extension of credit. Because of the seasonal nature of farming, it also is of utmost importance that credit and benefit applications be processed quickly or the farmer

may lose all or most of his anticipated income for an entire year. It does a farmer no good to receive a loan to buy seeds after the planting season has passed.

n2 The technical differences among USDA's various credit and non-credit programs are set forth in detail in a previous Opinion of this Court. See Pigford v. Glickman, 182 F.R.D. 341, 342-44 (D.D.C. 1998).

The USDA's credit and benefit programs are federally funded programs, but the decisions to approve or deny applications for credit or benefits are made locally at the county level. In virtually every farming community, local farmers and ranchers elect three to five member county committees. The county committee is responsible for approving or denying farm credit and benefit applications, as well as for appointing a county executive who |**8| is supposed to provide farmers with help in completing their credit and benefit applications. The county executive also makes recommendations to the county committee regarding which applications should be approved. The salaries of the county committee members and the county executives are paid from federal funds, but they are not considered federal [*87] government employees. Similarly, while federal money is used to fund the credit and benefit programs, the elected county officials, not federal officials, make the decision as to who gets the federal money and who does not.

The county committees do not represent the racial diversity of the communities they serve. In 1996, in the Southeast Region, the region in the United States with the most African American farmers, just barely over 1% of the county commissioners were African American (28 out of a total of 2469). See CRAT Report at 19. In the Southwest region, only 0.3% of the county commissioners were African American. In two of the remaining three regions, there was not a single African American county commissioner. Nationwide, only 37 county commissioners were African American out of a total of 8147 commissioners -- approximately |**9| 0.45%. Id.

Throughout the country, African American farmers complain that county commissioners have discriminated against them for decades, denying their applications, delaying the processing of their applications or approving them for insufficient amounts or with restrictive conditions. In several southeastern states, for instance, it took three times as long on average to process the application of an African American farmer as it did to process the application of a white farmer. CRAT Report at 21. Mr. Alvin E. Steppes is an African American farmer from Lee County, Arkansas. In 1986, Mr. Steppes applied to the Farmers Home Administration ("FmHA") for an operating loan. Mr. Steppes fully complied with the application requirements, but his application was denied. As a result, Mr. Steppes had insufficient resources to plant crops, he could not buy fertilizer and crop treatment for the crops he did plant, and he ended up losing his farm. See Seventh Amended Complaint at P 14.

Mr. Calvin Brown from Brunswick County, Virginia applied in January 1984 for an operating loan for that planting season. When he inquired later that month about the status of his loan application, a FmHA |**10| county supervisor told him that the application was being processed. The next month, the same FmHA county supervisor told him that there was no record of his application ever having been filed and that Mr. Brown had to reapply. By the time Mr. Brown finally received his loan in May or June 1984, the planting season was over, and the loan was virtually useless to him. In addition, the funds were placed in a "supervised" bank account, which required him to obtain the signature of a county supervisor before withdrawing any funds, a requirement frequently required of African American farmers but not routinely imposed on white farmers. See Seventh Amended Complaint at P 11.

In 1994, the entire county of Greene County, Alabama where Mr. George Hall farmed was declared eligible for disaster payments on 1994 crop losses. Every single application for disaster payments was approved by the Greene County Committee except Mr. Hall's application for four of his crops. See Seventh Amended Complaint at P 5. Mr. James Beverly of Nottaway County, Virginia was a successful small farmer before going to FmHA. To build on his success, in 1981 he began working with his FmHA office to develop a farm [**11] plan to expand and modernize his swine herd operations. The plan called for loans to purchase breeding stock and equipment as well as farrowing houses that were necessary for the breeding operations. FmHA approved his loans to buy breeding stock and equipment, and he was told that the loan for farrowing houses would be approved. After he already had bought the livestock and the equipment, his application for a loan to build the farrowing houses was denied. The livestock and equipment were useless to him without the farrowing houses. Mr. Beverly ended up having to sell his property to settle his debt to the FmHA. See id. at P 12.

The denial of credit and benefits has had a devastating impact on African American farmers. According to the Census of Agriculture, the number of African American farmers has declined from 925,000 in 1920 to approximately 18,000 in 1992. CRAT Report at

14. The farms of many African American farmers were foreclosed upon, and they were forced out of farming. Those who managed to stay in farming often were subject to humiliation and degradation at the hands of [*88] the county commissioners and were forced to stand by powerless, as white farmers received preferential |**12| treatment. As one of plaintiffs' lawyers, Mr. J.L. Chestnut, aptly put it, African American farmers "learned the hard way that though the rules and the law may be colorblind, people are not." Transcript of Hearing of March 2, 1999, at 173.

Any farmer who believed that his application to those programs was denied on the basis of his race or for other discriminatory reasons theoretically had open to him a process for filing a civil rights complaint either with the Secretary of Agriculture or with the Office of Civil Rights Enforcement and Adjudication ("OCREA") at USDA. USDA regulations set forth a detailed process by which these complaints were supposed to be investigated and conciliated, and ultimately a farmer who was unhappy with the outcome was entitled to sue in federal court under ECOA. See Pigford v. Glickman, 182 F.R.D. 341, 342-44 (D.D.C. 1998). All the evidence developed by the USDA and presented to the Court indicates, however, that this system was functionally nonexistent for well over a decade. In 1983, OCREA essentially was dismantled and complaints that were filed were never processed, investigated or forwarded to the appropriate agencies for conciliation. As a result, [**13] farmers who filed complaints of discrimination never received a response, or if they did receive a response it was a cursory denial of relief. In some cases, OCREA staff simply threw discrimination complaints in the trash without ever responding to or investigating them. In other cases, even if there was a finding of discrimination, the farmer never received any relief.

In December of 1996, Secretary of Agriculture Dan Glickman appointed a Civil Rights Action Team ("CRAT") to "take a hard look at the issues and make strong recommendations for change." See CRAT Report at 3. In February of 1997, CRAT concluded that "minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by FSA |Farm Services Agency| programs and the programs of its predecessor agencies, ASCS [Agricultural Stabilization and Conservation Service] and FmHA [Farmers Home Administration]. . . . The process for resolving complaints has failed. Minority and limited-resource customers believe USDA has not acted in good faith on the complaints. Appeals are too often delayed and for too long. Favorable decisions are too often reversed." Id. at 30-31.

Also |**14| in February of 1997, the Office of the Inspector General of the USDA issued a report to Secretary Glickman stating that the USDA had a backlog of complaints of discrimination that had never been processed, investigated of resolved. See Pls' Motion for Class Certification, Exh. A (Evaluation Report for the Secretary on Civil Rights Issues). The Report found that immediate action was needed to clear the backlog of complaints, that the "program discrimination complaint process at [the Farm Services Agency] lacks integrity, direction, and accountability," id. at 6, and that "staffing problems, obsolete procedures, and little direction from management have resulted in a climate of disorder within the civil rights staff at FSA." Id. at 1.

The acknowledgment by the USDA that the discrimination complaints had never been processed, however, came too late for many African American farmers. ECOA has a two year statute of limitations. See 15 U.S.C. ß 1691e(f). If the underlying discrimination alleged by the farmer had taken place more than two years prior to the filing of an action in federal court, the government would raise a statute of limitations defense to bar the farmer's |**15| claims. For instance, some class members in this case had filed their complaints of discrimination with the USDA in 1983 for acts of discrimination that allegedly occurred in 1982 or 1983. If the farmer waited for the USDA to respond to his discrimination complaint and did not file an action in court until he discovered in 1997 that the USDA had stopped responding to discrimination complaints, the government would argue that any claim under ECOA was barred by the statute of limitations.

In 1998, Congress provided relief to plaintiffs with respect to the statute of limitations problem by passing legislation that tolls the statute of limitations for all those who filed [*89] discrimination complaints with the Department of Agriculture before July 1, 1997, and who allege discrimination at any time during the period beginning on January 1, 1981 and ending on or before December 31, 1996. See Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, ß 741, 112 Stat. 2681 (codified at 7 U.S.C. ß 2297, Notes).

B. Procedural Background

From the beginning, this case has been a contentious and hard fought battle on [**16] both sides. The original complaint in this action was filed on August 28, 1997, by three African American farmers representing a putative class of 641 African American farmers. At an initial status conference on October 30, 1997, plaintiffs requested that the case be referred to Magistrate Judge Alan Kay for the purpose of discussing settlement. The government opposed that request. The Court refused to require the government to engage in settlement

negotiations if it was not prepared to do so in good faith and with an open mind, but it made clear that the case would move quickly.

From plaintiffs' perspective, the most important pieces of evidence necessary to ensure speedy resolution of the case were the files of the individual farmers that were held by the government. The Court ordered both sides to comply with their obligations under Rule 26(a)(1) of the Federal Rules of Civil Procedure by November 14, 1997, and it ordered the government to provide plaintiffs with any files in its possession on any farmer who was part of the putative class. See Order of November 4, 1997. The government complied with the Court's discovery ruling, and since then has continued to provide class [**17] counsel with the files of putative class members that it has. See Def's November 17, 1997, Report to the Court.

In the meantime, a number of motions to intervene were filed on behalf of putative class members represented by other attorneys. The two attorneys who originally had filed the Pigford action, Mr. Alexander Pires and Mr. Philip Fraas, stated in open court that any attorney was welcome to serve as of counsel in the case, on the condition that he or she would agree that (1) any compensation would be provided only under the attorneys' fees provisions of ECOA, 15 U.S.C. ß 1691e(d), or other statutory fee-shifting provisions, and (2) he or she would neither collect any fees from individual farmers nor enter into a contingent fee arrangement by which the attorney would take a percentage of the farmer's settlement or award. Class counsel also represented that any putative class member on whose behalf a motion to intervene was filed would be added as a named plaintiff in an amended complaint.

The motions to intervene subsequently were withdrawn, and a number of lawyers entered appearances as of counsel for plaintiffs. The resulting team of lawyers in the case represents [**18] an extraordinary range of experience, specialties and geography: Mr. Pires and Mr. Fraas, both of Washington D.C., have represented farmers in cases against the Department of Agriculture for many years; Mr. J.L. Chestnut from Selma, Alabama, Mr. Othello Cross from Pine Bluff, Arkansas, and Mr. Dennis Sweet, from Jackson, Mississippi, all are experienced civil rights lawyers; Mr. T. Roe Frazer from Jackson, Mississippi, and Mr. Gerard Lear of Arlington, Virginia both are complex litigation and class action specialists. In addition, Mr. Hubbard Saunders, IV, an attorney from Jackson, Mississippi with nearly twenty-five years of experience, and Mr. Willie Smith from Fresno, California have worked on the case.

By mid-November of 1997, the government had rethought its original position with respect to mediation and agreed to explore the option of settlement. The parties quickly agreed upon a mediator, Mr. Michael Lewis, but an agreement on the details of the mediation process required a number of status hearings and conference calls. Finally, in late December the parties agreed to stay the case for a period of six months during which time they would pursue mediation. The parties agreed [**19] to "commence" settlement discussions on a case-by-case basis but left open the possibility of discussing a global resolution of the case. See Order of December 24, 1997.

[*90] At a status conference just over two months later, however, there appeared to be a fundamental disagreement about the process of mediation: plaintiffs wanted to negotiate a settlement structure that would address the claims of all putative class members while the government continued to want to mediate claims on a case-by-case basis. Plaintiffs' counsel, in particular Mr. J.L. Chestnut, argued that the stay had to be lifted, legal issues briefed and decided, and a prompt and firm trial date set. If mediation continued on a case-by-case basis, Mr. Chestnut argued, "Well, Your Honor can look at my gray hair; I won't live that long. Many of my clients won't live that long. . . . Please, please give my people a trial date. It took us, Judge, 15 long miserable years to get here and now they want to go case by case. That will be another 15 years of injustice. The only way you can stop it, Your Honor, is a straightforward statement to the government: Settle it or try it." Transcript of Hearing of March 5, 1998, at 37-39. [**20]

The Court lifted the stay so that the parties could brief plaintiffs' motion for class certification and plaintiffs' motion for partial summary judgment on the issue of the statute of limitations. See Order of March 6, 1998. The Court also set a trial date of February 1, 1999. Id. Upon the representations of the parties that they wanted to continue trying to mediate the case with Mr. Lewis, the Court also extended the time for mediation. See Order of April 6, 1998.

In the meantime, plaintiffs had filed a second putative class action, Brewington v. Glickman, 185 F.R.D. 82, Civil Action No. 98-1693. The putative class in Brewington included those who had filed their discrimination complaints with the USDA after February 21, 1997, the cutoff date for the putative Pigford class, but before July 7, 1998, the filing date of Brewington. With the exception of the date of filing of discrimination complaints, the allegations of the Brewington complaint mirrored those of the Pigford complaint.

On October 9, 1998, the Court granted the motion for class certification in Pigford. The Court also ordered the parties jointly to file a draft notice to class members by October [**21] 30, 1998. At a status hearing on

October 13, 1998, plaintiffs informed the Court that Congress had passed a bill that would toll the statute of limitations for African American farmers who had filed complaints of discrimination with the USDA and that they would be withdrawing their motion for partial summary judgment on the statute of limitations issue as soon as the President signed the bill into law because that motion then would be unnecessary. On October 21, 1998, President Clinton signed into law the bill tolling the statute of limitations that had been enacted by Congress. See Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, ß 741, 112 Stat. 2681 (codified at 7 U.S.C. ß 2297, Notes). The waiver of the statute of limitations provides that "a civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the enactment of this Act, shall not be barred by any statute of limitations." An "eligible complaint" is defined, in relevant part, as "a nonemployment related complaint that was filed with the Department of Agriculture [**22] before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996" in violation of ECOA or "in the administration of a commodity program or a disaster assistance program." See id.

Faced with a February 1, 1999, trial date, the parties continued their efforts at mediation with the help of Mr. Lewis. At some point after the March 5, 1998 status hearing, the focus of negotiations shifted from case-by-case analysis to structuring a global resolution of the claims of all class members. By December 1998, the parties had informed the Court that they were very close to agreeing upon a global settlement of plaintiffs' claims in both Pigford and Brewington. Finally, on January 5, 1999, the parties filed with the Court (1) a motion to consolidate the two cases, (2) a motion to alter the definition of the class certified in Pigford to include members of the Brewington action and to certify the class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, (3) a motion [*91] for preliminary approval of a proposed Consent Decree, and (4) a notice to class members. The Court consolidated the two cases, preliminarily [**23] approved the Consent Decree, approved the notice to class members, notified class members of their right to file written objections by February 15, 1999, and scheduled a fairness hearing for March 2, 1999.

Within ten days after the preliminary approval of the Consent Decree, the facilitator mailed a copy of the Notice of Class Certification and Proposed Class Settlement to all then-known members of the class. n3 The facilitator also arranged a print notification program with one-quarter page advertisements in 26 general circulation newspapers for January 21, 1999, and in 100 African-American newspapers between January 13, 1999 and January 27, 1999. See Def's Memorandum in Support of Consent Decree (Declaration of Jeanne C. Finegan). The facilitator also arranged to have a full page advertisement announcing the preliminary approval of the Consent Decree and the time and place of the fairness hearing placed in the editions of TV Guide that were distributed in an 18-state region, and a half page advertisement in the national edition of Jet Magazine. See id. In addition, the facilitator aired 44 commercials announcing the preliminary approval of the Consent Decree and the time [**24] and place of the fairness hearing on the Black Entertainment Network and aired 18 similar commercials on the Cable News Network over the course of a two-week period. The facilitator estimates that on average, the print and television notice campaign "reached 87 percent of African-American farm operators, managers or others in farm-related industries, an average frequency of 2.4 times." Id. at 6. As of February 19, 1999, the facilitator had received 15,132 telephone calls as a result of its notification campaign. Id. at 7.

n3 The "facilitator" is the Poorman-Douglas Corporation. See Consent Decree at P 1(i). Among other responsibilities, the facilitator is required to mail copies of the Notice of Class Certification and Proposed Class Settlement to all known class members within ten days of the Court's preliminary approval of the proposed Consent Decree and to undertake an advertising campaign notifying potential class members of the class certification and proposed class settlement. See id. at PP 3, 4.

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The USDA exerted efforts to obtain the assistance of community based organizations, including those organizations that focus on African American and/or agricultural issues, in communicating to class members and potential class members the fact that the Court had preliminarily approved the Consent Decree and the time and place of the fairness hearing. Def's Memorandum in Support of Consent Decree (Declaration of David H. Harris). USDA officials also were notified that, to the extent possible, they had an obligation to communicate to class members information about the Consent Decree and the fairness hearing. The Court posted a copy of the proposed Consent Decree and the Notice of Class Certification on the Internet Website of the United States District Court for the District of Columbia. Finally, class counsel held meetings in counties throughout the country, particularly in the South, to notify farmers of the

settlement, the process for filing a claim package and the time, place and purpose of the fairness hearing.

The Court timely received approximately eighteen written objections from organizations or individuals. See Order of February 25, 1999. The Court also received a number [**26] of letters after the February 15, 1999 deadline which it also has considered. With the exception of one objection filed after the hearing, see Order of March 11, 1999, the Court has considered all letters and filings received before and since the hearing that have expressed objections to or comments on the proposed Consent Decree. Class counsel and counsel for the government also filed memoranda in support of the proposed Consent Decree and supplemental responses to the objections raised.

The Court conducted a fairness hearing on March 2, 1999, which lasted an entire day. The Court allocated time for all objectors who previously had filed written objections to the Consent Decree and also allocated time at the end of the day for others who wished to express their views. See Order of February 25, 1999. The Court provided time for class counsel and counsel for the government [*92] to explain the proposed Consent Decree and to discuss their view of its fairness. The Court heard from representatives of eight organizations that had filed written objections, six individuals who had filed written objections and ten individuals who had not filed written objections. The Court also heard from [**27] class counsel, counsel for the government and the mediator.

After the hearing, the Court sent a letter to the parties summarizing some of the objections that had been raised at the hearing and suggesting changes to the proposed Consent Decree that might alleviate some of the concerns raised. The Court indicated that it would not issue a final ruling on the fairness of the proposed Consent Decree until March 19, 1999, in the event that the parties wanted to file a revised proposed Consent Decree addressing the concerns raised at the hearing and by the Court. By letter of March 19, 1999, the parties transmitted to the Court a revised proposed Consent Decree which includes those changes or clarifications that the parties believed they could make to the proposed Consent Decree without fundamentally altering the framework and basis for their agreement. The Court posted the revised Consent Decree to the Court's Internet Website and issued an order granting any objector leave to file any comments with respect to the revisions to the proposed Consent Decree by March 29, 1999. The revised proposed Consent Decree now is before the Court to determine whether it is fair, reasonable and adequate. [**28]

II. CLASS CERTIFICATION

The Court originally certified a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure for purposes of determining liability. The class was defined as

> All African-American farmers who (1) farmed between January 1, 1983, and February 21, 1997; and (2) applied, during that time period, for participation in a federal farm program with USDA, and as a direct result of a determination by USDA in response to said application, believed that they were discriminated against on the basis of race, and filed a written discrimination complaint with USDA in that time period.

Pigford v. Glickman, 182 F.R.D. at 352. Plaintiffs had asserted that the class could be certified under either Rule 23(b)(2) or Rule 23(b)(3) of the Federal Rules of Civil Procedure, but the Court found that it was most appropriate for purposes of determining liability to certify a class under Rule 23(b)(2), governing class actions seeking primarily injunctive or declaratory relief. At the time, the Court also noted that "if liability is found and the case reaches the remedy stage, the Court will have to determine the most appropriate mechanism for determining remedy. [**29] It is possible that at that point it would be appropriate to certify a class pursuant to Rule 23(b)(3). . . ." Id. at 351 (*citing* Eubanks v. Billington, 324 U.S. App. D.C. 41, 110 F.3d 87, 96 (D.C. Cir. 1997) (in class action seeking both injunctive and monetary relief, court may adopt "hybrid" approach and certify (b)(2) class for former and (b)(3) class for latter)).

By Order of January 5, 1999, upon motion of the parties, the Court vacated the Order certifying the class and certified a new class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. The newly certified class is defined as:

> All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (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.

Order of January 5, 1999.

There are three [**30] changes to the substantive definition of the class. The first change relates to the time frame within which a class member is required to have filed his or her discrimination complaint with the USDA. Under the original class definition, a class member was required to have filed his complaint with the USDA before February 21, 1997. The putative class in Brewington included [*93] those who had filed their complaints of discrimination with the USDA between February 21, 1997, the cutoff date in Pigford, and July 7, 1998, the date of filing of the Brewington action.

The definition of the class certified by Order of January 5, 1999, modifies the class definition so that the filing date is consistent with the recently-enacted legislation tolling the statute of limitations. See Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, ß 741, 112 Stat. 2681 (codified at 7 U.S.C. ß 2297, Notes). The legislation specifies that in order to toll the statute of limitations, a farmer must have filed his complaint of discrimination with the USDA before July 1, 1997, and the new class definition includes the same [**31] cut-off date. The resulting class has a broader definition than the original Pigford class but a slightly narrower definition than the proposed class definition in Brewington. The members of the proposed Brewington class who are not a part of the newly certified class -- that is, those who filed discrimination complaints after July 1, 1997 -- are on a different legal footing because the statute of limitations has not been tolled for them and resolution of their claims therefore is not appropriate in this action.

The second change also involves timing issues. The original class definition specified that class members must have farmed between January 1, 1983, and February 21, 1997, and applied for a credit or benefit program during that same time period. The definition of the class certified by Order of January 5, 1999, requires class members to have farmed or attempted to farm between January 1, 1981, and December 31, 1996, and to have applied for a credit or benefit program during that time period. As with the changed discrimination complaint filing dates, this change in class definition is consistent with the recently-enacted legislation tolling the statute of limitations. [**32] See Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, ß 741, 112 Stat. 2681 (codified at 7 U.S.C. ß 2297, Notes).

The third change relates to the way in which a class member's complaint of discrimination was transmitted to the USDA. Under the original class definition, a class member must have filed a "written" complaint of discrimination with the USDA. The revised class definition provides that the class member must have "filed a discrimination complaint," and under the terms of the proposed Consent Decree, class members who have participated in "listening sessions" or have complained to members of Congress in certain case are deemed to have "filed" a discrimination complaint. See Consent Decree at P 1(h). None of the substantive changes to the class definition in any way affects the Court's analysis or conclusion that the case properly is certified as a class action. See Pigford v. Glickman, 182 F.R.D. at 344-45.

The primary difference between the class certified by the Court on October 9, 1998 and the class certified by the Court on January 5, 1999, is more procedural than substantive: [**33] the former was certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure for purposes of determining whether the USDA is liable to class members and the latter was certified for all purposes pursuant to Rule 23(b)(3). n4 Rule 23 provides that all class members in a Rule 23(b)(3) class action are entitled to notice and an opportunity to exclude themselves from -- or "opt out" of -- the class and pursue individual remedies. See Rule 23(c)(2), Fed. R. Civ. P. The Rule contains no explicit opt-out provision with respect to a class certified pursuant to Rule 23(b)(1) or Rule 23(b)(2), although a court [*94] may have discretion to permit class members to opt out of the class in (b)(1) and (b)(2) actions. See Eubanks v. Billington, 110 F.3d at 92-95. The parties in this case agreed that it was more appropriate -- and fairer to members of the class -- to ask the Court to certify the class under Rule 23(b)(3) for all purposes, particularly since the proposed settlement involves primarily monetary relief. See id. at 95. The decision to certify the class pursuant to Rule 23(b)(3) was made largely in order to allow class members to opt out of the class if they wanted to [**34] pursue their remedies individually either before the USDA or by separate court action.

n4 An action may appropriately be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

An action may appropriately be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure if the Court finds that "the questions of law or fact common to the members

> of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

The Court already has determined that a class exists and that the class meets the four criteria of Rule 23(a) of the Federal Rules of Civil Procedure. See Pigford v. Glickman, 182 F.R.D. at 346-50. Because [**35] the Court has certified the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, it also must ensure that the separate and additional requirements of (b)(3) are satisfied before approving the proposed settlement. See Amchem Products, Inc. v. Windsor, 521 U.S. 591, 622, 138 L. Ed. 2d 689, 117 S. Ct. 2231 (1997) (court's fairness analysis for settlement purposes under Rule 23(e) cannot substitute for determination whether class is appropriately certified in the first place); Thomas v. Albright, 139 F.3d 227, 234 (D.C. Cir.) (requirements of predominance and superiority in subsection (b)(3) are additional to requirements of subsection (a) which apply to all class actions), *cert. denied*, 142 L. Ed. 2d 480, 119 S. Ct. 576 (1998).

Rule 23(b)(3) requires the Court to find (1) that questions of law or fact common to members of the class predominate over questions affecting only individual members, and (2) that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy." Rule 23(b)(3), Fed. R. Civ. P. It is designed to cover cases in which a class action would promote "'uniformity of decision as to persons similarly [**36] situated, without sacrificing procedural fairness or bringing about other undesirable results.' The Advisory Committee had dominantly in mind vindication of 'the right of groups of people who individually would be without effective strength to bring their opponents into court at all.'" Amchem Products, Inc. v. Windsor, 521 U.S. at 615, 617 (quoting Rule 23, Fed. R. Civ. P., Adv. Comm. Notes). This is just such a case.

The ultimate settlement of this action envisions the creation of a mechanism on a class-wide basis that will then be utilized to resolve the individual claims of class members outside the traditional litigation process, most of them (Track A) in a rather formulaic way. Most members of the class lack documentation of the allegedly discriminatory transactions at issue. Without any documentation of those transactions, it would be difficult if not impossible for an individual farmer to prevail in a suit in federal court under a traditional preponderance of the evidence standard. The parties acknowledge, however, that it is not the fault of class members that they lack records. Since class members' lack of documentation is at least in part attributable to the passage [**37] of time which has been exacerbated by the USDA's failure to timely process complaints of discrimination, there is a common issue of whether and how best to provide relief to class members who lack documentation, and that common issue "predominate[s] over any questions affecting only individual members." See Rule 23(b)(3), Fed. R. Civ. P. This class action and its settlement as proposed in the Consent Decree provide a mechanism to address that common issue. See Amchem Products, Inc. v. Windsor, 521 U.S. at 619 ("Settlement is relevant to a class certification").

In addition to the lack of documentation making individual adjudication of most claims so difficult, the sheer size of the class makes the prospect of individual adjudication of damages virtually unmanageable. For this or any other court to adjudicate the individual claims of the 15,000 to 20,000 African American farmers now estimated to be members of the class would take years or perhaps even a decade or more. Any "fair and efficient" resolution of the claims therefore necessitates the implementation of some sort of class-wide mechanism such as the creative [*95] and speedy Track A/Track B procedures proposed by the parties [**38] in the Consent Decree. The Court therefore finds that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." See Rule 23(b)(3), Fed. R. Civ. P. The Court concludes that this action appropriately is certified for resolution pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. The remaining question is whether the proposed Consent Decree is fair, adequate and reasonable under Rule 23(e).

III. PROVISIONS OF PROPOSED CONSENT DECREE

The proposed Consent Decree, as revised after the fairness hearing and jointly filed by the parties on March 19, 1999, is a negotiated settlement that resolves all of the claims raised by plaintiffs in the Seventh Amended Complaint. The purpose of the Consent Decree is to ensure that in the future all class members in their dealings with the USDA will "receive full and fair treatment" that is "the same as the treatment accorded to similarly situated white persons." Consent Decree at 1-2. As with all settlements, it does not provide the plaintiffs and the class they represent with everything they sought in the complaint. Instead it is a negotiated settlement intended to achieve much [**39] of what was sought without the need for lengthy litigation and uncertain results. See Stewart v. Rubin, 948 F. Supp. 1077, 1087 (D.D.C. 1996) ("inherent in compromise is a yielding of absolutes and an abandoning of highest hopes"), *aff'd* 326 U.S. App. D.C. 337, 124 F.3d 1309 (D.C. Cir. 1997). It is impossible to know precisely how much the overall settlement in this case will cost the government, in part because the exact size of the class has not been

determined and because the Consent Decree provides for debt relief that is dependent on the amount of debt that individual class members owe to the USDA, but plaintiffs estimate that the settlement is worth at least $ 2.25 billion, the largest civil rights settlement in the history of this country. See Pls' Response to Post-Hearing Submissions at 7.

The Consent Decree accomplishes its purposes primarily through a two-track dispute resolution mechanism that provides those class members with little or no documentary evidence with a virtually automatic cash payment of $ 50,000, and forgiveness of debt owed to the USDA (Track A), while those who believe they can prove their cases with documentary or other evidence by a preponderance of the evidence [**40] -- the traditional burden of proof in civil litigation -- have no cap on the amount they may recover (Track B). Those who like neither option provided by the Consent Decree may opt out of the class and pursue their individual remedies in court or administratively before the USDA. The essential terms of the proposed Consent Decree and settlement are summarized below.

Under the terms of the proposed Consent Decree, any class member has the right to opt out of the class and pursue his remedies either administratively before the USDA or in a separate court action. See Consent Decree at P 2(b). A class member who opts out of the class cannot collect any relief under the settlement, but he retains all of his legal rights to file his own action against the USDA. In other words, if a class member opts out of the class, nothing in this settlement affects him. Any class member who wishes to opt out of the class must file a written request with the facilitator within 120 days of the date on which the Consent Decree is entered. See id.

Those who choose to remain in the class have 180 days from the entry of the Consent Decree within which to file their claim packages with the facilitator. [**41] Consent Decree at P 5(c). n5 When a claimant submits his claim package, he must include evidence that he filed a discrimination claim with the USDA between January 1, 1981 and July 1, 1997. See id. at P 5(b). n6 In the absence of documentation [*96] that a complaint was filed with the USDA, a claimant may submit a declaration from "a person who is not a member of the claimant's family" stating that he or she has first-hand knowledge that the claimant filed the complaint. See id. n7 A claimant also must include a certification from an attorney stating that the attorney has a good faith belief in the truth of the factual basis of the claim and that the attorney will not require compensation from the claimant for his or her assistance. See id. at P 5(e). n8

n5 The Court may grant an extension of this 180 day period "where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree at P 5(g).

n6 For a claimant who otherwise meets the class definition but who filed his complaint of discrimination after July 1, 1997, the claims package will be forwarded to JAMS-Endispute, Inc. JAMS-Endispute, Judicial Arbitration and Mediation Services Endispute, is a California-based corps of retired judges with offices throughout the country that provides alternative dispute resolution mechanisms. JAMS-Endispute will determine whether the claimant should be allowed to proceed as a class member despite his failure to timely file his discrimination complaint. See Consent Decree at PP 1(a)(ii), 6. [**42]

n7 For purposes of the proposed Consent Decree, a "discrimination complaint" means either a communication directly from the class member to the USDA or a communication from the claimant to a member of Congress, the White House, or a state, local, or federal official who forwarded the communication to the USDA asserting that the USDA had discriminated against the claimant on the basis of race in connection with a federal farm credit transaction or benefit application. Consent Decree at P 1(h).

n8 Class counsel is available to perform these services without charge to the claimant.

At the time that they submit their claim packages, claimants asserting discrimination in credit transactions also must choose between two options: adjudication of their claims under the Track A mechanism or arbitration of their claims under the Track B mechanism. Consent Decree at P 5(d). n9 The choice made between Track A and Track B has enormous significance. Under Track A, the class member has a fairly low burden of proof but his recovery is limited. Under Track B, there is a higher burden of proof but the recovery [**43] is unlimited. The claims facilitator, the Poorman-Douglas Corporation, has 20 days after the filing of a claims package within which to determine whether the claimant is a member of the class and, if he is, to forward the materials to counsel for the USDA and to the appropriate Track A or Track B decision-maker. Id. at P 5(f)

n9 Claimants asserting discrimination in non-credit benefit programs are only entitled to proceed under Track A. Consent Decree at P 5(d).

Under Track A, a claimant must submit "substantial evidence" demonstrating that he or she was the victim of race discrimination. See Consent Decree at PP 9(a)(i), 9(b)(i). Substantial evidence means something more than a "mere scintilla" of evidence but less than a preponderance. See Burns v. Office of Workers' Compensation Programs, 309 U.S. App. D.C. 400, 41 F.3d 1555, 1562 n. 10 (D.C. Cir. 1994). Put another way, substantial evidence is such "relevant evidence as a reasonable mind might accept to support [the] conclusion," even when "a [**44] plausible alternative interpretation of the evidence would support a contrary view." Secretary of Labor v. Federal Mine Safety and Health Review Comm'n, 324 U.S. App. D.C. 154, 111 F.3d 913, 918 (D.C. Cir. 1997). n10

n10 The Consent Decree defines "substantial evidence" as "such relevant evidence as appears in the record before the adjudicator 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." Consent Decree at P 1(l).

A claimant asserting discrimination in a credit transaction can satisfy this burden by presenting evidence of four specific things: (1) that he owned or leased, or attempted to own or lease, farm land; (2) that he applied for a specific credit transaction at a USDA county office between January 1, 1981 and December 31, 1996; (3) that the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide [**45] appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and (4) that USDA's treatment of the loan application led to economic damage to the class member. See Consent Decree at P 9(a)(i). A claimant asserting discrimination only in a non-credit benefit program can satisfy his burden by presenting evidence (1) that he applied for a specific non-credit benefit program at a USDA county office between January 1, 1981 and December 31, 1996, and (2) that his application was denied or approved for a lesser amount then requested and that such treatment was less favorable [*97] than that accorded to specifically identified, similarly situated white farmers. See id. at P 9(b)(i).

The USDA has sixty days after it receives notice of a Track A referral to provide the adjudicator and class counsel with any information relevant to the issues of liability and damages. Consent Decree at P 8. After receiving any material from the USDA, the facilitator will either make a recommendation with respect to whether the claim should be approved or indicate its inability to make a recommendation. The entire packet of material, [**46] including the submissions by the claimant and the USDA and the recommendation of the facilitator, then is referred to a member of JAMS-Endispute, Inc., for a decision which is to be made within 30 days. See id. at P 9(a). That decision is final, except that the Monitor, whose responsibilities are discussed further below, shall direct the adjudicator to reexamine the claim if he determines that "a clear and manifest error has occurred" that is "likely to result in a fundamental miscarriage of justice." See id. at PP 9(a)(v), 9(b)(v), 12(b)(iii).

If the adjudicator finds in the claimant's favor and the claim involves discrimination in a credit transaction, the claimant will receive (1) a cash payment of $ 50,000; (2) forgiveness of all debt owed to the USDA incurred under or affected by the program that formed the basis of the claim; (3) a tax payment directly to the IRS in the amount of 25% of the total debt forgiveness and cash payment; (4) immediate termination of any foreclosure proceedings that USDA initiated in connection with the loan(s) at issue in the claim; and (5) injunctive relief including one-time priority loan consideration and technical assistance. Consent Decree [**47] at PP 9(a)(ii); 11. If the adjudicator finds in the claimant's favor and the claim involves discrimination in a benefit program, the claimant will receive a cash payment in the amount of the benefit wrongly denied and injunctive relief including one-time priority loan consideration and technical assistance. Id. at P 9(b)(iii).

Track B arbitration is the option for those who have more extensive documentation of discrimination in a credit transaction. Under Track B, an arbitrator will hold a one day mini-trial and then decide whether the claimant has established discrimination by a preponderance of the evidence. Consent Decree at P 10. n11 Class counsel will represent any claimant who chooses Track B, or a claimant may be represented by counsel of his choice if he so desires. Track B is designed to balance the need for prompt resolution of the claim with the need to provide adequate discovery and a fair hearing. The entire Track B process will take a maximum of 240 days. During the first 180 days, there is a mechanism for limited discovery and depositions of witnesses. Following the one day mini-trial, the arbitrator will render a decision within 30 to 60 days. Id. at P 10(g). [**48]

n11 The arbitrator will either be Mr. Michael Lewis, the mediator, or will be a person selected by Mr. Lewis from a list of arbitrators pre-approved by class counsel and counsel for the government. See Consent Decree at P 1(b); Letter of March 19, 1999 from the Parties to the Court at P 1.

If the arbitrator finds that the claimant has demonstrated by a preponderance of the evidence that he was the victim of racial discrimination and that he suffered damages from that discrimination, the claimant will be entitled to actual damages, the return of inventory property that was foreclosed and other injunctive relief, including a one-time priority loan consideration. Consent Decree at PP 10(g), 11. As with Track A claims, the decision of the arbitrator is final except that the Monitor shall direct the arbitrator to reexamine the claim if he determines that "a clear and manifest error has occurred" that is "likely to result in a fundamental miscarriage of justice." See id. at PP 10, 12(b)(iii).

The proposed [**49] Consent Decree also provides for an independent Monitor who will serve for a period of five years following the entry of the decree. The Monitor will be appointed by the Court from a list of names proposed by the parties and cannot be removed "except upon good cause." Consent Decree at P 12(a). The Monitor is responsible for making periodic written reports to the Court, the Secretary of Agriculture, counsel for the government and class counsel, reporting on the good faith implementation of the Consent Decree and efforts to resolve disputes [*98] that arise between the parties under the terms of the decree. Id. at P 12(b). n12 He or she will be available to class members and members of the public through a toll-free telephone number to facilitate the lodging of Consent Decree complaints and to expedite their resolution. Id. at P 12(b)(iv).

n12 The parties indicated in their letter of March 19, 1999, that one of the changes to the original Consent Decree would be that the Monitor would provide copies of his report to the Court. That change was not reflected in the revised Consent Decree that was filed by the parties on March 19, 1999, but the parties have since filed a corrected page 21 of the revised Consent Decree so that the Monitor in fact will be required to provide copies of the report to the Court. See Notice of Filing of April 9, 1999.

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The Court retains jurisdiction to enforce the Consent Decree through contempt proceedings. Consent Decree at P 21. If one side believes that the other side has violated the terms of the Consent Decree, there is a mandatory procedure for attempting to resolve the problem with the assistance of the Monitor that the parties must follow before filing a contempt motion with the Court, but the Court remains available in the event that the terms of the decree are violated. Id. at P 13. Finally, the Consent Decree provides that class counsel shall be entitled to reasonable attorneys' fees and costs under ECOA, 15 U.S.C. ß 1691e(d), and under the Administrative Procedure Act, 28 U.S.C. ß 2412(d), for the filing and litigation of this action and for implementation of the Consent Decree. Id. at P 14(a).

IV. FAIRNESS OF PROPOSED CONSENT DECREE

Under Rule 23 of the Federal Rules of Civil Procedure, no class action may be dismissed, settled or compromised without the approval of the Court. Rule 23(c), Fed. R. Civ. P. Before giving its approval, the Court must provide adequate notice to all members of the class, id., conduct a "fairness hearing," and find, after notice and hearing, [**51] that the "settlement is fair, adequate and reasonable and is not the product of collusion between the parties." Thomas v. Albright, 139 F.3d at 231. In performing this task, the Court must protect the interests of those unnamed class members whose rights may be affected by the settlement of the action.

In this circuit there is "no obligatory test" that the Court must use to determine whether a settlement is fair, adequate and reasonable. Osher v. SCA Realty I, Inc., 945 F. Supp. 298, 303-04 (D.D.C. 1996). Instead the Court must consider the facts and circumstances of the case, ascertain what factors are most relevant in the circumstances and exercise its discretion in deciding whether approval of the proposed settlement is fair. n13 By far the most important factor is a comparison of the terms of the compromise or settlement with the likely recovery that plaintiffs would realize if the case went to trial. See Thomas v. Albright, 139 F.3d at 231 ("The court's primary task is to evaluate the terms of the settlement in relation to the strength of plaintiffs' case"); Isby v. Bayh, 75 F.3d 1191, 1199 (7th Cir. 1996) ("the relative strength of plaintiffs' case on the merits [**52] as compared to what the defendants offer by way of settlement, is the most important consideration"); Maywalt v. Parker and Parsley Petroleum Co., 67 F.3d 1072, 1079 (2nd Cir. 1995) ("the primary concern is with the substantive terms of the settlement: Basic to this is the need to compare the terms of the compromise with the likely rewards of litigation") (internal citations and quotations omitted). Having carefully considered all of

the objections that have been [*99] filed with the Court or expressed at the fairness hearing in relation to the strength of plaintiffs' case, the Court concludes that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties. n14

n13 The Third Circuit has adopted a nine-factor test for determining the fairness of a settlement of a class action, see Girsh v. Jepson, 521 F.2d 153 (3rd Cir. 1975), while the Tenth Circuit has adopted a four factor test, see Gottlieb v. Wiles, 11 F.3d 1004, 1014 (10th Cir. 1993), and the Eleventh Circuit has developed a six factor test. See Bennett v. Behring Corp., 737 F.2d 982 (11th Cir. 1984). Other circuits, including ours, have not imposed such rigid sets of factors, instead recognizing that the relevant factors may vary depending on the factual circumstances. See Thomas v. Albright, 139 F.3d at 231; Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1375-76 (9th Cir. 1993), *cert denied sub nom*, Reilly v. Tucson Elec. Power Co., 512 U.S. 1220, 129 L. Ed. 2d 834, 114 S. Ct. 2707 (1994). To the extent that the factors enumerated by the other circuits are at all relevant to the determination of whether this Consent Decree is fair, adequate and reasonable, however, the Court has considered and addressed those factors in this Opinion. [**53]

n14 The Court has received written objections or comments from the following organizations: Black Farmers and Agriculturists Assoc.; Black Farmers of North Carolina; Central Piedmont Economic Assoc.; Concerned Black Farmers of Tennessee, Arkansas, Mississippi, Georgia and North Carolina; Coordinating Council of Black Farm Groups; Kansas Black Farmers Assoc.; Land Loss Prevention Project; Federation of Southern Cooperatives Land Assistance Fund; Lawyers' Committee for Civil Rights Under Law; NAACP; National Black Farmers; National Council of Community Based Organizations in Agriculture; National Family Farm Coalition; Oklahoma Black Farmers and Agriculturalists Assoc.; and United States Dept. of Agriculture Coalition of Minority Employees.

The Court has received written objections or comments from the following individuals (on behalf of themselves and/or on behalf of other class members): Theodore F.B. Bates; Robert R. Binion; Abraham Carpenter, Jr.; Leonard C. Cooper; Harold M. Dunkelberger; George and Larry Ephfrom; Percy Gooch, Sr.; Estell Green, Jr.; Patricia Gibson Green; Brown J. Hawkins; Clarence Hardy, George and Patricia Hildebrandt; George Hobbs; Dave J. Miller; Jessie Nimmons; Timothy C. Pigford; Amelia Roland Washington; Roy L. Rolle, Jr.; Luis C. Sanders; Herbert L. Skinner, Jr.; Gregory R. Sweeker; V.J. Switzer; George M. Whitehead; Gladys R. Todd and Griffin Todd, Sr.; Andrew Williams; Jerome Williams; and Eddie and Dorothy Weiss.

All of the organizations and most of the individuals who had submitted written comments or objections spoke at the hearing on March 2, 1999. In addition, the following individuals spoke at the hearing: Mattie Mack; Kevin Pyle; Sherman Witchler; Eddie Slaughter; Ridgeley Mu'Min Muhammed; Willie Frank Smith; John Bender; Troy Scroggins; and Willie Head.

All of the objections and comments, whether received in the form of letters to the Court or as formal filings, have been filed as part of the official record of this case. To the extent possible, the Court has attempted to address all of the objections that have been raised. Whether or not specifically mentioned in this Opinion, the Court has carefully considered the objections and appreciates the extent to which the objectors have shared their thoughts and views.

[**54]

A. The Process of Settlement

Preliminarily, the Court considers those objections that address the fairness of the way in which the settlement negotiations were conducted, the amount of discovery completed at the time of settlement, the definition of the class, whether there is any evidence of collusion between class counsel and counsel for the government, and whether class members have had adequate notice and opportunity to be heard on the proposed settlement. See Thomas v. Albright, 139 F.3d at 231; Durrett v. Housing Authority of City of Providence, 896 F.2d 600, 604 (1st Cir. 1990); Mars Steel v. Continental Ill. Nat. Bank and Trust, 834 F.2d 677, 683 (7th Cir. 1987); Girsh v. Jepson, 521 F.2d 153 (3rd Cir. 1975); Osher v. SCA Realty I, Inc., 945 F. Supp. at 304.

1. Timing of Settlement and Extent of Discovery Completed

Some of the objectors maintain that settlement came too early and that class counsel undertook insufficient

discovery in this case before settling it. A review of the history of the case, however, reveals that "there has been a literal mountain of discovery provided and reviewed." Transcript of Hearing of March 2, 1999 at 170 (Comments [**55] of Mr. J.L. Chestnut). Less than three months after the case was filed, the Court ordered the USDA to open its files to plaintiffs within fifteen days. On the fifteenth day, the government provided plaintiffs with ten boxes of documents containing approximately 35,000 to 40,000 pages of records related to approximately 105 pending claims of race discrimination. See Def's November 17, 1997 Report to the Court, Declaration of Arnold Grundeman at P 4. Three days later, the government delivered an additional 20,000 pages related to another 30 pending cases of discrimination. See id. at P 5. At the time, the government represented that it was continuing to search for files, many of which had already been sent to a federal records repository. Since that time, the government has continued to provide plaintiffs with the files of class members.

The problem for plaintiffs has been that files simply do not exist for many class members. Providing additional time for discovery would not have solved that problem. As class counsel has pointed out, on the issue of liability of the USDA, the government's own [*100] documents and own admissions are the most damning evidence. See Transcript of [**56] Hearing of March 2, 1999 at 184 (Comments of Mr. Alexander Pires) ("I have an office full of admissions. I have tape recordings of Mr. Glickman. I have tape recordings of Governemnt officials. I've interviewed everybody there is to interview. I have documents. I have the CRAT Report annotated. I have all the [Office of the Inspector General] Reports"). There really was no other discovery that could have made a difference. The same is true on the issue of damages. The government delivered to class counsel all of the files it had on individual class members. But without documentary evidence that does not exist, an individual farmer would be hard-pressed to provide evidence beyond his own testimony, and additional discovery from the government would not be helpful.

In addition, a relatively extensive amount of litigation had occurred by the time the parties agreed to a settlement. The issue of class certification had been extensively briefed by the parties and decided by the Court. Plaintiffs' motion for summary judgment on the issue of the statute of limitations was fully briefed when the statute of limitations was tolled by legislative action. The government also had filed a motion [**57] for judgment on the pleadings and for partial summary judgment that was fully briefed. In sum, the discovery, investigation and legal research conducted by class counsel before entering into settlement was thorough and supports the fairness and reasonableness of the settlement. See Isby v. Bayh, 75 F.3d at 1200.

2. Class Definition

The class is defined to include all African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (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. Some characterize this class definition as too narrow. They claim that the class should be broadened to include all African American farmers who claim to have faced discrimination in credit transactions or benefit programs with the USDA, regardless of whether they filed a complaint of discrimination with [**58] the USDA.

The legal issues for those who never have filed a discrimination complaint, however, are much more difficult than those facing the members of the class as currently defined. The statute of limitations issue still exists for those who never have filed complaints of discrimination because Congress tolled the statute of limitations only for those who filed discrimination complaints by July 1, 1997. Moreover, from the beginning, plaintiffs' complaint only sought relief for those who had filed discrimination complaints with the USDA. Accordingly, the Consent Decree in this case cannot provide relief for those who never purported to complain to the USDA in any way about the alleged discrimination. Cf. United States v. Microsoft, 312 U.S. App. D.C. 378, 56 F.3d 1448, 1460 (D.C. Cir. 1995).

Some also have objected that the class as currently defined does not include all members of the putative Brewington class because under the current class definition, the farmer is required to have filed a complaint of discrimination prior to July 1, 1997, while the proposed class in Brewington would have included African American farmers who had filed their discrimination complaints [**59] prior to July 7, 1998. As previously discussed, see page 20 above, the statutory waiver of ECOA's two-year statute of limitations as recently enacted by Congress applies only to those farmers who filed complaints of discrimination by July 1, 1997. The claims of those who do not meet that deadline face separate and additional legal barriers not faced by the class as currently defined. Broadening the class would inject legal and factual issues into the case that are not now present and would only serve to hinder a fair, reasonable and adequate settlement for the African

American farmers who are a part of the class as currently defined. The Court therefore concludes that this class definition is appropriate.

[*101] The Consent Decree also requires each class member to provide proof that he filed a "discrimination complaint" with the USDA. The term "discrimination complaint" is defined broadly to include "a communication from a class member directly to USDA, or to a member of Congress, the White House, or a state, local or federal official who forwarded the class member's communication to USDA, asserting that USDA had discriminated against the class member on the basis of race in connection [**60] with a federal farm credit transaction or benefit application." Consent Decree at P1(h). In the absence of specified documents, a class member may submit an affidavit from a non-family member stating that he or she has personal knowledge that a discrimination complaint was filed and describing the way in which it was filed. See Consent Decree at P 5.

Some objectors maintain that it is unfair to require an affidavit from someone who is not a family member because, as Mr. Vernon Breckinridge put it, "getting loans from USDA is just like you go to a normal bank and get a loan. You don't normally go around and tell everybody in the neighborhood that you've gone to the bank to secure a loan." Transcript of Hearing of March 2, 1999 at 101. While it may be that some will be precluded from obtaining relief because they cannot use affidavits from family members, the class membership determination is designed to be mechanistic so that it can be done quickly by the facilitator. If family members were permitted to submit affidavits, the facilitator would be required to make credibility determinations that inevitably would slow the process of determining class membership.

3. Asserted Collusion [**61]

The Court finds that there is absolutely no evidence of collusion between the class counsel and counsel for the government. See Thomas v. Albright, 139 F.3d at 231. From the outset, all settlement negotiations were conducted in the presence of the mediator, Mr. Michael Lewis, a neutral and detached mediator with twenty-five years of experience who has mediated many complex class action cases including employment and environmental cases. Mr. Lewis has stated quite emphatically that there was no collusion in this case: "If this case represented collusion or the negotiations in this case represented collusion I as a mediator never ever want to mediate a case in which the parties are at each others' throats. To term this negotiation intensive . . . understates the difficulty. This was an arduous negotiation. It took a year. It was hard fought." Transcript of Hearing of March 2, 1999 at 21-22.

Nor has the Court has seen any evidence of collusion or other impropriety on the part of counsel on either side. From the day this case was filed, Mr. Alexander Pires has tenaciously asserted that his clients had a right to receive relief from the government. Even faced with difficult statute [**62] of limitations issues and a serious lack of documentation, he has never wavered from his fundamental position that the government had wronged generations of African American farmers and must provide compensation. Even when settlement negotiations were ongoing, both sides maintained their positions and continued to assert the interests of their respective clients in every filing and at every status conference. At the status hearing on March 20, 1998, for example, Mr. Chestnut pleaded for a trial date because he had no faith that the case would settle and he wanted to protect the interests of the class. Government counsel continued to file motions and protect the legal interests of the USDA. Certainly the Court can attest to the fact that the parties litigated vigorously all of the issues that were or logically could have been raised.

4. Notice, Opportunity to Be Heard and Reaction of the Class

When a class is certified and a settlement is proposed, the parties are required to provide class members with the "best notice practicable under the circumstances." Rule 23(c)(2), Fed. R. Civ. P.; see Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 172-77, 40 L. Ed. 2d 732, 94 S. Ct. [**63] 2140 (1974). The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree. [*102] See Durrett v. Housing Authority of City of Providence, 896 F.2d at 604.

First, the timing and breadth of notice of the class settlement was sufficient under Rule 23. Notice was mailed to all known class members by January 15, 1999, nearly six weeks before the fairness hearing and a month before the deadline for comments, providing class members with ample time to submit their objections. See Maywalt v. Parker and Parsley Petroleum Co., 67 F.3d at 1079; Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1374-75 (9th Cir. 1993), *cert denied sub nom*, Reilly v. Tucson Elec. Power Co., 512 U.S. 1220, 129 L. Ed. 2d 834, 114 S. Ct. 2707 (1994). n15 The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general circulation and African American targeted publications and radio and television stations. See pages 15-16 above.

n15 One objector maintains that notice was insufficient because the facilitator did not

advertise in the United States Virgin Islands. With the exception of that one objection, no one appears to believe that the scope of the notice provided was insufficient.

[**64]

Second, the content of the notice was sufficient because it "fairly apprised the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." See Maywalt v. Parker and Parsley Petroleum Co., 67 F.3d at 1079 (internal quotations omitted). The notice provided class members with information on the class, the purpose and timing of the fairness hearing, opt-out procedures and deadlines, and the deadline and process for filing claims packages. In addition, it provided telephone numbers for the facilitator and for class counsel to the extent that anyone had any questions.

Third, the Court gave objectors ample opportunity to present their objections to the Consent Decree. As noted above, the Court considered all of the written objections that were filed and provided objectors with an opportunity to present their objections orally at the fairness hearing. While the Court denied a request for an evidentiary hearing made by one group of objectors, see Order of March 11, 1999, the Court is not obligated to hold an evidentiary hearing, especially in view of the fact that it accepted and considered [**65] affidavits in place of testimony. See Jones v. Nuclear Pharmacy, Inc., 741 F.2d 322, 325 (10th Cir. 1984); Weinberger v. Kendrick, 698 F.2d 61, 79 (2nd Cir. 1982), *cert. denied sub nom*, Coyne v. Weinberger, 464 U.S. 818, 78 L. Ed. 2d 89, 104 S. Ct. 77 (1983); cf. United States v. Cannons Engineering Corp, 899 F.2d 79, 93-94 (1st Cir. 1990).

Finally, because the Court has received a number of objections, it is clear that class members do not unanimously support the settlement. It is significant, however, that there are relatively few objections to the settlement in comparison with the size of the class. See Thomas v. Albright, 139 F.3d at 232. This is a large class. As of March 26, 1999, 16,559 farmers had requested claims packages from the facilitator, and the facilitator already has received 1686 completed claim packages. By contrast, only 85 farmer class members have elected to opt out of the class. See Pls' Response to Post-Hearing Submissions of Objections at 6-7. Given the low rate of opt-outs and the relatively small percentage of class members objecting to the Consent Decree, the Court concludes that those objections do not warrant rejecting the [**66] Consent Decree. See Thomas v. Albright, 139 F.3d at 232 (settlement can be fair even if "a significant portion of the class and some of the named plaintiffs object to it"). n16

n16 Certain of the original named plaintiffs, including both Mr. Timothy Pigford and Mr. Cecil Brewington, have objected to the terms of the settlement. The Court has carefully considered their objections but nonetheless concludes that the settlement is fair, adequate and reasonable. See Thomas v. Albright, 139 F.3d at 232 (fact that named class representatives object to proposed settlement does not preclude court from finding that settlement is fair).

B. Substantive Fairness: Likely Recovery at Trial Compared with Terms of Proposed Settlement

As our court of appeals has said, in considering a proposed class action settlement, [*103] the Court first must compare the likely recovery that plaintiffs would have realized if they had gone to trial with the terms of the settlement. See Thomas v. Albright, 139 F.3d at 231. The Court [**67] must look at the settlement as a whole and should not reject a settlement merely because individual class members claim that they would have received more at trial. The Court should scrutinize the terms of the settlement carefully, but the discretion of the Court to reject a settlement is restrained by the "principle of preference" that encourages settlements. See Durrett v. Housing Authority of City of Providence, 896 F.2d at 604; Stewart v. Rubin, 948 F. Supp. at 1086. The Court has received approximately sixty written submissions from forty-three groups or individuals objecting to or commenting on the fairness of the settlement. The Court also heard from numerous individuals and organizations at the fairness hearing on March 2, 1999. n17 Some of the objectors have argued persuasively that the settlement could have included broader relief, but that is not the test. See Stewart v. Rubin, 948 F. Supp. at 1087 ("the Court [should not] make the proponents of the agreement justify each term of settlement against a hypothetical measure of what concessions might have been gained"). The question is whether the structure of the settlement and the substantive relief including [**68] the amount of money provided are fair and reasonable when compared to the recovery that plaintiffs likely would have realized if the case went to trial. The Court concludes that they are.

n17 With one exception, see Order of March 11, 1999, the Court has considered all objections and comments that it received by April 2, 1999. Some of those who have submitted objections do not appear to be members of the class and therefore lack standing to challenge the fairness of the Consent Decree, see Mayfield v. Barr, 300

U.S. App. D.C. 31, 985 F.2d 1090 (D.C. Cir. 1993), but the Court has considered their objections anyway.

The settlement provides a measure of certainty for most class members. The vast majority of class members probably will be entitled almost automatically to recovery under Track A, while Track B, which has no cap on the amount of damages available, provides those with stronger cases with the opportunity to realize greater recoveries. It is clear from the structure and terms of the settlement [**69] that class counsel were trying to strike a delicate balance between ensuring that as many class members as possible would receive compensation and ensuring that any compensation was adequate for the harm suffered. In striking this balance, class counsel were forced to recognize that most of the members of the class had little in the way of documentation or proof of their claims and likely would have recovered nothing if they were required to prove their cases by the traditional preponderance of the evidence standard. Track A was devised to provide a set amount of compensation for those class members who could meet only a minimal burden of proof, while Track B was not so limited. The Track A/Track B mechanism also ensures that this compensation is distributed as promptly as possible.

The Court is sympathetic to the reasons that various class members would have wanted class counsel to strike the balance differently in their negotiations. Nonetheless, the Court is not persuaded that striking a different balance would have been either achievable in the negotiating process or more favorable to all or even most members of the class. It certainly is not convinced that a better result would [**70] have been achieved by taking this case to trial where a substantial number of class members would have been unable to prove their claims by a preponderance of the evidence and thus would have recovered nothing. While each class member understandably wants the settlement to provide the greatest possible compensation to himself, the Court cannot conclude that the final balance struck by class counsel is anything but fair.

1. Likely Recovery If Case Had Proceeded to Trial

If the case had proceeded to trial, plaintiffs would have had in their possession strong evidence that the USDA discriminated against African American farmers. The reports of the Inspector General and the Civil Rights Action Team provide a persuasive indictment of the civil rights record of the USDA and the pervasive discrimination [*104] against African American farmers. There does not appear to be much dispute that racial discrimination has occurred throughout the USDA and that the USDA and the county committees discriminated against African American farmers for decades in evaluating their applications for farm credit and benefits. In addition, when Congress took the unprecedented action of tolling the statute of limitations [**71] for ECOA, one of plaintiffs' major obstacles to establishing defendant's liability to the class was removed.

The problem is that even with that evidence, 80 to 90 percent of the class members lack any documentary evidence of the alleged discriminatory denial of credit or benefits to them. See Pls' Response to Written Objections at 11; Transcript of Hearing of March 2, 1999 at 180 (Mr. Alexander Pires) ("What would happen . . . in this case if we went to trial? 90 percent of our clients do not have files. . . . 90 percent do not have files"). In order to recover damages under ECOA at a trial, a class member would have to be able to establish by a preponderance of the evidence a discriminatory denial of loans or terms of credit, the extent of the injury to him caused by the denial and the amount of damages he suffered. Absent any documentation, this would have been an impossible burden for the majority of class members. In addition, many class members lack any documentation to prove that they ever filed a complaint of discrimination with the USDA and therefore would have encountered great difficulty in even establishing their membership in the class. With no documentary evidence [**72] that they fall within the parameters of the class, it is not at all clear that those plaintiffs would have been able to recover anything.

Some objectors have suggested that the issue of damages could have been resolved by trying the claims of representative members of the class. See Transcript of Hearing of March 2, 1999 at 46. As Mr. Alexander Pires explained, however, "I would never take the thousands of clients we have now and say bet your claim on those 12 or 13 cases that are your lead cases. Even though we helped pick them. I know what's in those 12 cases, and that's risky." Id. at 180. In fact, class counsel discovered during the process of negotiating the settlement that mediating the cases individually was risky. When the parties were in the initial stages of settlement negotiations, they agreed to mediate twelve individual test cases: six chosen by the government and six chosen by plaintiffs. The lack of documentation presented serious obstacles to the resolution of those cases. The parties worked for an entire month trying to settle eight of those twelve cases, and at the end of that month, not one case had been resolved. See Transcript of Hearing of March 5, [**73] 1998 at 32.

Moreover, bringing this case to trial likely would have been a very complex, long and costly proposition. Practically speaking, prevailing class members likely would not have obtained relief for many years. Trial on

the issue of liability was scheduled to last the month of February 1999. Trial probably would have involved a number of experts, and the government probably would have raised a number of legal issues for the Court to resolve. Even if the Court devoted all of its resources and time to deciding the issue of liability, it is unlikely that a decision would have been issued before the summer of 1999. If the Court had found the USDA liable, it then would have had to resolve the issue of remedy for each farmer. A mechanism for establishing class or subclass membership and for resolving issues of individual damages for each farmer in the class or subclass would have been necessary. If the remedy phase were tried on an individual basis for each farmer -- as the government might have urged again as it has in the past, because of the acknowledged lack of documentation in so many cases -- the remedial process would have dragged on for years. If the remedy phase were not [**74] tried on an individual basis for each farmer, it is not inconceivable that a mechanism much like that negotiated in this settlement ultimately would be utilized. Even barring the inevitable appeal that the government would have taken in the event that plaintiffs prevailed, it is unlikely that any class member would have received any recovery for his injury for many years.

By contrast, the settlement negotiated by the parties provides for relatively prompt [*105] recovery. The claim of a claimant who chooses Track A will be resolved within 110 days of the date that the claim is filed. For those who choose Track B, the wait is a little longer because of discovery and trial, but the total time required is at most 240 days from the date that the claim is filed. Because neither side may appeal, the claimant will receive his compensation long before he would have if the case had gone to trial.

2. Overall Structure of Settlement: Track A and Track B

As currently structured, class members have three options: they have 120 days after the entry of the Consent Decree within which to notify, the facilitator if they want to opt out of the class altogether, they may remain in the class and choose [**75] Track A or they may remain in the class and choose Track B. n18 Those who do not opt out have 180 days from the entry of the decree within which to file their claim packages and, for those who choose Track A, to submit their proof. Consent Decree at PP 5(c), 5(d).

n18 For those class members who allege only discrimination in a benefit transaction, Track B is not an option.

A number of class members complain that they lack sufficient information to select among these three options and that the settlement is structured to force class members to choose Track A. At meetings throughout the country, class counsel currently is making every effort to reach all class members, to explain the options and to sit down with individual class members to provide advice. See Pls' Response to Post-Hearing Submissions, Exh. C. The turnout for these meetings has been overwhelming and has far exceeded everyone's expectations: literally hundreds of farmers show up for each meeting. It has become clear that there are more class |**76| members than anyone had anticipated and some class members contend that although they show up at the meetings, class counsel does not have time to meet with them. Class counsel is in the midst of scheduling more meetings and providing more time for each meeting, and they have assured the Court that they will be able to meet with all class members prior to the deadline for filing claim packages.

Those who assert only discrimination in non-credit, benefit transactions, rather than discrimination in credit transactions, do not have the option of proceeding under Track B, see Consent Decree at P 5(d), and one objector complains that those who have faced discrimination in the USDA's benefit programs ought to be allowed to proceed under Track B. The problem is that programs that do not involve credit transactions are not subject to ECOA. The cause of action for those who allege discrimination in benefit programs arises solely under the Administrative Procedure Act, 5 U.S.C. ß 706, which does not provide for the same measure of damages as is provided under ECOA. For that reason, those who allege only that they have suffered discrimination in a benefit program are afforded a slightly |**77| different form of relief than the relief provided for those who suffered discrimination in a credit transaction with the USDA. In other words, the different statutory predicates for the two different kinds of claims restricted the solutions that counsel could negotiate in each context.

A class member who selects Track A must submit "substantial evidence" demonstrating that he was a victim of race discrimination in a credit or benefit transaction with the USDA. Consent Decree at PP 9(a), 9(b). Some have objected that the "substantial evidence" standard is too high a burden of proof. Part of that concern stems from a misunderstanding of the "substantial evidence" standard. While the phrase "substantial evidence" makes it sound as though the burden of proof is high, the substantial evidence standard actually is one of the lowest possible burdens of proof known to the law. A "substantial evidence standard" is significantly easier for the claimant to meet than a "preponderance of the evidence" standard. A

"preponderance of the evidence" standard means that the claimant has to show that it is more likely than not that discrimination happened, while under a "substantial evidence" standard, [**78] the claimant only has to provide a reasonable basis for the adjudicator to find that discrimination happened. [*106] See Consent Decree at P 1(l); see also page 28 above. The substantial evidence standard therefore should not be a bar to the claims of most class members.

In order for a claimant to prevail under Track A, he must present specified evidence, including evidence that he was treated less favorably than a "specifically identified, similarly situated" white farmer. See Consent Decree at PP 9(a)(i)(C), 9(b)(i)(B). Some objectors contend that it will be too difficult for some claimants to present evidence of a specific, similarly situated white farmer who received more favorable treatment, especially since there is no right to discovery under Track A. At this point, however, class counsel has amassed a significant amount of material regarding the treatment by the USDA of both African American farmers and white farmers, and claimants will be able to call upon that material in completing their claim packages. Class counsel should be able to provide most claimants with the evidence they need.

Under Track B, after limited discovery the claimant has a one day mini-trial before [**79] an arbitrator, and the claimant has the burden of establishing by a preponderance of the evidence that the USDA discriminated against him in a credit transaction. There are a number of objections to the Track B mechanism. First, the original Consent Decree defined Track B arbitrators as Michael Lewis and "any other person or person who he assigns to decide Track B claims." Some objectors contended that the definition of arbitrator was too vague and that those who were thinking about choosing Track B would have no way of knowing who the arbitrator might be. As Mr. James Morrison put it, "If Mr. Lewis chooses to have distinguished jurists, lawyers, former judges, I think he has that right as the four corners of the document gives him the authority. But if he wishes to choose Mickey Mouse, he could choose Mickey Mouse." See Transcript of Hearing of March 2, 1999 at 75. The parties addressed this concern in the revised Consent Decree by defining arbitrators as either Michel Lewis or "other person or persons selected by Mr. Lewis who meet qualifications agreed upon by the parties and by Mr. Lewis and whom Mr. Lewis assigns to decide Track B claims. . . ." See Consent Decree at P [**80] 1(b). The parties have specified that Mr. Lewis will "develop a single list of alternates which the parties would pre-approve and from which Mr. Lewis can select an arbitrator for any arbitration that he is unable to handle himself." See Letter of March 19, 1999 from Parties at P 1. While a claimant may not know the identity of the arbitrator at the time that the claimant chooses Track B, he will know who the potential candidates are and that they were not unilaterally selected by Mr. Lewis. In addition, class counsel can provide background information about the people on the list so the claimant will be able to make a more informed decision about whether he wants to select Track B.

Track B provides for limited discovery prior to the one day mini-trial. Discovery is limited essentially to an exchange of lists of witnesses and exhibits and depositions of the opposing side's witnesses. See Consent Decree at P 10(b)-(d). Some contend that discovery should be much broader. While it undoubtedly is true that the Track B mechanism anticipates less discovery than is ordinarily provided in the course of civil litigation, the Track B mechanism also resolves the claim much more quickly [**81] than an ordinary civil case would be resolved, in large part because of the shortened discovery period. Expanding the scope of discovery would take significantly more time, and class counsel in their judgment reasonably weighed the possible benefits of additional discovery, against the delays that would ensue and determined that this was an adequate amount of discovery. n19

n19 In fact, several objectors contend that the Track B mechanism, even with the shortened discovery period, takes too long to resolve claims. It is clear from the tensions between these two sets of objections that class counsel had to strike a delicate balance between resolving Track B claims expeditiously and obtaining the necessary discovery, and the balance finally struck appears eminently reasonable to the Court.

A hearing on a Track B claim lasts eight hours. Consent Decree at P 10(f). There is no live direct testimony. All direct testimony [*107] is submitted in writing. The eight hours at the hearing are comprised entirely of cross-examinations: [**82] each side is allotted four hours to cross-examine any witness of the opposing side. Several objectors contend that the claimant should be able to present live direct testimony, rather than presenting it only in written form. As with the Track B discovery issue, class counsel clearly was trying to balance the need for expedition with the need to ensure that the process produces just results. Again, the Court cannot conclude that the balance that counsel ultimately struck renders the terms of the settlement unfair. n20

n20 The Court also notes that it is not unprecedented to conduct hearings in this way, even in trials in federal court. See Transcript at 51; Charles R. Richey, "Rule 16 Revised and Related Rules: Analysis of Recent Developments for the Benefit of Bench and Bar," 157 F.R.D. 69, 83-84 (1994).

----------End Footnotes----------

In order to prevail on his claims, a Track B claimant must prove by a preponderance of the evidence that "he was the victim of racial discrimination and that he suffered damages therefrom." See Consent [**83] Decree at P 10(g). One objection maintains that this standard is too high and that claimants will be unable to meet this standard. To the extent that a claimant is concerned that he lacks sufficient evidence to meet the preponderance of the evidence standard, the traditional standard in civil litigation in all states and federal courts in this country, Track A provides a safer option. A claimant who cannot meet the preponderance of the evidence standard is not barred from all relief; instead, he is required to choose Track A rather than choosing Track B. Another objector also contends that a Track B claimant should not be required to establish economic damage in order to prevail on a Track B claim, and that the claimant should be able to prevail even if he can only establish emotional injury. As class counsel has pointed out, however, the economic damage requirement stems from ECOA, which provides the cause of action for all Track B claimants.

Some objectors complain about the Track A/Track B structure because those claimants who select Track B and fail to demonstrate by a preponderance of the evidence that they were the victims of race discrimination and that they suffered economic [**84] harm as a result will recover nothing under the settlement, see Consent Decree at P 10(h), rather than being permitted to proceed under Track A if they lose under Track B. The decision whether to proceed under Track A or under Track B therefore takes on a great deal of significance. If a claimant who has sufficient evidence to meet Track A requirements but insufficient evidence to prevail in Track B nonetheless chooses Track B, he will receive nothing.

As class counsel and counsel for the government have pointed out, however, there simply is no way that those who fail on a Track B claim could be permitted to proceed under Track A without entirely undermining the settlement. The settlement is designed to resolve the claims of all class members as promptly as possible. Because of the absence of documentary proof in most cases, the vast majority of claimants will select Track A, and Track A is designed to be a mechanistic way to deal with claims very quickly. Track B, by contrast, involves a much lengthier, fact-specific inquiry, but it is anticipated that very few class members will opt for Track B. If there were a fallback mechanism to provide relief for claimants who failed in [**85] their Track B claims, every class member would choose Track B and the settlement structure would collapse under its own weight. See Letter of March 19, 1999 from the Parties to the Court at 4 (if a class member whose claim was denied under Track B nonetheless were permitted to recover under Track A, "virtually every class member who elects to seek relief under the Decree would choose to proceed under Track B. Not only would such a change increase exponentially the cost to the parties of implementing the Decree, it also would make it impossible for the parties or the arbitrator to come close to adhering to the deadlines for disposition of Track B claims imposed by P 10(a)-(e). Thus this change would make the Decree unworkable").

Finally, the decisions of the adjudicators on Track A claims and the decisions of the arbitrators on Track B claims are final; [*108] there is no right to appeal those decisions, except that the Monitor shall direct the arbitrator or adjudicator to reexamine the claim if he determines that a "clear and manifest error has occurred" that is "likely to result in a fundamental miscarriage of justice." Consent Decree at PP 9(a)(v), 9(b)(v), 10(i), 12(b)(iii). Many [**86] objectors contend that the absence of appeal rights renders the settlement structure unfair and/or that it gives the arbitrators and adjudicators too much power. As Mr. Willie Head expressed it, "would you send your sons and daughters off to war with one bullet." Transcript of Hearing of March 2, 1999 at 165. While the objection has force, class counsel made a strategic decision not to press for appeal rights because the government would have insisted that any appeal rights be a two-way street. See Transcript of Hearing of March 2, 1999 at 179. Any appeal process inevitably would delay payments to those claimants who prevailed on their claims. Since it is anticipated that most class members will prevail under the structure of the settlement, the Court concludes that the forfeit of appeal rights was a reasonable compromise.

3. Track A Relief: The $ 50,000 Objection

Any claimant who prevails on a Track A claim for discrimination in a credit transaction will receive: (1) a cash payment of $ 50,000; (2) forgiveness of all debt owed to the USDA incurred under or affected by the program that formed the basis of the claim; (3) a tax payment directly to the IRS in the amount of 25% [**87] of the total of the debt forgiveness and cash payment; (4) immediate termination of any foreclosure action that USDA initiated in connection with the loan(s) at issue in

the claim; and (5) injunctive relief including one-time priority loan consideration and technical assistance. This relief package is the source of two objections.

Many objectors claim that a $ 50,000 cash award is insufficient to compensate them for the losses they sustained as a result of the USDA's discrimination. As Mr. Willie Head expressed it, "imagine that your home has been taken, your land has been taken, your automobile has been taken, and then you can make a decision and see if $ 50,000 will be enough for you." Transcript of Hearing of March 2, 1999 at 165-66. Putting a monetary value on the damage done to someone who has experienced discrimination at the hands of the government obviously is no easy matter, and it is probable that no amount of money can fully compensate class members for past acts of discrimination. It is quite clear, as the objectors point out, that $ 50,000 is not full compensation in most cases.

To the extent that a specific value can be put on such compensation, however, class counsel [**88] have thoroughly researched the issue and provided persuasive evidence that the amount is fair. n21 As class counsel points out, every claimant who prevails under Track A will receive not $ 50,000 but at least $ 62,500 (the sum of a $ 50,000 cash payment plus $ 12,500 in tax relief). And most who prevail under Track A will receive much more than that. The government estimates that the average African American farmer carries government debt of approximately $ 100,000, and those debts will be forgiven under Track A; in addition, the settlement provides for a tax payment of 25% of the debt forgiveness. See Pls' Response to Post-Hearing Submissions, Exh. A (Declaration of Dr. Mervin J. Yetley) at P 5(c)-(d). The average cash value of relief for a claimant who prevails under [*109] Track A therefore totals $ 187,500. Id. at P 6. Class members undoubtedly would have liked to have received a larger settlement. But $ 187,500 is a significant amount of money, especially in view of the fact that a claimant who lacks the detailed records required in a normal civil action to prove his case by a preponderance of the evidence need only establish his claim by substantial evidence in order to receive [**89] that compensation. The Court therefore concludes that class counsel had an adequate basis for agreeing to this amount and that it is fair and reasonable.

n21 To the extent that objectors are claiming that class counsel had no economic basis for agreeing to settle the case for the amount they did, that argument is belied by the fact that class counsel consulted a number of economists. See Pls' Response to Post-Hearing Submissions. Moreover, while one objector submitted affidavits from other economists that contend that the value of class members' claims may have been worth more than $ 50,000, those economists do not take into account the breadth of relief provided by the settlement. See id., Exh. A (Declaration of Dr. Mervin J. Yetley).

Class counsel also conducted an extensive study of the settlement of four previous civil rights actions in which plaintiffs alleged egregious violations of civil rights, including the case brought by Japanese Americans interned during World War II and the Tuskegee case involving the claims of African Americans injected with syphilis as part of government experiments. See Pls' Response to Post-Hearing Submissions at 2, n.2. Class counsel reasonably concluded that this settlement, which affords class members greater monetary relief than that afforded to individuals in those four cases, was fair and adequate.

[**90]

Some objectors also contend that the tax relief provided under Track A is insufficient because it may not cover all the federal taxes owed on the settlement and because it does not cover state taxes. Any effort to determine the exact amount of federal tax owed on a settlement, however, would have required scores of auditors and inevitably would have resulted in delays. The logistical problems presented by a provision covering state taxes would have been even more complicated, since every state has a different method of assessing income taxes and different tax rates. Again, class counsel in its judgment determined that a flat tax payment was in the best interests of the class and in assuring a prompt resolution of the claims, and the Court is unwilling to second-guess that judgment.

4. Other Objections to Individual Relief

The failure of both Track A and Track B to include certain measures of individual relief also has led to objections. First, some contend that the USDA should provide relief from loans owed to creditors other than the USDA. They argue that because the USDA discriminated in its credit programs, many African American farmers either had to obtain loans from private [**91] banks at very high interest rates or had to buy their equipment and supplies on credit from private companies at high interest rates. They therefore seek to have all of those loans forgiven or at least to have loans that were guaranteed by the USDA forgiven. Class counsel clearly tried to negotiate for as much debt forgiveness as possible. But as Mr. J.L. Chestnut put it,

"There is no likelihood the United States government is going to go around to . . . commercial banks paying off private loans of black farmers, whether it relates to discrimination or not. Nobody is going to be able to negotiate that with the United States government. How do I know that? Because I tried." Transcript of Hearing of March 2, 1999 at 168.

Second, some have objected that the Consent Decree does not contain a provision to protect a class member's settlement award from his bankruptcy estate. The parties to this action cannot, however, determine whether the bankruptcy estate has a right to a claimant's settlement award. Those matters are controlled by operation of the bankruptcy laws and will turn on issues such as whether the claim is considered the property of the estate. See 11 U.S.C. ß 541. Those [**92] matters properly are resolved in bankruptcy court between the parties to those actions and cannot be resolved by the parties to this action.

Third, a claimant who prevails under Track B is entitled to "any USDA inventory property that was formerly owned by the class member but which was foreclosed in connection with the ECOA claim(s) resolved in the class member's favor by the arbitrator." See Consent Decree at P 10(g)(iv). With that one exception, however, the Consent Decree has no provision for returning land to prevailing claimants. A number of objectors have stated the need for more extensive land return provisions. Again, this was a matter that class counsel clearly tried to negotiate, and they obtained the best possible resolution they could.

Finally, one objector expressed concern that the credit records of many claimants have been damaged by the discrimination they experienced at the hands of the USDA and that it therefore will be difficult for those farmers to obtain credit from the USDA or others in the future. In response to that objection, the parties agreed to revise the Consent Decree to include a provision stating that "outstanding debt discharged pursuant to [Track [**93] A or Track B] shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program." See Consent Decree at P 11(c). In sum, while some class members clearly [*110] would have liked the terms of the settlement to be slightly different, the terms of the settlement are fair when compared with the likely recovery plaintiffs would have obtained at trial.

C. Monitoring and Enforcement Provisions

Some objectors contend that at the very least the enforcement and monitoring provisions of the Consent Decree must be strengthened. The Consent Decree provides for the appointment of a Monitor for a period of five years to track and report on the USDA's compliance with the terms of the Consent Decree. Under the original proposed Consent Decree, the Monitor was appointed by the Secretary of Agriculture, subject to class counsels' approval. A number of objections noted that the USDA did not have any incentive to appoint a strong and independent Monitor, and that the Monitor provision therefore needed to be changed. In response to those concerns, the parties revised the Monitor provision so that the Court now appoints the Monitor from a list of [**94] names submitted by the parties. See Consent Decree at 12(a). The Monitor is removable only for "good cause."

A number of objections also noted that the original proposed Consent Decree appeared to prevent the Court from exercising jurisdiction in the event that the USDA did not comply with the terms of the decree. The law is clear that the Court retains jurisdiction to enforce the terms of the Consent Decree. See Spallone v. United States, 493 U.S. 265, 276, 107 L. Ed. 2d 644, 110 S. Ct. 625 (1989); Beckett v. Air Line Pilots Ass'n, 301 U.S. App. D.C. 380, 995 F.2d 280, 286 (D.C. Cir. 1993) (principle is well-established that trial court "retains jurisdiction to enforce consent decrees and settlement agreements"); Twelve John Does v. District of Columbia, 272 U.S. App. D.C. 235, 855 F.2d 874, 876 (D.C. Cir. 1988) (in action to enforce terms of consent decree, district court "unquestionably had power to hold the District of Columbia in civil contempt for violations of the consent decree"). The parties also have clarified that the Court retains jurisdiction to enforce the terms of the Decree.

D. Absence of Provisions Preventing Future Discrimination

The stated [**95] purpose of the Consent Decree is to "ensure that in their dealings with the USDA, all class members receive full and fair treatment that is the same as the treatment accorded to similarly situated white persons." Consent Decree at 2. The Consent Decree does not, however, provide any forward-looking injunctive relief. It does not require the USDA to take any steps to ensure that county commissioners who have discriminated against class members in the past are no longer in the position of approving loans. Nor does it provide a mechanism to ensure that future discrimination complaints are timely investigated and resolved so that the USDA does not practice the same discrimination against African American farmers that led to the filing of this lawsuit. In fact, the Consent Decree stands absolutely mute on two critical points: the full implementation of the recommendations of the Civil Rights Action Team and the integration and reform of the county committee system to make it more accountable and representative. The absence of any such provisions has led to strong, heart-felt objections. It also

has caused the Court concern. After comparing the terms of the settlement as a whole with the [**96] recovery that plaintiffs likely would have received after trial, however, the Court cannot conclude that the absence of any such prospective injunctive relief renders the settlement as a whole unfair.

There are several legal responses to the objections about the lack of forward-looking injunctive relief. First, while plaintiffs sought both declaratory and monetary relief in the complaint, they never sought an injunction requiring the USDA to restructure or to fire people who may have engaged in discrimination. See Complaint at 40-42; Seventh Amended Complaint at 60-63. All of the objectors who seek to have the USDA restructured therefore are going beyond the scope of the complaint in this case. The role of the Court in approving or disapproving a settlement is limited to determining whether the settlement of the case before it is fair, adequate and reasonable. The Court cannot reject the Consent Decree merely because it [*111] does not provide relief for some other hypothetical case that plaintiffs could have but did not bring. Cf. United States v. Microsoft, 56 F.3d at 1459-60 (court cannot "reformulate the issues" or "redraft the complaint").

Second, nothing in the Consent Decree [**97] authorizes the USDA to engage in illegal conduct in the future, and the Consent Decree therefore should not be rejected for its failure to include such prospective injunctive relief. See Isby v. Bayh, 75 F.3d at 1197 ("we cannot approve a class action settlement which either initiates or authorizes the continuation of clearly illegal conduct . . . [but] we are mindful that . . . any illegality or unconstitutionality must appear as a legal certainty on the face of the agreement before a settlement can be rejected on this basis") (internal citations and quotations omitted).

Third, even if plaintiffs had prevailed on their ECOA claims at trial, it is not at all clear that the Court could have or would have granted the broad injunctive relief that the objectors now seek. The injunctive relief that the objectors seek, essentially an injunction requiring the USDA to change the way it processes credit applications, may be authorized where plaintiffs prove a constitutional violation, see Hills v. Gautreaux, 425 U.S. 284, 297, 47 L. Ed. 2d 792, 96 S. Ct. 1538 (1976), but plaintiffs in their Seventh Amended Complaint do not allege a constitutional violation and they have not undertaken [**98] to prove one. Moreover, while ECOA authorizes the Court to "grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter," 15 U.S.C. ß 1691e(c), in employing its broad equitable powers the Court must exercise "the least possible power adequate to the end proposed." See LaShawn A. v. Barry, 330 U.S. App. D.C. 204, 144 F.3d 847, 854 (D.C. Cir. 1998) (*quoting* Spallone v. United States, 493 U.S. 265, 280, 107 L. Ed. 2d 644, 110 S. Ct. 625 (1990)).

Those legal responses, however, provide little comfort to those who have experienced discrimination at the hands of the USDA and who legitimately fear that they will continue to face such discrimination in the future. The objections arise from a deep and overwhelming sense that the USDA and all of the structures it has put in place have been and continue to be fundamentally hostile to the African American farmer. As Mr. Leonard Cooper put it, "You cannot mediate . . . institutionalized racism." Transcript of Motions Hearing of March 2, 1999 at 142. Another class member expressed it more personally: "They have humiliated me and my family since [1989]. . . . And I was just [**99] wondering if there couldn't be something put in the provisions that would stop these FSA agents from humiliating and degrading [us] as they do. . . . my wife has almost had a nervous breakdown by dealing with our agent and he continues to do the same things that he has done in the past and I just wish there was some way for you to put something in that provision that would stop some of that stuff." Id. at 146.

Most fundamentally, these objections result from a well-founded and deep-seated mistrust of the USDA. A mistrust borne of a long history of racial discrimination. A mistrust that is well-deserved. As Mr. Chestnut put it, these objections reflect "fear which reaches all the way back to slavery. . . . That objection, you heard it from many today, it really asks you to retain jurisdiction over this case in perpetuity. Otherwise they say USDA will default, ignore the lawful mandates of this Court, and in time march home scot-free while blacks are left holding the empty bag again." Transcript of Hearing of March 2, 1999 at 172. The Court cannot guarantee class members that they will never experience discrimination at the hands of the USDA again, and the Consent Decree does [**100] not purport to make such a guarantee. But the Consent Decree and the Court do provide certain assurances.

First, under the terms of this Consent Decree, the USDA is obligated to pay billions of dollars to African American farmers who have suffered discrimination. Those billions of dollars will serve as a reminder to the Department of Agriculture that its actions were unacceptable and should serve to deter it from engaging in the same conduct in the future.

Second, the USDA is not above the law. Like many of the objectors, the Court was surprised and disappointed by the government's [*112] response to the Court's modest proposal that the Consent Decree include a simple sentence that in the future the USDA

shall exert "best efforts to ensure compliance with all applicable statutes and regulations prohibiting discrimination." Letter from the Court to Counsel, dated March 5, 1999; see Response Letter from the Parties to the Court, dated March 19, 1999. Whether or not the government explicitly states it in this Consent Decree, however, the Constitution and laws of the United States continue to forbid discrimination on the basis of race, see, eg., U.S. CONST. amend. V; 15 U.S.C. ß 1691; [**101] 42 U.S.C. ß 2000d, as do the regulations of the USDA. See 7 C.F.R. ß ß 15.1, 15.51. The actions of the USDA from now into the future will be scrutinized closely -- by class members, by their now organized and vocal allies, by Congress and by the Court. If the USDA or members of the county committees are operating on the misapprehension that they ever again can repeat the events that led to this lawsuit, those forces will disabuse them of any such notion.

Most importantly, the farmers who have been a part of this lawsuit have demonstrated their power to bring about fundamental change to the Department of Agriculture, albeit more slowly than some would have wanted. Each individual farmer may feel powerless, but as a group they have planted seeds that are changing the landscape of the USDA. As a group, they spurred Secretary Glickman in 1996 to look inward at the practices of the USDA and to examine African American farmers' allegations that the discrimination of the USDA was leading them to the point of financial ruin. As a group, they led Secretary Glickman to create the Civil Rights Action Team, a team that recommended sweeping changes to the USDA and to the county committee system. [**102] Indeed, in February 1997, the USDA Civil Rights Action Team itself recommended that the county committee system be revised by converting all county non-federal positions, including the county executive directors, to federal status, that the committee selection process by changed, that voting members of underrepresented groups be appointed to state and county committees, and that county committees be removed from any farm loan determinations. CRAT Report at 64-65.

As a group, the farmers mobilized a broad coalition within Congress to take the unprecedented action of tolling the statute of limitations. As a group, they brought Secretary Glickman to the negotiating table in this case and achieved the largest civil rights settlement in history. And as a group, they have made implementation of the recommendations of the CRAT Report a priority within the USDA. See Statement of February 9, 1999, by Secretary Dan Glickman, Before the Subcommittee on Agriculture, Rural Development, and Related Agencies Committee on Appropriations, United States Senate ("I also want to emphasize the importance that the President and I have placed on USDA civil rights issues; this priority is reflected in [**103] the [FY 2000] budget. The President's budget provides the necessary funding to continue to carry out the recommendations of the Civil Rights Action Team (CRAT) as well as the recommendations of the National Commission on Small Farms which supports our civil rights agenda"). While the USDA landscape has remained resistant to change for many seasons, the labors of these farmers finally are beginning to bear fruit. This settlement represents one significant harvest. It is up to the Secretary of Agriculture and other responsible officials at the USDA to fulfill its promises, to ensure that this shameful period is never repeated and to bring the USDA into the twenty-first century.

V. CONCLUSION

Forty acres and a mule. The government broke that promise to African American farmers. Over one hundred years later, the USDA broke its promise to Mr. James Beverly. It promised him a loan to build farrowing houses so that he could breed hogs. Because he was African American, he never received that loan. He lost his farm because of the loan that never was. Nothing can completely undo the discrimination of the past or restore lost land or lost opportunities to Mr. Beverly or to all of the other [**104] African American farmers whose representatives came before this Court. Historical discrimination cannot be undone.

[*113] But the Consent Decree represents a significant first step. A first step that has been a long time coming, but a first step of immeasurable value. As Mr. Chestnut put it, "Who really knows the true value, if there is one, for returning a small army of poor black farmers to the business of farming by the year 2000 who otherwise would never make it back? I am not wise enough to put a dollar value on that and I don't think anybody on this planet is wise enough to reduce that to dollars and cents." Transcript of Hearing of March 2, 1999 at 171. The Consent Decree is a fair, adequate and reasonable settlement of the claims brought in this case. It therefore will be approved and entered.

SO ORDERED.

PAUL L. FRIEDMAN

United States District Judge

DATE: 4/14/99

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD 2093 East Arcadia Road Riegelwood, NC 28456	:	
and	:	
LLOYD SHAFER P.O. Box 382 Bentonia, MS 39040	:	
and	:	
GEORGE HALL Route 2, Box 163-A Boligee, AL 35443	:	Civil Action No. 97-1978 (PLF)
and	:	
EDDIE L. ROSS 380 Spout Spring Road Vicksburg, MS 39180	:	**SEVENTH AMENDED CLASS ACTION COMPLAINT**
and	:	
STROWN AND FANNIE MARTIN 19207 Cajalco Road Perring, CA 92570	:	
and	:	
LUCIOUS ABRAMS 2023 Gough Red Hill Keysville, GA 30816	:	
and	:	
GRIFFIN TODD, SR. 810 Pony Road Zebulon, NC 27592	:	
and	:	
BEN HILSMAN 300 Hunting Ridge Road Roanoke Rapids, NC 27870	:	
and	:	

CALVIN C. BROWN
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and

JAMES B. BEVERLY
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and

EDDIE H. COTTON
Route 1, Box 120
Pattison, MS 39144

and

ALVIN STEPPES
Route 1, Box 82-B
Moro, AR 72368

ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

DAN GLICKMAN, Secretary
THE UNITED STATES DEPARTMENT OF AGRICULTURE
14th and Independence Avenue, S.W.
Washington, D.C. 20250

Defendant.

FILED
OCT 26 1998
DISTRICT COURT

SEVENTH AMENDED CLASS ACTION COMPLAINT
(FOR DECLARATORY JUDGMENT, REVIEW OF AGENCY ACTION, VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT, AND OTHER RELIEF)

By Order of the Court dated October 9, 1998, this case was certified as a class action, the Class was divided into three subclasses, and inter alia, plaintiffs were ordered to file this Seventh Amended Complaint, detailing the claims of 12 Class representatives:

"For the reasons stated in the Opinion issued this same day, the Court finds that plaintiffs have established that they meet the prerequisites for class certification of Rule 23(a) of the Federal Rules of Civil Procedure and that Plaintiffs have established that the class properly is certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that plaintiffs' motion for class certification is GRANTED; it is

FURTHER ORDERED that a class is CERTIFIED for purposes of determining liability; it is

FURTHER ORDERED that the class is defined as follows:

> All African-American farmers who (1) farmed between January 1, 1983, and February 21, 1997; and (2) applied, during that time period, for participation in a federal farm program with USDA, and as a direct result of a determination by USDA in response to said application, believed that they were discriminated against on the basis of race, and filed a written discrimination complaint with USDA in that time period.

FURTHER ORDERED that the above class is divided into three subclasses, defined as follows:

> Subclass I: African-American farmers, who have a file with Defendant, but did not receive a written determination from Defendant, in response to their discrimination complaint;
>
> Subclass II: African-American farmers, who have a file with Defendant, who received a written determination from Defendant in response to their discrimination complaint but who maintain that the written determination from Defendant was not reached in accordance with law; and

> Subclass III: African-American farmers, who do not have a file with Defendant because their discrimination complaints were destroyed, lost or thrown away by Defendant.

it is

FURTHER ORDERED that by October 23, 1998, plaintiffs shall file a further amended complaint detailing he claims of four typical representatives of each subclass; and it is

FURTHER ORDERED that the parties shall jointly file a draft notice to Class members by October 30, 1998.

SO ORDERED."

The individual and representative plaintiffs (listed in the caption) ("plaintiffs"), on behalf of themselves and the Class members, complain of defendant as follows:

NATURE OF THE CASE

This case involves defendant's administration, during the period January, 1983 to January, 1997, of applications by African-American farmers for farm loans and credit and participation in federal farm programs, (referred to hereinafter as, generally, "farm programs"). Plaintiffs contend that defendant, when processing applications of African-American farmers for farm programs (1) willfully discriminated against them, and (2) when, in response, plaintiffs filed written discrimination complaints with defendant, defendant failed, although required by, inter alia, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act, to investigate the complaints. For example, when African-American farmers filed complaints of discrimination with defendant, defendant willfully either (1) avoided processing and

resolving the complaints by stretching the review process out over many years; (2) conducted a meaningless, or "ghost investigation", or (3) failed to do anything. These two acts: (1) the discrimination in denial of the application and (2) the failure to properly investigate the discrimination complaints, deprived the African-American farmers, inter alia, of equal and fair access to farm credit and farm programs, and due process, resulting in damages to them.

In May, 1997, defendant's officials admitted that in early 1983, the Reagan administration had quietly disbanded and dismantled the civil rights enforcement arm at United States Department of Agriculture ("USDA") and that discrimination complaints had not been properly investigated since that time. Two federal reports, issued in February, 1997, verified these facts.

In the original complaint, the proposed Class consisted of 641 African-American farmers who filed complaints of discrimination during the period January, 1983 to January, 1997. Their claim for damages was $512,800,000.00.

Since the filing of the original complaint, USDA's Office of Inspector General released "Minority Participation in Farm Service Agency's Farm Loan Program - Phase II", which inter alia, stated that the backlog of unresolved discrimination complaint cases increased. This increased the proposed Class from 641 to 874, and increased the claim of damages to $699,200,000.00, as so stated in plaintiffs' First Amended Complaint, filed on October 23, 1997, which also increased the number of plaintiffs to 14.

The Second Amended Complaint, filed December 5, 1997, increased the number of plaintiffs to 69.

Plaintiffs filed a Third Amended Complaint on December 17, 1997, increasing the number of plaintiffs to 220, increasing the proposed Class to 2,000, and the claim of damages to $2,000,000,000.

On February 18, 1998 plaintiffs filed a Fourth Amended Complaint, increasing the number of plaintiffs to 349, increasing the proposed Class to 2,500, and the claim of damages to $2,500,000,000.

On May 12, 1998, plaintiffs filed a Fifth Amended Complaint, increasing the number of plaintiffs to 400.

On October 2, 1998, plaintiffs filed a Sixth Amended Complaint, increasing the number of plaintiffs to 447.

This is the Seventh Amended Complaint.[1]

JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. §1691, et seq. 28 U.S.C. 1331, 28 U.S.C. §1343, 28 U.S.C. 2201, 42 U.S.C. 2000d and 5 U.S.C. 706.

VENUE

2. Venue lies in this judicial district because the claim arose in this judicial district, and pursuant to 28 U.S.C. 1391(e).

[1] Because the Class has been certified, the individual plaintiffs have not been listed in the caption; they now approach 500 in number.

PARTIES

There are 12 Class representatives, each of which falls under one of three subclasses.

3(a). Plaintiff and Class representative, Timothy C. Pigford ("Pigford"), (Subclass II), is an African-American farmer and resident of Riegelwood, North Carolina. Mr. Pigford (a) timely applied for various loan programs with defendant during the years 1976 to 1986 and was the subject of willful and continuous racial discrimination, including denial of his applications for farm ownership loans, and refusal to provide operating credit, and appropriate loan servicing, by reason of his race, causing him substantial damages and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were denied by defendant, although such denial was contrary to the facts and applicable law causing him substantial damages.

3(b). On a number of separate occasions beginning in 1976 and extending through 1987, Tim Pigford applied for farm ownership ("FO") loans from FmHA and was turned down by the Bladen County FmHA office. The denial of this credit was due to racial discrimination against Tim Pigford -- this was acknowledged at the highest level of the agency, and the Civil Rights Office at USDA also concluded there was discrimination in the handling of Pigford's appeal on one of the FO denials.

3(c). A draft analysis of the Pigford FO denials done by FmHA staff on May 23, 1986, noted that FmHA had "placed an unyielding burden on [Tim Pigford] in rejecting his FO loan application. . . The rejection of the FO by the County Committee

was directly counter to Agency regulations as well as to its own actions before and after the FO loan decision", and further noted that the County Supervisor failed to provide Pigford farm program servicing according to FmHA regulations "comparable to that provided white borrowers". It was suggested as a remedy then that Tim be given an inventory farm of which he could take ownership of.

3(d). A memorandum by the Administrator of FmHA, dated August 22, 1986, said that "Our review of the files of the white farmers mentioned indicates the county supervisor was more tolerant of the problems experienced by them. . . The two white farmers also received large loans in a timely manner despite irregularities noted in paying FmHA, and in not following their established Farm and Home Plans. It is our conclusion Mr. Pigford was treated differently than the two white farmers."

3(e). A later (July 7, 1987) memorandum from one member of USDA's civil rights staff to another person on that staff stated that "Mr. Pigford has again charged discrimination regarding his denial of a farm ownership loan in 1987. . . We believe the hearing officer erred when he declined to accept Mr. Pigford's allegations of discrimination during the appeal process."

3(f). In addition, the statistics on the award of Fos in Bladen County, North Carolina, show disparity of treatment between white and black applicants for these loans.

3(g). Pigford timely filed a civil rights complaint matter with USDA on the racially discriminatory denial of the farm ownership loans. However, the Civil Rights Office at USDA in a

December 19, 1986, determination chose to ignore the FmHA findings and held against Pigford on the issue of discrimination on the FO loan denials as well as on unrelated matters of FmHA's servicing of his operating loan debts. Pigford re-filed his complaints in 1987, and USDA's civil rights staff again rejected them, as reflected in a July 7, 1997, memorandum (which is quoted above). Pigford has continued to press his complaints since then, both at USDA and with members of Congress.

3(h). As a result of these actions of USDA, Pigford has suffered frustration, humiliation, anxiety, and other mental distress at his inability to obtain redress from USDA for the racial discrimination committed against him; and members of his family have been subjected to mental and emotional stress after Pigford's loss of his farm and his homestead due to his inability to obtain such redress for the racial discrimination. Further, by being denied the farm ownership loan due to racial discrimination, Pigford additionally has suffered the loss of the ability to purchase a farm, the loss of the opportunity to continue farming, the loss of profits from a farming operation, and related pain and suffering on his part and that of his family.

4(a). Plaintiff and proposed Class representative, Lloyd Shafer ("Shafer"), (Subclass I), is an African-American farmer and resident of Yazoo County, Mississippi. Mr. Shafer is a farmer who (a) timely applied for various loan programs with defendant's agency, FmHA, for the years 1992 and 1993 and was the subject of willful and continuous racial discrimination, including refusal to provide full operating credit and appropriate loan servicing, by

reason of his race, causing him substantial damages, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

4(b). Shafer began farming in 1992, and as a beginning farmer sought operating loan credit from FmHA. The Yazoo County, Mississippi, FmHA office initially denied him credit, but was later forced to retract the denial as baseless. However, the operational credit provided by FmHA was delayed and inadequate to allow Shafer to harvest crops.

4(c). This pattern of FmHA only grudgingly providing Shafer operational credit, at times with onerous restrictions on the use of the funds, continued through 1994. Shafer, however, was making every effort to succeed as a farmer. For example, in 1993, Shafer enrolled in classes in agricultural science at Alcorn State University (an USDA designated minority farmer outreach grantee), and the Alcorn staff assisted him in preparing his farm plan in 1993 (although Yazoo County FmHA office refused to use it).

4(d). Again in 1994, Shafer was initially denied operative credit, but the denial was reversed. However, FmHA retaliated against Shafer by delaying and restricting operating loan funds. In 1995, Shafer's crops were adversely affected by natural disasters and he applied to FSA for a disaster loan. Again, his application was initially denied, but an appeal over the head of the Yazoo County FSA office was approved. However, the payment to Shafer of the disaster loan funds was delayed for a substantial period of time, to August 1995.

4(e). Over time, Shafer concluded that as an African-American farmer he was being discriminated against by FmHA and FSA an Yazoo County, Mississippi. He had been the President of the Yazoo County Chapter of the National Association for the Advancement of Colored People (NAACP), and there has been for some time an atmosphere of hostility toward the NAACP and its work in Yazoo County. Shafer believes the Yazoo County FSA office is part of the oppressive white establishment of Yazoo County.

4(f). A report in the Jackson, Mississippi, Clarion-Ledger, dated January 12, 1997, included a table showing the disparate treatment given white farmers, on the one hand, and minority and women farmers on the other than, in the award of farm loans by FSA in Mississippi:

Sunday, January 12, 1997 *The Jackson, Mississippi Clarion-Ledger-*

9A

FEDERAL FARM LOANS

FISCAL YEAR 1996

Loan type	No.	Amount	Minority	Amount	Female	Amount
Direct Operating	285	$16,800,410	77	$3,097,040	0	$0
Guaranteed Operating	217	40,136,405	10	1,168,320	0	0
Direct Farm` Ownership	3	365,150	3	247,700	1	76,650
Guaranteed Farm Ownership	37	5,277,570	0	0	1	40,200

FISCAL YEAR 1995

Loan type	No.	Amount	Minority	Amount	Female	Amount
Direct Operating	243	$13,871,300	100	$4,949,030	0	$0
Guaranteed Operating	273	54,533,980	26	2,657,525	0	0
Direct Farm Ownership	2	199,000	4	400,800	0	0
Guaranteed Farm Ownership	69	9,034,820	2	300,000	4	430,000

4(g). Shafer timely filed his civil rights complaint in early 1997. Because of numerous financial set-backs he has suffered as a farmer, due in no small part to the Yazoo County FSA office's racially discriminatory actions, Shafer is on the verge of financial ruin and cannot wait for a flawed civil rights administrative review process to slowly wind its way to a conclusion. He seeks a fair resolution of his complaint, and for that reason joins as a plaintiff in this law suit.

5(a). Plaintiff and proposed Class representative, George Hall ("Hall"), (Subclass II), is an African-American farmer and resident of Greene County, Alabama who (a) timely applied for disaster payments with defendant for 1994 and was the subject of willful and continuous racial discrimination, including initial refusal by defendant to provide disaster payments and then acts of reprisal when Hall appealed the initial denial, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

5(b). Hall suffered racially-based disparate treatment in being denied disaster payments in 1994. Disaster payments have been made available to U.S. farmers in most years since 1987, to compensate farmers for losses to their production because of natural disasters.

5(c). In 1994, Hall's county, Greene County, Alabama, was declared eligible for the disaster payment program on 1994 crop losses. All applications for disaster payments were approved by the Greene County ASC committee except for Hall's application on

four of his crops. Further, when Hall appealed these denials, the Green County, ASC office retaliated against him by reducing his payment yield on the crops. He appealed the denials and reprisals to the state office and his benefits were restored.

5(d). Hall filed a timely complaint of racial discrimination with USDA on August 9, 1996. USDA found that the Green County ASC committee discriminated against Hall on the basis of race, in denying his application for disaster payments. However, two years later, no corrective action based on this finding has been made, the discrimination against Hall has never been compensated, and the racially discriminatory situation in the Green County FSA office still exists.

6(a). Plaintiff and proposed Class representative, Eddie Ross ("Ross"), (Subclass II), is an African-American farmer and resident of Vicksburg, Mississippi. Mr. Ross (a) timely applied for various loan programs with defendant during the period 1991-1994 and was the subject of willful and continuous racial discrimination, including failure to process his loan applications in a timely manner, and (b) timely filed complaints with defendant of these acts of discrimination. These complaints twice resulted in a finding of discrimination by defendant but did not adequately compensate Ross. On a third occasion, the complaint was never acted upon pursuant to applicable law. In each case, defendant's illegal conduct has caused Ross substantial damages.

6(b). The Eddie Ross case is several cases of racial discrimination committed by the Farmers Home Administration (FmHA), beginning in 1991. They involve—

(1) FmHA's discriminatory deprivation of timely operating credit for Eddie Ross for his 1991 crops;

(2) FmHA's discriminatory deprivation of timely operating credit for Eddie Ross for his 1992 crops;

(3) FmHA's discriminatory delays, denials, and harassment of Eddie Ross regarding his operating credit for his 1993 crops, including—

(A) delay in the consideration by the FmHA county committee of Eddie Ross's December 9, 1992, loan application until February 23, 1993;

(B) delays and refusals of Eddie Ross's application for 1993 operating credit after county committee review;

(C) the freeze of Eddie Ross's 1993 FmHA operating loan funds in July 1993; and

(D) FmHA's call to one of Eddie Ross's creditors about the fund freeze on July 2, 1993; and

(4) FmHA's reprisal against Eddie Ross in 1993 and 1994 (including specific refusals by the county FmHA director to conduct business with Eddie Ross) for filing civil rights complaints on the 1991, 1992, and 1993 operating loan matters.

6(c). In each of these cases, Eddie Ross timely filed civil rights complaints with USDA, and the matters have been given various degrees of review by USDA after having been filed.

6(d). With respect to the 1991 discrimination, USDA already has found that in fact Eddie Ross was the victim of racial discrimination in the initial denial of operating credit (based, inter alia, on statistical analysis showing disparate treatment of whites and blacks by FmHA in Warren County, Mississippi). The question became whether he has been compensated for that act of

discrimination. Eddie believed that what USDA offered in 1991—access to operating credit when such credit was offered too late to allow him to plant his planned crops in 1991—was not truly compensation and declined it. He has continued to seek appropriate compensation since then.

6(e). As to the 1992 acts of discrimination, USDA has already found *prima facie evidence of discrimination in the* initial denial of Eddie's OL application (based, *inter alia*, on statistical analysis showing disparate treatment of whites and blacks by FmHA in Warren County, Mississippi).

6(f). As to the 1993-94 acts of discrimination, the delays, denials and harassment to which Eddie was subject by FmHA have never been reviewed as USDA indicated inter alia that these complaints were made outside of the Statute of Limitations timeframe.

7(a). Plaintiff and proposed Class representatives, Strown and Fannie Martin ("The Martins"), (Subclass I), are African-American farmers and residents of Riverside County, California. The Martins (a) timely applied for an operating loan from 1994 to 1996 and were the subject of willful and continuous racial discrimination, including failure to process their loan applications in a timely manner, and (b) timely filed complaints with defendant of these acts of discrimination, *which complaints* were never acted upon pursuant to applicable law, causing them substantial damages.

7(b). Plaintiffs Strown and Fannie Martin are African-American farmers in Perris, Riverside County, California, who

began farming in 1994. The Martins went to the local Farmers Home Administration (FmHA) to find out how they could apply for funds to refinance their 80 acres of farm land. The Martins were given an application for a Farm Ownership Loan. Shortly thereafter the Martins returned to the FmHA office with their completed application.

7(c). The Martins received a letter from Mr. Christopher Ketner (FmHA County Supervisor for Riverside County) dated March 25, 1994, which listed items needed to complete their Farm Ownership Loan application. Mr. Ketner also explained in his letter that the Martins could apply for an operating loan of up to $200,000. Within a few days, the Martins had obtained the items listed in Mr. Ketner's letter and returned them to him sometime during the first week in April 1994. After many telephone calls, the Martins finally received a letter from Mr. Ketner dated May 24, 1994, stating the local county committee had found them eligible for a loan and that FmHA would work their loan up as quickly as possible.

7(d). The Martins did not receive anything else from FmHA until the latter part of July 1994. They finally received a letter from Mr. Ketner which stated their loan application was completed on July 18, 1994. After receiving Mr. Ketner's letter, the Martins called his office and spoke with Mr. Brooks Whitlock. Mr. Whitlock gave them an appointment to come into the office on August 9, 1994.

7(e). At the August 9th meeting, Mr. Whitlock told the Martins that FmHA could put them on an 18-month plan, with an

operating loan of $31,240 to get them started. The Martins had already missed the planting season for some of the crops they had hoped to plant, so they felt the operating loan would allow them to be able to plant some cabbages, turnips, and mustards. However, prior to telling Mr. Whitlock they would accept the operating loan, the Martins asked Mr. Whitlock if they would have to reapply for a loan to refinance t heir land. Mr. Whitlock said that they would not have to, because they had already been approved for the loan. Mr. Whitlock stated that FmHA just had not had time to work up the loan to refinance the land, but that the loan would be worked up by the first of the year. The Martins accepted Mr. Whitlock's word that the loan to refinance their land would be completed by the first of the year. Mr. Whitlock also told the Martins that they would have to put up all of their assets (including their home) for the loan. They thought what Mr. Whitlock meant was that these assets would collaterize the loan to refinance their land and the operating loan. The Martins' land was appraised at $2.6 million dollars. The Martins felt they had no other choice but to do as Mr. Whitlock said if they were to get the loan to start their farm operation.

7 (f). Due to heavy flooding starting in January and lasting through March, 1995, the Martins had a total crop loss. They applied for an emergency loan with FmHA. While the Martins were waiting on the status of the emergency loan application, on March 8, 1995, they received a Notice of Loan Servicing and Debt Settlement from Mr. Whitlock. Upon receiving Mr. Whitlock's March

8th letter, the Martins called Mr. Whitlock for an explanation of his letter. He gave them an appointment to come into the office.

7(g). The Martins met with Mr. Whitlock on April 11, 1995, at which time Mr. Whitlock showed them a farm and home plan he had prepared for them. They told Mr. Whitlock they disagreed with the plan. Mr. Whitlock said that he would not approve the Martins' plan and that they could meet with Mr. Ketner to discuss the situation.

7(h). The Martins met with Mr. Ketner and Mr. Whitlock on April 12, 1995. In the meeting the Martins tried to explain to Mr. Ketner why they disagreed with the farm and home plan prepared by Mr. Whitlock. Mr. Ketner told Mr. Whitlock to prepare some questions for the Martins to answer and get back to him. Mr. Whitlock prepared a list of questions for the Martins and, within a couple of days, they submitted their answers to Mr. Ketner. After a few more days, the Martins called Mr. Ketner to get his answer on their loan request. It was then that Mr. Ketner told the Martins that FmHA was out of money. On May 13, 1995, the Martins filed their discrimination complaint.

7(i). In June 1995, the Martins received two letters from Mr. Ketner, both of which were dated June 22, 1995. One letter stated that FmHA would not be able to approve the Martins' application for primary loan servicing and their applications for an emergency loan and a farm ownership loan to refinance their land. The second letter was a notice of intent to accelerate or to continue acceleration and notice of borrower's rights. The Martins filed an appeal.

7(j). At the National Appeal Division (NAD) hearing, Mr. Whitlock admitted that the Martins' 1994 farm ownership application to refinance their land and their 1995 emergency loan application were never processed. The hearing officer reversed FmHA's decision and instructed FmHA to continue processing the Martins' 1994 and 1995 loan applications.

7(k). FmHA, however, flatly refused to implement NAD's decision. In 1996, to further delay the Martins and lull them into believing their loans were going to be processed, Mr. Ketner sent the Martins a letter telling that updated information was needed to process their 1994 and 1995 loan applications. Yet, the Martins had already provided FmHA with the information needed to process their loan applications.

8(a). Plaintiff and proposed Class representative, Lucious Abrams ("Abrams"), (Subclass III), is an African-American farmer and resident of Burke County, Alabama who (a) timely applied for various loan programs with defendant during the period 1981-1994 and was the subject of willful and continuous racial discrimination, including failure to process his loan applications in a timely manner, and (b) timely filed four complaints of these acts of discrimination with defendant in 1989, 1993 and twice in 1997, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

8(b). The four discrimination complaints were:

(i) in 1989, official testimony before the Agriculture Committee of the House of Representatives by the Office of Rep. Lindsay Thomas on behalf of Mr. Abrams;

(ii) in 1993, testimony before defendant's agency by the Office of Rep. Cynthia McKinney on behalf of Mr. Abrams;

(iii) in 1997, Mr. Abrams complained before defendant USDA listening session in Albany, Georgia;

(iv) in 1997, Mr. Abrams filed a written complaint of discrimination with USDA.

8(c). Abrams suffered race-based disparate treatment in being denied timely consideration by FmHA of his operating loan applications, which in turn caused him damaging delays in the planting of his crops. These failures to provide timely consideration happened on a on-going basis over the years 1981 through 1994. In each year, the local county FmHA supervisor would precipitate the delay by unnecessarily submitting and resubmitting several farm financial plans for Abrams to the District and State Offices of the FmHA. For example, with respect to Abrams's 1994 crops, he submitted his financial plan for the crop to the FmHA county supervisor on September 1, 1993, but the plan was not finally approved until March 16, 1994, after field preparation should have been completed for timely planting of crops. As a result, Abrams suffered substantial loss of farm income in 1994.

8(d). Abrams suffered further discrimination in the form of harassment when in 1994, in establishing conditions for Abrams's purchases of a farm from FSA inventory with several partners (a farm previously owned by a white farmer), FSA unnecessarily required his two partners to pledge their individual homes as

collateral. This action was administratively appealed and was overturned by the National Appeals Division.

8(e). Also, Abrams's case file was selected for "review" by the State FmHA Office in 1993, and an issue was raised as to whether a previous debt write-down by FmHA was excessive and required a repayment. After much gathering and presentation of documentation, the repayment required was only $2,800. The result of the discriminatory actions is that Mr. Abrams has lost his reputation for creditworthiness in his community and has no credit standing with local financial institutions, and has suffered other related losses.

9(a). Plaintiff and proposed Class representative, Griffin Todd, Sr. ("Todd"), (Subclass I), is an African-American farmer and resident of Wake County, North Carolina who (a) timely applied for loan programs with defendant in the 1980s and was the subject of willful and continuous racial discrimination, including refusal by defendant to discuss the rescheduling of outstanding loans or to accept an application for a farm loan, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

9(b). Todd suffered racially-based disparate treatment at the hands of FmHA in being denied access to the full range of FmHA farmer lending program alternatives, especially those with respect to debt rescheduling, that were offered to white farmers in Wake County. When Todd suffered severe financial reversals in the early 1980s after two consecutive drought years and then

petitioned the county FmHA office for assistance in servicing his FmHA debt, the county supervisor for FmHA refused to discuss the various alternative financial options suggested by Todd, while at the same time providing financial relief to white farmers in similar situations. When Todd later sought information from the FHA county supervisor as to the amount Todd would have to pay annually to retire all of the FmHA debt owed, the supervisor took two years to reply. During this time additional debt had accumulated to the unpaid interest. Also, at one point, the county FmHA committee refused to accept an application form from Todd for farm operating loan financing. Provision of the operating loan would have allowed Todd to continue farming and provided an opportunity for him to retire the outstanding debt. The result of the discriminatory actions is that Mr. Todd has had to pare back his farming operations considerably and, as a result, has lost substantial amounts of farm income and suffered related losses.

10 (a). Plaintiff and proposed class representatives, Ben & Zelma Hilsman ("the Hilsmans"), (Subclass III), are husband and wife African-American farmers and residents of Halifax County, North Carolina. In January of 1988, Mr. And Mrs. Hilsman (a) timely applied for a farm ownership loan to purchase additional farm land and were subjected to willful discrimination by their local FmHA office, including denial of appropriate loan servicing, by reason of their race, causing substantial financial losses in farm income earning potential, and they (b) timely filed a discrimination complaint with defendant's investigator in

1991, but were never informed of any action on their complaint contrary to the facts and applicable law, causing them further damages.

10(b). In January of 1988, the Hilsmans obtained a 90-day option on a farm acreage. They then timely applied for a farm ownership loan at their local FmHA office. Their loan application, however, was not processed until two weeks before the option expired. As a result, their loan was denied. The Hilsmans appealed to the State and the local FmHA county office supervisor's decision was overturned. However, they had lost the opportunity to purchase the farm because the option had expired. Nevertheless, this same FmHA county supervisor was able to timely process a loan for David Johnson (a white farmer) to purchase the same property.

10 (c). In 1991, the county supervisor attempted to accelerate their farm loans because he claimed they had purchased a house without his permission. The State office overturned his decision. This initial action by the FmHA supervisor, however, caused them to receive their operating loan late in that year. In 1993, the Hilsmans applied for an operating loan and were denied three times before receiving the funds. It was only after repeated appeals of the FmHA supervisor's decision that they were able to get funding. In the final appeal, they were able to prove that the information entered into the DARLS program was incorrect.

10 (d). In 1996, the Hilsmans did not get their operating loan until September. Because of the late planting, they lost their entire crop to a freeze. The reason for them not getting their loan until September was again due to incorrect information being entered into the DARLS program.

10 (e). This case has four key issues: (1) persistent negative action by the county supervisor, (2) the denial of the Hilsman's farm ownership loan at the county level, a deliberate act to make sure the white farmer was able to purchase the farm, (3) the attempt to accelerate the farm loans as retaliation, (4) the lack of a finding by USDA with respect to the 1988 complaint.

11 (a). Plaintiff and proposed class representative Calvin Brown ("Brown"), (Subclass III), is an African-American farmer and resident of Brunswick County, Virginia. Mr. Brown (a) timely filed his application for an operating loan in January, 1984, and was subjected to willful discrimination by forcing him to reapply for the loan, approving and subsequently releasing the funds late in the growing season, thus causing substantial financial losses in farm income, and Mr. Brown timely filed his discrimination complaint November 26, 1984, for which no response was ever received from the defendant, thus causing him further damages.

11 (b). In January, 1984, Mr. Brown filed his application for an operating loan. When Mr. Brown called the FmHA County Supervisor about the status of his loan application, toward the end of January, 1984, he was told his loan was being processed. In February, 1984, the same FmHA county supervisor told him he had no record of him ever applying for a loan. He was forced to

reapply for the operating loan. The loan was finally approved and Mr. Brown received the funds late in the planting season (May or June, 1984) causing substantial financial losses due to the shortened growing season.

11 (c). Furthermore, the funds received were placed in a supervised bank account (an account requiring the co-signature of FmHA county supervisor) for no apparent reason and without consultation with Mr. Brown. As a result, Mr. Brown often had problems getting his checks co-signed in a timely manner.

11 (d). Additional problems arose because Wednesday was the county supervisor's 'open door day,' *i.e.*, farmers came in to see the county supervisor without an appointment. Since appointments were rarely given Black farmers, Wednesday was the only day Black farmers could visit the FmHA office. On many Wednesday visits, Mr. Brown and other Black farmers were belittled and disrespected. On one Wednesday when Mr. Brown and other Black farmers were waiting to see the county supervisor, and had been waiting for quiet some time, a white farmer came into the FmHA office from a side door and walked right into the county supervisor's office, conducted his business with the door closed (the door always remained open when the county supervisor was with Black farmers) and left. These incidents are examples of the disparate treatment received by the Black farmers compared to their white farmer neighbors.

11 (e). Shortly after this incident, the FmHA county supervisor refused to give Mr. Brown an application for loan funds to build a tobacco barn. Then, in the mid-eighties, the

FmHA county supervisor stopped granting operating loans to Mr. Brown because he considered Mr. Brown to be a "gentleman farmer."

11 (f). This case has, inter alia, three issues: (1) was the reason for placing Mr. Brown on a supervised bank account proper and within the regulation, (2) was setting a particular day for Black farmers to come into the office discriminatory, and (3) was the treatment by the county supervisor discriminatory.

12 (a). Plaintiff and proposed class representative, James Beverly ("Beverly"), (Subclass III), is a Black farmer and resident of Nottoway County, Virginia. Mr. Beverly sought financial counseling and advice, and timely applied for loan funds with the defendant during the years 1981 to 1984 on the expansion and modernization of his swine herd operation. Mr. Beverly was (a) subjected to willful and continuous racial discrimination from his local FmHA office, including denial of loan funding called for in his approved Farm and Home Plan, based upon the advice received from his local FmHA office. This denial of proper loan financing and loan servicing, caused Mr. Beverly to suffer sever financial losses, leading to the failure of his farming operation, and Mr. Beverly (b) timely filed a complaint with defendant in 1985 of these acts of discrimination, which complaint was ignored contrary to the requirements of law, causing substantial damages to Mr. Beverly.

12 (b). Mr. Beverly sought advise from his local FmHA office and made plans for expanding his farming operation based upon that advise and the approved Farm and Home Plan. He then timely applied for an operating loan to purchase breeding stock and

equipment as called for in his farm and home plan developed in association with his local FmHA office. Mr. Beverly received loan funds to purchase breeding swine and equipment, but he was denied funding for the farrowing houses as called for by his Farm and Home Plan. This denial came even though his local FmHA officials knew that he had accepted the loan for the breeding swine and equipment and had purchased same, and that without the farrowing houses, the other funding was basically useless. In addition, these denials came in spite of the fact that he had been told he would get funding for the farrowing houses. FmHA officials knew that without the farrowing houses, Mr. Beverly could not succeed with his farm operation. Indeed, he lost everything including his property, which he sold so he could settled his debt with FmHA.

12 (c). Prior to seeking assistance from FmHA, Mr. Beverly had a successful small farm operation. However, within a six year period after going to the FmHA office for assistance with the expansion of his farming operation, Mr. Beverly was forced out of farming. He filed a complaint of discrimination with the local office in February, 1985, but never heard anything from his complaint. An FmHA employee will verify that Mr. Beverly filed a discrimination complaint.

12 (d). Four issues, inter alia, arise in this case: (1) did FmHA deliberately mislead Mr. Beverly so he would accept the operating loan; (2) did he receive appropriate loan servicing; (3) was the denial of funding for the farrowing houses correct

according to regulations, and (4) the impact of defendant's unresponsiveness to Mr. Beverly's discrimination complaint.

13 (a). Plaintiff and proposed Class representative Eddie Cotton ("Cotton"), (Subclass I), an African-American farmer and resident of Claiborne County, Mississippi. Mr. Cotton received two loans from the Farmers Home Administration in February, 1982. The first loan was for $53,280 and the second was for $10,850 for a total of $64,130. The loans are secured by Mr. Cotton's home and 80 acres of land. When Mr. Cotton submitted his loan applications, he informed Mr. Miskelly, County Supervisor for FmHA, that he only wanted to put up 70 acres of his land to secure the debt. Mr. Miskelly told Mr. Cotton that this was acceptable. Mr. Cotton later learned, however, that his home and 80 acres of land had been taken as security on his debt with FmHA.

13 (b). On October 10, 1990, Mr. Cotton filed a completed application for primary loan servicing. The FmHA did not begin processing Mr. Cotton's application until January, 1996, at which time it requested updated information from Mr. Cotton, including an updated farm and home plan dated April 30, 1996. On July 9, 1996, Mr. Cotton was sent a Notice of Intent to Accelerate, which stated, "You can not get primary loan servicing because your farm and home plan does not show you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments." The FmHA notified Mr. Cotton that he could buy-out his security at a net recovery value of $42,562. The FmHA never addressed the fact that FmHA's decision to deny Mr. Cotton's

application for primary loan servicing was based on updated information required by FmHA and not on information provided in 1990 when Mr. Cotton's application was submitted.

13 (c). In 1982 or 1983, Mr. Cotton went to FmHA and applied for a loan to purchase 132 acres of land adjacent to his property. FmHA held Mr. Cotton's application for over a year before notifying him t hat his application would be approved. By the time Mr. Cotton received notification from FmHA that he would get the loan, the landowner told him that the sales price had gone up from $55,000 to $75,000 and he had taken 12.5 acres from the land that was for sale.

13 (d). In 1987, the Veterans Administration was investigating Mr. Cotton's claim for improved pension benefits. The Veterans Administration's investigator went to the FmHA office and without Mr. Cotton's permission, obtained information from an FmHA employee. Mr. Cotton states some of the information provided to the investigator was incorrect. Mr. Cotton complained to FmHA about it providing information to the Veterans Administration without his permission, and he also questioned the accuracy of the information provided to the Veterans Administration's (Mr. Cotton told FmHA that Mr. Charles Johnson had not paid any loan for him and that he did not own any property other than his 80 acres and home). FmHA provided no explanation to Mr. Cotton regarding how it had the authority to release the information to the Veterans Administration, nor did FmHA attempt to correct any of the information it had provided the Veterans Administration.

13 (e). Mr. Cotton often went to his local FSA (formerly FmHA) office and inquired about participating in a tree planting program where FSA would pay $45 per acre for 13 years. Mr. Cotton was repeatedly told he did not qualify, though it was never explained to him why he did not qualify or that he could even apply to participate in the program. Mr. Cotton states that the employees at the FSA office were abusive and treated him other than like a human being.

13 (f). The USDA, through its FSA (formerly FmHA) office in Port Gibson, Claiborne County, Mississippi, discriminated against Mr. Cotton on the basis of his race by the following acts:

(1) Excessive Collateral to secure FmHA loan.

Mr. Cotton was told that it would be acceptable for him to use only 70 acres of his land to secure the debt. Instead, without Mr. Cotton's knowledge, FmHA listed Mr. Cotton's home and 80 acres as collateral. The requirement of Mr. Cotton's home to secure the debt was excessive.

(2) Failure to issue a decision on Mr. Cotton's loan applications within the required timeframe. *(FmHA Instruction 1910-A, Section 1910(h)(i)(1) Farmer Program Applications. Each application must be approved or disapproved and notified in writing of the action taken, not later than 60 days after receipt of complete application)* Mr. Cotton did not receive a decision on his application for a loan to purchase land adjacent to his property for over a year after filing his application. Also, he did not receive a decision on his application for primary loan servicing for over six (6) years.

(3) FSA failed to give proper consideration to Mr. Cotton's application for primary loan servicing.

Mr. Cotton applied for primary loan servicing in October 1990 and did not receive a decision on his application until 1996. The FSA required Mr. Cotton to provide them with a 1996 farm and home plan in order for it to make a decision on his 1990 application for primary loan servicing. The FSA should not have required Mr. Cotton to provide a farm and home plan for a 1990 application. At the time Mr. Cotton filed his application, he did not have 1996 information.

(4) FmHA provided information to an outside source without Mr. Cotton's permission.

An employee of FmHA gave information to a Veterans Administration investigator without Mr. Cotton's permission. The FmHA failed to assist Mr. Cotton in making sure the Veterans Administration had obtained accurate information regarding Mr. Cotton. The FmHA never proved to Mr. Cotton that it had the authority to provide any information to the Veterans Administration without his permission.

(5) FSA failed to provide Mr. Cotton with program information and applications for participation.

The FSA employees did not provide Mr. Cotton information regarding why he did not qualify to participate in the tree-planting program, nor did FSA provide him with an application to participate in the program.

14 (a). Plaintiff and proposed Class representative, Alvin E. Steppes ("Steppes"), (Subclass II), an African-American farmer and

resident of Lee County, Arkansas, where he and many other African-American farmers had been farming for many years. Due to race-based disparate treatment by the Farmers Home Administration throughout the 1980s, Mr. Steppes and other black farmers were unable to gain access to FmHA loans and loan servicing to which they were otherwise entitled. This discrimination resulted in substantial losses in farm income. These losses led to Mr. Steppes losing his farm land and his ability to farm and to like damages to many other African-American farmers in the same county and state. Further, Mr. Steppes has incurred substantial farm debts as a direct result of FmHA's racial discrimination which he is unable to repay.

14 (b). The racially discriminatory treatment Mr. Steppes was subjected to includes, in 1986, the unfair denial by FmHA of operating credit, even though he should have qualified and complied with all loan application requirement. This denial of credit prevented him from putting in crops and applying fertilizer, pesticides, and other treatments to the crops he did plant. As a result, he suffered a substantial loss in production and farm income in 1986.

14 (c). Mr. Steppes also is representative of many, if not all, African-American farmers in Arkansas in those years. He and 17 other African-American farmers from Lee County filed a detailed complaint with USDA in 1986, stating that they had been mistreated and at that time were all still being mistreated by FmHA in the same manner on the basis of their race.

14 (d). After investigating the claims of the group of which Mr. Steppes is a representative, USDA's Office of Advocacy and Enterprise in 1987 found that the racial discrimination of which Mr. Steppes and others complained was in fact occurring in the form of disparate treatment, and that it was occurring not only at the Lee County level, but at the level of the entire State. The findings include the following acts of disparate treatment and other acts of racial animus:

1. African-American farmers' projected crop yields were calculated differently from White farmers.

2. African-American farmers' applications were not handled in a timely manner.

3. African-American farmers were not provided timely information on required documents for completion of their applications.

4. African-American farmers' Farm and Home Plans contained computation errors, which resulted in their applications being rejected.

5. Approved African-American farmers' title opinions were delayed for an unacceptable time period.

6. African-American farmers were not advised of all servicing options.

7. County office personnel were rude and insensitive to African-American farmers.

14 (e). Despite these findings, Defendant responded, but never properly ruled pursuant to ECOA, on the discrimination complaints filed by Mr. Steppes and the other black farmers.

15. Each of the remaining Class members, is an African-American farmer and resident of either Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Missouri, Mississippi, North Carolina,

Oklahoma, South Carolina, Tennessee, Texas or Virginia, who (a) timely applied for loans and/or program payments with defendant during the period 1983-1997 and was the subject of willful and continuous racial discrimination, and (b) timely filed a complaint or complaints with defendant of these acts of discrimination, which complaint(s) was/were never acted upon pursuant to the applicable law, causing the farmer substantial damages.

16. Defendant, Dan Glickman, is Secretary of the United States Department of Agriculture ("USDA"), and is the federal official responsible for the administration of the statutes, regulations and programs which are the focus of this action.

HOW DEFENDANT IS ORGANIZED AND,
GENERALLY, THE GOVERNMENT PROGRAMS AT ISSUE

17. USDA's Farm Service Agency ("FSA") provides commodity program benefits (such as deficiency payments, price support loans, conservation reserve benefits), disaster payments, farm loans and other farm credit benefits to U.S. farmers. The agency was created in 1994, as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS", which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services) with the Farmers Home Administration ("FmHA", which previously had provided farm loans and other farm credit benefits).

18. The FmHA was created decades ago to provide loans, credit and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by private, commercial lenders. These loans included "farm

ownership", "operating", and "continuing assistance" loans, as well as loans that "restructure" existing loans and "emergency disaster" loans.

19. ASCS was an agency of USDA created to provide services to U.S. farmers under the price support, deficiency payment, CRP, and related programs to stabilize farm income and prices, and to assist in the conservation of land. It was consolidated into the Farm Service Agency in 1994.

20. Defendant, Glickman is responsible for the administration of the Farm Service Agency (FSA) and previously FmHA & ASCS. FSA, like FmHA and ASCS before it, administers the federal farm programs through a three-tiered review system consisting of (1) county offices and committees, (2) state offices and committees, and (3) a federal level of review in Washington, D.C., the National Appeals Division ("NAD"). The local county committees consist of producers from a county who have been elected by other producers in that county; they oversee the county offices. The state committees consist of producers from each state selected by the Secretary of USDA; they oversee the state offices. At the federal level NAD renders final determinations of administrative appeals. (Prior to the 1994 consolidation, FmHA had its own administrative appeal process).

HOW FARMERS (1) APPLIED FOR LOANS AND CREDIT WITH FmHA AND (2) APPLIED FOR PARTICIPATION IN OTHER FARM PROGRAMS WITH ASCS

21. Traditionally, when a farmer applied for any FmHA loan or program, he went to his county office (formerly the FmHA office), and filled out a Farm and Home Plan (FHP), which required

the assistance and guidance of defendant's officials to complete. Assistance and guidance was critical because of the complexity of the programs and forms. This application process was done pursuant to regulations found at 7 C.F.R. 1910, et seq. If the farmer needed an ASCS-type benefit or assistance, he worked with his County Executive Director ("CED") and county committee in applying for participation or benefits. The process was and is done pursuant to ASCS regulations (7 C.F.R. Part 700, et seq.) and Commodity Credit Corporation ("CCC") regulations (7 C.F.R. at 1400, et seq.).

22. When the FmHA loan application with its supporting documents was completed it was presented to the county committee. If approved, the loan was processed. The Equal Credit Opportunity Act ("ECOA") prohibits discrimination in credit based on sex, marital status, race, color, age, or national origin, religion, etc. (15 U.S.C. §1691(a)). If an FmHA loan was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA, the FmHA - Equal Opportunity ("EO") office or with the Office of Civil Rights Enforcement and Adjudication ("OCREA"), or both.

23. With respect to ASCS-type programs, the application was reviewed by the CED and then presented to the county committee. If approved, the ASCS benefits were awarded. Title VI of the Civil Rights Act of 1964 prohibits exclusion of participation in federal programs based on race, color or natural origin. With respect to ASCS-type applications, if a farm program application

was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA or OCREA.

HOW PLAINTIFFS AND MEMBERS OF THE CLASS WERE DAMAGED -- WHAT DEFENDANT DID IN RESPONSE TO COMPLAINTS OF DISCRIMINATION

24. Unbeknownst to plaintiffs and members of the Class, defendant disbanded the enforcement ability of EO and OCREA in 1983, leaving defendant with no ability to investigate discrimination complaints. In a May 25, 1997 Richmond News Dispatch article and interview of Lloyd Wright, Director of USDA Office of Civil Rights, Mr. Wright stated that (1) no systematic probes or investigations had been taken since 1983, when the Reagan administration disbanded the Civil Rights investigative staff, and (2) that agency regulations and the provisions of the Civil Rights Act of 1964, et al. were violated. Further evidence of defendant's willful failure to investigate discrimination complaints is evident in the February 27, 1997, Office of Inspector General Report ("OIG Report"), and the February, 1997 Civil Rights Action Team Report ("CRAT Report"), both explained below.

25. The Department of Justice (DOJ) was required to ensure that Federal agencies met their Title VI enforcement obligations and provide civil rights protection to persons filing discrimination complaints in the FSA programs. DOJ failed to ensure that defendant met its Title VI obligations.

26. Within USDA, The Policy Analysis and Coordination Center (PACC), an agency under the Assistant Secretary for Administration, was responsible for civil rights compliance and developing regulations for processing program discrimination

complaints at USDA. [OIG Report, p. 4] OCREA was responsible for processing program discrimination complaints received by USDA from participants in FSA programs. [OIG Report, p. 4]

27. OCREA was required to forward written complaints from FSA program participants of discrimination to the appropriate agency within USDA asking the agency to attempt conciliation of the complaint. If conciliation was not successful, the agency was to be instructed to perform a preliminary inquiry and make a recommendation of a finding of "discrimination" or "no discrimination". OCREA was to perform its own analysis of the complaint and the preliminary inquiry and make a recommendation to the Assistant Secretary for Administration on the finding of "discrimination" or "no discrimination". This process never occurred during the relevant period covered by this lawsuit. [OIG Report, p. 4]

28. FSA's Civil Rights and Small Business Staff (CR&SBUS) was responsible for handling program discrimination complaints within FSA. CR&SBUS never followed proper procedure pursuant to the law during the relevant period covered by this lawsuit. [OIG Report, p. 5]

29. The applicable State Civil Rights Coordinator in FSA was responsible for obtaining a conciliation agreement or performing a preliminary inquiry and forward it to CR&SBUS. If a conciliation agreement was reached with the complainant, CR&SBUS was to forward the agreement to OCREA and recommend the discrimination complaint be closed. If a preliminary inquiry was performed, CR&SBUS would analyze the information and determine if

discrimination was found; CR&SBUS was to forward the preliminary inquiry and its analysis to OCREA with its determination. These procedures were never properly followed.

30. USDA has codified regulations, 7 C.F.R., Part 15 - "Nondiscrimination," which states USDA's policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs, however, defendant admits the regulations have long been and still are outdated and never reflected the departmental agencies, programs and laws. (Emphasis supplied.) [OIG Report, p. 5]

31. USDA Regulation 4330-1, which is over 11 years old, dated June 27, 1986, set the departmental policy for program civil rights compliance reviews, but does not provide policy and guidance for processing program discrimination complaints. [OIG Report, p. 5]

32. On December 12, 1994, in a management alert to the then Office of Civil Rights Enforcement, defendant's Office of Inspector General (OIG) reported problems with how USDA received, processed, and resolved program discrimination complaints. OIG recommended that "a departmental regulation be promulgated that sets forth the authorities of the Office of Civil Rights Enforcement and that written procedures and controls be established governing the receipt, processing, and resolution of program discrimination complaints within established timeframes". [OIG Report, p. 5]

33. The regulation was never published.[2]

34. After years of abuse and benign neglect of African American farmers, OIG finally undertook an investigation and review, the results of which were released on February 27, 1997, of defendant's program discrimination complaints within FSA as well as 10 other agencies within USDA. OIG found, inter alia, that the discrimination complaint process within USDA lacked "integrity," and "accountability" was without a tracking system, was in "disorder", did not resolve discrimination complaints, and had a massive backlog:

> "The program discrimination complaint process at FSA lacks integrity, direction and accountability. The staff responsible for processing discrimination complaints receives little guidance from management, functions in the absence of any current position descriptions or internal procedures, and is beset with its own personnel EEO problems. The staff also processes discrimination complaints without a reliable tracking system to determine the status of the complaints and, apparently, with-out deadlines to resolve the complaints. The resulting climate of disorder has brought the complaint system within FSA to a near standstill. Little gets accomplished to resolve discrimination complaints or to make program managers aware of alleged problems within their programs. After developing our own data base of unresolved cases, we determined that as of January 27, 1997, FSA had an outstanding backlog of 241 complaints." (Emphasis supplied) [OIG Report, p. 6]

35. OIG found that the staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people:

> "The FSA staff responsible for processing discrimination complaints, the Civil Rights and Small Business

[2]The U.S. Commission on Civil Rights issued a report in June 1996, titled Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs. This report also had specific findings and recommendations critical of the USDA discrimination complaints processing system.

> Utilization Staff (CR&SBUS)" has two full-time program specialists working to resolve program complaints. These program specialists are supplemented by an administrative assistant who provides secretarial support and two staff assistants who maintain case files and the tracking system. The two program specialists and the two staff assistants transferred to FSA from the civil rights staff of the former Farmer's Home Administration (FmHA) during the Department's reorganization in October 1995. The staff assistants have been performing analyses of the preliminary inquiries conducted on the complaints, although they are not trained or otherwise qualified to do so. None of the former FmHA employees with CR&SBUS have position descriptions to reflect their current duties and responsibilities, and none have received performance appraisals for fiscal year 1996." (Emphasis supplied) [OIG Report, p. 6]

36. OIG found a "massive backlog" of unprocessed FSA complaints. [OIG Report, p. 6)

37. OIG found the FSA files "disorganized" and unaccountable:

> "...CR&SBUS was unable to provide us with an accurate number of outstanding complaints or their status. We reviewed the case files and found them generally disorganized. It was difficult for us to readily determine the date of the complaint, the reason it was brought, and the status of its resolution." (Emphasis supplied) [OIG Report, p. 7]

38. OIG found hundreds of FSA cases unresolved:

> "Our review at the CR&SBUS and CREA disclosed that, between them, they had listed a total of 272 cases as being active. The oldest case listed dates back to 1986. * * * After resolving all duplications and determining the actual status of the 272 cases, we found that FSA had 241 cases of program discrimination complaints that had not been resolved." (Emphasis supplied) [OIG Report, p. 7]

39. OIG found repeated unaccountability and missing files:

> "During our reconciliation of the two agencies' lists, we noted that some cases were listed by one or

the other agency but could not be found in its filing system. CR&SBUS listed 32 cases that we could no find in its filing system, and CREA listed 28 cases that we could not find in its filing system. We also noted that CR&SBUS listed cases unknown to CREA. CR&SBUS listed 19 cases that CREA did not list." [OIG Report, p. 7]

40. OIG found there was no reliable method to the processing:

"CREA had officially closed 30 of the 272 cases with findings of no discrimination. CREA had also closed one case with a finding of discrimination, and the complainant was compensated. The case involved the FSA disaster program, and the complainant received the benefits which were at first denied by FSA. Four of the remaining 24 cases had findings of discrimination as determined by CREA and are pending resolution. One of the four complainants has not responded to the Department's written notice regarding filing a claim for compensation. Office of Operations officials are negotiating a settlement with the remaining three complainants." [OIG Report, pp. 7-8]

41. OIG found improperly closed files and improper reviews, and many files with no documentation:

"We found that FSA improperly closed and forwarded 30 complaints to program managers, without notifying the Department (26 of 30 cases were closed under the old FmHA agency management). The civil rights staff concluded without first receiving concurrence from the Department that these cases were the result of "programmatic discrepancies" (i.e., agency error rather than civil rights violations). Without departmental concurrence with its findings, the agency may not have addressed the legitimate cases of discrimination. CREA has the responsibility to make final determination of program discrimination. FSA may recommend to CREA that cases be closed, but it does not have the authority to close these cases without concurrence from CREA. For example, we noted that in one instance FSA (the former FmHA) incorrectly concluded that a case had only programmatic concerns and closed the case without forwarding it to the Department. Only after a civil rights staff member complained, did FSA process the case as a civil rights discrimination case. The civil rights

staff stated in a letter that the allegation of racial discrimination was overlooked. The mix-up was discussed with the Department, which determined that the case should be processed by the civil rights staff. For most of the remaining cases, we found no documentation in the case files at FSA that the Department has reviewed these cases." (Emphasis supplied) [OIG Report, p. 8]

42. OIG found 58% of the FSA civil rights complaint case files were over 1 year old and over 150 cases were almost two years old:

". . . the average age of the 241 cases we consider open because they were not officially closed by the Department.

No. of Cases	Program	Average Age
151	Ag. Credit (Farm Loans)	703 Days
40	Disaster	485 Days
50	Others	482 Days

Of the 241 open cases, 139 (58 percent) were known to be over 1 year old. Of the 241 cases, 129 (54 percent) are awaiting action in FSA; the remaining 112 cases (46 percent) are in the hands of the CREA staff in USDA's Office of Operations. Sixty-five of the cases at FSA (50 percent) need a preliminary inquiry. Some of these date back to 1993." [OIG Report, p. 8]

43. OIG found no system within FSA for reconciliation or tracking of civil rights complaint cases:

"CR&SBUS has no procedures in place to reconcile or track the status of complaints after they are forwarded to CREA. Therefore, CR&SBUS could not tell us the status of complaints at CREA. As noted above, both CR&SBUS and CREA had different numbers and were not aware of all the outstanding complaints." (Emphasis supplied) [OIG Report, p. 8]

44. OIG found no management oversight within FSA with respect to the handling of civil rights complaints:

> "CR&SBUS also does not prepare management reports to inform FSA program managers of alleged problems of discrimination within their programs. Without this information, program managers may not be aware of potential discrimination in the programs they are responsible for administering." [OIG Report, p. 9]

45. With respect to defendant's Office of Operations, Civil Rights Enforcement and Adjudication (CREA), OIG found repeated inaccuracies and unaccountability:

> "...that the listing of outstanding cases provided by CREA contained inaccurate information. In some instances we were unable to locate the case files at CREA that were on its outstanding case list. Without reviewing the case files, we were unable to verify the status of the complaints. Also, CREA and FSA had not reconciled their cases, and neither could inform us of the correct number of outstanding cases."

> "CREA does not have controls in place to monitor and track discrimination complaints. When complaints are received they are logged in, given a case number, and after the agency forwards the preliminary inquiry to CREA, the case is assigned to one of its seven program specialists. There are no procedures to require the program specialists to follow up on overdue responses from the agency. We have found that CREA is not following up on discrimination cases it returned to FSA for conciliation or performance of a preliminary inquiry. CREA advises the agency that it has 90 days to complete its review, but it does not follow up with the agency to determine the status of the complaint." [OIG Report, p. 9]

46. OIG surveyed 10 other USDA program agencies in addition to FSA, to determine the procedures used for processing program discrimination complaints and found the same problems. [OIG Report, pp. 10-11]

47. OIG compiled a list of outstanding ("open") program discrimination complaints, as late as 1996, within the Department, totaling 271. [OIG Report, at Attachment A]

48. At the same time that OIG released its report, a USDA Civil Rights Action Team released a report, dated February 1997, condemning defendant's lack of civil rights enforcement and accountability which, inter alia, was a cause of the drastic decline in the number of African American farmers. (The Report is hereinafter referred to as "CRAT"):

> "According to the most recent Census of Agriculture, the number of all minority farms has fallen -- from 950,000 in 1920 to around 60,000 in 1992. For African Americans, the number fell from 925,000, 14 percent of all farms in 1920 to only 18,000, 1 percent of all farms in 1992." [CRAT, p. 14]

49. CRAT found a common problem involved minority farmers applying to defendant for loans:

> "The minority or limited-resource farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office might claim to have no applications available and ask the farmer to return later. Upon returning, the farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced." (Emphasis supplied) [CRAT, p. 15]

50. CRAT found systematic mistreatment of minority farmers:

> "If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the

> FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials." (Emphasis supplied) [CRAT, p. 16]

51. CRAT found insufficient oversight of farm credit to minorities:

> "Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services." (Emphasis supplied) [CRAT, p. 16]

52. CRAT found a lack of diversity in FSA program delivery structure:

> "Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversity in its program delivery structure. Federal EEO and Affirmative Employment laws and policies do not govern the FSA non-Federal workforce except by agency regulation." (Emphasis supplied) [CRAT, p. 18]

53. CRAT found a lack of minority employees in FSA county offices:

> "A recent GAO study indicated that in the 101 counties with the largest concentration of minority farmers, one-quarter had no minority employees in their offices." [CRAT, p. 18]

54. CRAT found lower participation rates and lower approval rates for minorities in FSA programs:

"Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Service (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities. The GAO found that between October 1, 1994 and March 31, 1996, 33 percent of minority applications but only 27 percent of non-minority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of non-minority loans in the direct loan program were disapproved." (Emphasis supplied) [CRAT, p. 21]

55. For some states, the approval rates for farm loans were widely disparate:

"For example, only 67 percent of African-American loans were approved in Louisiana, compared to 83 percent of non-minority loans. Alabama showed a similar disparity -- only 78 percent of African-American loans approved, compared to 90 percent of non-minority loans." [CRAT, p. 21]

56. CRAT found minorities endured longer loan processing times:

"Again, however, some States showed consistently longer processing times for minorities. In the Southeast, for example, in several States in took three times as long on average to process African-American loan applications as it did non-minority applications. Similar disparities between non-minority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region." [CRAT, p. 21]

57. CRAT found discrimination complaints at USDA were often ignored:

"Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where, even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the

toll these ongoing battles with USDA has taken on their families, and on their health." [CRAT, pp. 22-23)

58. CRAT found decisions favoring farmers routinely not enforced by USDA:

> "However, many farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply "not enforced"." [CRAT, p. 23]

59. CRAT found a lack of USDA regulations for discrimination complaint processing:

> "Program discrimination complaints generally fall within two categories: (1) programs conducted directly by a USDA agency, such as USDA loan programs, and (2) federal assisted programs, where USDA does not directly offer services to customers, but recipients of USDA funds do. The recipients must obey civil rights laws, and USDA can be sued under such laws as Title VI, the Rehabilitation Act, IX, the Equal Credit Opportunity Act, and others. CRAT members were informed by OGC that USDA presently has no published regulations with clear guidance on the process or time lines involved in program discrimination complaints. When a farmer does allege discrimination, "preliminary investigations" are typically conducted by the agency that has been charged with violating her or his right." [CRAT, p. 24]

60. CRAT found discrimination complaints often are not responded to by USDA:

> ". . . USDA doesn't respond even when they do file complaints. In Tulsa, OK. an advocate representing black and American Indian farmers said, "we have filed 72 civil rights complaints. Not one complaint has even been answered." [CRAT, p. 24]

61. CRAT found record-keeping on discrimination complaints "non-existent" and that a backlog existed:

> "The CRAT was unable to gather historical data on program discrimination complaints at USDA because record keeping on these matters has been virtually

nonexistent. Complaints filed with the agencies are not necessarily reported to USDA's Civil Rights office. Some figures are available however, for cases that were open as of December 31, 1996. The largest number of pending discrimination complaints, as comments at the listening sessions suggests, are concentrated in three agencies at USDA. There were 205 case pending, representing 42 percent of the total, against the FSS: 165, or 33.3 percent against the Rural Housing Service (RHS): and 62, or 12.5 percent against the Food and Consumer Services. Sixty-three cases, or 12.7 percent of the total, were pending against other agencies. The Department had a total of 495 pending program discrimination complaints. Approximately one-half of the pending cases are 2 years old or older, verifying farmers contention that complaints are being processed slowly, if at all. According to the Complaints Processing Division at the Office of Operation (OO), which processes complaints that make it to the Department level. USDA averages about 200 new program discrimination complaints each year. However, in fiscal year 1996, an average of only 9 cases were closed per month, or 108 during the year -- increasing a backlog of program complaints." (Emphasis supplied.) [CRAT, pp. 24-25]

62. CRAT uncovered neglect of and bias against minorities by USDA, resulting in a loss of farmers' land and income.

"The recent Civil Rights listening-sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK. observed that minority farmer are not sure which condition "was worse -- being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses. Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination of FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some kind of compensation for their loses." [CRAT, p. 30]

63. CRAT found USDA the fifth worst (of 56 government agencies) in hiring minorities:

"According to the US Department of Labor, between 1990 and 2000, women, minorities, and immigrants will account for 80 percent of the United States labor force growth. The "Framework for Change: Work Force Diversity and Delivery of Programs," a USDA report released in 1990, found that USDA had a need to remedy under-representation in its workforce by providing equal employment and promotion opportunities for all employees. When this statement was made, USDA ranked 52 out of 56 Federal agencies in the employment of minorities, women, and individuals with disabilities." [CRAT, p. 33]

64. CRAT found the lack of diversity at USDA adversely affects program delivery to minorities:

"USDA's workforce does not reflect the diversity of it customer base. The lack of diversity in field offices adversely affects program delivery to minority and women customers of USDA." [CRAT, p. 45]

65. CRAT found a lack of resources at USDA to ensure fair and equitable (non-discriminatory) program delivery to farmers:

"The Assistant Secretary for Administration is USDA's senior official responsible for civil rights. Although that position has the responsibility for civil rights policy and compliances, it does not have the authority or resources necessary to ensure that programs are delivered and employees are treated fairly and equitably." [CRAT, p. 46]

66. CRAT found enforcement of civil rights at USDA in program delivery lacking:

"Another problem with enforcing civil rights in program delivery is fragmentation. Agency civil rights directors have a number of responsibilities. For example, USDA agencies each perform some complaint processing functions. However, the Commission noted that the respective roles of OCRE and the agencies were not clearly defined. The Commission also found that OCRE was providing technical assistance to agencies on civil rights statutes, not proactively, but only when requested." [CRAT, p. 51]

67. CRAT found a lack of civil rights specialists and knowledge for program-related civil rights issues at USDA:

> "The Civil Rights Commission's report on the lack of Title VI enforcement also pointed to USDA's lack of civil rights specialists in program-related civil rights issues. Many of the Department's civil rights resources are devoted to processing of employment discrimination complaints. Of the current staff in the Department's two civil rights offices, two-thirds work on EEO complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery. According to the Commission, the 1994 civil rights reorganization was deficient because OCRE did not separate internal and external civil rights issues into separate offices. The Commission predicted that "a probable consequence is that USDA's Title VI enforcement program may suffer as OCRE responds to pressures to improve USDA's internal civil rights program." It recommended that USDA establish "two separate units, with different supervisory staff," one for internal and one for external civil rights issues." [CRAT, p. 54]

68. CRAT found defendant's counsel hostile to civil rights, if not racist:

> "The perception that the Office of the General Counsel [at USDA] is hostile to civil rights has been discussed earlier in this report. OGC's legal positions on civil right issues are perceived as insensitive at the least, and racist at worst. Correcting this problem is critical to the success of USDA's civil rights program." [CRAT, p. 55]

69. CRAT found defendant's counsel often have no civil rights experience or education:

> "However, the CRAT has found that attorneys who practice civil rights law at [USDA's] OGC are not required to have specialized experience or education in civil rights when they are hired. They acquire their civil rights experience on the job. In addition, most of OGC's lawyers working on civil rights issues work on non-civil-rights issues as well." [CRAT, p. 55]

70. In sum, CRAT concluded that defendant does not support or enforce civil rights:

> "USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks. There has been instability and lack of skilled leadership at the position of USDA Director of Civil Rights. Dividing up the Department's Civil Rights office between policy and complaints has further exacerbated the problem. The division of responsibility for civil rights among different USDA offices and agencies has left confusion over enforcement responsibilities. Finally, OGC is perceived as unsupportive of civil rights." [CRAT, p. 56]

71. On September 29, 1997, USDA's Office of Inspector General issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs - Phase II" (hereinafter "OIG Report Phase II") which found, inter alia that (a) defendant has resolved only 32 of the 241 outstanding discrimination complaints reported in the OIG Report (back in February, 1997) and (b) that the backlog of discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

72. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues - Phase V" [hereinafter "OIG Report V"], which supplements plaintiffs claims and supporting materials in this lawsuit and in the above pending motions. In particular, OIG Report V states, inter alia:

a. "We found that the Department [USDA], through CR [Office of Civil Rights], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998." OIG Report V, cover letter to the Secretary.

b. "The backlog is not being resolved at a faster rate because CR itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past. We noted with considerable concern that after 20 months, CR has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations." OIG Report V at i (emphasis added).

c. "Most conspicuous among the uncorrected problems is the continuing disorder within CR. The data base CR uses to report the status of cases is unreliable and full of error, and the files it keeps to store needed documentation are slovenly and unmanaged. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications." OIG Report V at iii (emphasis added).

d. "Of equal significance is the absence of written policy

and procedures." OIG Report V at iii.

e. "The absence of formal procedures and accurate records raises questions about due care within the complaints resolution process. We found critical quality control steps missing at every stage of the process. Staff members with little training and less experience were put to judging matters that carry serious legal and moral implications. Many of CR's adjudicators, who must determine whether discrimination occurred, were student interns. Legal staff members with the Office of General Counsel (OGC), who review CR's decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis. We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit." OIG Report V at iii (emphasis added).

73. In sum, defendant's willful disregard of, and failure to properly investigate, African-American discrimination complaints began with the disbanding of civil rights enforcement functions back in 1983, until February 1997 when the current administration reorganized and reestablished the enforcement staff of the civil rights office, and since February, 1987, has gotten worse, as evidenced by the massive increase of backlogged, unresolved cases and overall disarray in the USDA Office of Civil Rights as reported in the most recent OIG Report.

EQUAL CREDIT OPPORTUNITY ACT

74. The Equal Credit Opportunity Act ("ECOA"), as amended in 1976, is a detailed and exhaustive legislative directive unequivocal in its statutory intent to stamp out discrimination by any lender, anywhere, whether they be a private, public, governmental or quasi-governmental entity.

ECOA states, inter alia:

> It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);... 15 U.S.C. §1691(a)(1).

ECOA provides for monetary relief to both individuals and class members who are damaged by creditors who violate the statute:

> Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class. 15 U.S.C. §1691e(a) (emphasis added).

Thirdly, district courts are invested with the authority to provide equitable and declaratory relief:

> Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter. 15 U.S.C. §1691e(c) (emphasis added).

Fourthly, the prevailing party can recover costs and reasonable attorneys fees:

> In the case of any successful action under subsection (a), (b), or (c) of this section, the cost of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages

> awarded by the court under such subsection. 15 U.S.C. §1691e(d) (emphasis added).

75. In sum, this court has jurisdiction to grant actual damages, equitable and declaratory relief, costs and attorneys fees, and ECOA contains a waiver of United States sovereign immunity.[3]

76. When the class members filed discrimination complaints, they fell four-square under the umbrella of ECOA. It is plaintiffs' belief that ninety-five percent of class members filed complaints of discrimination with respect to the USDA loan application process. Only five percent have claims for denial of disaster applications.

77. Defendant does not dispute the waiver of sovereign immunity under ECOA. Plaintiffs assert that there is no just reason for denying the remaining five percent of plaintiffs' relief for complaints of discrimination involving disaster benefits. While ECOA covers farm "credit" programs, but not disaster programs, the APA provides an avenue of relief for Black farmers who have been denied equal access to disaster programs and, subsequently, due process of law in challenging the implementation of that program. The implementation of USDA's credit programs and other programs were closely intertwined and the violation of plaintiffs' rights equally egregious in both areas. Racial discrimination ran rampant under both programs, and neither offered Black farmers an opportunity to appeal to a civil rights enforcement body to obtain relief. Further, in many instances, the calculation of loans under the credit program and

payments or benefits under the other programs were interdependent. For example, the amount of program benefits or program allotments that a farmer could receive for the crop of a commodity (such as cotton, corn, wheat, rice, peanuts, or tobacco) in a year required a review of his or her farming history, which, in turn, was directly related to the yield per acre the farmer cultivated, which was dependent on the amount of operating credit made available to the farmer.

78. Class members are seeking redress for the denial of due process to the members of the class for the discriminatory implementation of these interconnected farm programs and for the defendant's failure regarding these programs to provide sufficient civil rights investigation and enforcement.

STATUTE OF LIMITATIONS IS WAIVED

79. On October 21, 1998, the President signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-___. This legislation contains the following provisions:

> Sec. [741]. Waiver of Statute of Limitations.
>
> (a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by any statute of limitations.
>
> (b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act. The Department of Agriculture shall—
>
> (1) provide the complainant an opportunity

[3] Moore v. USDA, 55 F.3d 991 (5th Cir. 1995).

for a hearing on the record before making that determination;

(2) award the complainant such relief as would be afforded under the applicable statute from which the eligible complaint arose notwithstanding any statute of limitations; and

(3) to the maximum extent practicable within 180 days after the date a determination of an eligible complaint is sought under this subsection conduct an investigation, issue a written determination and propose a resolution in accordance with this subsection.

(c) Notwithstanding subsections (a) and (b), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal Court of competent jurisdiction seeking a review of such denial.

(d) The United States Court of Federal Claims and the United States District Court shall have exclusive original jurisdiction over—

(1) any cause of action arising out of a complaint with respect to which this section waives the statute of limitations; and

(2) any civil action for judicial review of a determination in an administrative proceeding in the Department of Agriculture under this section.

(e) As used in this section, the term "eligible complaint" means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) in administering—

(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(B) a housing program established under title V of the Housing Act of 1949; or

(2) in the administration of a commodity

program or a disaster assistance program.

(f) This section shall apply in fiscal year 1999 and thereafter.

(g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. Chapter 5 of title 5 of the United States Code shall apply with respect to an agency action under this section with respect to an eligible complaint, without regard to section 554(a)(1) of that title.

CLASS ACTION ALLEGATIONS

80. On March 9, 1998, plaintiffs filed a Motion for Certification of Class. On April 8, 1998, Defendant filed its Response to Plaintiffs' Motion for Class Certification and its Opposition to Plaintiffs' Motion for Partial Summary Judgment. On October 9, 1998, this court certified plaintiffs' class, defined as "[a]ll African-American farmers who (1) farmed between January 1, 1983, and February 21, 1997; and (2) applied, during that time period, for participation in a federal farm program with USDA, and as a direct result of a determination by USDA in response to said application, believed that thlley were discriminated against on the basis of race, and filed a written discrimination complaint with USDA in that time period." The Class was further divided into three subclasses depending on what action, if any, that USDA has taken in responding to Class members' complaints of racial discrimination.

81. Notice to the "potential" Class members (estimated to be between 50-60,000) should result in somewhere between 2-8,000 Class members. With respect to the Class members, the allegations

are similar, if not identical, to the allegations and causes of actions of the 12 Class representatives. Simply put, each and every plaintiff was denied a loan or program benefit (such as a disaster loan) by defendant, or was granted a loan or program benefit on terms different than that of white farmers; said plaintiff complained on grounds of discrimination; said discrimination complaint was never resolved pursuant to the law; and all of these events occurred during the period 1983-1997.

82. The foregoing allegations are typical as to all Class Members. The Class Representatives, for themselves and members of the Class will present a prima facie case of discrimination showing (1) defendant's awarding of credit and farm program participation to whites was a pattern different than for the Class members and (2) a willful failure of defendant to properly investigate the discrimination complaints of plaintiffs and members of the Class.

COUNT I

(Declaratory Judgment)

83. The Class representatives, on behalf of themselves and all Class members, re-allege all paragraphs above as if fully set forth herein.

84. An actual controversy exists between Class representatives and Class members and defendant as to their rights with respect to defendant's farm programs.

85. The Class representatives and the Class members pray that this Court declare and determine, pursuant to 28 U.S.C. 2201, the rights of the Class members under defendant's farm programs

including their right to equal credit, participation in farm programs, and their right to full and timely enforcement of racial discrimination complaints.

COUNT II
(Violation of Equal Credit Opportunity Act)

86. Class representatives, on behalf of themselves and all Class members similarly situated, re-allege all paragraphs above as if fully set forth herein.

87. Defendant's acts of denying Class members credit and other benefits and systematically failing to properly process their discrimination complaints was racially discriminatory and contrary to the requirements of ECOA.

88. Class representatives and the Class members pray defendant's actions be reversed as violative of and contrary to ECOA, 15 U.S.C. 1691 et seq.

89. Class members pray for equitable and declaratory relief, 16 U.S.C. §1691e(c); money damages, 16 U.S.C. §1691e(a), for the Class of not less than $2,500,000,000; and costs and attorneys fees, 16 U.S.C. §1691e(d).

COUNT III
(Agency Action That Is Arbitrary
Capricious, An Abuse Of Discretion, Not In Accordance
With Law, And In Excess of Statutory Jurisdiction)

90. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

91. Defendant's acts of denying Class members credit or other benefits (particularly disaster applications)and

systematically failing to properly process their discrimination complaints was racially discriminatory and not authorized nor justified by any statute, regulation, or reasonable interpretation of program procedures, and thus constitutes arbitrary, capricious and unlawful action.

92. Plaintiffs and the Class pray defendant's actions be reversed as arbitrary, capricious, an abuse of discretion, and not in accordance with law, pursuant to 5 U.S.C. 706(2)(A), and in excess of defendant's statutory jurisdiction, pursuant to 5 U.S.C. 706(2)(C).

93. WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, request this Court enter judgment against defendant as follows:

(1) An Order declaring, pursuant to 28 U.S.C. §2201, that the Class members were denied equal credit and other farm program benefits and full and timely enforcement of their civil rights discrimination complaints.

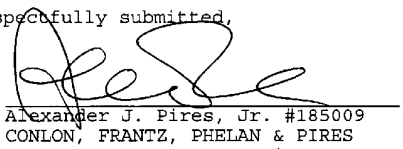
(2) An Order declaring defendant's actions to be a breach of the Class members' rights under the Equal Credit Opportunity Act and declare the Class members' eligible to receive equitable relief, declaratory relief, monetary damages of not less than $2,500,000,000, and costs and reasonable attorneys fees.

(3) An Order declaring defendant's actions arbitrary, capricious, an abuse of discretion, not in accordance with the law, and in excess of defendant's statutory authority and jurisdiction;

(4) An Order granting the Class members and their counsel attorneys' fees and costs pursuant to the Equal Credit Opportunity Act, 15 U.S.C. §1691e(d) et seq., and the Equal Access to Justice Act, 28 U.S.C. §2412, costs of suit, and interest upon the judgment from date when the Class members should have been paid to actual date of payment, and all other relief that the Court determines proper and fair.

Respectfully submitted,

October 26, 1998

By: 

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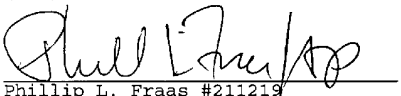
By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Defendants' Seventh Amended Class Action Complaint was delivered by fax and hand to Michael Sitcov and Susan Hall Lennon, 901 E Street, N.W., U.S. Department of Justice, Civil Division, Federal Programs Branch, Room 920, Washington, D.C. 20044, on the 26th day of October, 1998.

ALEXANDER J. PIRES, JR.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 97-1978 (PLF)
DAN GLICKMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE,	)	
Defendant.	)	
CECIL BREWINGTON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 98-1693 (PLF)
DANIEL R. GLICKMAN,	)	
Defendant.	)	

CONSENT DECREE

WHEREAS the parties desire to resolve amicably all the claims raised in these suits, including the plaintiffs' claims under the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691, et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, et seq.; and

WHEREAS the parties have agreed upon mutually satisfactory terms for the complete resolution of all the claims that have, or could have, been asserted by the plaintiffs in this litigation; and

WHEREAS, in light of the remedial purposes of this Consent Decree, the parties intend that it be liberally construed to effectuate those purposes in a manner that is consistent with law; and

WHEREAS the parties have entered into this Consent Decree for the purpose of ensuring that in their dealings with USDA, all class members receive full and fair treatment that is the same as the treatment accorded to similarly situated white persons;

NOW THEREFORE, the plaintiffs and the defendant, Dan Glickman, Secretary of the United States Department of Agriculture ("USDA"), hereby consent to the entry of this decree with the following terms:

1. Definitions

The following terms shall have the following meanings for purposes of this Consent Decree.

(a) The term "adjudicator" shall mean (i) the person or persons who is/are assigned by the facilitator to undertake the initial review of, and where appropriate make recommended decision on Track A claims under ¶ 9, below; and (ii) JAMS-Endispute, Inc., which shall make the final decision in all Track A claims and resolve issues of tolling under ¶ 6, below.

(b) The term "arbitrator" shall mean Michael K. Lewis of ADR Associates, and the other person or persons selected by Mr. Lewis who meet qualifications agreed upon by the parties and by

Mr. Lewis and whom Mr. Lewis assigns to decide Track B claims under ¶ 10, below.

(c) The term "claimant" shall mean any person who submits a claim package for relief under the terms of this Consent Decree.

(d) The term "claim package" shall mean the materials sent to claimants who request them in connection with submitting a claim for relief under the provisions of this Consent Decree. The claim package will include (i) a claim sheet and election form and a Track A Adjudication claim affidavit, copies of which are attached hereto as Exhibit A; and (ii) associated documentation and instructions.

(e) The term "class counsel" shall mean Alexander J. Pires, Jr. and Phillip L. Fraas, Lead Counsel for members of the class defined in ¶ 2(a), infra. In addition, the following counsel and law firms have been acting, and will continue to act, as Of Counsel in this case: J.L. Chestnut, of Chestnut, Sanders, Sanders & Pettaway, P.C., Selma, AL.; T. Roe Frazer of Langston, Frazer, Sweet & Freese, P.A., Jackson, MS.; Hubbard Saunders, IV, of The Terney Firm, Jackson, MS.; Othello Cross, of Cross, Kearney & McKissic, Pine Bluff, AR., Gerard Lear of Speiser Krause, Arlington, VA.; and William J. Smith, Fresno, CA.

(f) The term "credit" shall mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and

defer its payment or to purchase property or services and defer payment therefor.

(g) The term "defendant's counsel" shall mean the United States Department of Justice.

(h) The term "discrimination complaint" shall mean a communication from a class member directly to USDA, or to a member of Congress, the White House, or a state, local or federal official who forwarded the class member's communication to USDA, asserting that USDA had discriminated against the class member on the basis of race in connection with a federal farm credit transaction or benefit application.

(i) The term "facilitator" shall mean the Poorman-Douglas Corporation, which shall receive claims pursuant to this Consent Decree and assign claims to adjudicators and arbitrators for final resolution. The parties may, by agreement and without the Court's approval, assign to the facilitator such additional tasks related to the implementation of this Consent Decree as they deem appropriate.

(j) The term "preponderance of the evidence" shall mean such relevant evidence as is necessary to prove that something is more likely true than not true.

(k) The term "priority consideration" means that an application will be given first priority in processing, and with respect to the availability of funds for the type of loan at issue among all similar applications filed at the same time; provided,

however, that all applications to be given priority consideration will be of equal status.

(l) The term "substantial evidence" shall mean such relevant evidence as appears in the record before the adjudicator 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 preponderance of the evidence.

(m) The term "USDA" shall include the United States Department of Agriculture and all of its agencies, instrumentalities, agents, officers, and employees, including, but not limited to the state and county committees which administer USDA credit programs, and their staffs.

(n) The term "USDA listening session" shall mean one of the meetings of farmers and USDA's representatives conducted by USDA's Civil Rights Action Team between January 6, 1997 and January 24, 1997.

2. Class Definition

(a) Pursuant to Fed. R. Civ. P. 23(b)(3) the Court hereby certifies a class 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 United States Department of Agriculture (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.

(b) Any putative class member who does not wish to have his claims adjudicated through the procedure established by this Consent Decree may, pursuant to Federal Rule of Civil Procedure 23(c)(2), request to be excluded from the class. To be effective, the request must be in writing and filed with the facilitator within 120 days of the date on which this Consent Decree is entered.

3. Duties of Facilitator

(a) Poorman-Douglas Corporation shall serve as the facilitator and shall perform the following functions:

(i) publish the Notice of Class Settlement in the manner prescribed in ¶ 4, below;

(ii) mail claim packages to claimants who request them;

(iii) process completed claim packages as they are received;

(iv) determine, pursuant to the terms of this Consent Decree, which claimants satisfy the class definition as contained in ¶ 2(a);

(v) transmit to adjudicators claim packages submitted by claimants who contend that they are entitled to participate in the claims process due to equitable tolling of ECOA's statute of limitations under the particular circumstances of their claim;

(vi) transmit to the adjudicator the claims packages of class members with ECOA claims who elect to proceed under Track A;

(vii) transmit to the arbitrator the claims packages of class members with ECOA claims who elect to proceed under Track B;

(viii) transmit to the adjudicator the claims packages of class members who assert only non-credit benefit claims; and

(ix) maintain and operate a toll-free telephone number to provide information to interested persons about the procedure for filing claims under this Consent Decree.

(b) The facilitator's fees and expenses shall be paid by USDA.

4. Class Notice Procedure

(a) Within 10 days after the entry of the Order granting preliminary approval of this Consent Decree the facilitator shall mail a copy of the Notice of Class Certification and Proposed Class Settlement (a copy of which is attached hereto as Exhibit B) to all then-known members of the class.

(b) As soon as possible after entry of the Order granting preliminary approval of this Consent Decree the facilitator shall take the following steps:

(i) arrange to have 44 commercials announcing the preliminary approval of the Consent Decree and the time and place of the fairness hearing aired on the Black Entertainment Network, and 18 similar commercials on Cable News Network, during a two-week period;

(ii) arrange to have one-quarter page advertisements announcing the preliminary approval of the Consent Decree and the

time and place of the fairness hearing placed in 27 general circulation newspapers, and 115 African-American newspapers, in an 18-state region during a two-week period; and

(iii) arrange to have a full page advertisement announcing the preliminary approval of the Consent Decree and the time and place of the fairness hearing placed in the editions of TV Guide that are distributed in an 18-state region, and a half page advertisement in the national edition of Jet Magazine.

(c) USDA shall use its best efforts to obtain the assistance of community based organizations, including those organizations that focus on African-American and/or agricultural issues, in communicating to class members and potential class members the fact that the Court has preliminarily approved this Consent Decree and the time and place of the fairness hearing.

5. Class Membership Screening; Election by Claimant; Processing.

(a) The facilitator shall send claim packages to claimants who request them.

(b) To be eligible to obtain relief pursuant to this Consent Decree, a claimant must complete the claim sheet and return it and any supporting documentation to the facilitator. The claimant must also provide to the facilitator evidence, in the form described below, that he filed a discrimination complaint between January 1, 1981 and July 1, 1997:

(i) a copy of the discrimination complaint the claimant filed with USDA, or a copy of a USDA document referencing the discrimination complaint; or

(ii) a declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of the claimant's family and which (1) states that the declarant has first-hand knowledge that the claimant filed a discrimination complaint with USDA; and (2) describes the manner in which the discrimination complaint was filed; or

(iii) a copy of correspondence from the claimant to a member of Congress, the White House, or a state, local, or federal official averring that the claimant has been discriminated against, except that, in the event that USDA does not possess a copy of the correspondence, the claimant also shall be required to submit a declaration executed pursuant to 28 U.S.C. § 1746 by the claimant stating that he sent the correspondence to the person to whom it was addressed; or

(iv) a declaration executed pursuant to 28 U.S.C. § 1746 by a non-familial witness stating that the witness has first-hand knowledge that, while attending a USDA listening session, or other meeting with a USDA official or officials, the claimant was explicitly told by a USDA official that the official would investigate that specific claimant's oral complaint of discrimination.

(c) In order to be eligible for relief under ¶¶ 9 or 10, below, a claimant must submit his completed claim package to the facilitator postmarked within 180 days of the date of entry of this Consent Decree, except that a claimant whose claim is otherwise timely shall have not less than 30 days to submit a declaration pursuant to subparagraph (b)(iii), above, after being directed to do so without regard to the 180-day period.

(d) At the time a claimant who asserts an ECOA claim submits his completed claim package, he must elect whether to proceed under Track A, see ¶ 9, below, or Track B see ¶ 10, below, except that claimants whose claims arise exclusively under non-credit benefit programs shall be required to proceed under Track A. A class member's election under this subparagraph shall be irrevocable and exclusive.

(e) Each completed claim package must be accompanied by a certification executed by an attorney stating that the attorney has a good faith belief in the truth of the factual basis of the claim, and that the attorney has not and will not require the claimant to compensate the attorney for assisting him.

(f) Within 20 days of receiving a completed claim package the facilitator shall determine, pursuant to subparagraph (b), above, whether the claimant is a member of the class as defined by ¶ 2(a). If a claimant is determined to be a class member, the facilitator shall assign the class member a consent decree case number, refer the claim package to an adjudicator or an

arbitrator, as appropriate, and send a copy of the entire claim package to the class counsel and defendant's counsel along with a notice that includes the class member's name, address, telephone number, social security number, consent decree case number, and that identifies the track under which the class member is proceeding. If a claimant is found not to be a class member, the facilitator shall notify the claimant and the parties' counsel of that finding.

(g) A claimant who satisfies the definition of the class in ¶ 2(a), above, but who fails to submit a completed claim package within 180 days of entry of this Consent Decree may petition the Court to permit him to nonetheless participate in the claims resolution procedures provided in ¶¶ 9 & 10, below. The Court shall grant such a petition only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.

6. Tolling of ECOA's Statute of Limitations.

(a) In addition to the class defined herein, a person who otherwise satisfies the criteria for membership in the class defined in ¶ 2(a), above, but who did not file a discrimination complaint until after July 1, 1997, shall be entitled to relief under this Consent Decree by demonstrating, consistent with Irwin v. United States, 498 U.S. 89 (1990), that:

(i) he has actively pursued his judicial remedies by filing a defective pleading during the applicable statute of limitations period;

(ii) he was induced or tricked by USDA's misconduct into allowing the filing deadline for the applicable statute of limitations period to pass; or

(iii) he was prevented by other extraordinary circumstances beyond his control from filing a complaint in a timely manner, provided that excusable neglect shall not qualify as extraordinary circumstances.

(b) Within 10 days of a receiving a completed claim package from a person who did not file a discrimination claim until after July 1, 1997, the facilitator shall forward the claim to an adjudicator. The adjudicator shall then determine whether the claim is timely pursuant to subparagraphs (a)(i), (ii), or (iii), above. If the claim is found to be qualified under subparagraph (a), above, the adjudicator shall return the claim package to the facilitator, along with a written determination to that effect. The facilitator shall then process the claim pursuant to ¶ 5(f), above, and the claimant shall be eligible for the relief provided herein for class members. If the claim is found by the adjudicator to be untimely, the adjudicator shall return the claim package to the facilitator with a written determination to that effect. The facilitator shall promptly notify the claimant of the adjudicator's decision.

7. Interim Administrative Relief

Upon being advised by the facilitator that a claimant satisfies the class definition in ¶ 2(a), above, or that a claimant has met the criteria for equitable tolling under ¶ 6, above, USDA shall immediately cease all efforts to dispose of any foreclosed real property formerly owned by such person. USDA also will refrain from foreclosing on real property owned by the claimant or accelerating the claimant's loan account; however, USDA may take such action up to but not including foreclosure or acceleration that is necessary to protect its interests. USDA may resume its efforts to dispose of any such real property after a final decision in USDA's favor on the class member's claim pursuant to ¶¶ 9 or 10, below.

8. Response by USDA to a Track A Referral Notice

In any Track A case USDA may, within 60 days after receipt of the materials and notice the facilitator is required, pursuant to ¶ 5(f), above, to furnish to USDA with respect to persons who are determined to be class members, provide to the adjudicator assigned to the claim, and to class counsel, any information or materials that are relevant to the issues of liability and/or damages.

9. Track A – Decision by Adjudicator

(a) In cases in which a class member asserts an ECOA violation and has elected to proceed under Track A:

(i) the adjudicator shall, within 30 days of receiving the material required to be submitted by the class member under ¶ 5, along with any material submitted by defendant pursuant to ¶ 8, above, determine on the basis of those materials whether the class member has demonstrated by substantial evidence that he was the victim of race discrimination. To satisfy this requirement, the class member must show that:

(A) he owned or leased, or attempted to own or lease, farm land;

(B) he applied for a specific credit transaction at a USDA county office during the period identified in ¶ 2(a), above;

(C) the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and

(D) USDA's treatment of the loan application led to economic damage to the class member.

(ii) The adjudicator's decision shall be in a format to be agreed upon by the class counsel and defendant's counsel, and shall include a statement of the reasons upon which the decision is based.

(iii) In any case in which the adjudicator decides in a class member's favor, the following relief shall be provided to the class member:

(A) USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator. The discharge of such outstanding debt shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program;

(B) The class member shall receive a cash payment of $50,000 that shall be paid from the fund described in 31 U.S.C. § 1304 ("the Judgment Fund");

(C) an additional payment equal to 25% of the sum of the payment made under subparagraph (B), above, and the principal amount of the debt forgiven under subparagraph (A), above, shall be made by electronic means directly from the Judgment Fund to the Internal Revenue Service as partial payment of the taxes owed by the class member on the amounts paid or forgiven pursuant to those provisions;

(D) The injunctive relief made available pursuant to ¶ 11, below; and

(E) The immediate termination of any foreclosure proceedings that USDA has initiated against any of the class member's real property in connection with the ECOA claim(s) resolved in the class member's favor by the adjudicator; and the return of any USDA inventory property that formerly was owned by the class

member but which was foreclosed in connection with the ECOA claim(s) resolved in the class member's favor by the adjudicator.

(iv) If the adjudicator determines that a class member's claim is not supported by substantial evidence, the class member shall receive no relief under this Consent Decree.

(v) The decision of the adjudicator shall be final, except as provided by ¶ 12(b)(iii), below. The parties hereby agree to forever waive their right to seek review in any court or before any tribunal of the decision of the adjudicator with respect to any claim that is, or could have been decided by the adjudicator.

(b) In cases in which a class member asserts only non-credit claims under a USDA benefit program:

(i) the adjudicator shall, within 30 days of receiving the material required to be submitted by the class member under ¶ 5, along with any material submitted by defendant pursuant to ¶ 8, above, determine on the basis of those materials whether the class member has demonstrated by substantial evidence that he was the victim of race discrimination. To satisfy this requirement, the class member must show that:

(A) he applied for a specific non-credit benefit program at a USDA county office during the period identified in ¶ 2(a), above; and

(B) his application was denied or approved for a lesser amount than requested, and that such treatment was different than the treatment received by specifically identified, similarly

situated white farmers who applied for the same non-credit benefit.

(ii) The adjudicator's decision shall be in a format to be agreed upon by the parties, and shall include a statement of the reasons upon which the decision is based.

(iii) In any case in which the adjudicator decides in a class member's favor, the following relief shall be provided to the class members:

(A) USDA shall pay to the class member the amount of the benefit wrongly denied, but only to the extent that funds that may lawfully be used for that purpose are then available; and

(B) The injunctive relief made available pursuant to ¶11(c)-(d), below.

(iv) If the adjudicator determines that a class member's claim is not supported by substantial evidence, the class member shall receive no relief under this Consent Decree.

(v) The decision of the adjudicator shall be final, except as provided by ¶ 12(b)(iii), below. The parties hereby agree to forever waive their right to seek review in any court or before any tribunal of the decision of the adjudicator with respect to any claim that is, or could have been decided by the adjudicator.

(c) The adjudicator's fees and expenses shall be paid by USDA.

10. Track B – Arbitration

(a) Within 10 days of receiving the completed claim package of a class member who has elected to proceed under Track B, the arbitrator shall notify the class member and defendant of the date on which an evidentiary hearing on the class member's claim will be held. The hearing shall be scheduled for a date that is not less than 120 days, nor more than 150 days, from the date on which the hearing notice is sent.

(b) At least 90 days prior to the hearing described in subparagraph (a), above, USDA and the class member shall file with the arbitrator and serve on each other a list of the witnesses they intend to call at the hearing along with a statement describing in detail the testimony that each witness is expected to provide, and a copy of all exhibits that each side intends to introduce at such hearing. The parties shall be required to produce for a deposition, and for cross examination at the arbitration hearing, any person they identify as a witness pursuant to subparagraph (a), above.

(c) Each side shall be entitled to depose any person listed as a witness by his opponent pursuant to subparagraph (b), above.

(d) Discovery shall be completed not later than 45 days before the date of the hearing described in subparagraph (a), above.

(e) Not less than 21 days prior to commencement of the hearing described in subparagraph (a), above, each side shall (i)

notify the other of the names of those witnesses whom they intend to cross-examine at the hearing; and (ii) file with the arbitrator memoranda addressing the legal and factual issues presented by the class member's claim.

(f) The hearing shall be conducted in accordance with the Federal Rules of Evidence. All direct testimony shall be introduced in writing and shall be filed with the arbitrator and served on the opposing side at least 30 days in advance of the hearing. The hearing shall be limited in duration to eight hours, with each side to have up to four hours within which to cross examine his opponent's witnesses, and to present his legal arguments.

(g) The arbitrator shall issue a written decision 30-60 days after the date of the hearing. If the arbitrator determines that the class member has demonstrated by a preponderance of the evidence that he was the victim of racial discrimination and that he suffered damages therefrom, the class member shall be provided the following relief:

(i) actual damages as provided by ECOA, 15 U.S.C. § 1691e(a) to be paid from the Judgment Fund;

(ii) USDA shall discharge all of the class member's outstanding debt to the Farm Service Agency that was incurred under, or affected by, the program(s) that were the subject of the claim(s) resolved in the class member's favor by the arbitrator. The discharge of such outstanding debt shall not adversely affect

the claimant's eligibility for future participation in any USDA loan or loan servicing program;

(iii) The injunctive relief made available pursuant to ¶ 11, below; and

(iv) The immediate termination of any foreclosure proceedings that have been initiated against any of the class member's real property in connection with the ECOA claim(s) resolved in the class member's favor by the arbitrator, and the return of any USDA inventory property that was formerly owned by the class member but which was foreclosed in connection with the ECOA claim(s) resolved in the class member's favor by the arbitrator.

(h) If the arbitrator rules in the defendant's favor, the class member shall receive no relief under this Consent Decree.

(i) The decision of the arbitrator shall be final, except as provided by ¶ 12(b)(iii), below. The parties hereby agree to forever waive their right to seek review in any court or before any tribunal of the decision of the arbitrator with respect to any claim that is, or could have been decided, by the arbitrator.

(k). The arbitrator's fees and expenses shall be paid by USDA.

11. Class-Wide Injunctive Relief

(a) USDA will provide each class member who prevails under ¶¶ 9(a) or 10 with priority consideration, on a one-time basis, for the purchase, lease, or other acquisition of inventory property to the extent permitted by law. A class member must

exercise his right to the relief provided in the preceding sentence in writing and within 5 years of the date this order.

(b) USDA will provide each class member who prevails under ¶¶ 9(a) or 10 with priority consideration for one direct farm ownership loan and one farm operating loan at any time up to five years after the date of this Order. A class member must notify USDA in writing that he is exercising his right under this agreement to priority consideration in order to receive such consideration.

(c) Any application for a farm ownership or operating loan, or for inventory property submitted within five years of the date of this Consent Decree by any class member who prevails under ¶¶ 9 or 10, will be viewed in a light most favorable to the class member, and the amount and terms of any loan will be the most favorable permitted by law and USDA regulations. Nothing in the preceding sentence shall be construed to affect in any way the eligibility criteria for participation in any USDA loan program, except that outstanding debt discharged pursuant to ¶¶ 9(a)(iii)(A) or 10(g)(ii), above, shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program.

(d) In conjunction with any application for a farm ownership or operating loan or for inventory property submitted by a class member who prevails under ¶¶ 9 or 10, above, USDA shall, at the request of such class member provide the class member with

reasonable technical assistance and service, including the assistance of qualified USDA employees who are acceptable to the class member, in connection with the class member's preparation and submission of any such application.

12. Monitor

(a) From a list of three persons submitted to it jointly by the parties, or, if after good faith negotiations they cannot agree, two persons submitted by plaintiffs and two persons submitted by defendant, the Court shall appoint an independent Monitor who shall report directly to the Secretary of Agriculture. The Monitor shall remain in existence for a period of 5 years and shall not be removed except upon good cause. The Monitor's fees and expenses shall be paid by USDA.

(b) The Monitor shall:

(i) Make periodic written reports (not less than every six months) to the Court, the Secretary, class counsel, and defendant's counsel on the good faith implementation of this Consent Decree;

(ii) Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree;

(iii) Direct the facilitator, adjudicator, or arbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice; and

(iv) Be available to class members and the public through a toll-free telephone number in order to facilitate the lodging of any consent decree complaints and to expedite their resolution.

(c) If the Monitor is unable within 30 days to resolve a problem brought to his attention pursuant to subparagraph (ii), above, he may file a report with the parties' counsel who may, in turn, seek enforcement of this Consent Decree pursuant to ¶ 13, below.

13. Enforcement Procedures

Before seeking any order by the Court concerning the alleged violation of any provision of this Consent Decree, the parties must comply with the following procedures:

(a) The person seeking enforcement of a provision of this Consent Decree shall serve on his opponent a written notice that describes with particularity the term(s) of the Consent Decree that are alleged to have been violated, the specific errors or omissions upon which the alleged violation is based, and the corrective action sought. The person alleging the violation shall not inform the Court of his allegation at that time.

(b) The parties shall make their best efforts to resolve the matter in dispute without the Court's involvement. If requested to do so, the movant shall provide to his opponent any information and materials available to the movant that support the violation alleged in the notice.

(c) The person who served the notice of violation pursuant to subparagraph (a), above, may not move for enforcement of this Consent Decree until at least 45 days after the date on which he served the notice.

14. Attorney's Fees

(a) Class counsel (for themselves and all Of-Counsel) shall be entitled to reasonable attorney's fees and costs under ECOA, 15 U.S.C. § 1691e(d), and to reasonable attorney's fees, costs, and expenses under the APA, 28 U.S.C. § 2412(d) (as appropriate), that are generated in connection with the filing of this action and the implementation of this Consent Decree. Defendant reserves the right to challenge any and all aspects of class counsel's application for fees, costs, and/or expenses.

(b) Recognizing the fees, costs, and/or expenses already incurred, and given the anticipated fees, costs, and/or expenses to be incurred by class counsel in the implementation of this Consent Decree, defendant will make a one-time payment to class counsel of $1,000,000 as a credit toward class counsel's application for attorney's fees, costs, and/or expenses. The payment shall be made to class counsel and of counsel (payable to Alexander J. Pires, Jr. and Phillip L. Fraas) within 20 days of the date on which this Consent Decree is entered by the Court. This one-time payment shall be credited against any ultimate award or negotiated settlement of fees, costs, and expenses, and to the extent any such ultimate award or settlement is less than this

one-time payment, class counsel shall refund to defendant the entire amount by which this one-time payment exceeds the award or settlement amount.

(c) The provision of attorney's fees, costs, and/or expenses in this Consent Decree is by agreement of the parties and shall not be cited a precedent in any other case.

15. Parties' Respective Responsibilities

No party to this Consent Decree is responsible for the performance, actions, or obligations of any other party to this Consent Decree.

16. Fairness Hearing

(a) Upon the parties' execution of this Consent Decree, the parties shall transmit the Decree to the Court for preliminary approval; request that the Court schedule a fairness hearing on the Consent Decree; and request that the Court, upon issuance of an order granting preliminary approval of this Decree, issue an order setting aside the dates currently scheduled for trial and staying this litigation.

(b) Within 5 days of the execution of this Consent Decree by class counsel and defendant's counsel, the Notice of Class settlement provided for in ¶ 4, above, containing, inter alia, a notice of the fairness hearing on this Consent Decree shall be sent to all known, potential members of the class. The fairness hearing will be held at 10:00 AM on March 2, 1999, in Courtroom 20 of the E. Barrett Pettyman United States Courthouse at 3rd St. and

Constitution Ave., N.W., Washington, D.C. Any objections to the entry of this Consent Decree shall be filed not later than February 15, 1999.

17. Final Judgment

If, after the fairness hearing, the Court approves this Consent Decree as fair, reasonable, and adequate, a Final Judgment, the entry of which shall be a condition precedent to any obligation of any party under this Consent Decree, shall be entered dismissing with prejudice, pursuant to the terms of this Consent Decree and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, all claims in the litigation.

18. Releases

As provided by the ordinary standards governing the preclusive effects of consent decrees entered in class actions, all members of the class who do not opt out of this Consent Decree pursuant to ¶ 2(b), above, and their heirs, administrators, successors, or assigns (together, the "Releasors"), hereby release and forever discharge the defendant and his administrators or successors, and any department, agency, or establishment of the defendant, and any officers, employees, agents, or successors of any such department, agency, or establishment (together, the "Releasees") from -- and are hereby themselves forever barred and precluded from prosecuting -- any and all claims and/or causes of action which have been asserted in the Seventh Amended Complaint, or could have been asserted in that complaint at the time it was

filed, on behalf of this class, by reason of, or with respect to, or in connection with, or which arise out of, any matters alleged in the complaint which the Releasors, or any of them, have against the Releasees, or any of them. It also is expressly understood that any class-wide claims of race-based discrimination in USDA's credit programs by members of the class defined in ¶ 2(a), above are barred unless the operative facts giving rise thereto did not occur prior to the entry of this Decree.

19. Defendant's Duty Consistent With Law and Regulations

Nothing contained in this Consent Decree or in the Final Judgment shall impose on the defendant any duty, obligation or requirement, the performance of which would be inconsistent with federal statutes or federal regulations in effect at the time of such performance.

20. No Admission of Liability

Neither this Consent Decree nor any order approving this Consent Decree is or shall be construed as an admission by the defendant of the truth of any allegation or the validity of any claim asserted in the complaint, or of the defendant's liability therefor, nor as a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed or made by the defendant, nor shall this Consent Decree nor any confidential papers related hereto and created for settlement purposes only, nor any of the terms of either, be offered or received as evidence

of discrimination in any civil, criminal, or administrative action or proceeding, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the defendant, nor as an admission by any party to this Consent Decree that the consideration to be given hereunder represents the relief which could be recovered after trial. However, nothing herein shall be construed to preclude the use of this Consent Decree in order to effectuate the consummation, enforcement, or modification of its terms.

21. No Effect if Default

Subject to the terms of ¶ 17, above, and following entry by the Court of Final Judgment, no default by any person or party to this Consent Decree in the performance of any of the covenants or obligations under this Consent Decree, or any judgment or order entered in connection therewith, shall affect the dismissal of the complaint, the preclusion of prosecution of actions, the discharge and release of the defendant, or the judgment entered approving these provisions. Nothing in the preceding sentence shall be construed to affect the Court's jurisdiction to enforce the Consent Decree on a motion for contempt filed in accordance with ¶ 13.

22. Effect of Consent Decree if Not Approved

This Consent Decree shall not become binding if it fails to be approved by the Court or if for any reason it is rendered

ineffective in any judicial proceeding before initially taking effect. Should it fail to become binding, this Consent Decree shall become null and void and shall have no further force and effect, except for the obligations of the parties under this paragraph. Further, in that event: this Consent Decree; all negotiations in connection herewith; all internal, private discussions among the Department of Justice and/or USDA conducted in furtherance of the settlement process to determine the advisability of approving this Consent Decree; and all statements made by the parties at, or submitted to the Court during, the fairness hearing shall be without prejudice to any person or party to this Consent Decree, and shall not be deemed or construed to be an admission by any party to this Consent Decree of any fact, matter, or proposition.

23. Entire Terms of Agreement

The terms of this Consent Decree constitute the entire agreement of the parties, and no statement, remark, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

24. Authority of Class Counsel

Class counsel who are signatories hereto hereby represent, warrant, and guarantee that such counsel are duly authorized to execute this Consent Decree on behalf of the plaintiffs, the members of the plaintiff class, and all Of-Counsel for the plaintiffs.

25. Duty to Defend Decree

The parties to this Consent Decree shall employ their best efforts to defend this Consent Decree against any challenges to this Consent Decree, in any forum.

Consented to:

ALEXANDER J. PIRES, Jr.

Conlon, Frantz, Phelan, Pires & Leavy
1818 N. St., N.W.
Washington, D.C. 20036
(202) 331-7050

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Acting Assistant Attorney General

PHILIP D. BARTZ
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Civil Division

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Of Counsel:
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Othello Cross
T. Roe Frazer
Gerald R. Lear
Hubbard I Sanders, IV
Willie Smith

MICHAEL SITCOV
CAROLINE LEWIS WOLVERTON
DANIEL E. BENSING
CARLOTTA WELLS
Department of Justice
Civil Division
901 E Street, N.W.
Washington, D.C. 20004
(202)514-1944

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE:

APPENDIX F

Let this be filed.

PAUL L. FRIEDMAN
United States District Judge

DATE: 2/25/99

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
FEB 16 11 30 PM '99
N. MAYER WHITTINGTON
CLERK
U.S. DISTRICT COURT

TIMOTHY PIGFORD, *et al.*

Plaintiffs,

v.

DAN GLICKMAN, Secretary,
United States Department of Agriculture

Defendant.

Civil Action No. 97-1978 (PLF)
Honorable Judge Friedman

FILED
FEB 25 1999
Clerk, U.S. District Court
District of Columbia

OBJECTION TO PROPOSED CONSENT DECREE

I, John W. Boyd, Jr. of 68 Wind Road, Baskerville, Virginia 23915, am an African-American farmer and a class member in this case. Additionally, I serve as President of the National Black Farmers Association, Inc (NBFA). The membership of NBFA is comprised of class members in this action. I verily believe that my interest may be adversely affected by the approval of the Consent Decree as currently drafted. As such, I hereby formally object to the settlement as set forth in the Consent Decree filed with the Court on January 5, 1999, in the instant case. Please find my objections stated below.

I. CLASS-WIDE INJUNCTIVE RELIEF IS INADEQUATE, UNREASONABLE AND UNFAIR AS DRAFTED.

Section 11 of the Consent Decree is entitled, "CLASS-WIDE INJUNCTIVE RELIEF." This Section contains the exclusive class-wide injunctive relief offered under the proposed settlement. As offered, the injunctive relief is woefully inadequate, unfair and unreasonable. As currently drafted, the injunctive relief offers the class member no protection against the primary offending discriminatory practices by the Defendant as alleged in the class complaint.

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If the Consent Decree is approved as currently proposed, I shall—as well as similarly situated class members herein—be severely and adversely affected in my ability to continue to engage in farming in my community, whereupon, I must depend on the U.S. Department of Agriculture's Farm Service Agency (hereinafter, "FSA"). Therefore, I must object to the Consent Decree as now drafted.

As negotiated by the attorneys for the class and for the Plaintiff—absent any class member being part of the negotiation team—the Consent Decree completely overlooks and fails to address: (1) the real problems underpinning the systemic racial discrimination confronting myself and each African-American who attempts to secure technical support, assistance or financial consideration from FSA; (2) the total insensitivity by USDA staff toward African-American farmers; and (3) the conspicuous absence of any USDA agency-wide sensitivity training or nondiscrimination standards. Additionally, FSA does not have established agency-wide disciplinary standards for its thousands of federal and nonfederal personnel who work in the local FSA county offices. These personnel have consistently been and continue to be the primary source of the unlawful discrimination against African-American farmers. In fact, the uncorrected behavior of these individuals formed the primary reasons for the civil action now before this Court. When I—and other similarly situated African-American farmers—complained to USDA officials about the systematic discriminatory practices and patterns by these nonfederal workers, USDA advised that no action could be taken as these individuals were not subject to the civil rights laws imposed against federal employees. To date, disciple against these individuals remains almost unheard of. I—and indeed other similar class members herein—have been advised that irrespective of the fact that these individuals are paid from federal funds and control the very federal dollars and credit programs that I—and other similarly situated farmers—depend

on for our very economic livelihood, there is nothing USDA could do to discipline their agents. Since no mechanism to address these problems exist in the Consent Decree as now drafted , I object.

The unbridled acts of FSA's employees and nonfederal agents have caused economic devastation to the ranks of African-American farmers to the extent that our ranks are lower than anytime since the Civil War. By any other definition, African-American farmers are, indeed, an endangered species. The unlawful discrimination by FSA's employees and nonfederal agents is at an epidemic level. USDA—heretofore—has claimed to be without controls to arrest this unlawful discrimination. Based on USDA's inaction, our only hope for redress is in a fair, reasonable and adequate standards of considerations imposed by this Court to systematically hold USDA accountable for this course of open and obvious violations of law. To date, no such language exist in the Consent Decree. Thus, I object.

I—and other similarly situated class members—placed our trust in our class counsel that the Consent Decree would contain clear and unambiguous requirements for USDA to establish standards to ensure conformity with federal law which protects my, and my fellow similarly situated African-American farmers', civil rights against continued violations of federal law by FSA and its nonfederal agents. Our reliance was misplaced as the proposed Consent Decree is completely silent as to mechanisms crafted to address these issues. Thus, I object to the Consent Decree as drafted because my—as well as other similarly situated class members'—interests as a class member and as a person desiring to continue to engage in farming will certainly be adversely affected if the Consent Decree is approved as drafted.

To be fair, adequate and reasonable, the Consent Decree must include injunctive and other relief which requires USDA to institute remedial action to bring its employees and non-

federal agents under the ambits of the federal civil rights laws. This Consent Decree must include clear language to guarantee us fair treatment when we seek loans, technical advice and/or services from USDA. As drafted, the Consent Decree offers none of the protections. Again, I must object.

To accomplish this, the Consent Decree must contain provisions compelling USDA to adopt agency-wide standards prohibiting discrimination. The Consent Decree should compel USDA to convert all of its non-federal FSA county level positions into federal positions. Once the positions have been converted, job descriptions and standards should be established within the very near future. Thereafter, non-discriminating personnel should be employed. The entire process should be monitored for compliance for the next five years under the supervision of this Honorable Court or an independent body approved by the Court.

Heretofore, USDA has not provided agency-wide sensitivity training, diversity training or nondiscrimination training for FSA employees. The Consent Decree must contain requirements to establish standards and training modules to effectuate these goals. In the absence of these requirements, the Consent Decree should not be approved because it could never meet the standard of review of fairness, reasonableness or adequateness.

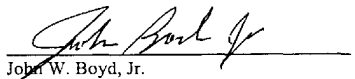
Lastly, the class-wide Injunctive Relief is unreasonable and inadequate because, as now drafted, it only applies only to class members who ". . . prevail[s] under ¶¶ 9(a) or 10. . . ." Each class member—and indeed each FSA customer—should be entitled to services and technical assistance from USDA irrespective of whether they have prevailed as a litigant under this class. The mere fact that they are a customer of FSA should enable them to fair, sensitive and humane treatment when applying for Equal Credit Opportunity Act (ECOA) loans or for any other services provided by USDA. The Consent Decree does not include such protections.

It is absolutely unfair for the Consent Decree to be approved as drafted. If so, all class members who filed claims but did not prevail through no fault of their own or those who—through fear of intimidation and/or reprisals—did not file claims are clearly at risk to be adversely affected by this Consent Decree. The Consent Decree offers no review of the decisions of the facilitator, arbitrator or the adjudicator. This is unfair, unreasonable and inadequate. It must be changed. Thus, the class-wide Injunctive Relief must be modified to include standards of sensitivity training for all FSA employees. Otherwise, the Consent Decree cannot and never shall be fair, adequate or reasonable.

I do desire to be heard in person upon oral argument at the Fairness Hearing. My comments and objections at the Fairness Hearing will be presented by me.

Signed this 16th day of February, 1999 in the District of Columbia.

Respectfully submitted,



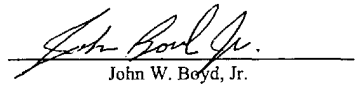
John W. Boyd, Jr.
Class Member and President
National Black Farmers Association, Inc.
68 Wind Road
Baskerville, VA 23915

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 1999, I have caused to be served on lead counsel for the parties herein a true of copy of my "Objections To Proposed Consent Decree" by U.S. mail with proper postage thereon and addressed to:

Alexander J. Pires, Jr., Esquire
Conlon, Frantz, Phelan, Pires & Leavy, LLP
1818 N Street, NW, Suite 700
Washington, D.C. 20036
Attorney for Plaintiffs

Michael Sitcov, Esquire
Department of Justice
Civil Division, Federal Programs Branch
901 E Street, NW, Room 1022
P.O. Box 883
Washington, D.C. 20044
Attorney for Defendant



John W. Boyd, Jr.

APPENDIX G

Department of Justice
Civil Division

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
1999	January		
		Azar, Henry A	8.50
		Bensing, Daniel E	40.00
		Wells, Carlotta P	22.00
		Wolverton, Caroline Lewis	85.00
		Total Hours for Month:	155.50
	February		
		Azar, Henry A	3.50
		Bensing, Daniel E	72.00
		Wells, Carlotta P	11.00
		Wolverton, Caroline Lewis	56.00
		Total Hours for Month:	142.50
	March		
		Bensing, Daniel E	47.00
		Henry, Terry M	4.00
		Wells, Carlotta P	8.00
		Wolverton, Caroline Lewis	84.00
		Total Hours for Month:	144.00
	April		
		Azar, Henry A	6.00
		Bensing, Daniel E	35.00
		Wells, Carlotta P	2.00
		Wolverton, Caroline Lewis	78.75
		Total Hours for Month:	121.75
	May		
		Bensing, Daniel E	83.00
		Cooper, Benjamin P	40.50
		Wells, Carlotta P	3.00
		Wolverton, Caroline Lewis	93.75
		Total Hours for Month:	220.25
	June		
		Bensing, Daniel E	90.00
		Dower, Marleigh D	3.17
		Loeb, Robert M	8.00
		Wolverton, Caroline Lewis	26.50
		Total Hours for Month:	127.67
	July		
		Bensing, Daniel E	65.00

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
1999			
	July		
		Wolverton, Caroline Lewis	46.00
		Total Hours for Month:	111.00
	August		
		Bensing, Daniel E	74.00
		Corke, Victoria M	34.50
		Dobbins, David	62.00
		Dover, Marleigh D	3.00
		Goodman, Michelle	46.00
		Griffiths, John R	34.00
		Hart, Melissa R	7.00
		Hunt, Joseph (Jody)	26.75
		Millet, Thomas W	4.00
		Ruggeri, Amy A.	16.66
		Smith, John	42.50
		Wolverton, Caroline Lewis	54.00
		Total Hours for Month:	404.41
	September		
		Bensing, Daniel E	46.00
		Corke, Victoria M	40.75
		Dover, Marleigh D	0.50
		Goodman, Michelle	30.50
		Griffiths, John R	36.50
		Hart, Melissa R	13.00
		Hunt, Joseph (Jody)	45.25
		McCarthy, Emily	163.00
		Ruggeri, Amy A.	15.15
		Smith, John	65.50
		Wells, Carlotta P	7.50
		Wolverton, Caroline Lewis	46.75
		Total Hours for Month:	513.40
	October		
		Bensing, Daniel E	26.00
		Cooper, Benjamin P	32.75
		Dover, Marleigh D	3.50
		Hart, Melissa R	25.00
		Levine, Gail F	32.00
		Loeb, Robert M	12.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
1999			
	October		
		Maloney, Kerrie	15.50
		McCarthy, Emily	250.50
		Ruggeri, Amy A.	18.96
		Severinsen, Patricia K	16.00
		Todd, James	31.00
		Wells, Carlotta F	42.00
		Wolverton, Caroline Lewis	50.00
		Zick, Timothy	39.00
		Total Hours for Month:	586.96
	November		
		Ahdieh, Robert B	28.00
		Bansley, Daniel E	103.00
		Cooper, Benjamin P	74.00
		Covey-Faygold, Julia	51.50
		Demske, Susan M	6.50
		Dover, Marleigh D	2.50
		Gotlieb, Elizabeth	105.92
		Hart, Melissa R	42.00
		Henry, Terry M	3.50
		Hunt, Joseph (Jody)	70.75
		Kennedy, Brian G	25.25
		Levins, Gail F	120.00
		Loeb, Robert M	6.00
		Maloney, Kerrie	61.00
		McCarthy, Emily	215.25
		Ninomiya, Roland E	73.50
		Rivera, William	17.50
		Rosenthal, Stephen	31.45
		Ruggeri, Amy A.	56.00
		Sanchez, Roberto	86.00
		Severinsen, Patricia K	16.25
		Smith, John	134.00
		Todd, James	32.00
		Wells, Carlotta P	48.00
		Wolverton, Caroline Lewis	72.75
		Zaring, David T	5.50
		Zick, Timothy	106.50

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
1999			
		Total Hours for Month	1,589.70
	December		
		Adams, Clara V	5.75
		Andleh, Robert B	100.00
		Bansing, Daniel E	143.00
		Cooper, Benjamin P	92.75
		Corks, Victoria M	92.50
		Covey-Feyngold, Julia	117.50
		Demske, Susan M	84.00
		Dover, Marleigh D	4.84
		Edney, Marsha S	163.00
		Goltein, Elizabeth	111.17
		Harr, Melissa R	50.00
		Hogan, John S	26.50
		Hunt, Joseph (Jody)	98.25
		Kennedy, Brian G	74.75
		Kim, Steven J	8.00
		Levine, Gail F	24.00
		Loeb, Robert M	56.00
		Mabrey, Kerrie	152.50
		McCarthy, Emily	252.00
		Mellmail, Timothy P	10.25
		Ninomiya, Roland B	76.00
		Rivera, William	106.50
		Rosenthal, Stephen	24.25
		Ruggeri, Amy A	41.00
		Sanchez, Roberto	143.00
		Smith, John	173.00
		Todd, James	8.00
		Wells, Carlotta P	56.00
		Wilson, Julia P	104.00
		Wolverton, Caroline Lewis	57.00
		Zick, Timothy	159.17
		Total Hours for Month:	2,601.66
		Total Hours for Year:	**6,728.77**
2000			
	January		
		Abdleh, Robert B	191.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	January		
		Bensing, Daniel E	89.00
		Buchholz, David C	21.00
		Cooper, Benjamin P	116.50
		Corka, Victoria M	30.50
		Covey-Feyngold, Julia	166.50
		Damska, Susan M	58.00
		Dover, Marleigh D	2.25
		Edney, Marsha S	180.00
		Giles, Allison C	8.00
		Goilein, Elizabeth	151.50
		Hart, Melissa R	118.00
		Hogan, John S	16.00
		Hunt, Joseph (Jody)	251.00
		Kennedy, Brian G	55.62
		Kim, Steven J	30.50
		Loeb, Robert M	39.00
		Maloney, Kerrie	230.00
		McCarthy, Emily	225.08
		McIlmail, Timothy P	35.75
		Moore, David H	116.75
		Rivers, William	130.00
		Rosenthal, Stephen	0.25
		Ruggeri, Amy A.	70.32
		Sanchez, Roberto	194.50
		Smith, John	110.00
		Todd, James	24.50
		Wells, Carolita P	24.00
		White, Kathleen Walker	4.00
		Wilson, Julia P	152.00
		Wolverton, Caroline Lewis	82.25
		Zick, Timothy	84.67
		Total Hours for Month:	3,010.64
	February		
		Andleh, Robert B	62.00
		Bensing, Daniel E	84.00
		Bondy, Thomas M	4.00
		Cooper, Benjamin P	57.75

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Time Reported on Pigford Litigation by Attorneys and Paralegals In Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2003	February	Covey-Fayrgold, Julie	200.00
		Demske, Susan M	13.50
		Dover, Madleigh D	10.50
		Edney, Marsha S	73.00
		Giles, Alison C	24.00
		Goldin, Elizabeth	165.25
		Hart, Melissa R	57.00
		Hogan, John S	18.00
		Hunt, Joseph (Jody)	129.50
		Leandheart, Carole A	84.00
		Kennedy, Brian G	36.75
		Kim, Steven J	42.50
		Loeb, Robert M	50.00
		Maloney, Kerrie	230.50
		McCarthy, Emily	49.75
		McIlmail, Timothy P	12.25
		Moore, David H	205.50
		Rivera, William	173.00
		Rosenthal, Stephen	3.50
		Taggart, Amy A	162.83
		Sanchez, Roberto	212.03
		Smith, John	45.50
		Weis, Carlotta P	16.00
		Wilson, Julie P	160.00
		Wolverton, Caroline Lewis	77.75
		Zeik, Timothy	83.30
		Total Hours for Month:	2,546.93
	March	Abdiish, Robert B	19.00
		Bensing, Daniel E	96.00
		Cohen, Edward R	72.00
		Cooper, Benjamin P	2.00
		Covey-Fayrgold, Julie	196.33
		Goldin, Elizabeth	8.50
		Hart, Melissa R	117.00
		Hogan, John S	9.00
		Hunt, Joseph (Jody)	129.50

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	March		
		Jeandheur, Carole A	93.50
		Kennedy, Brian G	13.75
		Kim, Steven J	108.00
		Kosicwa, Neil H	45.00
		Maloney, Karrie	120.00
		McCarthy, Emily	205.00
		McIlmail, Timothy P	3.75
		Moore, David H	70.25
		Questar, Amanda	20.66
		Rivera, William	61.50
		Rosenthal, Stephen	89.50
		Ruggeri, Amy A.	59.00
		Sanchez, Roberto	262.50
		Smith, John	14.50
		Wells, Cadotta P	2.00
		Wilson, Julia P	184.00
		Wolverton, Caroline Lewis	32.50
		Zick, Timothy	12.00
		Total Hours for Month:	2,106.74
	April		
		Bensing, Daniel E	3.00
		Cohan, Edward R	144.00
		Covey-Fayngold, Julia	114.00
		Edney, Marsha S	3.00
		Hart, Melissa R	112.50
		Hawkens, Edward R.	23.50
		Henry, Terry M	2.00
		Hogan, John S	4.00
		Jeandheur, Carole A	173.75
		Kennedy, Brian G	10.50
		Kim, Steven J	82.00
		Maloney, Karrie	92.50
		McCarthy, Emily	42.25
		McIlmail, Timothy P	1.00
		Moore, David H	3.50
		Questar, Amanda	70.51
		Rivera, William	13.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	April		
		Rosenthal, Stephen	52.50
		Ruggeri, Amy A.	17.00
		Sanchez, Roberto	71.00
		Smith, John	2.50
		Wilson, Julia P	160.00
		Wolverton, Caroline Lewis	124.75
		Zick, Timothy	4.50
		Total Hours for Month	[327.25
	May		
		Azar, Henry A	43.00
		Bensing, Daniel E	34.00
		Cohen, Edward R	176.00
		Cooper, Benjamin P	1.00
		Covey-Feyngold, Julia	49.00
		Hart, Melisse R	112.00
		Hawkens, Edward R.	58.50
		Henry, Terry M	33.00
		Hunt, Joseph (Joey)	8.00
		Jeandheur, Carole A	95.00
		Kennedy, Brian G	5.00
		Kim, Steven J	23.50
		McCarthy, Emily	24.25
		Moore, David H	48.00
		Quester, Amanda	25.10
		Rivera, William	5.50
		Rosenthal, Stephen	77.25
		Ruggeri, Amy A.	4.50
		Sanchez, Roberto	14.00
		Smith, John	2.50
		Wells, Carlotta P	4.00
		Wilson, Julia P	200.00
		Wolverton, Caroline Lewis	109.50
		Zick, Timothy	2.00
		Total Hours for Month:	1,161.20
	June		
		Azar, Henry A	128.50
		Bensing, Daniel E	34.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	June		
		Cohen, Edward R	104.00
		Cole, William G	141.00
		Covey-Faygold, Julia	115.50
		Gollein, Elizabeth	16.50
		Hawkens, Edward R.	66.50
		Henry, Terry M	219.00
		Kim, Steven J	11.50
		Maloney, Kerrie	12.00
		McCarthy, Emily	8.85
		Quester, Amanda	110.58
		Sanchez, Roberto	2.50
		Smith, John	1.00
		Temple, Karen A	18.00
		Thompson, Shirley D	3.00
		Wells, Carlotta P	16.00
		Wilson, Julia P	176.00
		Wolverton, Caroline Lewis	132.50
		Zick, Timothy	1.00
		Total Hours for Month:	1,320.93
	July		
		Azar, Henry A	93.75
		Bensing, Daniel E	33.00
		Cole, William G	138.00
		Covey-Faygold, Julia	45.00
		Gollein, Elizabeth	85.75
		Hawkens, Edward R.	10.50
		Henry, Terry M	71.25
		Hogan, John S	8.50
		Jaendheir, Carole A	14.00
		Kennedy, Brian G	10.50
		Kim, Steven J	5.00
		Klippel, Scott	55.00
		McCarthy, Emily	7.50
		Quester, Amanda	149.57
		Ray, Alex	45.00
		Rivera, William	4.00
		Rosenthal, Stephen	10.25

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	July		
		Sanchez, Roberto	15.00
		Smith, John	6.00
		Temple, Karen A	16.00
		Wells, Carlotta P	62.00
		Wilson, Julia P	160.00
		Wolverton, Caroline Lewis	76.00
		Total Hours for Month:	1,101.57
	August		
		Bensing, Daniel E	14.00
		Brown, Richard R	1.16
		Cohen, Edward R	8.00
		Cole, William G	137.00
		Cooper, Benjamin P	48.75
		Covey-Fayngold, Julia	10.50
		Goitein, Elizabeth	60.50
		Hawkens, Edward R.	17.00
		Henry, Terry M	103.25
		Jeancheur, Carole A	20.00
		Kennedy, Brian G	2.00
		Kim, Steven J	112.00
		Klippel, Scott	136.00
		Maloney, Kerrie	0.50
		McCarthy, Emily	23.00
		Moore, David H	4.50
		Nusraty, Timothy	4.00
		Quester, Amanda	63.00
		Ray, Alex	162.00
		Rivera, William	1.00
		Rosenthal, Stephen	23.25
		Simons, Jean	16.00
		Smith, John	31.50
		Temple, Karen A	3.00
		Wells, Carlotta P	91.00
		Wilson, Julia P	184.00
		Wolverton, Caroline Lewis	101.50
		Zick, Timothy	4.00
		Total Hours for Month:	1,401.41

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Civil Division

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	September		
		Azar, Henry A	41.00
		Bensing, Daniel E	12.00
		Cohen, Edward R	8.00
		Cole, William G	129.00
		Flory, Gillian	4.00
		Goitein, Elizabeth	80.00
		Hawkens, Edward R.	11.00
		Henry, Terry M	38.75
		Jeancheur, Carole A	2.00
		Kim, Steven J	50.50
		Klippel, Scott	167.00
		Maloney, Karrie	1.00
		McCarthy, Emily	9.50
		Quester, Amanda	118.67
		Ray, Alex	174.00
		Rivera, William	0.50
		Rogers, Kym	11.50
		Smith, John	66.50
		Temple, Karen A	2.00
		Wells, Carlotta P	72.00
		Wilson, Julia P	160.00
		Wolverton, Caroline Lewis	67.00
		Total Hours for Month:	1,220.92
	October		
		Azar, Henry A	13.50
		Bensing, Daniel E	7.00
		Bornstein, Lisa	19.50
		Cohen, Edward R	8.00
		Cole, William G	97.00
		Flory, Gillian	142.25
		Goitein, Elizabeth	68.50
		Hawkens, Edward R.	11.00
		Hunt, Joseph (Jody)	59.00
		Kamenshine, Robert D	1.50
		Kennedy, Brian G	0.75
		Kesselman, Marc	76.00
		Kim, Steven J	2.00

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	October		
		Klippel, Scott	183.00
		Meloney, Kerrie	3.00
		McCarthy, Emily	60.25
		Quester, Amanda	185.33
		Ray, Alex	194.00
		Rogers, Kym	139.50
		Rosenthal, Stephen	0.50
		Sanchez, Roberto	18.00
		Sitcov, Michael	169.00
		Smith, John	25.00
		Temple, Karen A	2.00
		Wells, Carlotta P	55.00
		Wilson, Julia P	168.00
		Wolverton, Caroline Lewis	82.50
		Total Hours for Month:	1,775.08
	November		
		Bensing, Daniel E	2.00
		Bornstein, Lisa	1.00
		Cole, William G	3.00
		Flory, Gillian	144.50
		Gack, Andrea	63.00
		Hawkens, Edward R.	24.00
		Hunt, Joseph (Jody)	5.75
		Kesselman, Marc	9[illegible].00
		Kim, Steven J	4.50
		Klippel, Scott	167.00
		McCarthy, Emily	27.00
		McKee, Carolyn	4.00
		Paisner, Jennifer	3.00
		Quester, Amanda	158.50
		Ray, Alex	166.00
		Rogers, Kym	184.00
		Sanchez, Roberto	2.50
		Sitcov, Michael	59.00
		Ullman, Susan	13.50
		Wells, Carlotta P	7.00
		Wilson, Julia P	128.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2000			
	November		
		Wolverton, Caroline Lewis	35.50
		Total Hours for Month:	1,310.75
	December		
		Atkins, Jon	152.00
		Bensing, Daniel E	2.00
		Bernstein, Lisa	6.67
		Edney, Marsha S	10.00
		Flory, Gillian	150.00
		Gacki, Andrea	38.50
		Goltsin, Elizabeth	9.00
		Hawkens, Edward R.	65.00
		Henry, Terry M	4.00
		Hunt, Joseph (Jody)	5.00
		Kennedy, Brien G	0.50
		Kesselman, Marc	31.50
		Kline, Gregory	165.00
		Klippel, Scott	173.00
		Liddle, Keith	152.00
		McCarthy, Emily	41.75
		McKee, Carolyn	32.00
		Nusraty, Timothy	152.00
		Paisner, Jennifer	23.00
		Quester, Amanda	80.33
		Ray, Alex	190.00
		Rogers, Kym	48.00
		Smith, John	1.00
		Temple, Karen A	47.00
		Ullman, Susan	72.50
		Wilson, Auriel	160.00
		Wilson, Julia P	144.00
		Wolverton, Caroline Lewis	59.00
		Total Hours for Month:	2,086.75
		Total Hours for Year:	**20,372.08**
2001			
	January		
		Atkins, Jon	168.00
		Bensing, Daniel E	6.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals In Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001	January		
		Bernstein, Lisa	2.50
		Cole, William G	31.00
		Flory, Gillian	16.00
		Gadd, Andrea	61.00
		Goldman, Robert	172.00
		Hawkins, Edward R.	31.00
		Healy, Terry M	44.00
		Jeancheur, Carole A.	35.50
		Kennedy, Brent G	0.25
		Kesselman, Marc	30.00
		Kline, Gregory	165.00
		Kippel, Scott	169.00
		Liddle, Keith	168.00
		McKee, Carolyn	31.50
		Nunnally, Timothy	168.00
		Paisner, Jennifer	36.00
		Quasius, Amanda	117.50
		Ray, Alex	204.00
		Rivera, William	0.50
		Rogers, Kym	169.00
		Sitcov, Michael	4.00
		Szuba, Adam	69.50
		Temple, Karen A	123.00
		Ullman, Susan	18.25
		Wilson, Aurjul	168.00
		Wilson, Julia P	126.00
		Wolverton, Caroline Lewis	50.50
		Total Hours for Month:	2,515.50
	February		
		Atkins, ...on	154.00
		Azar, Henry A	16.00
		Bensing, Daniel E	5.00
		Bernstein, Lisa	36.83
		Cole, William G	22.00
		Flory, Gillian	136.25
		Goldman, Robert	152.30
		Hawkins, Edward R.	16.00

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Civil Division

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001	February		
		Henry, Terry M	111.25
		Kesselman, Marc	43.00
		Kline, Gregory	144.00
		Klippe, Scott	152.00
		Liddle, Keith	144.00
		Nusraty, Timothy	136.00
		Palsner, Jennifer	6.00
		Queeter, Amanda	2.50
		Ray, Alex	191.00
		Rivera, William	1.50
		Rogers, Kyra	65.00
		Temple, Karen A	100.00
		Ullman, Susan	1.00
		Wells, Carlotta P	43.00
		Wilson, Aunjt	152.00
		Wilson, Julia F	152.00
		Total Hours for Month:	1,996.33
	March		
		Atkins, Jon	160.00
		Azar, Henry A	35.00
		Bornstein, Lisa	28.00
		Cole, William G	48.00
		Flory, Gillian	10.00
		Goldman, Robert	168.00
		Hawkins, Edward R.	45.00
		Henry, Terry M	132.75
		Kennedy, Brian G	0.25
		Kesselman, Marc	71.00
		Kline, Gregory	168.00
		Klippel, Scott	176.00
		Liddle, Keith	175.00
		Nusraty, Timothy	123.00
		Palsner, Jennifer	96.00
		Ray, Alex	206.00
		Rogers, Kyra	56.00
		Rosenthal, Stephen	0.50
		Smith, John	0.50

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Department of Justice
Civil Division

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001			
	March		
		Szubin, Adam	115.75
		Temple, Karen A	110.00
		Ullman, Susan	1.50
		Wilson, Aurjul	134.00
		Wilson, Julia P	176.00
		Total Hours for Month:	2,243.25
	April		
		Atkins, Jon	168.00
		Azar, Henry A	2.00
		Bensing, Daniel E	3.00
		Bornstein, Lisa	114.00
		Cooper, Benjamin P	25.00
		Goldman, Robert	160.00
		Hawkens, Edward R.	35.00
		Henry, Terry M	103.25
		Kline, Gregory	160.00
		Klippel, Scott	168.00
		Liddle, Keith	168.00
		Nusraty, Timothy	166.00
		Pelsner, Jennifer	64.00
		Ray, Alex	200.00
		Rogers, Kym	14.00
		Smith, John	5.00
		Szubin, Adam	58.00
		Temple, Karen A	164.00
		Wilson, Aurjul	76.00
		Wilson, Julia P	120.00
		Total Hours for Month:	1,993.33
	May		
		Atkins, Jon	166.00
		Bornstein, Lisa	144.00
		Goldman, Robert	120.00
		Hawkens, Edward R.	10.50
		Henry, Terry M	44.25
		Kesselman, Marc	52.00
		Kline, Gregory	168.00
		Klippel, Scott	176.00

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001			
	May		
		Liddle, Keith	120.00
		Nusraty, Timothy	176.00
		Palsner, Jennifer	36.00
		Quester, Amanda	0.75
		Ray, Alex	152.00
		Rogers, Kym	123.00
		Smith, John	1.00
		Szubin, Adam	71.00
		Temple, Karen A	13.00
		Ullman, Susan	0.50
		Wilson, Aurjul	152.00
		Wilson, Julia P	160.00
		Total Hours for Month:	1,023.00
	June		
		Atkins, Jon	132.00
		Bensing, Daniel E	6.00
		Bornstein, Lisa	41.50
		Hawkens, Edward R.	2.00
		Henry, Terry M	6.00
		Kline, Gregory	168.00
		Klippel, Scott	168.00
		Liddle, Keith	168.00
		Nusraty, Timothy	168.00
		Palsner, Jennifer	20.00
		Quester, Amanda	4.00
		Ray, Alex	162.00
		Wilson, Aurjul	48.00
		Wilson, Julia P	168.00
		Total Hours for Month:	1,261.50
	July		
		Atkins, Jon	128.00
		Azar, Henry A	10.00
		Bensing, Daniel E	3.00
		Bornstein, Lisa	3.17
		Cole, William G	9.00
		Henry, Terry M	2.00
		Kline, Gregory	168.00

Department of Justice
Civil Division

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001			
	July		
		Klippel, Scott	144.00
		Liddle, Keith	168.00
		Nusraty, Timothy	168.00
		Quester, Amanda	14.50
		Ray, Alex	167.00
		Rogers, Kym	3.00
		Szubin, Adam	20.50
		Ullman, Susan	0.25
		Wilson, Aurjul	64.00
		Wilson, Julia P	137.00
		Wolverton, Caroline Lewis	10.00
		Total Hours for Month:	1,219.42
	August		
		Atkins, Jon	194.00
		Bensing, Daniel E	2.00
		Bornstein, Lisa	1.50
		Cole, William G	8.00
		Cooper, Benjamin P	25.00
		Henry, Terry M	20.00
		Kane, Kathleen	5.00
		Kennedy, Brian G	0.25
		Kline, Gregory	184.00
		Klippel, Scott	144.00
		Liddle, Keith	184.00
		Nusraty, Timothy	144.00
		Quester, Amanda	9.00
		Ray, Alex	168.00
		Rogers, Kym	3.00
		Ruggeri, Amy A.	2.00
		Wilson, Aurjul	184.00
		Wilson, Julia P	3.00
		Wolverton, Caroline Lewis	6.00
		Total Hours for Month:	1,306.75
	September		
		Atkins, Jon	152.00
		Baxter, Felix V	3.50
		Bensing, Daniel E	2.00

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001			
	September		
		Cole, William G	16.00
		Henry, Terry M	29.00
		Kane, Kathleen	4.00
		Kline, Gregory	152.00
		Klippel, Scott	136.00
		Liddle, Keith	160.00
		Nusraty, Timothy	152.00
		Quester, Amanda	8.00
		Ray, Alex	155.00
		Ruggeri, Amy A.	38.00
		Sicov, Michael	70.00
		Ullman, Susan	0.75
		Wilson, Aurjul	152.00
		Wolverton, Caroline Lewis	25.50
		Total Hours for Month:	1,258.75
	October		
		Atkins, Jon	178.00
		Azar, Henry A	3.50
		Baxter, Felix V	3.00
		Bensing, Daniel E	3.00
		Cole, William G	46.00
		Henry, Terry M	93.00
		Kline, Gregory	184.00
		Klippel, Scott	165.00
		Liddle, Keith	176.00
		Nusraty, Timothy	158.00
		Quester, Amanda	4.00
		Ray, Alex	180.00
		Ruggeri, Amy A.	10.00
		Sicov, Michael	128.00
		Wilson, Aurjul	176.00
		Wolverton, Caroline Lewis	10.00
		Total Hours for Month:	1,530.50
	November		
		Atkins, Jon	160.00
		Baxter, Felix V	1.00
		Bensing, Daniel E	6.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2001			
	November		
		Cole, William G	17.00
		Henry, Terry M	22.00
		Kline, Gregory	160.00
		Klippel, Scott	172.00
		Liddle, Keith	160.00
		Nusraty, Timothy	152.00
		Quester, Amanda	6.00
		Ray, Alex	135.00
		Rivera, William	5.00
		Sitcov, Michael	100.50
		Wilson, Aurjul	160.00
		Wolverton, Caroline Lewis	2.00
		Total Hours for Month:	1,288.50
	December		
		Atkins, Jon	56.00
		Bensing, Daniel E	2.00
		Henry, Terry M	83.75
		Kane, Kathleen	8.00
		Kline, Gregory	152.00
		Klippel, Scott	152.00
		Liddle, Keith	152.00
		Nusraty, Timothy	132.00
		Quester, Amanda	30.00
		Ray, Alex	134.80
		Rivera, William	7.00
		Sitcov, Michael	12.00
		Todd, James	3.50
		Wilson, Aurjul	152.00
		Wolverton, Caroline Lewis	1.00
		Total Hours for Month:	1,097.25
		Total Hours for Year:	10,621.16
2002			
	January		
		Baxter, Felix V	7.00
		Henry, Terry M	17.50
		Jeandheur, Carole A	2.00
		Kane, Kathleen	4.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2002			
	January		
		Kline, Gregory	96.00
		Klippel, Scott	168.00
		Liddle, Keith	168.00
		Nusraty, Timothy	60.00
		Ray, Alex	180.00
		Rivera, William	2.50
		Scher, Howard S	4.00
		Wilson, Audrey	168.00
		Wilson, Julia P	104.00
		Wolverton, Caroline Lewis	1.00
		Total Hours for Month:	962.00
	February		
		Klippel, Scott	117.25
		Liddle, Keith	152.00
		Nusraty, Timothy	8.00
		Ray, Alex	128.00
		Rivera, William	2.50
		Scher, Howard S	43.00
		Todd, James	28.00
		Wilson, Audrey	56.00
		Total Hours for Month:	534.75
	March		
		Henry, Terry M	19.50
		Kennedy, Brian G	0.50
		Klippel, Scott	136.00
		Liddle, Keith	168.00
		Nusraty, Timothy	6.00
		Scher, Howard S	97.00
		Wolverton, Caroline Lewis	6.00
		Total Hours for Month:	433.00
	April		
		Baxter, Felix V	1.00
		Collette, Matthew M	4.00
		Henry, Terry M	14.75
		Kane, Kathleen	4.00
		Klippel, Scott	88.00
		Liddle, Keith	176.00

Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2002			
	April		
		Maier, Peter R	12.50
		Rivera, William	3.50
		Scher, Howard S	96.00
		Wolverton, Caroline Lewis	4.00
		Total Hours for Month:	403.75
	May		
		Baxter, Felix V	9.50
		Cole, William G	2.00
		Henry, Terry M	1.75
		Kane, Kathleen	35.50
		Liddle, Keith	176.00
		Scher, Howard S	9.00
		Sitcov, Michael	52.00
		Wolverton, Caroline Lewis	4.00
		Total Hours for Month:	289.75
	June		
		Baxter, Felix V	1.00
		Cole, William G	39.00
		Kane, Kathleen	1.00
		Kennedy, Brian G	0.25
		Liddle, Keith	160.00
		Nusraty, Timothy	10.00
		Scher, Howard S	4.00
		Sitcov, Michael	64.00
		Wolverton, Caroline Lewis	1.00
		Total Hours for Month:	280.25
	July		
		Baxter, Felix V	15.16
		Cole, William G	48.00
		Liddle, Keith	176.00
		Scher, Howard S	35.50
		Sitcov, Michael	56.00
		Wolverton, Caroline Lewis	7.00
		Total Hours for Month:	337.66
	August		
		Baxter, Felix V	10.00
		Cole, William G	66.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2002			
	August		
		Liddle, Keith	176.00
		Scher, Howard S	6.00
		Szubin, Adam	3.00
		Wolverton, Caroline Lewis	6.00
		Total Hours for Month:	267.00
	September		
		Baxter, Felix V	5.00
		Cole, William G	27.00
		Liddle, Keith	160.00
		Rogers, Kym	4.00
		Wolverton, Caroline Lewis	3.00
		Total Hours for Month:	199.00
	October		
		Baxter, Felix V	11.00
		Dean, Paul	136.00
		Liddle, Keith	152.00
		Sitcov, Michael	50.00
		Wolverton, Caroline Lewis	1.00
		Total Hours for Month:	350.00
	November		
		Cole, William G	7.00
		Dean, Paul	92.00
		Goltein, Elizabeth	18.30
		Sitcov, Michael	38.00
		Wolverton, Caroline Lewis	11.00
		Total Hours for Month:	166.30
	December		
		Dean, Paul	134.00
		Goltein, Elizabeth	9.00
		Nusraty, Timothy	4.00
		Sitcov, Michael	59.00
		Wolverton, Caroline Lewis	5.00
		Total Hours for Month:	211.00
		Total Hours for Year:	**4,454.46**
2003			
	January		
		Baxter, Felix V	9.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2003			
	January		
		Bondy, Thomas M	8.00
		Dean, Paul	154.00
		Goltein, Elizabeth	44.00
		Henry, Terry M	75.25
		Kanter, William G	2.00
		Scher, Howard S	21.50
		Sitcov, Michael	64.00
		Wolverton, Caroline Lewis	16.50
		Total Hours for Month:	394.25
	February		
		Baxter, Felix V	2.00
		Bondy, Thomas M	8.00
		Dean, Paul	144.00
		Goltein, Elizabeth	26.00
		Henry, Terry M	136.25
		Kanter, William G	3.00
		Scher, Howard S	24.00
		Sitcov, Michael	41.00
		Total Hours for Month:	384.25
	March		
		Baxter, Felix V	6.50
		Dean, Paul	192.00
		Edney, Marsha S	36.00
		Goltein, Elizabeth	55.00
		Henry, Terry M	97.50
		Loeb, Robert M	6.00
		Nusraty, Timothy	4.00
		Scher, Howard S	22.50
		Sitcov, Michael	27.00
		Wolverton, Caroline Lewis	8.00
		Total Hours for Month:	446.50
	April		
		Baxter, Felix V	2.00
		Dean, Paul	219.00
		Edney, Marsha S	20.00
		Goltein, Elizabeth	46.00
		Henry, Terry M	91.75

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2003			
	April		
		Scher, Howard S	36.50
		Sitcov, Michael	36.00
		Wolverton, Caroline Lewis	16.50
		Total Hours for Month:	467.75
	May		
		Baxter, Felix V	2.00
		Dean, Paul	140.00
		Edney, Marsha S	11.00
		Henry, Terry M	26.50
		Scher, Howard S	25.00
		Sitcov, Michael	38.00
		Wolverton, Caroline Lewis	4.00
		Total Hours for Month:	246.50
	June		
		Baxter, Felix V	3.00
		Dean, Paul	168.00
		Scher, Howard S	2.00
		Sitcov, Michael	21.00
		Swails-Brown, Maria Y	12.00
		Wolverton, Caroline Lewis	2.00
		Total Hours for Month:	208.00
	July		
		Baxter, Felix V	2.50
		Dean, Paul	176.00
		Edney, Marsha S	53.00
		Henry, Terry M	9.00
		Scher, Howard S	1.00
		Sitcov, Michael	7.00
		Swails-Brown, Maria Y	49.00
		Total Hours for Month:	297.50
	August		
		Dean, Paul	138.00
		Henry, Terry M	4.00
		Scher, Howard S	12.00
		Sitcov, Michael	13.00
		Swails-Brown, Maria Y	18.00
		Total Hours for Month:	185.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2003			
	September		
		Dean, Paul	162.00
		Edney, Marsha S	1.00
		Henry, Terry M	4.00
		Scher, Howard S	79.50
		Silcov, Michael	8.00
		Swails-Brown, Maria Y	8.00
		Total Hours for Month:	262.50
	October		
		Dean, Paul	178.00
		Edney, Marsha S	55.00
		Scher, Howard S	50.00
		Swails-Brown, Maria Y	18.00
		Total Hours for Month:	301.00
	November		
		Dean, Paul	128.00
		Edney, Marsha S	12.00
		Scher, Howard S	2.50
		Swails-Brown, Maria Y	5.00
		Total Hours for Month:	147.50
	December		
		Baxter, Felix V	0.50
		Dean, Paul	128.00
		Edney, Marsha S	33.00
		Scher, Howard S	28.00
		Swails-Brown, Maria Y	18.00
		Total Hours for Month:	207.50
		Total Hours for Year:	**3,548.25**
2004			
	January		
		Dean, Paul	180.00
		Edney, Marsha S	77.00
		Swails-Brown, Maria Y	5.00
		Total Hours for Month:	262.00
	February		
		Baxter, Felix V	6.00
		Dean, Paul	140.00
		Edney, Marsha S	5.00

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Time Reported on Pigford Litigation by Attorneys and Paralegals in Calendar Years 1999-2004* (by Calendar Year and Month)

Year	Month	Attorney/Paralegal Name	Total Hours
2004			
	February		
		Robinson, Michael E	3.50
		Scher, Howard S	24.50
		Swails-Brown, Maria Y	9.00
		Total Hours for Month:	188.00
	March		
		Baxter, Felix V	9.00
		Dean, Paul	221.50
		Edney, Marsha S	9.00
		Wolverton, Caroline Lewis	4.00
		Total Hours for Month:	243.50
	April		
		Dean, Paul	146.00
		Edney, Marsha S	52.00
		Swails-Brown, Maria Y	18.00
		Total Hours for Month:	216.00
	May		
		Dean, Paul	62.00
		Edney, Marsha S	5.00
		Scher, Howard S	7.00
		Wolverton, Caroline Lewis	4.00
		Total Hours for Month:	78.00
		Total Hours for Year:	**987.50**
		Total Hours for Report:	**55,712.22**

* Calendar Year 2004 includes time entered as of 05/27/2004.

FYI: There are 220 Pigford cases: 129 had time reported on them in the time period and 91 had no time reported on them in the time period.

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Detail of Estimated Pigford Expenses (Track A and Track B) for the Civil Division, U.S. Department of Justice:

Category	1998	1999	2000	2001	2002	Total
1. Salary/Benefits: Calculated from hours reported to the Civil Division Cases System:						
DOJ Attorneys:	184,050.10	133,797.02	938,660.78	384,772.12	124,313.14	1,765,593.16
DOJ attorneys assigned exclusively to Pigford			75,932.80	97,432.83	393,655.58	567,021.21
2. Agriculture Attorneys*				500,000.00		500,000.00
3 Consultants (hired to provide advice to):						
DOJ		4,117.01		10,059.60		14,176.61
Agriculture*		35,731.00	857,138.79	1,250,000.00	1,213,248.79	3,356,118.58
4. Automated Litigation Support						
Agriculture*			3,484,096.04	1,813,950.56	124,489.7	5,422,536.30
5. Travel		4,215.32	66,350.59	47,460.21	10,565.45	128,591.57
6. Expert Witness		468.00	1,925.00			2,393.00
7. Transcripts	653.75	1,891.90	78,849.44	63,701.70	14,488.55	159,585.34
8. Misc Litigatition Expense	4,429.40		620.75	792.76		5,842.91
Total	189,133.25	180,220.25	5,503,574.19	4,168,169.78	1,880,761.21	11,921,858.68

* The Civil Division was reimbursed by the Department of Agriculture for these expenses.

APPENDIX I

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Actions 97-1978 and 98-1693. Timothy Pigford, et al and Cecil Brewington, et al versus Ann Veneman. Mr. Pires, Mr. Fraas, Mr. Chestnut, Miss Sanders, Mr. Stein, Mr. Fierst, Mr. Beato and Mr. Lear for the plaintiffs. Mr. Sitcov, Mr. Henry and Miss Goitein for the defendant. Miss Roth is the Monitor and Mr. Lewis is the Mediator.

THE COURT: Everybody is here.

Let me just say a couple of things before we start. This is a status conference and with some specific questions or issues on the table that I tried to set out in an Order of April 6th. And I think I'm going to ask the Monitor to give me a report and then I'll hear from whoever wants to say anything, but what I'm concerned about is the fact that by May the 15th all of the petitions for Monitor Review have to be filed with respect to decisions that were made on Track A and I guess Track B as well, but the numbers suggest that we should be focusing on Track A, decisions made on Track A either within the preceding 120 days or prior to then because of the Order that I issued back in -- on November the 8th over the vigorous objection of the Government.

The way that I see this, to put it in context, and you all may have different recollections and different views, is that when this case was settled, we had a Fairness Hearing, we had all sorts of discussions, we had objectors, we had draft

settlement agreements, Consent Orders that went back and forth with some changes made. But essentially if you look back at the transcript and you look back at my Opinion the belief that everybody had was that those farmers -- first of all, everybody thought there would be many fewer farmers in the class and many fewer people filing claims, but the belief that everybody had was that under Track A there was a very low threshold of proof, that this would probably be about, I don't know how you would quantify it, a 95 percent success rate. In my Opinion I said that I thought it would be virtually automatic. One of the reasons that everybody thought it would be virtually automatic is because it was represented that it wouldn't be a problem to find similarly situated white farmers, and class counsel said they had that, and I don't mean to be pejorative, they had that information in their hip pocket. And it was class counsel's belief that that would be easy.

And, you know, to the extent that there are lots of people frustrated, and I have to say this, I know there are fees in the background, there are all sorts of other things in the background, but the thing that I'm frustrated about and I want to focus on, is the farmers. And they believed, and you can tell me if I'm wrong, Mr. Chestnut, Miss Sanders, Mr. Pires, Miss Roth, you all have been all over the South talking to people, I haven't, but they believed that at the time of the settlement that most of them were going to get something and

that's because we thought it was going to be virtually automatic and that's because we thought finding similarly situated white farmers wasn't going to be a problem. And then it turned out to be a problem. And Mr. Pires has said -- he's taken some of the blame for that. So we have a 60 or 62 percent success rate which means that there are more petitions.

Now, the Government might have filed more petitions if the success rate had been higher but I think we all believed from the beginning that most of the petitions -- the Government wasn't going to file that many petitions, even if the success rate were higher, but most of the petitions were going to come from the farmers. So we start with having many more farmers filing claims than we anticipated, and I understand that now with the late filings and I assume, having delegated this to Mr. Lewis, that most of the late filings are going to be declined. That's not what we were focusing on. But there are 16-some thousand late filings. But we're talking about the 20 or so thousand that actually filed timely and that have been or are being processed. That's what the focus is today, I think.

So because the success rate was lower at the initial stage, the number of petitions are greater. And there are some additional claims, there were white farmer problems, and so forth. So one of the things I was concerned about as we got ready to appoint the Monitor was those -- that 40 percent or whatever we anticipated the number would be and if there was no

similarly situated white farmer and if the file that was reviewed by the Track A decisionmakers didn't have that information, they would -- it would be hard to prove. They might prove manifest injustice but they wouldn't be able to prove it in the absence of a similarly situated white farmer.

So once again over the vehement objection of the Government, in the Order of Reference I said that the files could be supplemented with additional information. The Government was not happy. They thought that was changing the bargain. But I did it. And my thought was that the primary thing that those files would be supplementing, probably two things, one is sometimes there's actually more than one claim but because of the way the claim file was prepared only one claim was included or it was not clear that there might actually be separate claims. The primary thing I think was finding that white farmer. And that's what was going on. Because it seemed to me that we should not punish the farmers for the failings of the lawyers who prepared the claims packages. And some of the failings of the lawyers, if we want to call them that, are simply because people were overworked. There was much more to be done than people thought. But there may be other reasons as well.

Then there was a realization that the Consent Judgment didn't have a deadline for the filing of the petitions for Monitor Review. In fact, as I recall it, the only deadline in

the Consent Decree that's relevant is that at the end of five years this entire apparatus we've constructed would be gone, including the Monitor. And so it was clear to everybody that if the Monitor was to make decisions before she faded off into the sunset we had to have deadlines for Monitor Review and for filing of petitions for Monitor Review.

And so there was a stipulation, and I say all of this because I think we find ourselves here in part because of agreements that were made, not Orders that I issued, but agreements that were made and then I issued Orders. And the agreement was that all of the petitions could be processed within 120 days. So that takes you from July 14th, the day of the agreement, to November 13th.

Now, somewhere along the way, and I think if you read the Consent Decree, and maybe Mr. Pires or Mr. Chestnut or anybody else who are among class counsel -- the Consent Decree did not, did not obligate them to handle each and every individual claim that came down the pike. It contemplated some people might file pro se. Not that that would be the best thing in the world. It contemplated other lawyers might get into the act. But it didn't contemplate -- it certainly didn't say that they had to handle each and every claim.

Now, I think Mr. Pires and his colleagues essentially did tell people they would do it but I don't think they were obligated to do it, according to the Consent Decree. In fact,

there were some other lawyers who were not in the counsel -- of-counsel group or maybe they were in the of-counsel group but not the original counsel group who had small groups of claims in various States and they processed them, claims and petitions, and they processed them.

Then in November Mr. Pires said this could not be done by the -- within the 120 days which by then was almost elapsed, that was agreed upon in July. And he needed more time. And the Government objected vehemently to any more time because of the agreement and the commitments.

And so what I said was -- I'm not quite sure how to characterize what I said, that I wouldn't give them more time, but I would. And that what he had to do, what counsel had to do, given the numbers that -- of people whose petitions they had to process was to give us a list, a register of who those people were and then -- recognizing that would be a rough cut, withdraw some that didn't have a claim to pursue under the petition and get the petitions filed at a rate of 400 a month. And that number -- that five- or six-month period was proposed by class counsel and the number that could be processed per month was proposed by class counsel. Or maybe we took the overall number -- that's what we did. We took the overall number and took the number of months that was proposed by class counsel and did what appeared to be simple math.

So now -- then there are about 2000 of those petitions

left, and the Monitor can give me a report, but the first month seemed to go well, and the second month seemed to go pretty well. And then the numbers dwindled. And we face this May 15th deadline. And what I'm concerned about is that, not just -- just is it humanly possible to do this in that period of time and more importantly, is it possible to do a quality job, because turning in a petition if you haven't taken the time to try to find that other similarly situated white farmer accomplishes nothing.

Now, I don't know what percentage of the petitioners are going to succeed. We probably are not going to get up to the 90 or 95 percent total that we thought we might when the settlement agreement was signed. But I would hope that we'd get higher than 60 or 62 percent and that there would be some success in those petition processes or why bother having them. And if I'm right, and my recollection of the history of the case, the success rate depends in large part on finding similarly situated white farmers. Now, that takes time, whether it's Al Pires or somebody else, although it should be fast if it were Mr. Pires and his colleagues and Mr. Chestnut and his colleagues because they know the case, know the history, of reviewing a file, seeing what's deficient in the claim package. Fixing it up. Talking to the client. Trying to find the white farmers.

In the midst of all of this I issued an Opinion on

attorneys' fees and I have to tell you I really think that what I said should have been no surprise to anyone if you read the Consent Decree. If you read the document that you all negotiated and signed when you settled the case. And it was previewed in my decision with respect to the Banks Law Firm to a certain extent.

The only reason I didn't decide it sooner was because I was hopeful, and maybe had been led to believe, that this whole fee issue could be settled. And I've looked back at a number of old transcript where it was suggested that that was quite possible. But what seems to have happened and since I issued that decision is that it's had an impact on the number of lawyers and the amount of time that those lawyers are spending on the Monitor petition process. And I assume that's because -- for two reasons. One is that presumably given what the standard is, that the number of petitions that are going to succeed is assumed -- is presumed to be small or moderate. But not -- it's not assumed that the overwhelming number of people that petition for Monitor Review given the standard that was written into the Consent Decree after negotiations, a lot of people are going to lose, and so if you have to succeed or prevail to get paid, then getting new lawyers in the act would be hard, and I understand that it is also having an impact on the existing lawyers. Mr. Pires has cut back on his staff. Other people have been impacted by the now certain knowledge

that you're not going to get paid for working on petitions unless you succeed.

I still think that there should be a way to resolve and settle the fee issue and put more money in the pockets of the lawyers that have worked on this case to date, but with respect to the individual claims -- I mean, you know, 60 percent -- if there had been a 60 percent success rate it would seem to me that somebody ought to be able to come up with a formula that says if you take X-number of claims and the average number of hours per claim was, or maybe there are different categories of claims, and take 60 percent of that number, if both sides are willing to accept some sort of rough justice, that that might be a way to solve that and -- or close to solving it. And certainly with respect to the question of out-of-pocket expenses it ought to be even easier to solve. But going forward and including the claims that have been filed to date, but going forward on the Monitor petitions, whatever lawyers do this are only going to get paid if they're successful.

But coming back to where I started from, and then I'll ask Miss Roth to give us some specifics, and then I'll hear from everybody, we were all very proud of ourselves when this case settled and thought that what was an intractable problem had been ameliorated, not solved. That a lot of farmers who thought they would never see a penny were going to get

something and that maybe, just maybe overtime they would even feel that the Government going forward might be more fair than it's been in the past. That was the hope. This was a first step. A lot of people actually have gotten checks.

And, you know, I just personally -- I shouldn't take it personally, but I just am proud of what we did. And if it begins to fall apart in this last phase and if the 40 percent that didn't succeed feel they don't have lawyers to help them now or that they're doing a slipshod job or that they don't have a chance of succeeding with the Monitor because of a lot of mistakes that have been made along the way, a lot of good things have been done along the way, but some mistakes have been made as well, or let's put it this way, time has been allowed to pass without things being done that should have been done somehow.

And I also feel that, and I know this is easier said than done, that lawyers have obligations to their clients even though they're not getting paid or even when they don't know if they're going to get paid. Sometimes it depends what rules you play on. If you take a contingent fee case, you may get nothing, you may get a lot. If you get paid by the hour you may get nothing -- you won't get nothing, you'll be paid by the hour regardless of the outcome. And under ECOA and the Equal Access to Justice Act you've got to succeed. And the only thing that may have changed is you all thought I was going to

say something different about that paragraph of the Consent Decree. And maybe you guessed wrong or bet wrong or maybe you weren't reading it -- certainly weren't reading it the same way I was.

But now where are we and what are we going to do about the farmers that ought to have petitions prepared, that are of sufficient quality that they stand a chance of success with the Monitor even under the standard that you all negotiated, which is a heavy burden. And that's really the issue that I'm most concerned about. I really want you to settle this attorneys' fees thing. I would hope that it can be resolved without the lawyers that should be spending their time on helping the farmers in the time that remains having to devote too much of their time to the fee question. But I don't know how to get there and I'll let Miss Roth say something, but -- and I want to say this as kindly as I can, Mr. Pires, I think you made some commitments and some prognoses that you haven't been able to meet and -- for a variety of reasons, and from my perspective with May 15th staring us in the face unless somebody's got a plan that makes sense, not just to get the numbers processed which even that seems close to impossible, but to do it in some sort of a professional way that means that your clients have a chance of succeeding. And we -- the case was resolved and some people have succeeded. But -- and I am sure -- and Mr. Chestnut can tell me if I'm wrong, I think

he'll tell me I'm right, there are lots of people that will always think this case wasn't fairly settled, that they still got the wrong end of the stick, that they still have no faith in the Government. They didn't get any money out of it, they should have gotten more money out of it.

But I think we all have something still to be proud of to this point, and if there was a message sent, and not only messages sent but checks sent, and I just don't want to see it fall apart in this last stage.

And I'm very troubled by what I've been reading in Miss Roth's reports and what I've been hearing, and as much respect as I've got for Mr. Chestnut, Mr. Pires, and Mr. Sitcov, you know, who has gotten beat up as much as he's been beat up but in the end he helped move these things along and some of his colleagues deserve some of the credit.

I don't want to see it fall apart and I don't want people to feel that they've been let down by people on whom they placed some confidence. I just don't know what to do about it, and I'm hoping that you all -- it's probably not Mr. Sitcov's problem at this point but I'm hoping that we have some way to deal with it.

I have spoken longer than I intended to. Miss Roth, do you want to add anything at this point or shall I hear from Mr. Pires?

MS. ROTH: Your Honor, I'll just give a brief

away from being done, that we've had this problem. And I understand the difficult choice you have if your case is being handled by lawyers who offer two things that I don't know where you can get anywhere else.

There's nobody like us who understand farm law. It's interesting that we get criticized but we never get criticized for that because we are the bar for that. There's very few people who can do that. And secondly, we are an intergraded group of lawyers who have been involved for four years and we stayed from the beginning to the end under incredible financial circumstances.

And I think I'm holding JL up. JL?

MR. CHESTNUT: May it please the Court, good morning, Your Honor -- good afternoon.

THE COURT: Good afternoon, Mr. Chestnut.

MR. CHESTNUT: I want to, Your Honor, if I might, provide a non-Washington perspective --

THE COURT: That's always helpful.

MR. CHESTNUT: -- of this case. A number of agreements were made in this case. Some I participated in. Some I didn't. Each and every one of these agreements though were based on our best estimates. That's all we had. More often than not, in this unprecedented litigation those estimates turned out to be wrong. Sometimes egregiously wrong. And there had to be adjustment all along the line. At one

point I initially thought that this class would not number more than 6000 people. And it exploded. And this has been part of the problem.

But I want to first assure Your Honor that this case is not about to fall apart. This case is not going to fall apart. It is my life. It is my partner's life. I'll fall apart before I let this case fall apart.

Also I want you to know that in spite of the constant criticism that we suffer through almost daily, this Court could select at random a sampling of the class and of the various black farmer organizations and bring them here and they all would tell you not only have they been represented well, but constantly. Daily class counsel goes far beyond the call of duty. We spend hours and hours, Your Honor, explaining to poor people who can't read and write why they don't qualify for this class. There's no way I could bill anybody for that. I'm not interested in billing anybody. That's part of what my life is all about. But every day we go through that.

There are all kinds of aspects to this case that you can't know unless you visit ground zero. You have to be in Mississippi and Alabama and Georgia. You have to know these folks, commiserate with them, to really understand this case. It has never never been about money. It never never will be about money. Some of the members of this class, Your Honor, are as old or older than I am. And a tax-free $50,000 payment

does not do much for them. I mean he can go and pay off two, three debts. Buy some farm equipment. And that's about it. It is not about money really to the class. It never was.

If you want to know, Your Honor, how this case is seen at what I call ground zero, I want to tell you that in an improbable unforgettable little town called Itta Bena, Mississippi there's a poor blind black farmer who stands on the street corner every Saturday morning and sings a song he composed and the title of it is The Day Us Talked to the Big Judge in Washington. I went to Itta Bena and he sang it for me. We talked about it. And then we both cried. He is talking, Your Honor, about a day when this Court, a United States District Court in the Nation's capital, permitted poor ungrammatical black farmers from Alabama, from Mississippi, from Georgia, from Virginia, to come in here and not talk through lawyers but to talk directly about their pain and about asking you to abolish a Government department really recreated in Lincoln's Administration to help farmers. The -- this Court in permitting that to happen caused a more lasting, a more positive, a more important national impact, brought hope where there wasn't any. And that day is more important, believe me, Your Honor, that day is more important than all the checks the Government could ever write.

This case has never been about money. The money part comes in when Rose and JL and Hank Sanders in Alabama have to

go to Alabama bankers who don't like black farmers generally and don't like us in particular and borrow 3.5 million dollars, and they don't make it easy. It's excruciatingly hard and embarrassing, but we don't care. We believe in this case. We believe in the people. We believe in what this Court has done in this case.

It costs us, Your Honor, more than $200,000 a year in interest on loans that we have borrowed on behalf of this class. That is money we can't recover from the Government and don't want to recover. If it costs $500,000 and we would pay the Government the taxes owed it and still use it on behalf of the class.

I want Your Honor to understand this class is not about to fall apart, but there are problems. And I would have to tell you, Your Honor, some of these problems derive from maybe the thickness of my skull. When we were negotiating with my dear dear friend, Mr. Sitcov, for the consent settlement, had I had any inkling that each claim would be litigated almost as if it was a class action unto itself I never would have agreed to it. I don't know of any farmer who would have agreed to that. If I had known I was negotiating a situation whereby in Track B cases we would have these monumental struggles over discovery, lengthy Hornbook motions to dismiss, I never would have agreed to that. What I had in mind and what I mistakenly thought everybody else had in mind was that we were talking

about something more in the nature of arbitration.

And I have never understood, and Your Honor knows that I take the same position that Al does, we agree with you most of the time but I've always been bothered by the proposition that a poor farmer unless that poor farmer wins, we can't even get reimbursed, much less paid for the time spent preparing his case, preparing and presenting his case. I thought, Your Honor, the class won the right to be heard, to that point the Government had denied these people the right to be heard. That I thought was the success. And then I learned that, no, you have agreed that even though they have a hearing now you have to go in and win.

And so Rose and JL and there's Hank and there's the rest of us, we're down there in Alabama now, how do we go to this farmer and say, well, I've got to take your case regardless and I've got these bankers over here who are calling me all kinds of names and we're struggling, but one thing that we have always said, that the class comes first. We will represent the class and we will represent the class with quality.

I'm going to ask Rose to speak in a minute. She won't take long. But I want you to know and I want to say to Your Honor that Rose Sanders took over the team at my request and she has supervised both the A and B cases. And under her supervision we got -- she got through, all of -- with our team,

APPENDIX J

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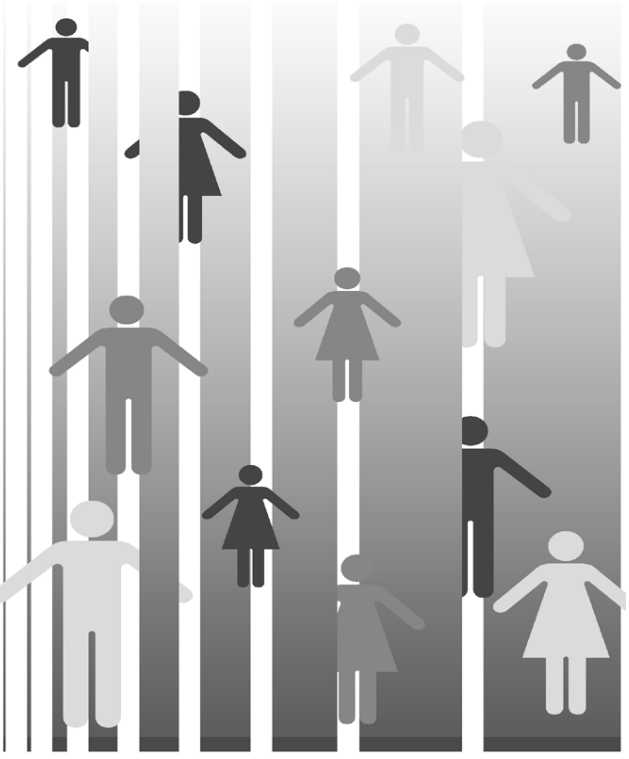
bruary 1997

Civil Rights at the United States Department of Agriculture

A Report by the Civil Rights Action Team



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Washington, DC
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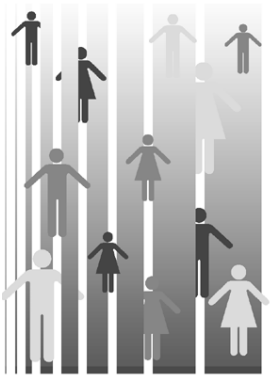

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Secretary of Agriculture
Daniel R. Glickman.

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Civil Rights at the United States Department of Agriculture

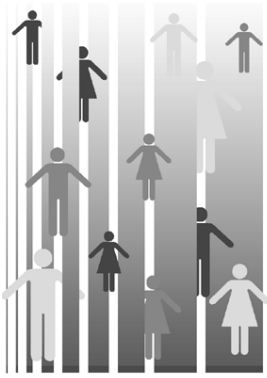
Introduction

Secretary of Agriculture Daniel R. Glickman's goal is that each employee and customer of the U.S. Department of Agriculture be treated fairly and equitably, and with dignity and respect. The Secretary's goal is that the USDA become, as Abraham Lincoln suggested over 130 years ago, "the people's department," serving all of the people.

There are some who call USDA "the last plantation." An "old line" department, USDA was one of the last Federal agencies to integrate and perhaps the last to include women and minorities in leadership positions. Considered a stubborn bureaucracy and slow to change, USDA is also perceived as playing a key role in what some see as a conspiracy to force minority and socially disadvantaged farmers off their land through discriminatory loan practices.

Many of the hundreds of minority and socially disadvantaged customers who addressed the civil rights listening sessions held across the country spoke poignantly of discrimination and mistreatment by county-level employees and advisory boards who administer USDA programs. Employees also told of discrimination by USDA managers.

The problems are not new, nor are they unknown. Studies, reports, and task forces have documented the problems in report after report. In 1965, the U.S. Commission on Civil Rights found discrimination problems both in USDA program delivery and in USDA's treatment of minority employees. A 1970 USDA Employee Focus Group Report concluded the agency was insensitive to issues regarding equal opportunity and civil rights and that cronyism and nepotism were frequent factors in making personnel and management decisions. A 1982 Civil Rights Commission report found the Farmers Home Administration had not placed adequate emphasis on dealing with the crisis facing black farmers, and saw indications the agency "may be involved in the very kind of racial discrimination that it should be seeking to correct." A report by the Congressional Committee on Government Operations in 1990 identified Farmers Home Administration as one of the key causes of the drastic decline in black farm ownership.



Despite the fact that discrimination in program delivery and employment has been documented and discussed, it continues to exist to a large degree unabated. USDA is a huge decentralized bureaucracy that administers several hundred federally assisted and federally conducted programs with more than 90,000 Federal and nearly 20,000 non-Federal employees throughout the world.

Many of its agencies deliver programs through a large field office network in conjunction with local farmer boards which help direct how the programs are administered locally. Maintaining focus on civil rights policy across the far-flung bureaucracy is no easy task.

Members of the Civil Rights Action Team at a listening session.





SECRETARY'S CHARGE TO CRAT—

The Civil Rights Action Team was charged with developing a set of recommendations to address institutional and underlying problems and ways to implement actions to ensure accountability and follow-through at USDA.

On December 12, 1996, a group of black farmers demonstrated outside the White House in Washington, DC, calling on President Bill Clinton to assure fair treatment for them in agricultural lending programs. The farmers also filed suit in court against Secretary of Agriculture Dan Glickman, asking for an end to farm foreclosures and restitution for financial ruin they claimed was brought on by discrimination. The farmers' actions buttressed those by many USDA employees who have relentlessly pursued change by writing letters, holding press conferences, and filing class action law suits.

Clearly, it was time for USDA to address its long-standing civil rights problems.

Secretary Glickman responded by appointing a team of USDA leaders to take a hard look at the issues and make strong recommendations for change. The Civil Rights Action Team (CRAT) was charged with developing a set of recommendations to address institutional and underlying problems and ways to implement actions to ensure accountability and follow-through at USDA.

In addition to auditing past reports, the team sponsored 12 listening sessions in January 1997, in 11 locations across the country to hear from customers—especially socially disadvantaged and minority farmers—and from USDA employees. The listening panels were composed of either Secretary Glickman or Deputy Secretary Richard E. Rominger (with one exception), CRAT members, members of Congress, and members of the State Food and Agriculture Council. Customer sessions were tailored to address the civil rights concerns of specific cultural groups.

Testimony at the sessions was often emotionally charged and evoked compassion. Hundreds of customers and employees provided valuable information about how they perceive USDA. Many farmers told stories of years of bias, hostility, greed, ruthlessness, rudeness, and indifference not only by USDA employees, but also by the local county committees that provide access to USDA's Farm Service Agency programs. Minority, socially disadvantaged, and



Some of the most poignant comments, however, came from minority farmers across the country, who noted that the Federal Government writes off millions of dollars in loans to foreign countries that cannot pay, yet forecloses on U.S. farmers when they cannot pay.



women farmers charged that USDA has participated in a conspiracy to acquire land belonging to them and transfer it to wealthy landowners. Minorities, women, and disabled employees charged that discrimination, sexual harassment, favoritism, and reprisals are common at USDA.

Many customers and employees who could not attend the sessions, or who did not want to comment publicly, faxed and mailed comments to the CRAT. Others phoned a Hotline USDA had established to handle civil rights issues. The comments reflected the depth of pain and betrayal felt by so many customers and employees. Many sent page after page of documentation of their situations.

A speaker in Belzoni, MS, said USDA employees treat small-scale and minority farmers "worse than I would treat a dog." Another, who felt he was receiving unequal and unfair treatment from USDA employees, said "All I ask is for a level playing field."

A female USDA employee said she was told that her career would be jeopardized if she did not submit to sexual relations with her supervisor. While the supervisor was eventually transferred as a result of an ensuing investigation, she said she was left "stigmatized and blamed for challenging the culture." Another woman noted that the system at USDA is broken, "perhaps not intended to work."

Some of the most poignant comments, however, came from minority farmers across the country, who noted that the Federal Government writes off millions of dollars in loans to foreign countries that cannot pay, yet forecloses on U.S. farmers when they cannot pay.

This is the report of Secretary Dan Glickman's Civil Rights Action Team. It is the result of an audit of civil rights issues facing the U.S. Department of Agriculture in 1997 in both program delivery and employment. It contains findings and draws conclusions. Most importantly, it contains recommended actions that can be taken to remedy many of the long-standing problems plaguing the Department and weakening its credibility among customers and employees alike.







Lack of Management Commitment to Civil Rights

Background

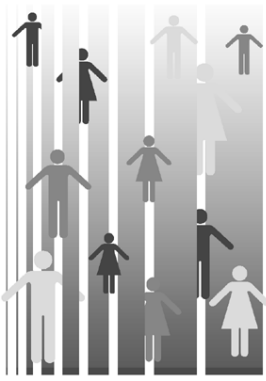
Findings in this report, and many others, lead to the conclusion that too many managers—from the lowest to the highest levels, both career civil servants and political appointees—are not committed to and are not being held accountable for their actions on civil rights.

USDA's painful history of individual and class action law suits, court orders, media exposés, numerous Congressional hearings, and reports depicts the Department as a stubborn bureaucracy that refuses to provide equal opportunity to all as the law requires.

The CRAT was told over and over, by farmers and employees, that managers at USDA operate in a system that does not hold them accountable when they break the law.

Farmers Say That USDA's Managers Are Not Held Accountable for Their Actions

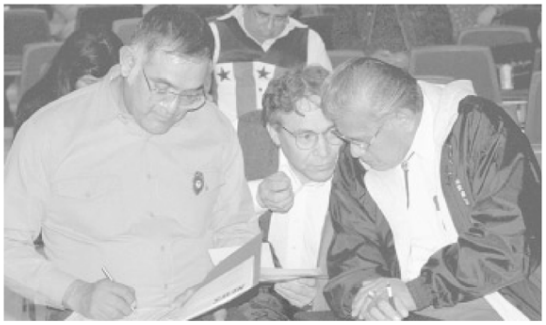
During the CRAT listening sessions, hundreds of minority farmers voiced concerns, as they have for decades, that they are still being denied equal access to USDA's programs. An African-American farmer in Brooks County, GA, which is 62 percent black, said the Farm Service Agency (FSA) wasn't serving black farmers there. He asked the Secretary "to come in and assist us to put watchdog groups over these places, so they can see that we're treated fairly."



Many echoed the sentiments of a farmer at the listening session in Washington, DC, who said USDA has participated in a "conspiracy to strip black farmers of their land." They described a litany of neglect, racial bias, unfair lending practices, and discrimination by county officials who one described as "short on moral rectitude and long on arrogance and sense of immunity."

Blacks, as well as white small-scale farmers, in the Mississippi Delta charged that USDA officials deny them courtesy and respect while giving large-scale farmers service and loans. A white female farmer said that the "single largest problem for women is to be taken seriously by the financial community." Another farmer added, "if they [county officials] don't like you, they won't give you the loan." And another said that county supervisors "are playing with our lives, playing with our livelihoods....We need people we can trust."

Hispanic, Asian-American, and American Indian farmers in Texas, California, and Oklahoma, and at other listening sessions, told stories with a common theme: USDA has done more to hurt than to help small and minority farmers. One farmer said that the 400 Hispanic growers in





California Central Coast counties formed an association in 1995 because the Department of Agriculture "systematically excluded" them from programs. "Some [USDA] staff need to change their attitudes towards members of our community," he said. "I feel that everyone who is present and has testified reinforces this statement."

Many farmers complained about the regulations and cumbersome paperwork requirements which simply don't work for small farmers. However, they also described a county committee system that shuts out minorities and operates for the favored few, where county officials, as another Mississippi farmer said, have the power "to send you up the road to fortune, or down the road to foreclosure," a system where officials abuse their power with impunity. They describe an entire system without accountability.

Echoing feelings expressed across the country, a farmer and representative of the Cherokee Nation in Oklahoma said, "I have seen the abuses at the county level personally and for many other farmers.... You know, I believe that people in Cherokee County, I don't know if they're just bigots or ignorant, or if it's just such a tight-knit group there they don't want minorities to participate."

A field coordinator for small farm outreach in Texas said, "we had a supervisor actually take an individual's plan and throw it in the trash can.... I think we need to look at some policies which govern accountability and look at the ethics of accountability as well." That sentiment was repeated by a female farm advocate from Louisiana, who said, "today we need somebody to hold the offices accountable for their actions...that needs to be done if anybody's going to ever be treated fairly."

Farmers also charged that USDA refuses to pay them damages, even after admitting that it has discriminated. One farmer said that discrimination continues because it has not yet cost the government "one single dime."

A farmer in Mississippi recalled that in 1990 and 1991, he and two other minority farmers were rejected for operating loans. They filed appeals and



Field employees' performance ratings are often based on measurement systems that favor large, wealthy landowners who can afford to repay loans or adopt innovative farm management practices.

won. They filed discrimination complaints, which were upheld by USDA. "The same county supervisors and county committee year after year used the fact that we filed these complaints and that they had to attend civil rights training classes as a reprisal against us, from '91 until the present," he said. " And what have we received? Delinquent accounts. What has the county supervisor received? He walked out with his 25 years of retirement, leaving us with this debt over our head."

Several farmers and farm advocates harshly criticized the Department's Office of the General Counsel (OGC). Their perception is that OGC has prevented USDA from providing compensation to farmers who have been discriminated against; that OGC lacks diversity among its senior staff; and that the agency lacks sensitivity to—and is even hostile towards—civil rights. Similar perceptions were also shared with the CRAT by the Department's Civil Rights Leadership Council.

Farmers also told the CRAT that USDA's Office of Inspector General is being used by management to investigate and bring unsubstantiated charges against them. "I've got stories" of OIG investigations and retaliation against farmers, a farm advocate said. "If the Office of General Counsel says, 'this is the way it ought to be,' then that's the way it is. It doesn't matter about your rights. So the system is very badly broken, as I see it."

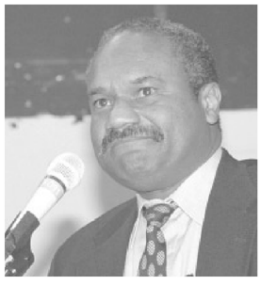
One example of a "broken" system is that field-level employees, those closest to farmers, often work under an incentive system that is adverse to serving minority and other small producers. Minority and small farmers said that their loans are processed too late, if at all, and that often, "the money is gone" by the time they are approved. Field employees' performance ratings are often based on measurement systems that favor large, wealthy landowners. County loan officers are rewarded based on the total number of acres served by program dollars, for having low default rates, and for dispensing all of the funds allocated to them—a performance management system that rewards service to large, financially sound producers while working against small and minority farmers.

USDA's policy statements support the idea of helping low-income and socially disadvantaged farmers. However, its management practices include performance measurement systems that actually do the opposite.

USDA Employees Tell Similar Stories

USDA employees at the listening sessions—several of them at the emotional breaking point—told of acts of "intimidation, fear, threats, and retaliation" by managers when employees complain of discrimination. They related stories of abusive behavior by managers who, rather than being punished, were rewarded with promotions and awards.

At the May 1996 Departmental Forum on Civil Rights, in CRAT listening sessions, in focus group reports, in the Blue Ribbon Task Force report, and



Pearlie Reed, Team Leader, Civil Rights Action Team.

elsewhere, USDA employees consistently have said that they believe managers who are guilty of discrimination are not being disciplined.

Abuse of managerial authority was a common theme, expressed most often by employees within the Forest Service. "Believe it or not," one Forest Service employee said at the Washington, DC, session, "management has used Forest Service law enforcement to police their own employees. Clearly, in these cases, the agency is not acting in the public's best interest, but as a Gestapo, totally out of control....Added to this, there is a segment of management which may not be guilty of these offenses, but chooses to ignore them in the effort not to buck the system." Several employees said that when confronted by complaints, agency leadership at higher levels adopts an attitude of "defending the troops"—the managers—rather than listening to employees or customers.

Although many of the employees who attended the listening sessions were from the Forest Service, USDA's largest agency, similar problems were described by employees of other agencies at the listening sessions, in reports, and in letters. A report produced by Westover Consultants for the Foreign Agricultural Service (FAS) in 1993, for example, said that minority and female employees feel that they are discriminated against and that many of the agency's managers lack the skills and training necessary for managing a diverse workforce. An employee in the Economic Research Service said Asian-Pacific American employees at USDA "get reprisal" when they voice their concerns to top management.

GAO Finds Agency Heads Not Accountable for Affirmative Employment Plans

Managerial commitment to civil rights is fundamentally an issue of accountability. Equal Employment Opportunity Commission (EEOC) regulations make agency heads accountable, and require them to hold all officials, managers, and employees accountable, for the successful implementation of Affirmative Employment Programs (AEP's). AEP's are mandated by Congress for agencies with more than 500 employees. They are designed to eliminate the under-representation of women and minorities in each agency's workforce. However, in 1995, GAO reported that at USDA, and three other Federal agencies, "no formal mechanisms are in place to hold them (agency heads) accountable for the success of their agencies' EEO/affirmative employment programs." GAO also found that senior officials treat AEP's as "paperwork requirements rather than as action plans to be taken seriously."

Contrary to EEOC regulations, most senior managers at USDA do not actively participate in the preparation of AEP's. According to GAO, officials with the authority to make personnel decisions regarding employment, job assignments, training, promotions, and terminations at USDA and the other agencies were rarely involved in the process of identifying barriers and actions to improve the representation of women and minorities in their agencies.



According to GAO, accountability "suggests that goals will be established, performance will be measured and reported, and that this information in turn will be used to monitor progress towards achieving the agencies' EEO objectives." However, as GAO noted, USDA managers make hiring, promotion, and other employment decisions without reference to the agency's AEP's.

Many managers at the Department also view numerical goals for ending under-representation as illegal quotas. In its February 1996 Memorandum to General Counsels (Post-Adarand Guidance on Affirmative Action in Federal Employment), the Department of Justice (DOJ) addressed this issue. It stated that agencies may establish reasonable numerical objectives for minority representation under specified conditions where race may be a factor in decision making. Further, Justice said, "the establishment of numerical goals for minority participation should not raise concerns under Adarand where race-based decision-making is not used to achieve the goal and the goal is commensurate with availability of minorities in the qualified and appropriate labor pool."

Previous Reports Find Lack of Commitment and Accountability

USDA employees appear to agree with GAO's findings. A 1993 USDA employee focus group report noted "strong concerns that managers have not been held accountable for their actions when discrimination is found." Lack of managerial accountability was one of four critical issues identified by the Department's Blue Ribbon Task Force on Equal Opportunity and Diversity in its recommendations to the Secretary in 1996.

Employees with discrimination complaints often contend that managers are not held accountable for civil rights. A 1993 study by Westover Consultants, Inc., commissioned by the Foreign Agricultural Service's (FAS) Civil Rights office, and marked "confidential," reported that many managers in FAS agree. In focus groups, managers in the agency "expressed that their attempts to foster a workplace where diversity is recognized and respected have had negative results and no support from top management. This has created in them a reluctance to become involved."

Westover found many managers in the agency view the emphasis on civil rights and diversity as "a burden." The report continued: "White supervisors were said by several groups to be tired of racial/ethnic issues. They are also tired of the EEO effort and perceive it to have a negative influence on the workforce." Senior executives "admitted that they have had a management style that reacts and is focused entirely on the Director's concerns. This has meant that little time is spent ensuring that employees are satisfied and that issues such as workforce diversity are dealt with appropriately."

Like farmers, employees at listening sessions also complained that some USDA managers harbor prejudices. This view was echoed in the Westover report, which found that some managers in FAS still hold stereotypes about minorities. "Major barriers consistently identified in each [focus] group were

the preconceived notions and prejudicial attitudes that white managers appear to have about the skills and competencies of African-American and Hispanic/Latino employees. These attitudes are demonstrated by the kinds of training suggested; the level of assignments given; their presence in minimal numbers in the Foreign Service; and in the general lack of recognition of positive accomplishments and contributions."

At the New Orleans Listening Session, several USDA employees brought up the issue of racism and racist comments, "lack of respect for people of color," and incidents of physical abuse against employees.



PERFORMANCE RATINGS

Despite the problems documented throughout this report, no senior executive was rated "does not meet fully successful" in civil rights at USDA.

Assistant Secretary for Administration Lacks Authority

The Assistant Secretary for Administration (ASA) has overall responsibility for ensuring that agencies comply with all civil rights laws, rules, and regulations. However, the ASA is not involved in the performance appraisal process for the agency heads and senior executives (other than those in Departmental Administration) whose actions—at least on civil rights—the office ostensibly oversees. The ASA has the responsibility for ensuring compliance; in reality, the ASA has minimal ability to impact the performance ratings, bonuses, or pay adjustments of senior executives, civil rights directors, deputies for management, and others throughout the Department whose actions he or she is responsible for overseeing.

Accountability at the highest levels should cascade down through agencies' organizational structures, where field supervisors provide direct service to the public. However, without measurable goals, agencies have no way of effectively assessing whether or not they are making progress. Performance Review Boards (PRB's) meet yearly to assess the performance of senior executives. In fiscal year 1996, 59 percent of the Department's 318 senior executives received a rating of "exceeds fully successful" in their EEO/Civil Rights performance element. The other 41 percent received ratings of "meets fully successful." Despite the problems documented throughout this report, no senior executive was rated "does not meet fully successful" in civil rights at USDA.

PRB's also recommend to the Secretary the amount of bonuses, pay raises, and awards for the Department's senior executives. In FY 1996, the Department awarded a total of $564,000 to 87 senior executives. Career executives are also eligible for special act awards (up to $10,000) and Presidential Rank awards ($10,000 or $20,000). With rare exceptions, senior executives are rewarded for achievements in program areas, rather than civil rights.

Some Managers Lack Skills To Manage Diversity

Managerial competence is another concern. The ability to manage people, according to a former USDA personnel director, is the one area where USDA candidates have the most trouble passing the Office of Personnel

Management's Quality Review Boards, which certify candidates for the Senior Executive Service (SES).

In 1994, the Department's National Performance Review Team supported this observation. The team analyzed questionnaires from over 1,400 USDA employees on the issue of human resources management. The team reported that many employees "cited an inflexible style of management as the reason for hindering achievement of their full performance potential." The report said that many USDA managers are selected on the basis of their technical competence and are "not trained as managers."

Level of Resources for Civil Rights Also Measures Commitment

Finally, commitment is also a question of resources devoted to civil rights. A report being prepared by the Department's Civil Rights Policy Analysis and Coordination Center found that less than 1 percent of the Department's full time equivalent (FTE) resources, and budgetary resources, are allocated to civil rights. Civil rights budgets were seriously reduced in the 1980's, and have not fully recovered. The Civil Rights Leadership Council told the CRAT that agencies do not provide adequate resources to carry out the compliance and oversight activities needed to enforce civil rights laws and regulations.

Conclusions

In recent years, every Secretary of Agriculture has said that improving civil rights is a priority at USDA. However, findings in this report and many others suggest that with few exceptions, senior managers at the Department have not invested the time, effort, energy, and resources needed to produce any fundamental change.





Management commitment and accountability are key to the civil rights issues at the U.S. Department of Agriculture, both from a customer and program delivery standpoint as well as from the standpoint of employment practices and workforce diversity.

Minority and small farmers believe that USDA has participated in a conspiracy to take their land. In listening sessions across the country, farmers and employees described a system without accountability; a system in which some managers and supervisors abuse their power without concern for the consequences. The perception persists that even when discrimination occurs, appropriate disciplinary actions are not taken.

USDA's employment and program delivery systems appear to operate without sufficient checks and balances. Agency heads have delegated responsibility for civil rights to agency civil rights directors who do not have the resources, or authority, to ensure compliance with civil rights laws and regulations.

Contrary to EEOC regulations, agency heads and senior officials are not held accountable for results-oriented AEP's to end under-representation, or for Civil Rights Implementation Plans, which address program delivery. In most cases, agencies have not established measurable goals, in employment, program delivery, or procurement, for which managers are to be held accountable.

Senior officials receive awards, bonuses, and pay raises—but generally not for documented improvements in civil rights. Senior officials who receive "does not meet" for their civil rights performance elements do not qualify for bonuses or pay raises. However, few, if any, officials have ever received this rating. Field-level supervisors also have performance incentives that favor large producers while putting small and minority producers at a disadvantage. For example, accomplishments are often measured in acres or dollars; therefore, it is to field employees' advantage to work with large, well-financed farmers.

The Assistant Secretary for Administration, who is ultimately charged with ensuring that civil rights laws, rules, and regulations are enforced, does not have the delegated authority to ensure that subcabinet officials, agency heads, and other senior officials are held accountable. As a result, accountability has not cascaded down throughout USDA's massive field structure.

Management commitment and accountability are key to resolving the civil rights issues at the U.S. Department of Agriculture, both from a customer and program delivery standpoint as well as from the standpoint of employment practices and workforce diversity. The sections that follow detail the CRAT's findings in both of these areas.

Program Delivery and Outreach

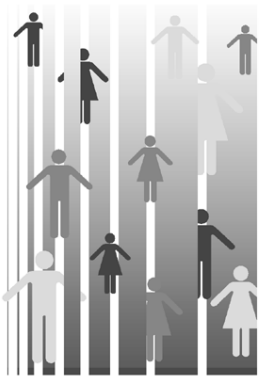
Background

Many minority and limited-resource farmers believe that USDA has participated in a conspiracy to take their land. They cite as proof the severe decline in farm ownership by minorities, especially African-American farmers, in the last 70 years. Much of this land had been owned for generations, in some cases acquired by these farm families after slavery was abolished in the 1860's.

According to the most recent Census of Agriculture, the number of all minority farms has fallen—from 950,000 in 1920 to around 60,000 in 1992. For African Americans, the number fell from 925,000, 14 percent of all farms in 1920, to only 18,000, 1 percent of all farms in 1992. Although the number of farms owned by other minorities has increased in recent years, particularly among Hispanics, the total acres of land farmed by these groups has actually declined. Only women have seen an increase in both number of farms and acres farmed.

During this time, the number of nonminority farmers has also dramatically declined, although at a slower rate. Many farmers have voluntarily chosen other pursuits. For some, however, especially minority and limited-resource farmers and ranchers, the loss of their land has been involuntary. Many of these farmers and ranchers believe that USDA has been in part responsible for their losses.

These farmers blame USDA's program delivery system, with its wide-ranging and relatively autonomous local delivery structure. They charge that USDA has long tolerated discrimination in the distribution of program benefits and misuse of power to influence land ownership and farm profitability. They blame farm program regulations that—intentionally or not—shut out minority and limited-resource farmers and ranchers from the benefits of the programs that have helped larger nonminority producers survive the changes in agriculture in the last 50 years. And they blame USDA's insensitivity to the differing needs of minority and limited-resource customers and neglect of its responsibility to reach out and serve all who need USDA's assistance.



Farm advocates compared minority farmers to "endangered species." "We keep up with endangered species of animals," one said. "And I guess what we're saying is that black farmers, people-of-color farmers in this country... deserve the kind of registry, the kind of list so that we could preserve those farmers." They called on USDA to establish a voluntary registry of minority land owners, through the Farm Service Agency, that would establish a baseline of land ownership by people of color. They challenged USDA to target its various programs to ensure that the baseline level of ownership by these farmers is sustained, and progressively increased.



A Common Theme:
By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer has not been able to plant...profit is then reduced.

Socially Disadvantaged Customers Perceive USDA Is a Partner in Taking Their Land

Customers across the nation, but most particularly in the Southeast, echoed a common theme at the recent listening sessions. They pointed to discrimination in USDA programs by Farm Service Agency (FSA), formerly Agricultural Stabilization and Conservation Service (ASCS), and Farmers Home Administration (FmHA) county offices as the primary reason for their loss of land and farm income. Details varied from family to family, but the general outlines of the stories farmers told the CRAT remained constant:

> The minority or limited-resource farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office might claim to have no applications available and ask the farmer to return later. Upon returning, the farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversights in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced.





" ... Somewhere there should be reparations. It's good to know that you're saying we're not going to have foreclosures, but what are you going to do about those hundreds of thousands of acres of land that have been lost, hundreds of thousands of black farmers who have been put out of business because of the policies that were adverse to them?"

If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. The farmer then will have to sell the land or be foreclosed on to settle debts. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of that land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials.

The consequences of this scenario, repeated in all its varieties, and the hopes of those who have lost land through this process, were summarized by a participant at the listening session in Memphis, TN:

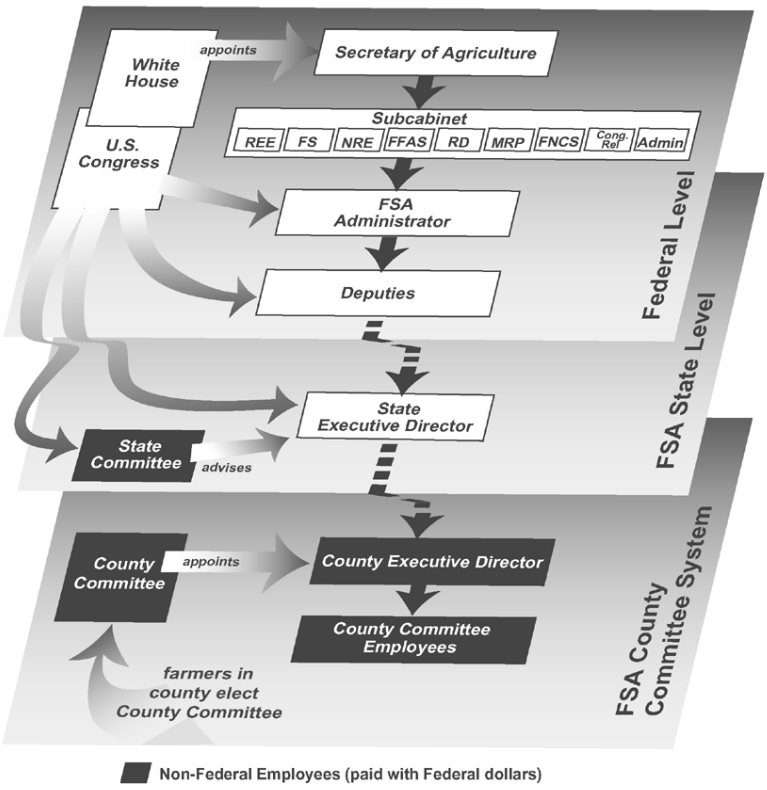
> " ... Somewhere there should be reparations. It's good to know that you're saying we're not going to have foreclosures, but what are you going to do about those hundreds of thousands of acres of land that have been lost, hundreds of thousands of black farmers who have been put out of business because of the policies that were adverse to them?"

Lack of Accountability Within the FFAS and Rural Development Mission Areas

Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services. At all levels of management in FSA, the Secretary must defer to interested outside constituencies in making appointments. Those appointed to management positions then retain a degree of autonomy in their management decisions because of their connection to influential constituencies outside of USDA. A similar situation exists within the Rural Development Mission Area.

The problem of autonomy from the Departmental chain of command is amplified at the State and local levels of FSA program delivery and at the State level in Rural Development program delivery. State committees and State executive directors in FSA and State directors in Rural Development, although appointed by the Secretary and charged with carrying out the policies of USDA, owe some loyalty to those supporters who nominated them for appointment and retain some autonomy from the Secretary's authority by the strength of that outside support.

USDA Reporting Lines and Personnel—from Headquarters to FSA County Committee Level





At the county level, local farmers and ranchers elect 3- to 5-member committees to oversee FSA programs locally. These committees hire a county executive director, who hires a county office staff. The county executive director is accountable to the county committee and supervises the county committee staff. Neither the county executive director nor the county committee staff are Federal employees, although they are paid through Federal funds appropriated to operate FSA programs. County office employees are officially responsible for implementing the policies of USDA and can be removed, as can State executive directors and county and State committee members, for failing to do so. In practice, however, that is rare.

As in most large organizations, FSA draws on its local and State staffs to fill positions at higher levels in the organization. Since county executive directors and employees owe their positions and allegiances to people, and sometimes political parties, other than the Secretary, it is more difficult to hold people accountable and remove employees who do not follow the Secretary's policies. This appears to be particularly true at the local level, where employees tend to be influenced by the values of their local communities and county committees rather than by standard policies promulgated at the national level. Farmers at the recent listening sessions described it as a system where management and program staffs at the State and local levels are relatively free to use their program authority and insider information to benefit themselves, their friends, and their families.

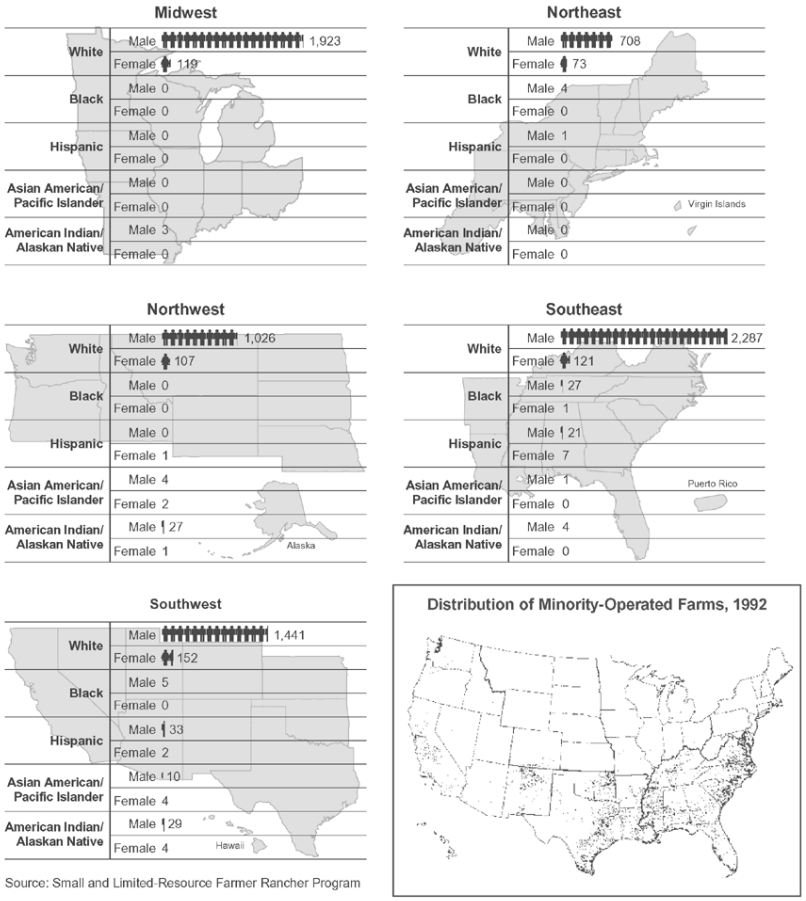
Lack of Diversity Among County Committees and County Office Employees

Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversity in its program delivery structure. Federal EEO and Affirmative Employment laws and policies do not govern the FSA non-Federal workforce except by agency regulation. Consequently, the diversity of the non-Federal workforce is even less reflective of customers than the Federal program delivery workforce. In addition, the non-Federal employees within this county committee system are not covered by most Federal labor relations and labor standards protections. They can be fired at the discretion of the county executive director.

A recent GAO study indicated that in the 101 counties with the largest concentration of minority farmers, one-quarter had no minority employees in their offices. In those offices that did employ minorities, most were program assistants, although one-quarter of the offices had minority county executive directors.

Perhaps the lack of diversity that minority and limited-resource customers deem to be most critical, however—and this was confirmed by comments in the recent listening sessions—is the lack of minority and female representation on the county committees which can affect access to FSA programs. Proportionate under-representation has been a particular problem in the

FSA County Committee Members by Race, Sex, and Ethnicity, 1996



Source: Small and Limited Resource Farmer Rancher Program

Distribution of Minority-Operated Farms, 1992







Southeast and Southwest, but it is a problem throughout the Nation.

In 1994, 94 percent of all county committees had no female or minority representation. Minority producers were 4.7 percent of eligible voters, but held only 2.9 percent of county committee seats. Women were 28.8 percent of eligible voters, but held only 1.5 percent of county committee seats. GAO found that in 1995, only 36 of the 101 counties with the largest concentration of minority farmers had a least 1 minority county committee member. Representation has improved slightly for women in the last few years, reaching 7 percent in 1997, but remains variable and disproportionately low, at 2.3 percent in 1997, for minorities.

Legislation passed by Congress in 1994 to reorganize the USDA requires that the county committees be representative of the agricultural producers in the county or multi-county area. In counties with relatively high concentrations of minority farmers without elected minority county committee members, FSA has required appointment of minority advisors to increase the awareness of and participation of minorities in FSA programs, including elections. Minority advisors are also intended to ensure that minority group problems and viewpoints are fully understood and considered in all FSA actions.

However, both FSA and minority and limited-resource farmers and ranchers recognize that the minority advisor system does not work. Without representation that has equal voting status on the county or area committees, the interests of minorities and limited-resource farmers and ranchers will not carry any weight.

Disparities in the Treatment of Minorities in FSA Programs

Minority and limited-resource customers stated repeatedly in the recent listening sessions that their participation in FSA programs has been blocked by discriminatory county office staffs. If they do succeed in receiving services, their participation is often restricted by delays and lack of support.

Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Service (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities.

The GAO found that between October 1, 1994, and March 31, 1996, 33 percent of minority applications but only 27 percent of nonminority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of nonminority loans in the direct loan program were disapproved.

Approval rates for the FSA direct and guaranteed loan programs in 1995 and 1996 varied by region and by State and showed no consistent picture of disparity between minority and nonminority rates. Some States showed fairly wide ranges, however. For example, only 67 percent of African-American loans were approved in Louisiana, compared to 83 percent of nonminority loans. Alabama showed a similar disparity—only 78 percent of African-American loans approved, compared to 90 percent of nonminority loans.

Loan processing rates for the FSA direct and guaranteed loan programs also varied widely in 1995 and 1996 and again showed no consistent picture of disparity between minority and nonminority rates. Again, however, some States showed consistently longer processing times for minorities. In the Southeast, for example, in several States it took three times as long on average to process African-American loan applications as it did nonminority applications. Similar disparities between nonminority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region.

These reports suggest that the disparity in participation and treatment of nonminority and minority farmers may be partially accounted for by the smaller average size of minority- and female-operated farms, their lower average crop yields, and their greater likelihood not to plant program crops, as well as less sophisticated technology, insufficient collateral, poor cash flow, and poor credit ratings.



LONGER LOAN PROCESSING

In several Southeastern States, it took three times as long on average to process African-American loan applications as it did nonminority applications.



However, representatives of minority and female farm groups point out that previous discrimination in USDA programs has helped to produce these very conditions now used to explain disparate treatment.

Opportunities for Relief Neglected



A program exists that could be more widely used to help with debt relief for minority and limited-resource farmers. The conservation contract debt reduction program, familiarly called "Debt for Nature," reduces a landowner's debt in return for placing a portion of the land under contract as a conservation easement for a specified length of time, usually about 50 years. Use of the program would allow minority or limited-resource farmers to retain ownership of their land and continue farming on a large enough portion to remain profitable, while contributing to the conservation of highly erodible land, wetlands, endangered species habitats, and other fragile lands.

However, because these contracts are considered debt write-downs, their use disqualifies the landowner from further FSA loans. A change in legislation to end that prohibition would make "Debt for Nature" contracts more helpful to minority and limited-resource customers and would increase benefits to fragile ecosystems.

Farmers Find Little Relief in USDA Complaint Processes

Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where,



The D. J. Miller report of 1996 found anecdotal evidence suggesting that minorities and females use the appeals process less. This is primarily due to discomfort with and lack of confidence in the decision makers; slowness of the appeals process; lack of knowledge of appeals rules and regulations; and the time-consuming bureaucracy of the appeals process.

even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the toll these ongoing battles with USDA has taken on their families, and on their health.

When USDA denies a loan, payment, or any other benefit, the customer almost always has appeal rights. Agency appeals processes vary but, typically, an appeal goes to a higher level agency official in the county, State, or region, and then to the agency's national office or to the Department. Until 1995, FmHA and ASCS (now FSA) appeals processes were handled entirely within the agency. If the customer did not agree with the national decision, the only appeal was to the courts.

However, many farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply "not enforced." Farmers also mentioned the backlog and length of time needed to appeal, and the lack of timely communication to inform them of the status of their cases.

The D. J. Miller report of 1996 noted that this system was not beneficial to minority farmers. It found that "the statistical evidence shows that minority and female farmers do not file appeals of FSA decisions in proportion to their share of producers" and that "anecdotal evidence suggests that minorities and females utilize the appeals process less primarily due to discomfort with and lack of confidence in the decision makers; slowness of the appeals process; and lack of knowledge of appeals rules and regulations; and the time-consuming bureaucracy of the appeals process." For those minority farmers who did use this system, the Miller report did not find a statistically significant difference between the outcomes of appeals between white male and female and minority farmers.

A new, independent, National Appeals Division (NAD) was established by USDA in 1994. The director of NAD reports directly to the Secretary. Any customer may appeal to NAD after going through at least one stage of appeal within the agency.

Testimony at the listening sessions and written comments submitted questioned the integrity of the new NAD appeals system. The principal complaint was that after a NAD hearing officer overturns an agency decision in favor of the farmer, the agency, usually FSA, appeals to NAD's Director to reverse the hearing officer's decision and rule against the farmer. Questions were raised about the influence of OGC and the Justice Department over NAD. One speaker said that farmers' civil rights have been violated when the appeals system has not respected the bankruptcy laws. Also, based on a meeting with OGC, it appears that NAD's appeals process is not coordinated with the Department's program discrimination complaints process.

However, one farm advocate at the Halifax, NC, listening session stated that according to information he received through the Freedom of



Information Act (FOIA), "when hearing officers rule for the agencies, they were competent [upheld] 98 percent of the time, but when they ruled for the farmer, these same hearing officers were incompetent [reversed] over 50 percent of the time.... This is indisputable evidence of bias and discrimination against a whole class of farmers...."

NAD does not process complaints which allege discrimination. When they believe they have been denied service because of discrimination, as hundreds of farmers told the CRAT, farmers can file discrimination complaints directly with the agencies they believe have discriminated, or with the Department. Many described this approach as "the fox guarding the hen house."

Program discrimination complaints generally fall within two categories: (1) programs conducted directly by a USDA agency, such as USDA loan programs, and (2) federally assisted programs, where USDA does not directly offer services to customers, but recipients of USDA funds do. The recipients must obey civil rights laws, and USDA can be sued under such laws as Title VI, the Rehabilitation Act, Title IX, the Equal Credit Opportunity Act, and others.

CRAT members were informed by OGC that USDA presently has no published regulations with clear guidance on the process or timelines involved in program discrimination complaints. When a farmer does allege discrimination, "preliminary investigations" are typically conducted by the agency that has been charged with violating her or his rights.

Also, farmers charged that while complaints are working their way through the agency, USDA proceeds with farm foreclosures—even where discrimination may have contributed to the farmers' plight. This sentiment was expressed by a farmer in Albany, GA, who said, "I felt like that if I enter a complaint, then that would just speed up (the) foreclosure process on me. And I didn't want to do that, because some farmers, they already have complaints in with Farmers Home. And it didn't do them any good."

Some charged that USDA doesn't respond even when they do file complaints. In Tulsa, OK, an advocate representing black and American Indian farmers said, "we have filed 72 civil rights complaints. Not one complaint has ever been answered."

At the Memphis, TN, listening session, a farmer who filed a complaint against FSA 11 months ago complained, "I have not, I cannot get, anyone to talk to me about the status of this discrimination complaint. I called the office and they tell me don't call back...that they have arthritis and that they don't want to talk. They've got other things to do. I'd just like to know what I can do to find out the status of this complaint that I've filed."

The CRAT was unable to gather historical data on program discrimination complaints at USDA because record keeping on these matters has been virtually nonexistent. Complaints filed with the agencies are not necessarily reported to USDA's Civil Rights office.

Some figures are available, however, for cases that were open as of December 31, 1996. The largest number of pending discrimination complaints, as comments at the listening sessions suggest, are concentrated in

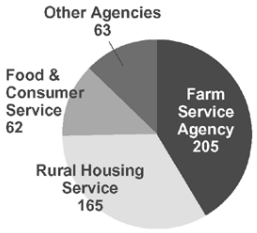


Richard E. Rominger, Deputy Secretary of Agriculture, at a listening session.

three agencies at USDA. There were 205 cases pending, representing 42 percent of the total, against the FSA; 165, or 33.3 percent against the Rural Housing Service (RHS); and 62, or 12.5 percent, against the Food and Consumer Service. Sixty-three cases, or 12.7 percent of the total, were pending against other agencies. The Department had a total of 495 pending program discrimination complaints. Approximately one-half of the pending cases are 2 years old or older, verifying farmers' contention that complaints are being processed slowly, if at all.

According to the Complaints Processing Division at the Office of Operations (OO), which processes complaints that make it to the Department level, USDA averages about 200 new program discrimination complaints each year. However, in fiscal year 1996, an average of only 9 cases were closed per month, or 108 during the year—increasing a backlog of program complaints.

Number of Pending Program Discrimination Complaints at USDA



Source: USDA Office of Operations

Program Rules Reduce Minority and Limited-Resource Customer Participation

In some cases, the CRAT found that program rule changes, either required by Congress in legislation or developed through the rule-making process, have the effect of disqualifying many minority and disadvantaged farmers from participating in USDA programs, or significantly reducing benefits they may receive. Most of these arise from lack of communication by responsible agencies with the minority and limited-resource communities.

A recent example of one such congressionally mandated rule change includes the abrupt end to the Lease Back/Buy Back option for farmers who had been unable to repay FSA loans. A number of farmers who had entered

into such agreements were unable to exercise their option to buy back their land because of inadequate program funding in the 3 years preceding the rule change. Because the rule change ended the program altogether, without protection of existing options, many minority and limited-resource farmers have lost this opportunity to repurchase their land.

Another example is the prohibition instituted in 1996 against continued lending to farmers who had received a debt write-down or whose farms were pending liquidation. Many minority and small farmers have limited access to sources of credit outside USDA. Without eligibility for FSA operating loans, these farmers are unable to continue farming and are likely to lose their land even without formal foreclosure.





Other agencies, including RHS and the Natural Resources Conservation Service (NRCS), require particular practices or qualifications for loans that are difficult for limited-resource customers to meet. Until USDA agencies review their rules to identify and eliminate regulations that discriminate against socially disadvantaged customers, they will not achieve the goal of equitable treatment for all customers.

Improved Outreach Would Improve Program Participation

Lack of diversity in the FSA county office delivery system directly affects participation of minority and female producers in USDA programs. Underrepresentation of minorities on county committees and on county staffs means minority and female producers hear less about programs and have a more difficult time participating in USDA programs because they lack specific information on available services.

However, outreach efforts have failed on a much broader front than just the county committee system in FSA. USDA does not place a priority on serving the needs of small and limited-resource farmers and has not supported any coordinated effort to address this problem. The many mission areas and agencies within the Department have developed their own separate programs that may or may not be successful in responding to the real differences in scale and culture presented by minority and limited-resource customers.

Minority and limited-resource farmers and ranchers reported they are not receiving the technical assistance they require. They said they are not receiving basic information about programs for which they might be eligible. They are not being helped to complete complicated application forms. They are not being helped to understand and meet eligibility requirements for programs. They are not receiving information about how their applications are handled and, if they are denied participation, why they were denied and how they might succeed in the future. When they do receive loans or other program benefits, they are not being helped to use those benefits most effectively to improve their operations.

Some outreach efforts, like the consolidated Service Center approach to



providing comprehensive services to USDA customers, have created new barriers. Their locations have not considered the needs of minority and limited-resource customers who may have difficulty in reaching more distant centers than customers with greater resources. Their services have not provided for cultural and language differences that make USDA programs inaccessible or less relevant to minority customer needs. And their services have failed to recognize the different needs of small-scale enterprises, be they farms, businesses, communities, or families.

Cultural Insensitivity Interferes with Minority Participation

USDA program outreach efforts have not made sufficient use of partnerships with community-based organizations, land-grant and other educational institutions, and program diversity initiatives that understand the specific needs of minority and limited-resource customers. These organizations and institutions can help USDA agencies address discriminatory program rules, develop appropriate special programs, and target outreach in the most effective ways to reach minority communities and other groups with special needs.

Customers at the recent listening sessions reiterated the special needs of different minority and socially disadvantaged communities. All communities agreed that they are overlooked when information is released about available USDA programs. USDA agencies do not make use of minority community organizational and media outlets to be sure all eligible participants know about their programs. Cultural barriers prevent the communication necessary for good service by USDA programs.

All communities also agreed that minority youth are being discouraged from becoming farmers. They witness the struggles of their parents to obtain fair treatment and the poor return for their efforts. Listening session participants said young minorities are not recruited for USDA youth programs in sufficient number. And those few who do choose to try to farm are turned down for ownership and operating loans because they are too young or too inexperienced, even when they hold college degrees in agriculture.

Young men and women who want to follow in the family footsteps, either by taking over the family farm or by buying their own, oftentimes find it difficult to obtain financing for their ventures. According to several speakers at the listening sessions, FSA has denied loans to new or beginning farmers despite years of working on their family farm or receiving advanced degrees in agriculture.

A farmer at the Halifax, NC, session said that in 1994, his son received a letter from FmHA which said, "You lack sufficient training and experience and education to be successful in farming to assure reasonable re-payment for the loan requested." His son, who grew up on a 300-acre family farm, was a graduate of A&T State University with a major in agricultural education. Since his son had inherited land and equipment from his grandfather, all he needed was operating money. This speaker mentioned an FmHA pamphlet

for young farmers which says "You're interested in being a young farmer, then FmHA wants to help." As the speaker said, "Where is the help?"

A special case exists among American Indians on Tribal lands. USDA programs have not addressed their special status as sovereign nations and have not accommodated the special needs of their ownership of land in trust. The county delivery system ignores the political boundaries of Tribal governments. Lack of cooperation between the Department of the Interior, with responsibility for Indian affairs, and the USDA, with its responsibilities for agricultural, rural, and food and nutrition programs, interferes with delivery of needed services to American Indians. Program rules specifying particular forms of land ownership for eligibility prevent American Indians from access to assistance they need to develop their agriculture and conserve their land.

Hispanic and Asian-American farming communities expressed concern that cultural differences in approaches to farming, in family and community traditions, in language, even in diet, are not being considered in the ways USDA delivers its programs. They express a perception that USDA has begun to recognize the shortcomings in its outreach to African-American and American Indian customers, but that it has yet to even identify that there is an unmet need in the Hispanic and Asian-American communities.

One of the most neglected customer communities, with few representatives at the listening sessions, was the farmworker community. According to this group, USDA has almost completely failed to acknowledge its responsibilities for addressing the needs of this community of agricultural workers.



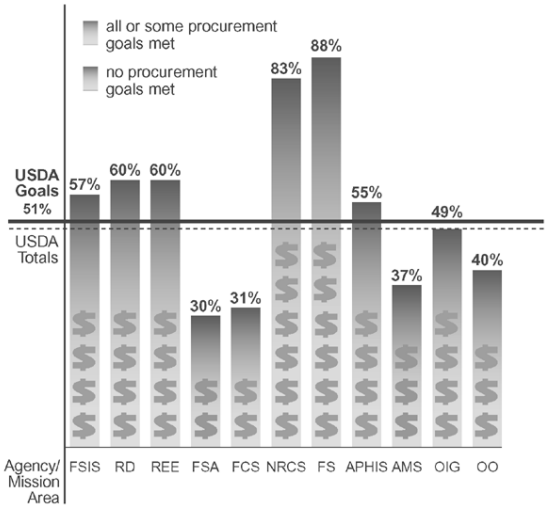
Research and Education Needs of Minority, Small-Scale, and Limited-Resource Farmers and Ranchers Have Been Neglected

Beyond direct assistance programs, USDA research and extension efforts are not adequately addressing the unique needs of small, limited-resource, and minority farmers and ranchers. These include the need for intensive enterprises, appropriate technological practices, value-added products, management and marketing strategies, and the systematized of these into profitable operations.

Funding for the 1890 and 1994 land-grant institutions has not been adequate. Speakers at the Belzoni, MS, listening session said that the "disparate funding" between the State's 1890 and 1862 institutions by USDA has also contributed to the problems facing minority farmers in the State. Funds for 1890 and 1994 institutions should be directly appropriated in proportion to the number of minority farmers in the State. At the Washington, DC, session, the Secretary was asked to act on a proposal submitted several weeks ago to create partnerships with institutions serving Asian-Pacific Americans.

Also, the lack of representation of small, limited-resource, and minority farmers and ranchers on many research and education advisory boards has reduced the responsiveness of research and education programs to the specific needs of these under-represented groups. Minority customers are also more

USDA Small and Disadvantaged Business Procurement Accomplishments FY96
(in % of total $)



Source: OSDBU

likely to participate in research and education programs if at least some of those delivering the programs and on the advisory committees are of the same race, sex, and ethnicity.

Including Small Businesses in USDA Programs

Outreach efforts to expand contracting for goods and services to support USDA agencies have also been a source of complaints. Minorities, women, and other under-represented groups say that USDA agencies favor nonminority contractors for general operating goods and services.

USDA set procurement goals in fiscal year 1996 for all small businesses, and within that category for small disadvantaged businesses participating in the Small Business Administration (SBA) 8(a) program, for other minority-owned small disadvantaged businesses, and for women-owned businesses. Although

the Department met its goal only for 8(a) participant businesses, it came close to the goals in several other categories. Accomplishment by mission area and agency, however, varied widely, from a high of exceeding all USDA small and disadvantaged business procurement goals in the Natural Resources Conservation Service and Forest Service to a low of meeting none of those goals in the Farm Service Agency and the Agricultural Marketing Service.

Along the same lines, the Foreign Agricultural Service (FAS) operates an Export Promotions Program that assists U.S. agriculture and food-related businesses in reaching overseas markets. Minorities have not been well-represented, either among employees or among cooperating businesses. FAS also has not focused much attention on developing markets in African nations, countries in which many African-American businesses are interested.

Current Funding Priorities Are Inadequate To Address the Needs of Minority and Limited-Resource Customers

All of these voids in USDA's program delivery are exacerbated by the increasing shortage of funds available for program delivery. Yet shortage of funds is no excuse for inaction. USDA has not dedicated enough of its available funding to serving the needs of minority and limited-resource customers. Both increased funding and a retargeting of already available funds are necessary to address the Department's failures in responding to the needs of these underserved customers.



Conclusions

Clearly, USDA has not effectively protected, supported, or promoted small and limited-resource farmers and ranchers and other underserved customers. Not only have they often not been served at all, but in many cases the service has appeared to be detrimental to the survival of minority and limited-resource farmers. The recent Civil Rights listening sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK, observed that minority farmers are not sure which condition "was worse—being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses."

Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some kind of compensation for their losses.

Because of the traditional selection process for employees and management within the FSA program delivery system, State and county committees and



their staffs have not been held accountable for carrying out USDA nondiscrimination policies. The non-Federal status of county employees allows for less diversity and accountability to the Departmental civil rights policies. Under-representation of socially disadvantaged groups on State and county committees and in the county offices contributes to mistrust of the Department. The Rural Development mission area faces similar charges of discriminatory delivery of programs and lack of accountability of its State directors.

The process for resolving program complaints has failed. Minority and limited-resource customers believe USDA has not acted in good faith on the complaints. Appeals are too often delayed and for too long. Favorable decisions are too often reversed.

Some problems of inequitable delivery of services stem from program rules and legislation that—intentionally or not—have the effect of disqualifying limited-resource customers from USDA programs. Eligibility requirements limit the participation of limited-resource customers while complicated forms and program regulations discourage participation.

Poor outreach efforts are central to the USDA's failure to meet the program needs of minority, small-scale, and limited-resource farmers. USDA Service Centers are not well located to serve socially disadvantaged customers and are not always accessible to the disabled. County offices and Service Center staffs do not provide the necessary assistance to socially disadvantaged customers in understanding regulations and completing complicated applications.

USDA agencies have also failed to establish working relationships with community-based organizations and educational institutions that could help communicate USDA programs to underserved communities. As a consequence, cultural and language differences that interfere with minority participation in USDA programs have not been addressed sufficiently.

The special needs of small-scale and limited-resource enterprises have also not been addressed, either in the area of technological improvements and alternative enterprises, or in the area of marketing. USDA has also failed to consistently meet its goals for increasing procurement from small and disadvantaged businesses.

Limited funding cannot be an excuse for inadequate targeting of funds to minority and limited-resource customers. However, increased funding, as well as improved targeting, would do much to improve minority and limited-resource customer participation in USDA programs and to demonstrate the Department's commitment to serving their needs.

Workforce Diversity and Employment Practices



Background

Many of the problems in USDA's program delivery system are related to the level of diversity in the Department's workforce. USDA customers at listening sessions expressed their concern about diversity, or rather the lack of it, in USDA service centers. Minority farmers in particular said that because the workforces in many county offices are not diverse, they are often forced to deal with employees who not only did not understand their needs and concerns, but who blatantly discriminate against them.

Although women, minorities, and persons with disabilities have made gains over the past decade, the CRAT found that these groups continue to be underrepresented in many USDA agencies. This includes, significantly, the offices of the Secretary and the Subcabinet, which according to many managers and employees set examples for the rest of USDA.

How the CRAT Defines Workforce Diversity

Workforce diversity is an integral part of USDA's mission. The CRAT believes that, fundamentally, workforce diversity is an effort to improve the way all employees work together to accomplish USDA's missions. It means making every effort to find and use the rich human talent and diversity of the Nation. More than just an idea and a goal, it is a way of looking at ourselves and each other; an openness to difference and innovation; a realization that, as Secretary Glickman has said, America's strength is in our differences.



Workforce diversity is also a commitment to provide training and career development opportunities to all USDA employees, so that their potential is fully used. It's what the "People's Department" is, or should be, all about—fair and equal treatment for all USDA employees and customers. Where diversity is valued as a source of strength, employees of differing race, color, age, sex, sexual orientation, national origin, religion, marital status and people with disabilities are allowed to contribute effectively at all levels of USDA; employees are given an opportunity to develop, advance, and contribute to the USDA mission; managers at all levels understand, embrace, and effectively use the diverse values, beliefs, and behavior of USDA's employees.

Workforce diversity is not giving preferential treatment in violation of merit system principles. It is not denying opportunity to one group to hire, train, or promote another group; and it is not a quota program, which is neither legal nor advocated.

Minority and Women Under-Represented in USDA's Workforce

According to the U.S. Department of Labor, between 1990 and 2000, women, minorities, and immigrants will account for 80 percent of the United States labor force growth. The "Framework for Change: Work Force Diversity and Delivery of Programs," a USDA report released in 1990, found that USDA had a need to remedy under-representation in its workforce by providing equal employment and promotion opportunities for all employees. When this statement was made, USDA ranked 52nd out of 56 Federal agencies in the employment of minorities, women, and individuals with disabilities.

In 1990, USDA established a goal to build a diverse workforce that approximates the Nation's labor force at entry, mid, senior, and executive levels and to ensure that the workforce would deliver programs in an efficient, effective, and fair manner by 2000. The 1995 GAO report cited earlier noted that while women and minorities at USDA had made progress in their relative levels of representation since 1984, compared with white men, they were still represented in lower relative numbers in the agencies' key job categories. In general, the relative numbers of white women and minorities in the SES ranks of USDA has increased since 1984. However, white men continued to dominate the higher ranks of USDA's top positions in 1996.

These statistics, however, do not tell the whole story. An analysis of USDA's workforce by Professional, Administrative, Technical, Clerical, Other, and Blue Collar (PATCOB) series shows that men continue to dominate the professional ranks in USDA, accounting for over 77 percent of the 28,101 professional positions. White men in particular account for 18,678 or 66 percent of all professional positions in USDA. Women continue to hold the majority of the 7,057 clerical positions in USDA, filling 92 percent of those positions.

While a few USDA agencies have made great strides in diversifying their workforce at all levels, most continue to lag far behind in providing the same levels of diversity in their professional, mid-, and senior-level positions. (See



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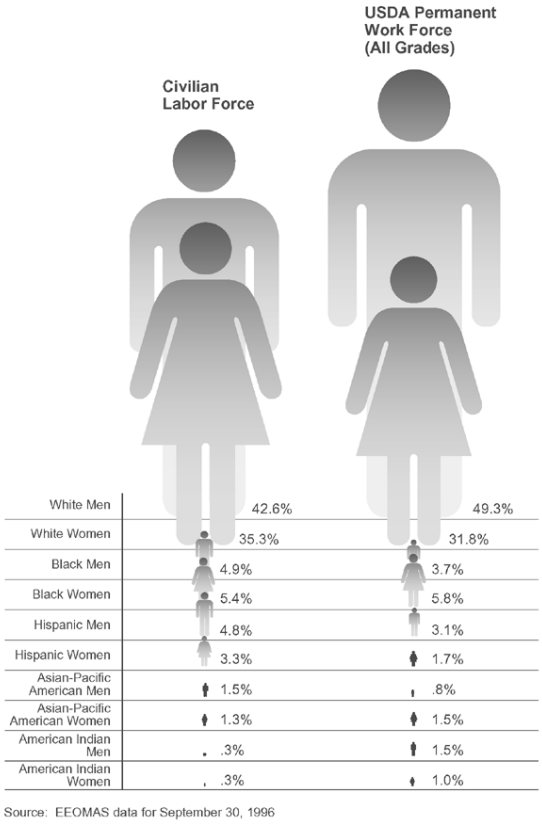
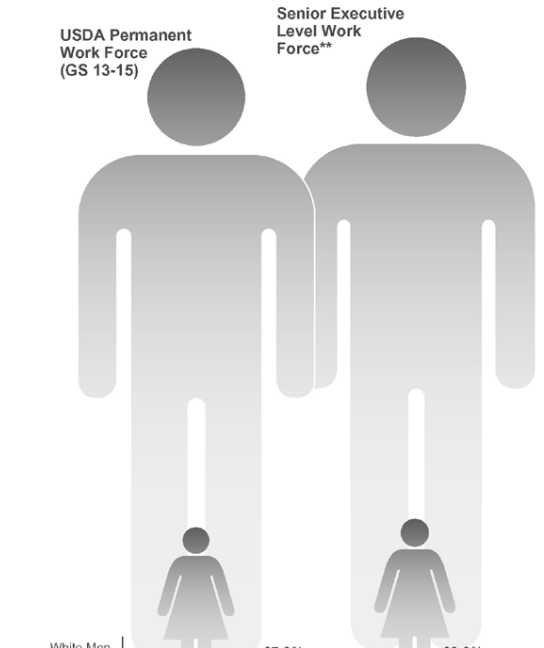
Members of the Civil Rights Action Team at a listening session.

USDA Work Force Compared to Civilian Labor Force in 1996



Source: EEOMAS data for September 30, 1996



	USDA Permanent Work Force (GS 13-15)	Senior Executive Level Work Force**
White Men	67.9%	68.0%
White Women	17.9%	19.0%
Black Men	4.0%	7.8%
Black Women	3.9%	2.6%
Hispanic Men	2.0%	1.3%
Hispanic Women	.6%	.3%
Asian-Pacific American Men	2.1%	.8%
Asian-Pacific American Women	.6%	0%
American Indian Men	.8%	0%
American Indian Women	.2%	.3%

**Presidential appointees, career and non-career SES positions, senior level positions, scientific and technical positions, and USDA judges. Does not include senior foreign service positions.



the agency workforce profiles in Appendix C for detailed information on USDA employment statistics.)

According to data from the Equal Employment Opportunity Monitoring and Analysis System (EEOMAS), relative to the Civilian Labor Force, Hispanics are the most under-represented minority group in USDA, followed by Asian-Pacific Americans. Hispanics, who are not well represented at any grade level, are the fastest growing minority group; many estimate that they will be the largest minority group by 2012. American Indians have been able to achieve and exceed parity in USDA overall, but are under-represented in some regions and grade levels.

Employee Perceptions of Workforce Diversity at USDA

Statistics tell only a small part of the story. Workforce diversity is about how well USDA treats, values, and taps the potential of everyone in its workforce. By that measure, according to employees who spoke at CRAT listening sessions, USDA is not very diverse at all.

Statistics alone do not explain why USDA's workforce looks as it does, or what has and has not been done by USDA managers to help or hinder diversity. At listening sessions at USDA's National Finance Center (NFC) in New Orleans, at Woodland, CA, and at the Jefferson Auditorium in Washington, DC, minority, female, and employees with disabilities told the CRAT that they face a different set of standards when trying to advance in their careers at USDA.

Many contend that personnel rules, regulations, and policies are applied

differently for women and minority employees. Black employees, many with college degrees, said they were turned down for technician positions or even many entry-level positions, because they do not qualify. They spoke about the inability of black employees, even those with prior government experience, to be converted to permanent positions. One employee who applied for an accounting technician job said he was told that his hands were too large to use an adding machine.

Minority and female employees told of being unfairly denied promotions, permanent positions, developmental assignments, training, and awards, and they spoke of having their positions downgraded and eliminated. They said managers often detail "favored" employees into vacant positions prior to advertising those positions. This practice gives the detailed employees valuable experience in the job, which strengthens their resumés and often guarantees their eventual selection. Such "pre-selection" tactics are problems at all grade levels, including SES positions, minority and female employees said.



Female employees at some of the listening sessions said that those who refused to engage in sexual relationships with their supervisors often were denied promotions and/or transfers. In some instances, careers were "destroyed and the work situation turned violent."

There is a perception that the Forest Service is using its "surplus list" to retaliate against employees who filed complaints. The surplus list, officially called the Forest Service's Employee Placement Service, is used to identify positions that will be reduced, eliminated, or moved in response to budget cutbacks.

Because they represent only a small portion of USDA's workforce, Asian-Pacific American employees said they "feel invisible." Despite their specialized degrees or educational achievements, many Asian-Pacific American employees at NFC said that they have a hard time getting promoted. In addition to a "glass ceiling," they believe there is a "sticky floor" for them because none can rise above the GS-12 level. Others said that managers used employees' accents as excuses to hold them back.

As noted earlier, many USDA employees described what they called "hostile work environments." Other employees, particularly at the NFC, contended that nepotism and favoritism were widespread throughout their agency. They said that promotions were given to employees who were friendly with or related to managers.

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A Forest Service employee at the New Orleans listening session compared the situation to someone who has cancer, adding that if the cancer is ignored, it destroys everything around it, and "eventually destroys its host, the very thing that is essential to its livelihood." While NFC and the Forest Service are cited in these examples, these recurring themes can be applied to other USDA agencies as well.

The CRAT also heard from employees with disabilities. Approximately 1,142 employees (1.2 percent) in USDA have indicated that they have a targeted disability. Targeted disabilities are 29 specified severe disabilities. At employee listening sessions, individuals with disabilities said that even though



they are competent in their skills and abilities, they often cannot carry out and complete assignments because they lack adaptable equipment for the hearing- or visually-impaired. Many times, USDA agencies also fail to provide material in the necessary format, such as Braille or closed-captioning.

At the Washington, DC, listening session, a Forest Service employee described the frustration of many disabled USDA employees regarding the lack of special accommodations, which they need to fully participate in meetings and listening sessions. She said that while EEOC Management Directive 712 clearly provides avenues to enable employees with targeted disabilities to be promoted and to receive training, approximately 70 percent of those with disabilities in the Forest Service are in GS-7 or below positions. The employee said, "While persons with targeted disabilities represent 7 percent of the Civilian Labor Force [CLF], they only represent 1.28 percent [394 employees] of the workforce at the Forest Service." The CRAT has not been able to verify the CLF numbers for persons with targeted disabilities. (Table 1 provides information on the number of employees with targeted disabilities in USDA.)

The CRAT found that USDA has not taken advantage of the existing Federal programs available to help agencies in recruiting and hiring employees with disabilities. The Workforce Recruitment Program for College Students with Disabilities is one recruitment source; however, in 1996 USDA hired only three students under that program.

Employees at all of the listening sessions told of harassment or reprisals after they had filed complaints or come to the defense of co-workers. They complained that their supervisors suffered no consequences, even after having been found guilty of committing various offenses. In some instances, these supervisors were promoted and their careers advanced with no ill effects. One employee told of a manager with four findings of reprisal against him who recently received a temporary assignment as acting head of a regional office. Fear of reprisal or harassment has kept some employees with legitimate complaints or concerns from speaking out. Several employees at the listening sessions said that they hesitated to come forward for fear of reprisal and that this fear kept other employees from speaking out.

Two speakers at the Washington, DC, employee listening session identified themselves as members of the USDA Gay, Lesbian, and Bisexual Employees Organization (GLOBE) and both spoke of the hostility and ridicule they have experienced from others when they disclosed their sexual orientation. An employee at the Woodland, CA, session said that for 22 years, from the signing of Executive Order 10450 by then-President Dwight Eisenhower branding homosexuals as perverts and excluding them from the Federal civil service, to a 1975 Civil Service Commission memorandum which declared such discrimination a prohibited personnel practice, it was impossible to serve one's country as an openly gay or lesbian Federal employee. Despite this policy change, many gay and lesbian Federal employees remained in the closet because of the discrimination experienced by others who were open about their sexual orientation. As this employee said, "it takes an enormous amount

Table 1: USDA Employees with Targeted Disabilities

Position Levels	Number	Percent
SES	2	0.5
GS 13-15	87	0.7
GS 9-12	369	0.9
GS 1-8	639	1.9
Wage Grade & Other	39	2.0

of energy to maintain a cover 24 hours a day. Sadly, for many employees the stress is too much and they spiral downwards into various forms of dysfunctional and self-destructive behavior."



The opportunity to participate in decision-making bodies provides important career developmental opportunities for minorities and women, whose perspectives also add to the quality of decisions that are made.

Past Recommendations on Workforce Diversity

These issues are not new. Several past reports and task forces have identified problems in workforce diversity as well as proposed solutions, but little has been done to implement those recommendations.

The Secretary's 1996 Blue Ribbon Task Force on Equal Opportunity and Diversity stressed the importance of having effective AEP's in place. Several of the recommendations of the Task Force which were adopted by Secretary Glickman concerned strengthening agencies' AEP's. The Secretary directed the Assistant Secretary for Administration to issue guidance on existing statutes and regulations for executing the AEP program; and each Subcabinet official was directed to issue a statement to her or his agency heads reiterating the need to comply with their submitted plan. The Assistant Secretary for Administration also was directed to issue an official semi-annual report on each agency's compliance with its AEP.

An effective AEP will ensure that USDA is taking the necessary actions to eliminate the under-representation of women, minorities, and persons with disabilities. The Blue Ribbon Task Force reiterated that the development and execution of AEP's must be carried out in a fashion that is consistent with the principles laid out by the Supreme Court in Adarand Construction v Pena. The goals and objectives described in AEP's cannot be transformed unconsciously into quotas.

The Task Force also advocated diversity on all USDA task forces, committees, and advisory groups. USDA is continually establishing task forces, committees, and advisory groups on a large variety of issues. These groups cover a wide range of activities, and provide important developmental opportunities for employees to advance their careers.

USDA has published a regulation requiring that USDA consider diversity as part of its appointments to external task forces, committees, or advisory groups. Secretary Glickman has also issued a policy statement regarding diversity on all internal task forces, committees, and advisory groups. Even so, several employees, including political appointees, told members of the CRAT that diversity is rarely the case, especially when decisions are being made about critical issues at the Departmental and agency level, such as the Fund for Rural America.

The opportunity to participate in decision-making bodies provides important career developmental opportunities for minorities and women, whose perspectives also add to the quality of decisions that are made.

The Secretary has directed the Assistant Secretary for Administration to establish a database containing information on the workforce makeup of each agency. Accurate data is essential, especially when the perception is that

Average Processing Time of Formal EEO Complaints 1992-1996



Source: USDA annual reports filed with EEOC

minorities and women are being adversely impacted by downsizing. (Unfortunately, the Department now has two databases—the EEOMAS and the DN714 databases—neither of which contains accurate data.) Based on the data available to the CRAT, downsizing has not had a negative impact on women and minorities. In fact, these groups have shown slight increases largely because many white males accepted incentives to retire.

The Report of the USDA Task Force on Sexual Orientation, dated January 31, 1994, included a list of recommendations which addressed the issue of sexual orientation. The USDA GLOBE provided the CRAT with a revised list of recommendations based on that report. These recommendations include providing training on the subjects of sexual orientation, homophobia, and nontraditional family structures; defining and publicizing the avenues of redress available to employees and program recipients who have been subjected to discrimination based on sexual orientation; and having the Department become an advocate for domestic partner benefits, and reintroduction of the Employment Non-Discrimination Act.

Employee Complaints

Because of USDA's lack of effective leadership in civil rights, employees who file EEO complaints have had to endure a truly dysfunctional system.

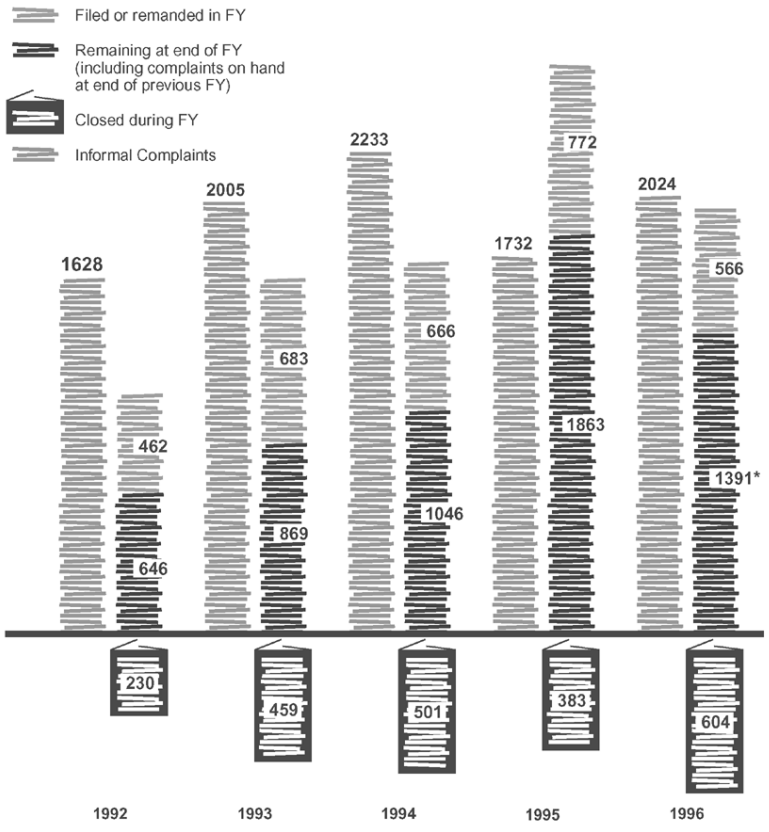
Under the EEO complaint process, employees who believe they have been discriminated against in the workplace must first contact a USDA EEO counselor. The counselors report to a central USDA civil rights office as a result of a 1994 reorganization. During the counseling stage, counselors tell employees about their EEO rights, and employees are encouraged to "informally resolve" the matter. If the matter is not resolved, then a "formal complaint" is filed with one of USDA's civil rights offices. The case must then be investigated before a decision is reached. Although there are legally established time limits, employees often don't hear anything about their cases for years.

One part of the problem is strictly the volume of complaints. USDA has figures on EEO complaints closed, opened, and pending during the last 5 years (see chart next page).

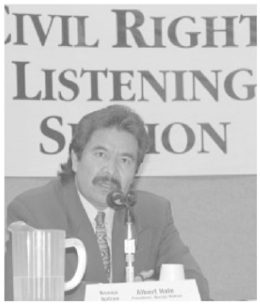
The numbers clearly show that, with the exception of a decrease in 1996 due to the reconciliation of data, complaints are being filed faster than the Civil Rights office can handle them. Between 1992 and 1996, USDA reported that complaints took anywhere from 1 to 3 years to close, either by settlement or decision. The listening sessions suggest that resolution may be taking much longer.

Employees at the listening sessions complained about the process and the lack of responsiveness on the part of USDA's Civil Rights office. An NFC employee who filed a complaint in 1992 said the only contact he ever received from USDA was in June 1996. Although the letter apologized for the delay and assured him he would receive prompt service, he said he has heard nothing further and his calls have gone unreturned.

Backlog of Formal EEO Complaints Filed Against USDA by Employees 1992-1996



*This figure is lower because 432 cases were closed due to a comprehensive audit (reconciliation of data).
Source: USDA annual reports filed with EEOC; Office of Operations



One woman said she had filed a complaint because she feared for her life, and 6 weeks later, received a form letter asking her to contact an EEO counselor. A Forest Service employee in California believes the EEO complaint process and the people running it are "an adversary toward the employee rather than what their job is supposed to be." Feeling they have nowhere else to turn, many employees have gone directly to the Secretary's office.

Another oft-expressed complaint about the EEO process is the failure of the civil rights staff to honor confidentiality. An employee in New Orleans charged that "by the time you get back to your desk, your supervisor and those who you are alleging these charges against know everything you have said."

Employees also echoed the theme that agencies, in particular the Forest Service, have not complied with the terms of settlement agreements or taken the corrective actions mandated by EEOC or other adjudicative bodies in their decisions. One employee said when she reported the non-compliance to USDA's compliance division, she was simply told to go to court.

A sentiment frequently voiced by employees and managers alike is that the EEO office and the Department are more concerned with settling complaints than with solving the real workplace problems. During the New Orleans listening session, several employees complained that they were pressured by EEO counselors not to go through with an EEO complaint. An employee relations specialist in Washington, DC, characterized the process as one of "giving out money in exchange for withdrawing a complaint." She added that while settling all complaints may be fine if the only concern is settlement rates, "legitimate issues of discrimination" become "lost in this process of settling." An EEO specialist at the Woodland session said: "It is more economical to resolve these issues, not to settle complaints, but to resolve the issues."

The focus on settlement is evident in the USDA "resolution model." The underlying premise of the model is that it is better for managers to resolve their own disputes than to have a judge do it for them. That model makes sense as far as it goes, but it uses a settlement "formula." Little attention is given to the human aspects of conflict, such as relationships and communication. As a result, USDA hasn't focused on uncovering and resolving the real problems in the workplace. So, while complaints may get "settled," issues are never "resolved" and new complaints are filed.

The fixation on settlement is perpetuated by the high volume of EEO complaints filed. A 1991 law that allows employees who prove discrimination to receive up to $300,000 in compensatory damages provides additional incentive for filing. An employee in New Orleans summed up the fear about those cases already in the system: "If they can't investigate one that's 4 years old, how long is it going to take one to surface that's filed now?"

The EEO system has left the perception that management is not held accountable for wrong doing. Many employees contend that when settlements are reached, managers who have discriminated go unpunished. Since most settlements are "no fault," there usually is no finding of discrimination, making discipline difficult. Between 1992 and 1996, there was an average of 22 findings of discrimination per year by USDA agencies in the EEO process.



The EEO system has left the perception that management is not held accountable for wrong doing.

The Department has tried new ways to deal with EEO complaints. In September 1993, the Department established the Dispute Resolution Boards (DRB) to require management to negotiate and settle complaints. The boards conduct mini-hearings at the beginning of the formal complaint phase, and then assess the case and attempt to work out a settlement.

A May 1994 study revealed that both employees and managers thought the boards were a step in the right direction. However, surveys and focus groups revealed that the boards were seen as formal, too late in the process, and concerned only with settlement. They did not deal with improving communications or identifying and solving problems. An individual at the Woodland, CA, listening session said five or six management officials attend board sessions while employees don't even know how the boards are supposed to work.

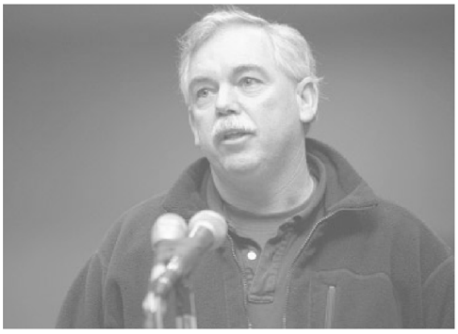
The boards have decreased their activities since FY 1994. For example, in the last quarter of FY 1996, four of the six service centers conducted only three DRB sessions combined. Even using the settlement standard by which effectiveness has been judged at USDA, the boards in one of the most active service centers settled 121 complaints in FY 1994, while the boards in all six service centers settled only 88 cases in FY 1996.

In 1994, USDA moved the counselors from the agencies to the Department's Civil Rights office to improve the effectiveness of the counselors. However, employees feel the counselors have actually been less effective and responsive since the move.

The fact that agencies settle a high percentage of EEO cases may suggest that many complaints do have merit. On the other hand, managers frequently maintain that their agencies settle regardless of merit and that they are "hung out to dry." Under the current system, where settlement is the focus, the question of whether discrimination has occurred or not is beside the point. In a 1996 study, the EEOC observed that while some EEO complaints may not







involve discrimination, Federal employees may choose the EEO route because they see "no other forum available to air general workplace concerns." Few USDA employees have an acceptable alternative route to address their workplace complaints.

Many recommendations have been made to improve the handling of workplace disputes. The May 1994 evaluation of the Dispute Resolution Boards recommended the Department move its focus away from settlement and toward resolving the underlying problems, even before an employee goes to an EEO counselor. On a similar note, the EEOC's 1996 report concluded that agencies could benefit from the use of an "interest based" approach to resolving workplace disputes, where emphasis is placed on finding areas of mutual agreement that address people's needs and concerns. A USDA employee focus group on EEO and civil rights recommended in July 1993 that USDA allow employees to prevail when an agency doesn't respond within the prescribed timeframes. And a 1996 report commissioned by the Administrative Conference of the United States found that the creation of "ombudsman" offices has taken pressure off of overloaded EEO systems and provided agencies with a vehicle for identifying and solving systemic organizational workplace problems.

Slowly, USDA is moving in this direction. A few agencies—the Agricultural Research Service, Animal and Plant Health Inspection Service, and the Eastern Region (Region 9) of the Forest Service—have established mediation systems outside the EEO process. The Secretary, on May 15, 1996, directed the Assistant Secretary for Administration to establish a model complaint prevention system, and directed every agency to create a complaint prevention program by November 30, 1996. The idea is a good one; however, it appears that implementation has been slow. Agencies would benefit greatly from Departmental guidance and a coordinated effort toward conflict management. Finally, the number of EEO complaints could be greatly reduced if managers had the necessary conflict management and communications skills.

Conclusions

USDA's workforce does not reflect the diversity of its customer base. The lack of diversity in field offices adversely affects program delivery to minority and women customers of USDA. Since Federal EEO and Affirmative Employment laws and policies do not govern the non-Federa workforce, it is even less reflective of customers than the Federal program delivery workforce. At the highest levels, agencies look to the office of the Secretary and the Subcabinet to be models for the kind of diversity USDA is expected to achieve.

Since 1990, when USDA initiated formal efforts to diversify its workforce, there has been limited progress. Women, minorities, and those with disabilities continue to be under-represented in senior management and executive positions at USDA.



Many minority, female, and employees with disabilities believe that they are subjected to "hostile work environments," and that they face double standards when seeking to advance in their careers at USDA. They charge managers with unfair employment practices in personnel areas regarding preselection, time-in-grade, inequities in the distribution of high-visibility assignments, and with violation of merit promotion principles. They also perceive that USDA unfairly distributes training, awards, promotions, and developmental opportunities.



Managers do not always aim for workforce diversity when forming task forces, committees, and advisory groups, or in the composition of staffs responsible for program delivery. Also, recruitment efforts in USDA agencies are not coordinated to ensure workforce diversity in the hiring of women, minorities, and those with disabilities.

As USDA strives for a diverse workforce, workforce planning and retention programs must be developed and implemented as part of each agency's strategic plan.

Also, recommendations in the "1994 Report of the USDA Task Force on Sexual Orientation" have not been implemented to make certain that discrimination and/or harassment based on sexual orientation will not be tolerated.

The EEO complaint system is not timely, is unresponsive, and is generally dysfunctional. Too much focus is placed on settlement for settlement's sake, and not enough focus is placed on resolving the underlying problems.

The Organizational Structure of Civil Rights



Background

Major "people" problems, many of them noted already, exist with USDA's civil rights program. However, while preparing this report, the CRAT also identified significant organizational and structural problems that impact USDA's ability to ensure civil rights enforcement for its customers and employees.

They include: the absence of one highly placed official with full authority over USDA's civil rights program; inadequate oversight and guidance to USDA agencies from the Department's Civil Rights office; USDA's failure to emphasize eliminating discrimination in program delivery; and, as noted earlier, the widespread dissatisfaction with the role of the Office of the General Counsel.

Lack of Strong Civil Rights Leadership at USDA

The Assistant Secretary for Administration is USDA's senior official responsible for civil rights. Although that position has the responsibility for civil rights policy and compliance, it does not have the authority or resources necessary to ensure that programs are delivered and employees are treated fairly and equitably.

On the contrary, the resources and authority for administering programs as well as for hiring and employment practices are vested with agency heads. And, agency heads' performance is rated by their subcabinet members, not the senior civil rights official. As mentioned earlier in this report, it is rare that agency heads are rated as "does not meet" in their civil rights performance element, even though many USDA agencies have obvious civil rights problems.



This scenario is repeated with the agency and mission area civil rights directors. Regardless of to whom the civil rights directors report at the agency or mission area level, they do not have the authority to rate program directors within their agency or mission area on their civil rights accomplishments. This lack of close oversight and accountability at the agency level has led to the widespread perception by both customers and employees that the fox is guarding the henhouse when it comes to enforcing civil rights policies at USDA.



According to a June 1996 report by the U.S. Commission on Civil Rights, during the early and mid-1980's USDA leaders had effectively "dismantled" USDA's civil rights apparatus.

Lack of Administrative Management Coordination

Too many administrative issues are elevated to the Office of the Secretary without coordination among USDA management functions. There is also a lack of cooperation between functions that report to the Office of the Secretary and those that report to the Assistant Secretary for Administration (ASA). For example, the Chief Financial Officer (CFO) and the Chief Information Officer (CIO) report directly to the Secretary. Some argue that Congress mandated that the CFO report to the Secretary. However, Treasury and Interior are examples of Departments which have successfully managed this issue by having their ASA also serve as the CFO.

Several other offices that influence civil rights operate without coordination by the Assistant Secretary for Administration. The USDA Service Center Implementation Team, which assists the USDA Service Centers with such things as automation and outreach, reports indirectly to the Deputy Secretary through the Food and Agriculture Council. The Office of Small and Disadvantaged Business Utilization, which plays a key role in promoting equal opportunity for small and minority businesses, reports to the Deputy Secretary. Improvement in USDA's civil rights performance will require a concerted outreach effort. For that effort to succeed, close coordination with USDA's civil rights functions will be needed. However, there is little coordination because there is no one individual ultimately in charge.

If At First You Don't Succeed . . . Reorganize, Reorganize, Reorganize

The CRAT's study of past reports indicates that civil rights at USDA has been in a persistent state of chaos because of numerous reorganizations since the 1980's. According to a June 1996 report by the U.S. Commission on Civil Rights, during the early and mid-1980's USDA leaders had effectively "dismantled" USDA's civil rights apparatus.

Until 1993, USDA's Office of Personnel handled adjudication of EEO complaints within the Employee Appeals Staff, which was then renamed EEO Complaints Management. The Office of Advocacy and Enterprise (OAE) was responsible for adjudicating program discrimination complaints, and handled other civil rights functions, such as outreach and enforcement.

In 1993, the EEO complaints function was briefly transferred to OAE, and redesignated the Disputes Resolution Staff, the first step towards consolidating all civil rights compliance functions relating to program delivery and employment under the Assistant Secretary for Administration.

In a major reorganization of civil rights in 1994, USDA created the Office of Civil Rights Enforcement (OCRE), which assumed civil rights responsibility for both EEO (primarily Title VII) and program delivery (such as Title VI and the Equal Credit Opportunity Act) activities. The reorganization also established six regional service centers in Atlanta, Sacramento, Kansas City,



Denver, New Orleans, and Washington, DC, whose primary functions are to provide counseling and conduct dispute resolution boards for employment complaints.

In October 1995, OCRE's short life came to an end: USDA divided civil rights responsibilities among two new offices—the Policy Analysis and Coordination Center (PACC-CR), and the Office of Operations (OO). PACC-CR was delegated all civil rights responsibility for USDA, except for employment and program delivery complaints, which was delegated to OO.

In addition to civil rights, OO's Director is responsible for many other functions at USDA, ranging from procurement to security. OO's Associate Director for Complaints Adjudication is responsible for hearing civil rights complaints. The Employment Complaints and Adjudication Division, the Program Complaints and Adjudication Division, and six regional service centers also report to the Associate Director.

The 1995 reorganization thus moved responsibility for civil rights complaints to a lower level than civil rights policy, and has left employees and customers confused about which office they should go to for help.

In June 1996, the U.S. Commission on Civil Rights found that "the impact of the numerous reorganizations on Title VI or other civil rights enforcement at USDA remains unclear." The one clear impact the Commission did find was negative: "these reorganizations have created considerable upheavals among the civil rights staff .... "

Civil Rights Leadership Changes Frequently

Over the years, USDA has had almost as many Departmental Civil Rights Directors as it has had reorganizations. The Civil Rights Leadership Council cited this as another factor contributing to the disarray in civil rights at USDA. They stated that not only has there been a lack of continuity and longevity in directors, but that the individuals who have held the position have not had a strong background in civil rights, and attributed this to the fact that the position has been designated as a "general" senior executive position which can be filled by political appointees. The civil rights community advocates designating the director position as "career reserved" to ensure that individuals with the appropriate qualifications and background are appointed to this position.

The Commission on Civil Rights also cited the "revolving door" of Civil Rights Directors in the mid-1980's, "many of whom had no civil rights experience." The current Director of Civil Rights is a career employee, but did not come from a civil rights background, and has been "acting" in that position for more than a year. This has given the perception that civil rights is not a high priority in USDA.

The Civil Rights Leadership Council recommended that USDA's Civil Rights Director should report directly to the Secretary, and that agency Civil Rights Directors should report to their agency heads. In 1996, the Commission observed that OCRE's director reported to the Assistant

Members of the Civil Rights Action Team at a listening session.





While some contend that elevating the civil rights role directly to the Secretary would increase both accountability and visibility, others felt a more effective program could be obtained by building accountability into agency heads' performance standards and giving full authority for civil rights program oversight, compliance, and enforcement to the Assistant Secretary for Administration.

Secretary for Administration, "several layers removed from the Secretary," and called this "a placement which suggests that civil rights enforcement is not a high priority at USDA."

In the Federal Government, executive Departments are almost evenly split on where their civil rights office reports, some reporting directly to the Secretary, and others reporting to a Subcabinet official. Some within USDA's civil rights community expressed concern about the increased span of control in the Office of the Secretary if the civil rights function were to be elevated. Both sides of the issue agree that there is a greater need for accountability and commitment at a high level.

While some contend that elevating the civil rights role directly to the Secretary would increase both accountability and visibility, others felt a more effective program could be obtained by building accountability into agency heads' performance standards and giving full authority for civil rights program oversight, compliance, and enforcement to the Assistant Secretary for Administration.

Lack of Emphasis on Eliminating Program Discrimination

In part because USDA has dedicated most of its civil rights efforts and resources to processing employment discrimination complaints, civil rights has not been integrated into program delivery. The Fifth Amendment of the Constitution and certain Federal statutes mandate that Federal agencies deliver their programs to the public without discrimination. Title VI of the Civil Rights Act of 1964 requires that programs and activities receiving Federal



funds be delivered free of discrimination. Other statutes, such as the Equal Credit Opportunity Act, make discrimination in USDA's lending programs illegal as well.

In the mid-1970's, the U.S. Commission on Civil Rights found that Federal agencies, including USDA, were not enforcing Title VI effectively. Approximately 20 years later, the Commission found that the deficiencies from the 1970's still existed, and that Title VI enforcement "remained dormant." Other than the Department of Education, the Commission found that "none of the Federal agencies has a comprehensive and proactive Title VI enforcement program to eliminate and prevent discrimination in each of the federally assisted programs it administers." Commission findings also indicated that agency resources for Title VI enforcement are inadequate.

The absence of adequate enforcement of Title VI and other statutes governing program delivery explains why farmers, other customers, and even USDA employees at listening sessions asserted consistently that civil rights are being violated without effective oversight by USDA. For example, an EEO counselor for Rural Development in California pointed out that even when she completed her investigation of one housing discrimination complaint within 45 days, "after a year and a half there was still no decision [from Washington] in the case."

The Commission pointed out that at USDA "one of OCRE's [the former Office of Civil Rights Enforcement] chief responsibilities" is to "oversee, coordinate, and monitor the USDA agency heads' Title VI implementation and enforcement programs." However, "OCRE has not fulfilled this responsibility adequately," the Commission found. This inadequacy was attributed, in part, to the elimination of the desk officer position, a staff member in the central Civil Rights Office assigned to oversee specific USDA agencies.



The U.S. Commission on Civil Rights expressed concern about the lack of USDA resources dedicated to civil rights in program delivery.

The Commission pointed out that USDA did not have units "devoted exclusively to policy and planning related to Title VI and other civil rights enforcement activities." Ensuring that Federal programs and federally funded programs are delivered in an equal and fair manner requires that USDA's top civil rights officials take the lead in establishing, disseminating, and enforcing USDA's civil rights policies. The Commission found that USDA does have a Departmental Regulation, 4330-1, establishing policy and providing guidance on compliance reviews, which "lays a strong foundation for USDA's Title VI implementation and enforcement program."

However, the Commission reported that "with the exception of a change with respect to filing complaints, the USDA regulations have not been revised since 1973. In particular, they have not been updated to reflect the Civil Rights Restoration Act of 1987, which clarifies that an entire institution is covered by anti-discrimination laws even if only one part of that institution received Federal funds. The absence of clear legal guidance to agencies and civil rights officials hinders enforcement, and makes it difficult to hold management accountable."

Finally, as noted earlier, is the question of resources. The Commission expressed concern about the lack of USDA resources dedicated to civil rights in program delivery. For example, in 1982 there were 63 full-time employees (FTE's) carrying out compliance and special emphasis programs. As of December 1993, that number had decreased to 20. A 1994 proposal would have increased the number of FTE's to 56. As of this report, however, the staff dedicated to program delivery is well below the proposed increase.

A former Director of OCRE also reported that no USDA money was specifically earmarked for Title VI implementation because "external civil rights is primarily the function of the program agencies, with OCRE maintaining only an oversight role." The Commission found that "the absence of specific funding for Title VI allows resources to be transferred from one civil rights enforcement activity to another without adequate management planning by OCRE."

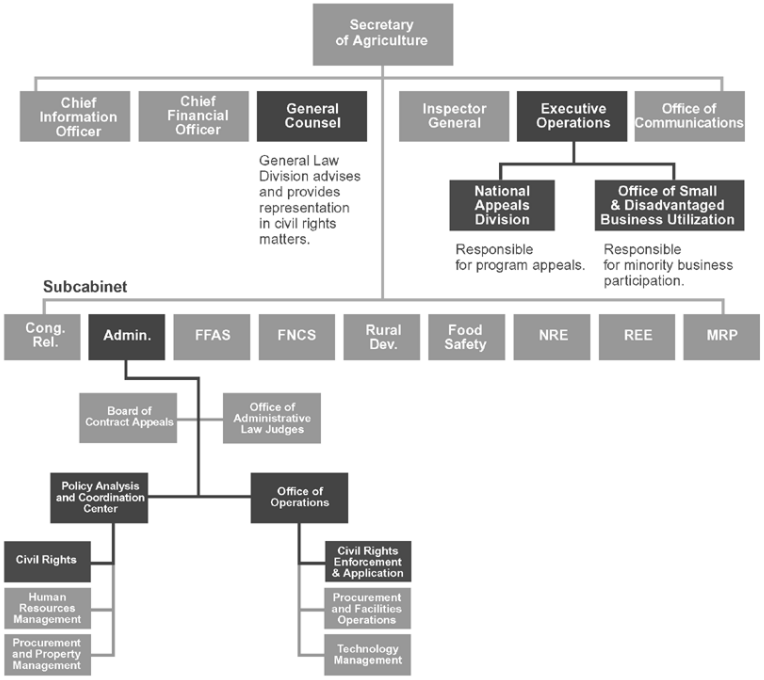
Civil Rights Responsibilities Divided Between the Department and the Agencies

Another problem with enforcing civil rights in program delivery is fragmentation. Agency civil rights directors have a number of responsibilities. For example, USDA agencies each perform some complaint processing functions. However, the Commission noted that the respective roles of OCRE and the agencies were not clearly defined. The Commission also found that OCRE was providing technical assistance to agencies on civil rights statutes, not proactively, but only when requested.

Before the 1994 USDA reorganization, most agencies had their own civil rights offices. USDA's policy required these offices to report directly to the agency head, in order to provide the agency's director of civil rights direct

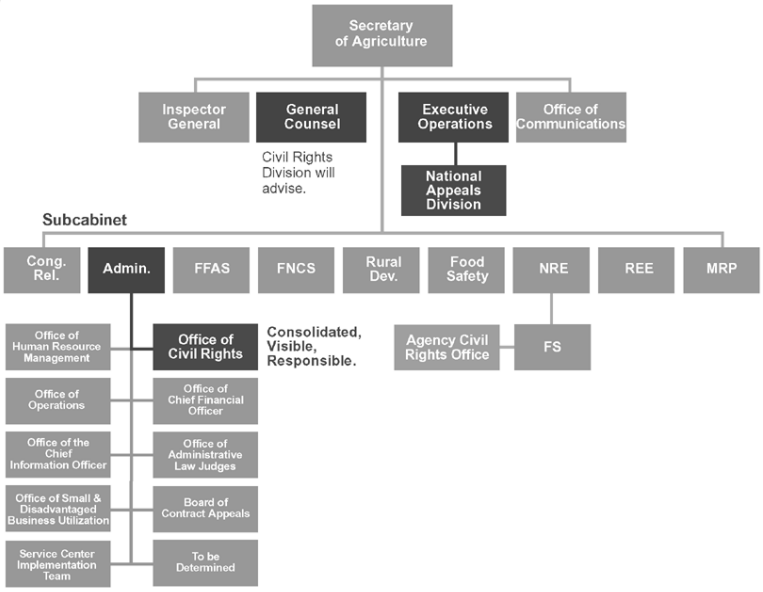
U. S. Department of Agriculture
Headquarters Civil Rights Structure

Current



U. S. Department of Agriculture
Headquarters Civil Rights Structure

Proposed



access to the agency head without intervening layers of supervision that might impede access. However, this was not implemented consistently throughout the Department. The 1994 reorganization required each Subcabinet officer to consolidate all mission area administrative functions using either a "lead agency" or "center of excellence" approach.

This followed a November 1993 directive by then-Secretary Espy to each Under and Assistant Secretary to establish a "Board of Directors," which was to include a senior civil rights official.

Thus, the channels of communication and accountability in the civil rights area at the mission level are inconsistent. In addition, some agency field offices have civil rights personnel who report to their program managers in the field, and not to the agency's central civil rights office. The CRAT concluded that agency heads, because they have authority and resources to manage people and programs, must be held accountable for civil rights. Ensuring oversight and compliance should be the role of the Assistant Secretary for Administration, at least until such time as the agency heads can be trusted to hold themselves accountable.



Of the current staff in the Department's two civil rights offices, two-thirds work on EEO complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery.

Lack of Civil Rights Expertise

The Civil Rights Commission's report on the lack of Title VI enforcement also pointed to USDA's lack of civil rights specialists in program-related civil rights issues. Many of the Department's civil rights resources are devoted to processing of employment discrimination complaints. Of the current staff in the Department's two civil rights offices, two-thirds work on EEO complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery.

According to the Commission, the 1994 civil rights reorganization was deficient because OCRE did not separate internal and external civil rights issues into separate offices. The Commission predicted that "a probable consequence is that USDA's Title VI enforcement program may suffer as OCRE responds to pressures to improve USDA's internal civil rights program." It recommended that USDA establish "two separate units, with different supervisory staff," one for internal and one for external civil rights issues.

Comments at listening sessions indicate that employees believe USDA's civil rights offices are dysfunctional. The widespread perception is that the Department's civil rights offices are "dumping grounds," where many employees end up as a result of settlements of their own EEO complaints. Since 1989, at least 11 employees have been assigned to USDA's civil rights offices by way of EEO settlements, most at the GS-13 or GS-14 level. On top of all this, there is general dissatisfaction within the Civil Rights office. As of January 1997, there were 31 EEO complaints against the Departmental civil rights offices.

Members of the Civil Rights Action Team at a listening session.



The Role of the Office of the General Counsel Is Unclear

The perception that the Office of the General Counsel is hostile to civil rights has been discussed earlier in this report. OGC's legal positions on civil rights issues are perceived as insensitive at the least, and racist at worst. Correcting this problem is critical to the success of USDA's civil rights program.

The CRAT found at least four Federal Departments—Health and Human Services, Housing and Urban Development, Labor, and Justice—that have legal divisions devoted exclusively to civil rights.

The General Law Division in OGC is USDA's principal legal advisor on civil rights matters. It provides legal advice to the Department on civil rights issues; reviews draft regulations, reorganizations, and policies for USDA's civil rights office; and represents USDA agencies in hearings before the EEOC on employee discrimination complaints. When an employee or customer sues USDA in court for discrimination in employment or program delivery, various OGC divisions assist the Department of Justice in defending USDA.

However, the CRAT has found that attorneys who practice civil rights law at OGC are not required to have specialized experience or education in civil rights when they are hired. They acquire their civil rights experience on the job. In addition, most of OGC's lawyers working on civil rights issues work on non-civil-rights issues as well.

Agency civil rights directors told the CRAT that they do not seek assistance from OGC because OGC is perceived as unresponsive. They stated that OGC attorneys need a better understanding of the mission areas that they service. A number of the directors expressed the need for OGC to assign a civil rights attorney to each mission area. Others told the CRAT that they do not understand the role of OGC regarding civil rights.

Another reason for the perception that OGC is insensitive when it comes to civil rights is the lack of diversity among OGC's attorneys. According to recent USDA figures, women make up 34.2 percent of the lawyers; however, only 5.4 percent of the lawyers are minorities. A USDA report on diversity and under-representation for USDA agencies found that OGC has "a manifest imbalance in the representation of black men." There is one black male attorney in OGC.

There are no minority senior executives at OGC. Nor are there minority attorneys working on civil rights. At the GS-15 level, minorities (one black male, one black female) represent 6.9 percent. Most important, until OGC leads by example and diversifies its professional staff starting at the highest levels, it may always be viewed with suspicion regarding civil rights.

Conclusions

USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks.

There has been instability and lack of skilled leadership at the position of USDA Director of Civil Rights. Dividing up the Department's Civil Rights office between policy and complaints has further exacerbated the problem. The division of responsibility for civil rights among different USDA offices and agencies has left confusion over enforcement responsibilities. Finally, OGC is perceived as unsupportive of civil rights.



Summary



To realize the Secretary's goal that every USDA customer and employee be treated fairly and to finally solve the persistent problems discussed in this report, USDA must make decisive breaks with the past. Among other things, failure to change will mean that minority farmers continue towards extinction; USDA will continue to underutilize a significant number of its employees; the Department's liability for discrimination complaints of all kinds will continue to increase; and, perhaps most importantly, USDA will not accomplish its mission.

Fundamental change will not be easy. USDA has allowed too many past reports to gather dust and too many recommendations to go unimplemented.

The following recommendations include action steps along with those who should be accountable for those actions. These recommendations are not intended to address every problem that has been identified. Indeed, the Department is too massive, and its programs too numerous, for any one report to do that.

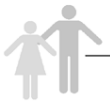
However, the recommendations in this report, when completed, will allow the Department to make fundamental changes which will dramatically improve USDA's ability to serve all customers and to fully use the potential of every USDA employee.

The hundreds of customers and employees who came forward to share their stories with the CRAT, and all Americans, deserve no less.



Civil Rights Action Team Recommendations

Lack of Management Commitment to Civil Rights



Delegate to the Assistant Secretary for Administration Full Civil Rights Authority

1. To ensure civil rights accountability at USDA, delegate to the Assistant Secretary for Administration (ASA) full authority—in practice as well as on paper—over all civil rights issues at USDA. The ASA may further delegate civil rights authority through the Mission Area Assistant and Under Secretaries to Agency Heads to administer civil rights programs.

2. Delegate to the ASA the authority to rate Agency Heads on their civil rights performance elements. The ASA will provide feedback to the Secretary on the civil rights performance of the Subcabinet.

3. Revise the present Performance Review Board (PRB) process for measuring performance of senior executives in civil rights, and implement an objective process designed to measure accomplishments based on specific goals and objectives. Hold Subcabinet members, Agency Heads, and senior officials accountable for implementing results-oriented affirmative employment and civil rights implementation plans.



Action Plan

A Ensure that the ASA has the full backing of the Secretary and the leadership and management skills and abilities necessary to support an effective USDA civil rights program. The ASA must have direct access and serve as the policy advisor to the Secretary on all civil rights issues.
Who: *The Secretary* ***When:*** *Immediately*

B Send a clear and concise message to the Subcabinet that the ASA has full authority for civil rights but that the Subcabinet, Agency Heads, and agency civil rights directors are fully accountable for an effective civil rights program in their respective areas of responsibility.
Who: *The Secretary* ***When:*** *Immediately*

C Delegate authority to the ASA to rate Agency Heads on their civil rights programs and to provide feedback to the Secretary on the Subcabinet's civil rights performance. Delegation should have provision to reassess the need to continue close agency monitoring after three rating cycles.
Who: *The Secretary* ***When:*** *30 days*

D Assess the funding needs for conducting an effective USDA civil rights program.
Who: *Assistant Secretary for Administration; Civil Rights Director* ***When:*** *60 days*

E Allocate adequate funding to the ASA to implement an effective civil rights program.
Who: *The Secretary* ***When:*** *Immediately upon receipt of assessment*

Ensure the Department Has Measurable Goals for Treating Customers and Employees Fairly and Equitably

4. The Secretary should revise and reissue USDA's civil rights policy to include specific, measurable goals and objectives in program delivery and employment that will provide guidance for senior officials on what they are expected to accomplish. The Secretary will hold the Subcabinet and Agency Heads accountable for adherence to the civil rights policy.

Action Plan

A Revise civil rights policy.
Who: *The Secretary* ***When:*** *Immediately*

B Publicize goals and objectives widely throughout USDA.
Who: *Subcabinet* ***When:*** *Immediately*





Adopt a USDA Policy on Reprisals

5. To assure accountability, adopt and enforce a policy that the Department will take the appropriate adverse or disciplinary action against any manager found guilty of reprisal against any USDA employee or customer. Investigate all allegations of reprisal, and abuses of power, and, where the allegations appear meritorious, immediately remove the official from managerial duties pending full investigation.

Action Plan

A Issue policy.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

B Determine and implement process for investigating reprisal allegations.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

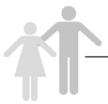


Remove USDA Employees Who Do Not Perform Adequately on Civil Rights or Who Abuse Their Authority

6. Streamline procedures to allow agencies to quickly take the appropriate adverse and disciplinary actions against employees who fail to provide programs and services in compliance with all applicable civil rights laws and regulations, or who discriminate against or harass USDA customers or employees.

Action Plan

A Issue new policy and procedures on adverse and disciplinary actions.
Who: *Assistant Secretary for Administration* ***When:*** *60 days*

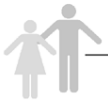


The Secretary, the Subcabinet, and Agency Heads Must Set Examples of Diversity

7. The Secretary, USDA's Subcabinet, and Agency Heads must set an example of accountability and commitment for the Department by ensuring that their immediate staffs reflect the desired diversity that the Secretary is establishing for the Department as a whole.

Action Plan

A Ensure diversity among senior staff.
Who: *The Secretary or Subcabinet; Agency Heads* ***When:*** *Immediately*



Include Goals in USDA's Strategic Plan

8. Include in the Department's Strategic Plans required under the Government Performance and Results Act (GPRA) as well as in agency plans, goals as outlined in the Secretary's policy statement to improve workforce diversity and civil rights. Affirmative Employment Plans and Civil Rights Implementation Plans must also reflect the Secretary's goals. Set specific goals for minority and women-owned business participation in all program delivery, procurement, export, and business development activities.

9. Plans should establish reporting requirements to periodically collect data from USDA field offices to measure program delivery to minority, women, and small and limited-resource farmers.

10. Plans should include well-defined areas of responsibility and accountability. Performance standards and elements for Agency Heads and all senior officials should reflect the specific goals and objectives as identified in the Department's and agencies' strategic plans.

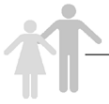
Action Plan

A Plan Department-wide strategic planning session.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

B Conduct session/ develop plan.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 90 days*

C Plans should include measures such as contracts, loan applications, acceptance and rejection rates, status of foreclosure actions, processing times, and other data critical to determining the quality of service provided.
Who: *Agency Heads* ***When:*** *Complete within 90 days*

D Plans should identify the institutional barriers to improving civil rights and ending under-representation at USDA and include a comprehensive compliance review schedule to provide effective oversight to agency operations.
Who: *Agency Heads* ***When:*** *Complete within 90 days*



Identify the Core Competencies and Skills Required to Effectively Manage People and Serve Customers

11. Identify the core competencies and skills required to effectively manage people and serve customers, including recruitment and management of a diverse workforce and serving diverse customers. Require all promotions and selectees into managerial positions to demonstrate those competencies. Use employee and peer review surveys to assess managerial competence, provide feedback, and develop performance improvement plans for managers where needed.

12. Require and provide ongoing training for all managers to enhance their people skills, including managing a diverse workforce. Develop criteria to measure effectiveness, provide specific timeframes for managers to improve, and require Agency Heads to remove from managerial positions those whose performance fails to meet the criteria.

Action Plan

A Identify core competencies.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 180 day*

B Issue policy on promotions.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 45 days*

C Determine process for employee and peer reviews.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 45 days*

D Develop training module.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 45 days*

E Develop criteria for measuring effectiveness.
Who: *Assistant Secretary for Administration* ***When:*** *Complete within 45 days*

Investigate Alleged Abuses of Authority by Office of Inspector General (OIG) and Forest Service, and Advise on Role of Office of the General Counsel (OGC)

13. The Department of Justice (DOJ) should investigate allegations of abuses of authority by the Office of Inspector General and Forest Service Law Enforcement.

14. The Secretary should direct the Forest Service to discontinue the practice of using its Law Enforcement staff to investigate Forest Service employees.

15. The DOJ should advise the Secretary on the role and functions of the OGC at USDA as it relates to civil rights. The Secretary should take appropriate action to ensure that OGC has the capacity to provide the Department with the quality of legal assistance required for Civil Rights.

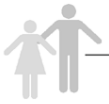
Action Plan

A Request DOJ review of OIG, OGC, and Forest Service Law Enforcement.
Who: *The Secretary* ***When:*** *Immediately*

B Issue directive to Forest Service.
Who: *The Secretary* ***When:*** *Immediately*



Program Delivery and Outreach



Manage USDA Programs in Accordance with USDA Civil Rights Policy

16. To assure that local delivery of USDA credit programs is fair and equitable, work with the President and Congress to obtain the authority to make personnel selections and manage the Farm and Foreign Agricultural Service (FFAS) and Rural Development (RD) mission areas to ensure accountability down the line from the Secretary to the State and county levels.

Action Plan

A The Secretary should work with the White House and Congress to change the personnel selection process and system in FFAS and Rural Development.
Who: *The Secretary* ***When:*** *Within 90 days of this report*

17. Modernize the FSA State and county committee system by converting all county non-Federal FSA positions, including county executive directors, to Federal status; changing the committee selection process; and removing county committees from any farm loan determinations.

Action Plan

A Include in the legislative package to Congress amendments to the 1935 Soil Conservation and Domestic Allotment Act to make all FSA county positions Federal and to remove county committees from any loan determinations.
Who: *Under Secretary FFAS* ***When:*** *In conjunction with preparation of the legislative package*

B Appoint voting members of under-represented groups to State committees where such representation is not currently present.
Who: *The Secretary* ***When:*** *Within 60 days of this report*



C Include in the legislative package to Congress amendments to the 1935 Soil Conservation and Domestic Allotment Act to add two voting members to county committees that are appointed to represent members of groups who are otherwise under-represented on the elected county committee. Selection of the two members should be based upon recommendations from under-represented groups in the county to the State executive director and the State committee.
Who: *Under Secretary FFAS* ***When:*** *In conjunction with preparation of the legislative package*

18. Conduct a complete review of county committees and county office staffs to determine whether nepotism, conflict of interest, and/or discrimination in program delivery exists.

Action Plan

A Appoint an independent review body in each State to conduct reviews.
Who: *FSA Agency Head* ***When:*** *Within 30 days of this report, with reviews to be completed within 120 days*

B Where violations are found, require immediate corrective action.
Who: *FSA Agency Head* ***When:*** *Within 30 days of completed review*

19. Establish a system to assure timely and equitable handling of loan applications by county offices, including review and concurrence by FSA and Rural Development State directors within 30 days of any adverse decision that affects a member of a defined socially disadvantaged group.

Action Plan

A Instruct FSA and Rural Development Agency Heads to notify State directors of current disparities in loan processing times and require immediate corrective action.
Who: *FSA and Rural Development Agency Heads* ***When:*** *Within 30 days of this report*



B Instruct FSA and Rural Development Agency Heads to establish an ongoing monitoring system for loan application processing, including provisions for concurrence of State directors in any adverse decisions involving socially disadvantaged customers.
Who: *FSA and Rural Development Agency Heads* ***When:*** *Within 30 days of this report*

20. Require independent review of all pending foreclosures to determine whether discrimination in USDA programs contributed to foreclosure action.

Action Plan

A Reissue policy suspending all foreclosures.
Who: *The Secretary* ***When:*** *Immediately*

B Appoint diverse, independent teams in each State to review whether USDA discrimination contributed to pending foreclosure. If evidence of discrimination is found, recommend appropriate action to reverse the foreclosure and provide compensation for any additional losses.
Who: *The Secretary* ***When:*** *Immediately, with reviews to be completed within 60 days*

21. Require that all pending foreclosures or actions leading to foreclosure be halted until all appeals of any formal civil rights complaints have been completed.

Action Plan

A Issue policy halting foreclosure proceedings until customer has exhausted all other rights.
Who: *The Secretary* ***When:*** *Immediately*

22. Act on all existing program discrimination complaints within the next 120 days. Resolve those that can be resolved and bring all others to the point of adjudication within those 120 days.

Action Plan

A Delegate authority to the Subcabinet to implement the recommendation in mission areas.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

23. Require that an agency's civil rights office elevate a program discrimination complaint to the next higher level when no action has been taken within the time limit. When a delay occurs at the next higher level, the agency's civil rights office should apply the adverse inference rule and direct the agency to immediately act on the complaint in favor of the customer.

Action Plan

A Delegate authority to the Assistant Secretary for Administration, who may redelegate that authority to Subcabinet or Agency Heads, to implement the recommendation.
Who: *The Secretary* ***When:*** *Immediately*

24. Establish one program appeals system for all Mission Areas at USDA. Hold all litigation until the appeals process is complete.

Action Plan

A Delegate authority to the Assistant Secretary for Administration to establish a uniform program appeals system.
Who: *The Secretary* ***When:*** *Immediately*

B Issue a policy to hold all litigation until appeals are completed.
Who: *The Secretary* ***When:*** *Immediately*

25. The National Appeals Division Director shall consider the impact of the NAD appeals process on the civil rights of farmers and coordinate the program appeals process with the Department's program discrimination complaints process.

Action Plan

A Meet with farmer groups, USDA civil rights community, and USDA Director of Civil Rights.
Who: *NAD Director* ***When:*** *Immediately*



26. Require that the National Appeals Division and informal agency program appeals processes comply with established legal timelines and establish timelines in cases where they are not required by law. When NAD does not comply with these timelines and the Hearing Officer has ruled in favor of the customer, the Hearing Officer's ruling shall stand.

Action Plan

A Delegate authority to the Assistant Secretary for Administration to establish a timeline of 90 days for processing appeals where they are not already established by law.
Who: *The Secretary* ***When:*** *Immediately*

B Hold NAD and all agencies responsible for handling program appeals to meet established timelines.
Who: *Subcabinet* ***When:*** *Within 2 weeks of the Secretary's approval*

27. Hold all managers accountable for carrying out the final decisions of the National Appeals Division and within 10 working days of their issuance.

Action Plan

A Issue policy to all Mission Areas establishing the 10-day deadline.
Who: *Subcabinet* ***When:*** *Within 2 weeks of the Secretary's approval*

28. To establish a baseline for the number of minority farms, USDA should support a voluntary registry of minority farms. This would help USDA set goals to halt land loss and to monitor the loss of minority-owned farms.

Action Plan

A Follow up on recommendations from Albany, GA, and Washington, DC, listening sessions.
Who: *Civil Rights Director* ***When:*** *FY 1997*

B Assure that the Census of Agriculture accurately counts minority farms, paying particular attention to Tribal lands.
Who: *USDA* ***When:*** *FY 1998*

29. Fully implement a "Debt for Nature" program as authorized in the 1996 Farm Bill and prior legislation.

Action Plan

A Implement a "Debt for Nature" program.
Who: *Under Secretaries for FFAS and NRE* ***When:*** *FY 1998*

Take Action to Remedy Past Discrimination

30. Establish and empower a Special Task Force to determine a process for providing remediation to farmers who have been discriminated against by USDA. Priority should go to farmers who have lost or are about to lose their land because of discrimination.

Action Plan

A Appoint Task Force and delegate appropriate authority.
Who: *Assistant Secretary for Administration* ***When:*** *Within 15 days of this report*

B Establish parameters including criteria and timeframes under which prior cases will be reviewed. Establish process to examine files, gather additional guidance, and determine where discrimination occurred.
Who: *Assistant Secretary for Administration* ***When:*** *Within 30 days of convening Task Force*

C Make a fair and equitable offer of settlement to farmers who have already received findings of discrimination.
Who: *Assistant Secretary for Administration* ***When:*** *Within 120 days of convening Task force*





31. Allow farmers who have received debt write-down or whose farms are pending liquidation to continue eligibility for operating loans.

32. Allow completion of lease back/buy back agreements extended for lack of funds during the 3 years previous to elimination of the program on April 4, 1996, where the farm and home plan did show that the operation would cash-flow.

33. Allow incorporation of anticipated tax liability in the terms of debt write-downs.

34. Allow eligibility for 502 single-family housing program direct loans without a credit history if applicants can demonstrate they have been able to live independently and pay rent and utility bills in a timely manner.

35. Allow EQIP cost-share payments in the same year conservation practices are completed.

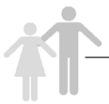
Action Plan

A Include in the legislative package to Congress amendments to the 1990 Consolidated Farm and Rural Development Act to revise program rules for operating loans and the lease back/buy back program.
Who: *Under Secretary FFAS* ***When:*** *In conjunction with preparation of the legislative package*

B Include in the legislative package to Congress language for EQIP payments as recommended.
Who: *Under Secretary NRE* ***When:*** *In conjunction with development of new EQIP regulations*

C Issue policy revisions to change program rules on tax liability for debt write-downs.
Who: *FSA Agency Head* ***When:*** *Within 30 days of this report*

D Issue policy revision to change policy on eligibility for 502 housing program direct loans.
Who: *RHS Agency Head* ***When:*** *Within 30 days of this report*



Strengthen USDA Outreach Efforts to Under-Represented Customers

36. Appoint a diverse commission to develop a national policy on small farms.

Action Plan

A Appoint diverse commission.
Who: *The Secretary* ***When:*** *60 days*

37. Establish an Office of Outreach in a program mission area to coordinate program delivery outreach efforts throughout USDA. Assign responsibility for the Outreach and Technical Assistance to Socially Disadvantaged Farmers (2501) program to this new office to assure Department-wide implementation.

38. Develop a strategic outreach plan, as part of USDA's strategic plan, for which Agency Heads will be held accountable through the Civil Rights performance standard.

39. Establish in each agency an outreach liaison position to coordinate and direct outreach programs in conjunction with the new USDA Office of Outreach. The agency coordinator must be responsible for monitoring outreach goals and accomplishments to under-served customers.

40. Establish State and National Outreach Councils, comparable to the USDA Food and Agriculture Council (FAC), to coordinate outreach efforts of all USDA agencies with State and local-level program delivery. Require that Outreach Councils establish partnerships with community-based organizations and 1890, 1994, and 1862 land-grant institutions, HACU, and Research Employment Access Programs Initiative to enhance program and service delivery to under-served communities.

41. Establish a partnership between USDA and the Department of Interior to develop a strategic outreach plan to address the needs of American Indian agriculture and land conservation.

Action Plan

A Establish an Office of Outreach in a program mission area to coordinate program delivery outreach efforts throughout USDA.
Who: *The Secretary* ***When:*** *Within 30 days of this report*

B Assign responsibility for the Outreach and Technical Assistance to Socially Disadvantaged Farmers (2501) program to the new Office of Outreach.
Who: *The Secretary* ***When:*** *Within 30 days of this report*

C Develop a strategic outreach plan as part of the USDA strategic plan for which Agency Heads will be held accountable through the Civil Rights performance standard.
Who: *The Secretary* ***When:*** *Within 30 days of this report*

D Establish in each agency an outreach liaison position to coordinate and direct outreach programs in conjunction with the new USDA Office of Outreach.
Who: *Agency Heads* ***When:*** *Within 45 days of this report*

E The agency coordinator must be responsible for monitoring outreach goals and accomplishments to under-served customers.
Who: *Agency Heads* ***When:*** *Within 45 days of this report*

F Establish a State and National Outreach Council, comparable to the state FAC, to coordinate outreach efforts of all USDA agencies with State and local level program delivery.
Who: *The Secretary* ***When:*** *Within 30 days of this report*

G Work with the Secretary of the Interior to better coordinate USDA assistance on Indian lands.
Who: *The Secretary* ***When:*** *Within 60 days of this report*

Strengthen USDA's Research and Educational Assistance to the Socially Disadvantaged

42. Require land-grant institutions and major CSREES, ARS, ERS, FS, and NRCS programs to identify and give priority to the research and educational needs of the socially disadvantaged.

Action Plan

A Name an individual in each land-grant institution and major CSREES, ARS, ERS, FS, and NRCS program whose primary responsibility is to assure the research, management, and educational needs of the socially disadvantaged are identified and given priority.
Who: *Land-grant presidents; CSREES, ARS, ERS, FS, and NRCS Agency Heads* ***When:*** *Within 30 days of this report*

B Develop a plan to expand use of cooperative research agreements with the Historically Black Colleges and Universities, the Hispanic Association of Colleges and Universities, Research Employment Access Programs, the American Indian Initiative, and community-based organizations.
Who: *Agency Heads* ***When:*** *Within 90 days of this report*

C Develop a plan to increase involvement of small and limited-resource farmers/ranchers in demonstration farms, forests, and watershed projects.
Who: *NRCS, FS, CSREES* ***When:*** *Within 90 days of this report*



Members of the Civil Rights Action Team at a listening session.

43. USDA should thoroughly examine funding of institutions of higher education to determine if 1890 and 1994 land-grant institutions are receiving equitable support to assist USDA in carrying out its mission. The Department should adjust its budget recommendations and consider other statutory or regulatory changes required to eliminate any disparate funding of land-grant institutions.

Action Plan

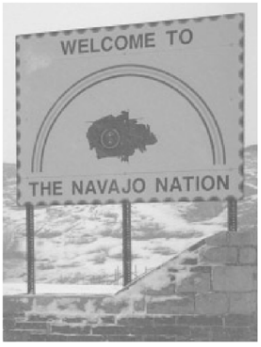
A Establish mechanism to examine land-grant funding.
Who: *Assistant Secretary for Administration; Under Secretary REE* ***When:*** *Within 60 days of this report*

B Adjust budget, develop legislative package to eliminate any disparities.
Who: *Assistant Secretary for Administration; Under Secretary REE* ***When:*** *Within 60 days of this report*

44. Fully fund the Outreach and Technical Assistance to Socially Disadvantaged Farmers (2501) program at $10 million annually.

45. Extend and fully fund the Extension Indian Reservation program at $8 million annually.

46. Increase EQIP funding from $200 million to $300 million and target the increase for assistance to minority and limited-resource farmers, ranchers, and Indian nations.



47. Fully fund the farm ownership and farm operating direct loan programs at $85 million and $500 million, respectively.

48. Require that a higher percentage of farm ownership and farm operating direct loan funding be targeted to minorities and socially disadvantaged groups.



Action Plan

A Include in the legislative package to Congress amendments necessary to support these recommendations.
Who: *The Secretary* ***When:*** *In conjunction with preparation of the legislative package*

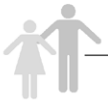
49. Dedicate one-third of the Fund for Rural America to serving the needs of socially disadvantaged customers.

50. Target $100 million annually from Rural Utilities Service Water and Waste Disposal Grant Program to Federally Recognized Indian Tribes.

51. Target $50 million of RHS funds annually for the Farmworker Housing Program.

Action Plan

A Instruct Subcabinet heads to adjust funding targets to reflect recommendations.
Who: The Secretary ***When:*** *Immediately*



Remove Barriers to Serving Under-Represented Customers at USDA Service Centers.

52. Require consideration of under-served communities in USDA Service Center location decisions.

53. Establish satellite offices where necessary to reach under-served customers.

Action Plan

A Instruct State FAC's to work with representatives of under-served customers to identify locations with concentrations of socially disadvantaged customers and determine whether full Service Centers or satellite offices are most appropriate to meet those customers' needs.
Who: *State FAC's* ***When:*** *Immediately*

54. Establish full-time USDA Service Centers on Indian Tribal lands.

Action Plan

A Work with Indian tribes to set guidelines and locations of the USDA Service Centers.
Who: *State FAC's* ***When:*** *Immediately*

55. Ensure that all USDA Service Centers are accessible to the disabled.

Action Plan

A Instruct USDA Service Centers to review their facilities and make necessary changes to assure accessibility to the disabled.
Who: *State FAC's* ***When:*** *Immediately*

B Make adequate funding available to Service Centers to make these necessary changes.
Who: *State FAC's* ***When:*** *Immediately*

56. Streamline program regulations and application forms to make USDA programs more easily accessible to all customers. Require USDA county offices to assist socially disadvantaged customers in understanding requirements and completing forms.

57. Strengthen the training program for FSA county committees and county office staff on all programs, with special emphasis on civil rights issues and outreach responsibilities.

58. Provide and document Title VI training for all volunteers and new field, State, and Service Center employees on an annual basis.

Action Plan

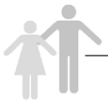
A Instruct agencies to examine rules and application forms and make changes necessary to facilitate participation by socially disadvantaged customers.
Who: *Agency Heads* ***When:*** *Within 90 days of this report*

B Collaborate with National Center for Diversity at Kentucky State University and others as appropriate for providing diversity training.
Who: *Agency Heads* ***When:*** *Within 6 months of this report*

59. Make all USDA educational and technical assistance services and publications available to customers in languages appropriate to the community being served. Use appropriate media outlets to distribute information to under-served communities.

Action Plan

A Make resources available for translation services.
Who: *Agency Heads* ***When:*** *Within 6 months of this report*



Address Needs of Farmworkers

60. Establish an initiative to address the needs of farmworkers that could be addressed through USDA programs.

61. Enforce the requirement that those who use "restrictive-use pesticides" keep records of the application of their products.

62. Immediately provide pesticide information to health care providers treating pesticide-related illnesses.

63. Require USDA to use this information to prepare comprehensive annual pesticide use reports, as mandated in the 1990 and 1996 farm legislation.

64. Enforce the Environmental Justice Executive Order at USDA.

Action Plan

A Appoint a panel to review unmet needs of farmworkers that could be addressed through USDA programs.
Who: *Under Secretary REE* ***When:*** *FY 1997*

B Support the farmworker-related recommendations of USDA Environmental Justice Initiative.
Who: *Under Secretary REE* ***When:*** *FY 1997*

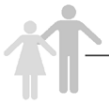


C Extend research to investigate the impact of pesticides on farmworkers' health.
Who: *Under Secretary REE* ***When:*** *FY 1997*

D Develop an enhanced training program in farm safety and pesticide safety that addresses the special needs and concerns of farmworkers.
Who: *Under Secretary REE* ***When:*** *FY 1997*

E Fund pesticide training programs for farmworkers, particularly programs delivered by community-based organizations with demonstrated experience with farmworkers.
Who: *Under Secretary REE* ***When:*** *FY 1997*

F Train community health care providers in the diagnosis, treatment, and proper reporting of pesticide and other work-related illnesses.
Who: *Under Secretary REE* ***When:*** *FY 1997*



Increase Involvement of Small and Disadvantaged Business in USDA Programs

65. Reassert the commitment of USDA to the goal of increasing involvement of small and disadvantaged businesses in USDA programs.

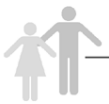
Action Plan

A Prepare a plan and establish goals for expanding Market Access Program outreach to minority and women-owned businesses.
Who: *FAS* ***When:*** *Within 30 days of this report*

B Develop Departmental as well as agency-specific goals for increasing purchasing and contracting of goods and services from minority and limited-resource businesses.
Who: *OSDBU* ***When:*** *Within 30 days of this report*

C Develop a technical assistance program for small and socially disadvantaged businesses to enable them to successfully compete for contracts with USDA programs.
Who: *OSDBU, in conjunction with the new Office of Outreach* ***When:*** *Within 90 days of this report*

Workforce Diversity and Employment Practices

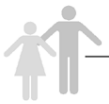


Review All USDA Senior Executive Service (SES) Designations

66. Review all SES designations, beginning with FSA, to determine if positions are appropriately designated as career-reserved or general.

Action Plan

A Review SES positions.
Who: *Assistant Secretary for Administration* ***When:*** *Within 90 days*



Hold All Managers Accountable for a Diverse Pool of Applicants

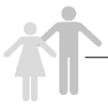
67. Hold all managers accountable for a diverse pool of applicants for all vacancy announcements and target outreach and recruitment of under-represented groups as identified in the agency Affirmative Employment Plans (AEP's).

Action Plan

A Require and approve outreach plans for filling vacancies. Outreach plans must target under-represented groups and organizations.
Who: *Agency Heads* ***When:*** *Immediately*

B Require that recruiters have interpersonal skills, be trained in recruiting, and be sensitive to cultural differences of potential recruits.
Who: *Agency Heads* ***When:*** *Ongoing*

C Advertise, where appropriate, positions as multi-graded positions (e.g., GS-7/9/11, GS-11/12/13).
Who: *Agency Heads* ***When:*** *Ongoing*



Require All USDA Employees to Have Civil Rights Training

68. Require all USDA employees to have civil rights training annually.

Action Plan

A Develop standardized training modules for USDA.
Who: *Assistant Secretary for Administration* ***When:*** *Within 120 days of this report*

B Train all employees and certify to the Secretary that training is completed on an annual basis.
Who: *Agency Heads* ***When:*** *FY 1998*

C Make a civil rights module a part of all management/supervisory training and orientation programs.
Who: *Agency Heads* ***When:*** *Ongoing*



Hold All Managers Accountable for a Diverse Workforce

69. Publicize and recognize those managers and agencies that have made significant accomplishments in workforce diversity.

Action Plan

A Recognize managers and employees through awards and commendations, as appropriate.
Who: *The Secretary; Agency Heads* ***When:*** *Annually; ongoing*

70. Direct the Forest Service to end the use of surplus lists.

Action Plan

A Issue a directive to the Forest Service to end use of surplus lists.
Who: *The Secretary* ***When:*** *Immediately*

71. Evaluate the role and function of the Special Emphasis Program Managers (SEPM) in accomplishing USDA's civil rights goals and objectives. The valuable resources dedicated to support SEPM could be used more effectively. Presently they are limited to the annual Special Emphasis activities as their primary function.

Action Plan

A Conduct a review and reassessment of the roles and responsibilities of the Special Emphasis Program Managers USDA-wide.
Who: *Assistant Secretary for Administration* ***When:*** *90 days*

B Allocate appropriate resources to support and administer program and employment functions of the SEPM's.
Who: *Assistant Secretary for Administration; Agency Heads* ***When:*** *90 days*

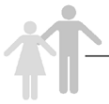
72. Develop and implement retention programs to ensure a diverse workforce.

Action Plan

A Require the use of an "Exit Interview Feedback" system to assist agencies in determining why employees leave the Agency/Department. Share this information with agency managers and develop a system for trend-analysis and evaluation. Use the analyses to develop action items for inclusion in agency plans designed to eliminate barriers to recruitment and retention, improve the work environment, and retain a diverse workforce.
Who: *Agency Heads* ***When:*** *120 days; ongoing*



B Require that each agency initiate surveys such as the Food and Consumer Service's "Employee Work Life Surveys" and the Forest Service's "Continuous Improvement Process" to assess employee satisfaction about issues affecting their work lives. Use the results to develop action items in agency plans that will assist in improving the work environment and help employees in balancing their career and personal needs.
Who: *Agency Heads* ***When:*** *120 days; ongoing*



Employee Complaints

73. To substantially reduce the backlog of EEO complaints, offer mediation, arbitration, or similar alternative dispute resolution (ADR) processes to employees who filed a formal EEO complaint before January 1, 1997. The use of ADR shall be the employee's choice; however, binding arbitration will be used only if agreed to by both the employee and management.

Action Plan

A Determine whether all, or select categories of complaints (e.g., by location, type of complaint, age of complaint) will be offered ADR.
Who: *Director, Office of Civil Rights* ***When:*** *Immediately*

B Identify and obtain necessary resources.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

C Write to employees and management explaining the ADR option.
Who: *Director, Office of Civil Rights* ***When:*** *15 days*

D Obtain necessary DOJ authority to use binding arbitration.
Who: *General Counsel* ***When:*** *Immediately after decision to make binding arbitration an option*

E Select or contract with competent, neutral mediators and/or arbitrators.
Who: *Director, Office of Civil Rights* ***When:*** *45 days*

F Begin ADR sessions.
Who: *Director, Office of Civil Rights* ***When:*** *60 days*

G Complete ADR sessions.
Who: *Director, Office of Civil Rights* ***When:*** *Most within 120 days; ongoing*

74. All EEO resolution agreements shall have terms that (1) relate to the nature of the complaint; (2) address causal factors; (3) are conducive to timely implementation; and (4) contain implementation timeframes. To ensure accountability, "no fault" settlements shall be used only in cases where all the parties to the dispute agree that it is appropriate.

Action Plan

A Establish a USDA policy on the use of "no fault" agreements.
Who: *The Secretary* ***When:*** *60 days*



75. To ensure an effective and timely EEO complaints process on a permanent basis, conduct an independent review of USDA's existing EEO system, assess the areas of deficiency, and redesign or repair the system.

Action Plan

A Select an independent entity/individual(s) with necessary expertise and neutrality to review the system and recommend changes.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

B Complete the report and recommendations.
Who: *Selected reviewer* ***When:*** *Within 45 days of selection*

C Implement the recommended changes.
Who: *Assistant Secretary for Administration; Director, Office of Civil Rights* ***When:*** *Begin immediately upon receipt of recommended changes. Complete major changes within 90 days*

D Identify and obtain resources necessary to implement this recommendation.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

76. Initiate a continuing and coordinated USDA-wide workforce planning and recruitment process.

Action Plan

A Require the Department and each agency to develop a workforce planning process, linked to its strategic plan and affirmative employment program plan, that addresses under-representation and includes recruitment, training, and retention efforts.
Who: *The Secretary* ***When:*** *Within 60 days of this report, then annually*

B Coordinate recruitment efforts Department-wide and coordinate outreach and recruitment plans with institutions with which the Department has ongoing relationships such as the 1890 Land-Grant Colleges, HBCU, HACU as well as special recruitment initiatives such as REAP and the Workforce Recruitment Program for College Students with Disabilities.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately/ Ongoing*

C Sign REAP MOU and fund appropriately.
Who: *The Secretary* ***When:*** *Immediately*

D Establish a personnel management evaluation/assistance program at the Department level to coordinate periodic reviews of agency workforce plans and human resource management programs.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately/ ongoing*

77. The Secretary should be more involved in the management and selection of the SES cadre within USDA.

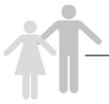
Action Plan

A Issue a letter to Agency Heads regarding changes in the SES program. The letter requires Agency Heads to assure that training, details, reassignments, and other work-related activities that are assigned to prepare individuals for the SES level are done in a fair and equitable manner.
Who: *The Secretary* ***When:*** *Immediately*

B Use impartial third parties to evaluate applicants for SES positions, especially for their demonstrated commitment to civil rights.
Who: *The Secretary* ***When:*** *Immediately*

C Reopen USDA-wide Senior Executive Service Candidate Development Program and ensure a diverse pool of candidates.
Who: *The Secretary* ***When:*** *Immediately*

Organizational Structure of Civil Rights



Consolidate USDA's Civil Rights Functions Into One Office

78. Consolidate the Department's civil rights functions under one Office of Civil Rights that reports directly to the ASA. Immediately fill the top position in that office with a career SES individual with demonstrated skills in civil rights management, communications and outreach, partnership building with other USDA agencies, and leadership.

79. Organize the new USDA civil rights office with separate employment and program civil rights components that report under separate lines of supervision.

80. The USDA Civil Rights Office will proactively promote civil rights at USDA, provide guidance and oversight to agencies, establish and disseminate civil rights policy, update regulations, and conduct compliance reviews and audits to ensure enforcement of all applicable civil rights laws, rules, and regulations.

81. USDA's Director of Civil Rights is ultimately accountable for investigations of program discrimination complaints. The Director may delegate to agency civil rights directors the authority to conduct preliminary investigations of program discrimination complaints, but must document any such delegation in writing, and may withdraw such authority from the agencies.

82. The Director of Civil Rights will focus on improving the Department's enforcement of civil rights laws in program delivery, and ensure that adequate funds are allocated to enforcing civil rights in program delivery. The Director should consider reestablishing the position of desk officer or similar position that would provide specialized service to individual agencies.

83. Give the Department's new Director of Civil Rights the authority to create a quality, competent staff capable of implementing an effective civil rights program at USDA. This authority includes the flexibility to reassign and hire staff.

Action Plan

A Identify the skill mix a Civil Rights Director needs to administer an effective civil rights program (e.g., enforcement, policy development, evaluation, advisory services, conflict resolution, etc.).
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

B Conduct a search for qualified applicants; ensure that a competent panel is responsible for recommending to the Secretary the new Director; establish criteria and goals by which the Director will be evaluated.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

C Appoint a Civil Rights Director with a proven track record in civil rights who is committed to carrying out the recommendations in this report.
Who: *The Secretary* ***When:*** *30 days after receiving the name of the recommended individual candidate*

D Enter into a memorandum of understanding with OGC to establish, clarify, and improve relationship and communications between offices.
Who: *Assistant Secretary for Administration; General Counsel* ***When:*** *60 days after new Director is appointed*

E Prohibit transfer of employees to the civil rights staff as a resolution of a complaint unless justified by merits of complaint.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

F Develop a reorganization and implementation plan and identify strategies for placement and out-placement of individuals who do not match skills in the new structure.
Who: *Assistant Secretary for Administration* ***When:*** *60 days*

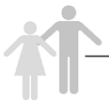


SES Status of Civil Rights Director

84. Change the designation of the Director of Civil Rights from SES general to SES career reserved, but do not allow that process to hold up the immediate appointment of a permanent Director of Civil Rights.

Action Plan

A Prepare justification for change and transmit to Office of Personnel Management.
Who: *Executive Resources and Services Division* ***When:*** *90 days*



Make the Office of the General Counsel Accountable for Civil Rights

85. To ensure civil rights accountability, OGC must demonstrate its commitment to civil rights by establishing a division dedicated to providing legal counsel to the Department and agency officials on civil rights issues and diversifying its staff of attorneys starting at the highest levels.

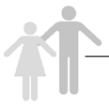
Action Plan

A Develop an organizational structure that will ensure effective delivery of civil rights legal services, such as adding an Assistant General Counsel for Civil Rights and having that Assistant report to the General Counsel.
Who: *General Counsel* ***When:*** *30 days*

B Staff the Civil Rights Division with lawyers who are committed to civil rights in USDA and who specialize in civil rights law and have been, or will be, thoroughly trained in civil rights law.
Who: *General Counsel* ***When:*** *90 days*

C Ensure that top OGC management supports these changes or ensure that OGC has leadership that will support it.
Who: *The Secretary* ***When:*** *Immediately*

D Make resources available within existing budget.
Who: *General Counsel* ***When:*** *Immediately*



Establish Civil Rights Offices in Each Agency

86. To ensure that each USDA agency has civil rights accountability, each agency must have a civil rights director who reports to the agency head. Any exception to the reporting line must be approved by the Secretary. The director will have primary responsibility for ensuring that the agency enforces all civil rights laws and that the agency complies with all complaints processing timeframes. Departmental Staffs (OGC, OIG, OBPA, etc.) must have effective civil rights programs with a measurable mechanism for feedback to the Secretary on their civil rights performance.

87. Agency civil rights programs must include program planning/analysis, compliance, and complaints management. In addition, agencies must have documented, measurable goals and timetables to address civil rights in program delivery and employment, under-representation, work force diversity, and procurement.

88. The EEO counselor positions, including resources, must be returned to the agencies from the Department's Civil Rights Office. All EEO counselors must be in a full-time civil rights position.

Action Plan

A Revise the policy to administer mission area civil rights programs through Agency Heads and agency civil rights directors, unless the Secretary grants an exception.
Who: *The Secretary* ***When:*** *30 days*

B Require all staff offices reporting to the Secretary to have an AEP.
Who: *Assistant Secretary for Administration; Agency Heads* ***When:*** *60 days*

C If agencies change or establish organizational structure associated with this recommendation, submit to the USDA Director of Civil Rights any required documentation to effect this change.
Who: *Agency Heads* ***When:*** *45 days*

D Expedite approval of changes in organizational structure.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately, upon receipt of documentation*

E Execute necessary directives to return counselors to agencies.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

F Hold Agency Heads and civil rights directors accountable for meeting mandated processing deadlines and for adequately training their staffs in all aspects of civil rights, including conflict management.
Who: *Assistant Secretary for Administration; Director, Office of Civil Rights* ***When:*** *Immediately; ongoing.*



Adopt a New Conflict Management Policy at USDA

89. Adopt and announce as USDA's official policy that management is responsible for preventing conflict and resolving disputes at the lowest possible level by resolving the underlying issues and preventing recurrence of conflicts. Resolve conflicts using an "interest based" approach whenever possible.

Action Plan

A Issue a statement that forcefully states policy for resolving disputes on an interest-based approach and that USDA's past philosophy of "settle at all costs" is not acceptable.
Who: *The Secretary* ***When:*** *30 days*

B Direct that EEO counselors and other USDA personnel with dispute resolution responsibilities are not to be rated exclusively or even primarily on their settlement/resolution rates. Instead, ratings should be based primarily on the quality of the dispute resolution services these employees provide.
Who: *The Secretary* ***When:*** *30 days*

90. Convene a team, with representatives from all mission areas/agencies, to develop a USDA program implementing the Department's new conflict management policy.

Action Plan

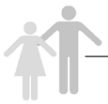
A Direct each agency/mission area to designate one or two representatives for membership on the Department's Conflict Management Team (CMT).
Who: *The Secretary* ***When:*** *Immediately*

B Select team leader having the necessary conflict resolution knowledge and skills.
Who: *The Secretary* ***When:*** *Immediately*

C Develop recommendations on implementing complaint prevention/resolution programs.
Who: *Conflict Management Team* ***When:*** *45 days*

D Determine how responsibility for conflict resolution programs shall be divided between agencies and the Department.
Who: *Conflict Management Team* ***When:*** *45 days*

E Reassess the role of the EEO counselors and determine whether counselors should serve as mediators.
Who: *Conflict Management Team* ***When:*** *45 days*



Eliminate Dispute Resolution Boards, Regional Service Centers

91. Eliminate the Dispute Resolution Boards and close the Department's Civil Rights Regional Service Centers.

Action Plan

A Communicate closure of civil rights service centers directly to the affected employees before making the public announcement.
Who: *Assistant Secretary for Administration* ***When:*** *Immediately*

B Announce to the USDA community the discontinuation of boards and closures.
Who: *Assistant Secretary for Administration* ***When:*** *October 1, 1997*

C Provide a career transition and placement program for employees affected by service center closings.
Who: *Human Resources* ***When:*** *45 days*

Consolidate Offices Under the Assistant Secretary of Administration

92. Consolidate all administration and management functions under the ASA with full delegation of authority. This consolidation will bring the Chief Financial Officer, the Chief Information Officer, the Office of Small and Disadvantaged Business Utilization, and the Service Center Implementation Team under the ASA.

Action Plan

A Prepare the necessary draft legislation to move the CFO, CIO, and OSDBU reporting from the Secretary to the ASA.
Who: *General Counsel* ***When:*** *30 days*

B Ensure that the ASA has demonstrated leadership skills in managing administration functions in a large and complex organization. Such leadership should have a track record with results.
Who: *The Secretary* ***When:*** *Immediately*

C Ensure that ASA is able to implement the new organizational structure with the full support and resources from the Secretary. This includes full authority to adjust leadership to make this happen, including removal of those who do not support the new structure.
Who: *The Secretary* ***When:*** *Immediately*



Follow-up/Listening Sessions

In addition to using the information gained at the listening sessions to help develop this report and make recommendations, USDA will provide follow-up to those who voiced concerns about civil rights at USDA.

During each session, Secretary Glickman or Deputy Secretary Rominger requested staff to follow up by investigating some individual cases of speakers. That is currently being done and the process will continue.

However, the recommendations contained in this report are intended to solve the underlying civil rights problems at USDA to make the system work for both customers and employees. The recommendations are also intended to provide a framework for civil rights at USDA into the next century.

Listening Sessions

The CRAT sponsored 12 listening sessions, which were held in 11 locations across the country, in January of 1997. The sessions were designed to hear "first hand" from both customers—especially socially disadvantaged and minority farmers—and USDA employees about what was wrong with civil rights at the Department. The CRAT held 9 listening sessions with customers and 3 with employees. Each customer listening session was tailored to address the concerns of specific gender, racial and cultural groups, including American Indians, Hispanics, and Asians. Each session followed the same basic format, which was designed to hear from the maximum number of people in a 3-hour period. When needed, language translators were provided.

Customers and employees who did not speak at the listening sessions or did not wish to speak openly were able to submit recorded or written statements to the CRAT. USDA also established an e-mail address, a fax number, and a Hot Line for civil rights comments.

Over 2,000 customers and 900 employees attended the sessions. Those who spoke voiced concerns about program delivery and civil rights issues at USDA. Some spoke as individuals, others represented groups.

Customers' Major Issues

Major farmer concerns focused on program delivery. Speakers told of abuse and discrimination in loan processing, delays in delivery of approved loans, and lack of timely information and help needed to participate in USDA programs.

Some speakers voiced concern over the decline of minority farmers and farms in the South and Southwest. Some farmers and farm advocates spoke of a perception that USDA is involved in a conspiracy to take land from minority farmers and let wealthy land-owners buy it, often at a fraction of the land's worth.

All customer sessions raised the issue of the lack of a USDA workforce that reflects the diversity of the customers in USDA's field offices.

Employees' Major Issues

USDA employees tended to focus on unfair management practices, insensitive managers, hostile work environments, and lack of protection from reprisals. Many employees felt they were discriminated against because of race, national origin, religion, sexual orientation, disability, gender, or age.

Employees said USDA management is neither accountable for nor committed to civil rights. Many complained about the complaint process. Some pointed out it had been years since they'd filed a complaint and they had heard nothing back about the status of the complaint.

Listening Sessions:

January 6, 1997	Customer Listening Session, Albany, GA
January 7, 1997	Employee Listening Session, New Orleans, LA
January 7, 1997	Customer Listening Session, Memphis, TN
January 8, 1997	Customer Listening Session, Halifax, NC
January 10, 1997	Customer Listening Session, Tulsa, OK
January 11, 1997	Customer Listening Session, Brownsville, TX
January 13, 1997	Customer Listening Session, Window Rock, AZ
January 16, 1997	Customer Listening Session, Salinas, CA
January 17, 1997	Employee Listening Session, Woodland, CA
January 22, 1997	Employee Listening Session, Washington, DC
January 22, 1997	Customer Listening Session, Washington, DC
January 24, 1997	Customer Listening Session, Belzoni, MS

Acknowledgements

A great many people, too numerous to list, both within and outside of USDA, helped the Civil Rights Action Team by providing information and other support, often on short notice. The team thanks all of those who provided help, with a special thanks to the following USDA staffs

State Food and Agriculture Committees at listening session locations

Natural Resources Conservation Service
- Office of the Chief
- Quality Management and Program Evaluation Division
- Office of Public Affairs
- Administrative Services

Policy Analysis and Coordination Center—Civil Rights

Policy Analysis and Coordination Center—Human Resources

Office of Operations

Office of Management Services

Modernization of Administrative Processes

Economic Research Service

Office of the Chief Financial Officer

Office of Congressional Relations

Office of the General Counsel

Office of Inspector General

Office of Communications

Office of Budget and Program Analysis

Office of the Executive Secretariat

National Appeals Division

Farm Service Agency

Farm and Foreign Agricultural Services Mission Area

Food and Consumer Service

Rural Development

Civil Rights Action Team Hotline Staff

Office of Chief Information Officer

Agricultural Research Service

Forest Service

The team also thanks those Congressional representatives and members of their staffs who attended listening sessions.

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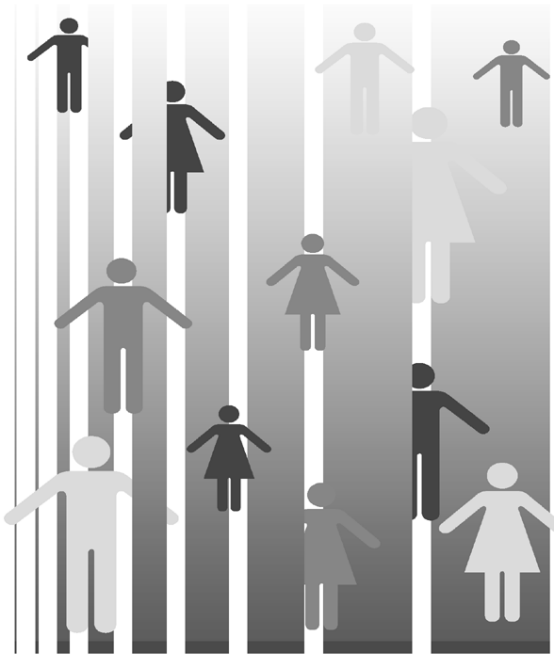

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U.S. Department of Agriculture
Breakdown by Agency as of 9/30/96

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Office of the Secretary	#	47	25	16	20	5	5	0	0	1	0	0	0
	%		53.19	34.04	42.55	10	10.64	0.00	0.00	2.13	0.00	0.00	0.00
Agricultural Marketing Service	#	2633	1067	1331	779	130	205	65	51	27	20	13	12
	%		40.52	50.55	29.59	4.94	7.79	2.47	1.94	1.03	0.76	0.49	0.46
Agricultural Research Service	#	6536	2584	3406	2060	242	338	151	76	135	89	18	21
	%		39.53	52.11	31.52	3.70	5.17	2.31	1.16	2.07	1.36	0.28	0.32
Rural Housing Service	#	6578	4270	1947	3476	246	505	63	153	25	60	27	76
	%		64.91	29.60	52.84	3.74	7.68	0.96	2.33	0.38	0.91	0.41	1.16
Foreign Agricultural Service	#	525	267	223	145	19	114	11	4	5	3	0	1
	%		50.86	42.48	27.62	3.62	21.71	2.10	0.76	0.95	0.57	0.00	0.19
Forest Service	#	29074	11471	14964	9518	552	598	1043	594	227	220	817	541
	%		39.45	51.47	32.74	1.90	2.06	3.59	2.04	0.78	0.76	2.81	1.86
Office of Communications	#	105	54	40	26	11	28	0	0	0	0	0	0
	%		51.43	38.10	24.76	10.48	26.67	0.00	0.00	0.00	0.00	0.00	0.00
Office of the General Counsel	#	190	104	80	74	4	28	2	1	0	1	0	0
	%		54.74	42.11	38.95	2.11	14.74	1.05	0.53	0.00	0.53	0.00	0.00
Rural Utilities Service	#	355	129	198	70	16	53	3	2	8	3	1	1
	%		36.34	55.77	19.72	4.51	14.93	0.85	0.56	2.25	0.85	0.28	0.28
Natural Resources Conservation Service	#	10811	2757	6973	2275	521	248	294	116	76	45	190	73
	%		25.50	64.50	21.04	4.82	2.29	2.72	1.07	0.70	0.42	1.76	0.68
Economic Research Service	#	537	225	276	116	12	96	5	3	19	9	0	1
	%		41.90	51.40	21.60	2.23	17.88	0.93	0.56	3.54	1.68	0.00	0.19
National Agricultural Statistics Service	#	933	458	417	349	39	78	8	16	9	13	2	2
	%		49.09	44.69	37.41	4.18	8.36	0.86	1.71	0.96	1.39	0.21	0.21
Coop. State. Res., Educ. & Exten.	#	309	198	90	91	15	103	3	3	2	0	1	1
	%		64.08	29.13	29.45	4.85	33.33	0.97	0.97	0.65	0.00	0.32	0.32
Office of Inspector General	#	705	299	325	173	46	98	21	11	10	16	4	1
	%		42.41	46.10	24.54	6.52	13.90	2.98	1.56	1.42	2.27	0.57	0.14
Food & Consumer Service	#	1660	1032	497	652	81	284	34	59	13	30	3	7
	%		62. 17	29.94	39.28	4.88	17.11	2.05	3.55	0.78	1.81	0.18	0.42
Rural Business-Cooperative Service	#	111	49	52	23	7	24	1	1	1	1	1	0
	%		44.14	46.85	20.72	6.31	21.62	0.90	0.90	0.90	0.90	0.90	0.00

U.S. Department of Agriculture
Breakdown by Agency as of 9/30/96
(continued)

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Animal & Plant Health Inspection Svc.	#	4801	1920	2105	1419	155	234	414	178	187	71	20	18
	%		39.99	43.85	29.56	3.23	4.87	8.62	3.71	3.90	1.48	0.42	0.37
Grain Inspection Packers & Stockyard	#	791	199	439	136	132	49	7	8	6	3	8	3
	%		25.16	55.50	17.19	16.69	6.19	0.88	1.01	0.76	0.38	1.01	0.38
Food Safety & Inspection Service	#	8970	2830	5006	2020	469	635	333	72	264	52	68	51
	%		31.55	55.81	22.52	5.23	7.08	3.71	0.80	2.94	0.58	0.76	0.57
Office of the Chief Economist	#	34	10	23	7	0	3	0	0	1	0	0	0
	%		29.41	67.65	20.59	0.00	8.82	0.00	0.00	2.94	0.00	0.00	0.00
Office Budget & Program Analysis	#	68	34	28	21	5	12	0	1	1	0	0	0
	%		50.00	41.18	30.88	7.35	17.65	0.00	1.47	1.47	0.00	0.00	0.00
Office of Information Resources Mgmt.	#	252	110	123	75	12	31	3	2	3	2	1	0
	%		43.65	48.81	29.76	4.76	12.30	1.19	0.79	1.19	0.79	0.40	0.00
Office of the Chief Financial Officer	#	1545	1100	297	562	105	484	26	27	8	20	9	7
	%		71.20	19.22	36.38	6.80	31.33	1.68	1.75	0.52	1.29	0.58	0.45
Office of Administrative Law	#	17	12	5	4	0	7	0	0	0	1	0	0
	%		70.59	29.41	23.53	0.00	41.18	0.00	0.00	0.00	4.88	0.00	0.00
Office of Civil Rights Enforcement	#	114	78	13	15	12	47	9	9	1	5	1	2
	%		68.42	11.40	13.16	10.53	41.23	7.89	7.89	0.88	4.39	0.88	1.75
Office of Personnel	#	113	80	26	30	6	44	0	1	1	3	0	2
	%		70.80	23.01	26.55	5.31	38.94	0.00	0.88	0.88	2.65	0.00	1.77
Office of Operations	#	288	138	43	33	102	100	1	2	3	3	1	0
	%		47.92	14.93	11.46	35.42	34.72	0.35	0.69	1.04	1.04	0.35	0.00
Alternative Agr. Res. & Comm. Center	#	5	3	2	1	0	2	0	0	0	0	0	0
	%		60.00	40.00	20.00	0.00	40.00	0.00	0.00	0.00	0.00	0.00	0.00
Off. of Small & Disadvantaged Bus.	#	10	9	1	2	0	7	0	0	0	0	0	0
	%		90.00	10.00	20.00	0.00	70.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Executive Secretariat	#	17	15	1	3	1	12	0	0	0	0	0	0
	%		88.24	5.88	17.65	5.88	70.59	0.00	0.00	0.00	0.00	0.00	0.00
Farm Service Agency	#	6407	3323	2724	2715	211	460	89	74	21	26	39	48
	%		51.87	42.52	42.38	3.29	7.18	1.39	1.15	0.33	0.41	0.61	0.75
National Appeals Division	#	126	50	69	38	4	12	2	0	0	0	1	0
	%		39.68	54.76	30.16	3.17	9.52	1.59	0.00	0.00	0.00	0.79	0.00
TOTAL	#	**84669**	**34902**	**41740**	**26930**	**3160**	**4944**	**2588**	**1464**	**1054**	**696**	**1225**	**868**
	%		**41.22**	**49.30**	**31.81**	**3.73**	**5.84**	**3.06**	**1.73**	**1.24**	**0.82**	**1.45**	**1.03**

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency—
GS 1 Through 8 as of 9/30/96

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Office of the Secretary	#	2	2	0	1	0	1	0	0	0	0	0	0
	%		100.00	0.00	50.00	0.	50.00	0.00	0.00	0.00	0.00	0.00	0.00
Agricultural Marketing Service	#	960	650	232	469	45	135	22	29	6	12	5	5
	%		67.71	24.17	48.85	4.69	14.06	2.29	3.02	0.63	1.25	0.52	0.52
Agricultural Research Service	#	2226	1527	549	1203	70	218	55	59	18	35	7	12
	%		68.60	24.66	54.04	3.14	9.79	2.47	2.65	0.81	1.57	0.31	0.54
Rural Housing Service	#	2996	2849	106	2338	34	310	4	99	1	41	2	61
	%		95.09	3.54	78.04	1.13	10.35	0.13	3.30	0.03	1.37	0.07	2.04
Foreign Agricultural Service	#	88	85	0	16	2	68	1	0	0	0	0	1
	%		96.59	0.00	18.18	2.27	77.27	1.14	0.00	0.00	0.00	0.00	1.14
Forest Service	#	10683	5904	3691	4740	234	330	438	375	41	100	375	359
	%		55.27	34.55	44.37	2.19	3.09	4.10	3.51	0.38	0.94	3.51	3.36
Office of Communications	#	13	9	1	3	3	6	0	0	0	0	0	0
	%		69.23	7.70	23.08	23.08	46.15	0.00	0.00	0.00	0.00	0.00	0.00
Office of the General Counsel	#	40	36	2	17	2	17	0	1	0	1	0	0
	%		90.00	5.00	42.50	5.00	42.50	0.00	2.50	0.00	2.50	0.00	0.00
Rural Utilities Service	#	59	58	0	23	1	32	0	1	0	1	0	1
	%		98.31	0.00	38.98	1.69	54.24	0.00	1.69	0.00	1.69	0.00	1.69
Natural Resources Conservation Service	#	2999	1286	1446	1057	115	123	70	48	18	22	64	36
	%		42.88	48.22	35.25	3.83	4.10	2.33	1.60	0.60	0.73	2.13	1.20
Economic Research Service	#	94	88	5	11	1	76	0	1	0	0	0	0
	%		93.62	5.32	11.70	1.06	80.85	0.00	1.06	0.00	0.00	0.00	0.00
National Agricultural Statistics Service	#	340	307	20	241	7	45	1	10	4	9	1	2
	%		90.29	5.88	70.88	2.06	13.24	0.29	2.94	1.18	2.65	0.29	0.59
Coop. State. Res., Educ. & Exten.	#	105	99	2	28	3	70	1	1	0	0	0	0
	%		94.29	1.90	26.67	2.86	66.67	0.95	0.95	0.00	0.00	0.00	0.00
Office of Inspector General	#	104	92	7	45	1	38	2	3	2	5	0	1
	%		88.46	6.73	43.27	0.96	36.54	1.92	2.88	1.92	4.81	0.00	0.96
Food & Consumer Service	#	270	250	8	110	9	106	3	18	0	12	0	4
	%		92.59	2.96	40.74	3.33	39.26	1.11	6.67	0.00	4.44	0.00	1.48
Rural Business-Cooperative Service	#	17	17	0	3	0	13	0	1	0	0	0	0
	%		100.00	0.00	17.65	0.00	76.47	0.00	5.88	0.00	0.00	0.00	0.00

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency
GS 1 Through 8 as of 9/30/96 *(continued)*

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Animal & Plant Health Inspection Svc.	#	1601	1013	357	755	45	137	150	89	30	24	6	8
	%		63.27	22.30	47.16	2.81	8.56	9.37	5.56	1.87	1.50	0.37	0.50
Grain Inspection Packers & Stockyard	#	259	124	89	83	41	35	2	3	1	2	2	1
	%		47.88	34.36	32.05	15.88	13.51	0.77	1.16	0.39	0.77	0.77	0.39
Food Safety & Inspection Service	#	4764	2050	2267	1472	234	466	154	47	15	25	44	40
	%		43.03	47.59	30.90	4.91	9.78	3.23	0.99	0.31	0.52	0.92	0.84
Office of the Chief Economist	#	5	5	0	2	0	3	0	0	0	0	0	0
	%		100.00	0.00	40.00	0.00	60.00	0.00	0.00	0.00	0.00	0.00	0.00
Office Budget & Program Analysis	#	8	6	0	1	2	4	0	1	0	0	0	0
	%		75.00	0.00	12.50	25.00	50.00	0.00	12.50	0.00	0.00	0.00	0.00
Office of Information Resources Mgmt.	#	29	23	5	13	1	9	0	0	0	1	0	0
	%		79.31	17.24	44.83	3.45	31.03	0.00	0.00	0.00	3.45	0.00	0.00
Office of the Chief Financial Officer	#	795	693	57	341	37	322	4	17	3	10	1	3
	%		87.17	7.17	42.89	4.65	40.50	0.50	2.14	0.38	1.26	0.13	0.38
Office of Administrative Law	#	7	7	0	1	0	5	0	0	0	1	0	0
	%		100.00	0.00	14.29	0.00	71.43	0.00	0.00	0.00	14.29	0.00	0.00
Office of Civil Rights Enforcement	#	24	23	0	5	1	15	0	1	0	2	0	0
	%		95.83	0.00	20.83	4.17	62.50	0.00	4.17	0.00	8.33	0.00	0.00
Office of Personnel	#	35	31	1	8	3	21	0	0	0	1	0	1
	%		88.57	2.86	22.86	8.	60.00	0.00	0.00	0.00	2.86	0.00	2.86
Office of Operations	#	79	50	3	5	26	44	0	0	0	1	0	0
	%		63.29	3.80	6.33	32.91	55.70	0.00	0.00	0.00	1.27	0.00	0.00
Alternative Agr. Res. & Comm. Center	#	1	1	0	0	0	1	0	0	0	0	0	0
	%		100.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Off. of Small & Disadvantaged Bus.	#	2	2	0	0	0	2	0	0	0	0	0	0
	%		100.00	0.00	0.00	0.	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Executive Secretariat	#	7	6	0	1	1	5	0	0	0	0	00	
	%		85.71	0.00	14.29	14.29	71.43	0.00	0.00	0.00	0.00	0.00	0.00
Farm Service Agency	#	2153	1999	103	1641	38	257	10	49	1	13	2	39
	%		92.85	4.78	76.22	1.76	11.94	0.46	2.28	0.05	0.60	0.09	1.81
National Appeals Division	#	16	14	1	10	1	4	0	0	0	0	0	0
	%		87.50	6.25	62.50	6.25	25.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: GS Pay Plan

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency—
GS 9 Through 12 as of 9/30/96

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Office of the Secretary	#	9	8	1	6	0	2	0	0	0	0	0	0
	%		88.89	11.11	66.67	0.	22.22	0.00	0.00	0.00	0.00	0.00	0.00
Agricultural Marketing Service	#	1365	354	871	261	77	61	42	18	13	7	8	7
	%		21.93	63.81	19.12	5.64	4.47	3.08	1.32	0.95	0.51	0.59	0.51
Agricultural Research Service	#	1928	750	1048	602	51	90	41	12	33	41	5	5
	%		38.90	54.36	31.22	2.65	4.67	2.13	0.62	1.71	2.13	0.26	0.26
Rural Housing Service	#	2926	1268	1404	1030	165	158	48	50	21	16	20	14
	%		43.34	47.98	35.20	5.64	5.40	1.64	1.71	0.72	0.55	0.68	0.48
Foreign Agricultural Service	#	135	91	30	57	9	31	4	1	1	2	0	0
	%		67.41	22.22	42.22	6.67	22.96	2.96	0.74	0.74	1.48	0.00	0.00
Forest Service	#	14390	4857	8381	4180	219	219	452	194	143	101	338	163
	%		33.75	58.24	29.05	1.52	1.52	3.14	1.35	0.99	0.70	2.35	1.13
Office of Communications	#	41	28	11	10	2	18	0	0	0	0	0	0
	%		68.29	28.83	24.39	4.88	43.90	0.00	0.00	0.00	0.00	0.00	0.00
Office of the General Counsel	#	22	16	4	13	1	3	1	0	0	0	0	0
	%		72.73	18.18	59.09	4.55	13.64	4.55	0.00	0.00	0.00	0.00	0.00
Rural Utilities Service	#	78	44	27	27	4	15	0	1	2	1	1	0
	%		56.41	34.62	34.62	5.13	19.23	0.00	1.28	2.56	1.28	1.28	0.00
Natural Resources Conservation Service	#	6831	1306	4846	1095	323	94	201	62	44	19	111	36
	%		19.12	70.94	16.03	4.73	1.38	2.94	0.91	0.64	0.28	1.62	0.53
Economic Research Service	#	86	48	26	27	8	16	1	1	3	4	0	0
	%		55.81	30.23	31.40	9.30	18.60	1.16	1.16	3.49	4.65	0.00	0.00
National Agricultural Statistics Service	#	302	111	164	80	19	26	4	3	4	2	0	0
	%		36.75	54.30	26.49	6.29	8.61	1.32	0.99	1.32	0.66	0.00	0.00
Coop. State. Res., Educ. & Exten.	#	68	55	10	32	3	22	0	1	0	0	0	0
	%		80.88	14.71	47.06	4.41	32.35	0.00	1.47	0.00	0.00	0.00	0.00
Office of Inspector General	#	320	138	146	82	22	42	9	7	3	7	2	0
	%		43.13	45.63	25.63	6.88	13.13	2.81	2.89	0.94	2.89	0.63	0.00
Food & Consumer Service	#	997	609	300	417	52	137	23	35	10	17	3	3
	%		61.08	30.09	41.83	5.22	13.74	2.31	3.51	1.00	1.71	0.30	0.30
Rural Business-Cooperative Service	#	22	17	4	10	1	6	0	0	0	1	0	0
	%		77.27	18.18	45.45	4.55	27.27	0.00	0.00	0.00	4.55	0.00	0.00

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency
GS 9 Through 12 as of 9/30/96 *(continued)*

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Animal & Plant Health Inspection Svc.	#	2257	688	1132	491	81	64	204	80	141	45	11	8
	%		30.48	50.16	21.75	3.59	2.84	9.04	3.54	6.25	1.99	0.49	0.35
Grain Inspection Packers & Stockyard	#	421	67	262	49	79	13	5	3	3	1	5	1
	%		15.91	62.23	11.64	18.76	3.09	1.19	0.71	0.71	0.24	1.19	0.24
Food Safety & Inspection Service	#	3549	605	2367	419	194	133	165	22	195	21	23	10
	%		17.05	66.69	11.81	5.47	3.75	4.65	0.62	5.49	0.59	0.65	0.28
Office of the Chief Economist	#	7	3	4	3	0	0	0	0	0	0	0	0
	%		42.86	57.14	42.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office Budget & Program Analysis	#	14	11	2	8	1	3	0	0	0	0	0	0
	%		78.57	14.23	57.14	7.14	21.43	0.00	0.00	0.00	0.00	0.00	0.00
Office of Information Resources Mgmt.	#	94	46	39	31	4	13	2	2	2	0	1	0
	%		48.94	41.49	32.98	4.26	13.84	2.13	2.13	2.13	0.00	1.06	0.00
Office of the Chief Financial Officer	#	512	324	131	174	35	129	14	9	4	9	4	3
	%		63.28	25.56	33.98	6.84	25.20	2.73	1.76	0.78	1.76	0.78	0.56
Office of Administrative Law	#	4	4	0	2	0	2	0	0	0	0	0	0
	%		100.00	0.00	50.00	0.00	50.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Civil Rights Enforcement	#	18	14	1	3	2	7	1	3	0	0	0	1
	%		77.78	5.56	16.67	11.11	38.89	5.56	16.67	0.00	0.00	0.00	5.56
Office of Personnel	#	19	17	1	5	0	11	0	0	1	1	0	0
	%		89.47	5.26	26.32	0.	57.89	0.00	0.00	5.26	5.26	0.00	0.00
Office of Operations	#	74	45	7	11	22	32	0	1	0	1	1	0
	%		60.81	9.46	14.86	29.73	43.24	0.00	1.35	0.00	1.35	1.35	0.00
Alternative Agr. Res. & Comm. Center	#	1	1	0	0	0	1	0	0	0	0	0	0
	%		100.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Off. of Small & Disadvantaged Bus.	#	1	1	0	0	0	1	0	0	0	0	0	0
	%		100.00	0.00	0.00	0.	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Executive Secretariat	#	9	9	0	2	0	7	0	0	0	0	0	0
	%		100.00	0.00	22.22	0.00	77.78	0.00	0.00	0.00	0.00	0.00	0.00
Farm Service Agency	#	3020	1030	1792	835	102	160	57	20	13	8	26	7
	%		34.11	59.34	27.65	3.38	5.30	1.89	0.66	0.43	0.26	0.86	0.23
National Appeals Division	#	3	3	0	3	0	0	0	0	0	0	0	0
	%		100.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency—
GS/GM 13 Thru 15 as of 9/30/96

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Office of the Secretary	#	6	6	0	6	0	0	0	0	0	0	0	0
	%		100.00	0.00	100.00	0.	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Agricultural Marketing Service	#	285	59	213	47	5	8	1	3	7	1	0	0
	%		20.70	74.74	16a.49	1.75	2.81	0.35	1.05	2.46	0.35	0.00	0.00
Agricultural Research Service	#	1812	272	1422	231	18	20	17	4	82	13	1	4
	%		15.01	78.48	12.75	0.99	1.10	0.94	0.22	4.53	0.72	0.06	0.22
Rural Housing Service	#	646	150	431	105	46	37	11	4	3	3	5	1
	%		23.22	66.72	16.25	7.12	5.73	1.72	0.62	0.46	0.46	0.77	0.15
Foreign Agricultural Service	#	173	64	98	48	3	13	6	3	2	0	0	0
	%		36.99	56.65	27.75	1.73	7.51	3.47	1.73	1.16	0.00	0.00	0.00
Forest Service	#	2912	626	2056	536	60	42	87	19	34	19	49	10
	%		21.50	70.60	18.41	2.06	1.44	2.99	0.65	1.17	0.65	1.68	0.34
Office of Communications	#	48	17	27	13	4	4	0	0	0	0	0	0
	%		35.42	56.25	27.08	8.33	8.33	0.00	0.00	0.00	0.00	0.00	0.00
Office of the General Counsel	#	112	30	60	42	1	8	1	0	0	0	0	0
	%		44.64	53.57	37.50	0.89	7.14	0.89	0.00	0.00	0.00	0.00	0.00
Rural Utilities Service	#	213	27	167	20	10	6	3	0	6	1	0	0
	%		12.68	78.40	9.39	4.69	2.82	1.41	0.00	2.82	0.47	0.00	0.00
Natural Resources Conservation Service	#	939	157	656	117	78	30	21	5	13	4	14	1
	%		16.72	68.86	12.46	8.31	3.19	2.24	0.53	1.38	0.43	1.49	0.11
Economic Research Service	#	346	84	239	73	3	4	4	1	16	5	0	1
	%		24.28	69.08	21.10	0.87	1.16	1.16	0.29	4.26	1.45	0.00	0.29
National Agricultural Statistics Service	#	285	40	227	28	13	7	3	3	1	2	1	0
	%		14.04	79.65	9.82	4.56	2.46	1.05	1.05	0.35	0.70	0.35	0.00
Coop. State. Res., Educ. & Exten.	#	128	42	73	30	8	10	2	1	2	0	1	1
	%		32.81	57.03	24.44	6.25	7.81	1.56	0.78	1.56	0.00	0.78	0.78
Office of Inspector General	#	272	66	167	43	23	18	9	1	5	4	2	0
	%		24.26	61.40	15.81	8.46	6.62	3.31	0.37	1.84	1.47	0.74	0.00
Food & Consumer Service	#	374	166	178	120	19	39	8	6	3	1	0	0
	%		44.36	47.59	32.09	5.08	10.43	2.14	1.60	0.80	0.27	0.00	0.00
Rural Business-Cooperative Service	#	69	15	47	10	4	5	1	0	1	0	1	0
	%		21.74	68.12	14.49	5.80	7.25	1.45	0.00	1.45	0.00	1.45	0.00

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency
GS/GM 13 Thru 15 as of 9/30/96 *(continued)*

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Animal & Plant Health Inspection Svc.	#	760	201	501	160	20	31	23	6	12	2	3	2
	%		26.45	65.92	21.05	2.63	4.08	3.03	0.79	1.58	0.26	0.39	0.26
Grain Inspection Packers & Stockyard	#	104	7	82	4	12	0	0	2	2	0	1	1
	%		6.73	78.85	3.85	11.54	0.00	0.00	1.92	1.92	0.00	0.96	0.96
Food Safety & Inspection Service	#	621	164	356	122	36	32	11	3	53	6	1	1
	%		26.41	57.33	19.65	5.80	5.15	1.77	0.48	8.53	0.97	0.16	0.16
Office of the Chief Economist	#	17	1	15	1	0	0	0	0	1	0	0	0
	%		5.88	88.24	5.88	0.00	0.00	0.00	0.00	5.88	0.00	0.00	0.00
Office Budget & Program Analysis	#	42	17	22	12	2	5	0	0	1	0	0	0
	%		40.48	52.38	28.57	4.76	11.90	0.00	0.00	2.38	0.00	0.00	0.00
Office of Information Resources Mgmt.	#	126	40	77	30	7	9	1	0	1	1	0	0
	%		31.75	61.11	23.81	5.56	7.14	0.79	0.00	0.79	0.79	0.00	0.00
Office of the Chief Financial Officer	#	212	80	100	45	19	32	8	1	1	1	4	1
	%		37.74	47.17	21.23	8.96	15.09	3.77	0.47	0.47	0.47	1.89	0.47
Office of Administrative Law	#	1	0	1	0	0	0	0	0	0	0	0	0
	%		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Civil Rights Enforcement	#	69	41	12	7	8	25	6	5	1	3	1	1
	%		59.42	17.39	10.14	11.59	36.23	8.70	7.25	1.45	4.35	1.45	1.45
Office of Personnel	#	58	21	24	17	3	11	0	1	0	1	0	1
	%		53.45	41.38	29.31	5.	18.97	0.00	1.72	0.00	1.72	0.00	1.72
Office of Operations	#	78	35	27	16	12	17	0	1	3	1	1	0
	%		44.87	34.62	20.51	15.38	21.79	0.00	1.28	3.85	1.28	1.28	0.00
Alternative Agr. Res. & Comm. Center	#	3	1	2	1	0	0	0	0	0	0	0	0
	%		33.33	66.67	33.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Off. of Small & Disadvantaged Bus.	#	6	5	1	2	0	3	0	0	0	0	0	0
	%		83.33	16.67	33.33	0.	50.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Executive Secretariat	#	1	0	1	0	0	0	0	0	0	0	0	0
	%		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Farm Service Agency	#	1161	285	784	235	56	39	19	5	6	5	11	1
	%		24.55	65.53	20.24	4.82	3.36	1.64	0.43	0.52	0.43	0.95	0.09
National Appeals Division	#	106	33	67	24	3	8	2	0	0	0	1	0
	%		31.13	63.21	23.58	2.83	7.55	1.89	0.00	0.00	0.00	0.94	0.00

"NOTE: Includes Pay Plans - GG, GH, GM, GS"

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency—
Senior Executives as of 9/30/96

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Office of the Secretary	#	25	10	11	8	4	2	0	0	0	0	0	0
	%		40.0	44.0	32.0	16.0	8.0	0.00	0.00	0.00	0.00	0.00	0.00
Agricultural Marketing Service	#	11	2	8	2	0	0	0	0	1	0	0	0
	%		18.18	72.73	18.18	0.00	0.00	0.00	0.00	9.09	0.00	0.00	0.00
Agricultural Research Service	#	69	7	59	7	1	0	1	0	1	0	0	0
	%		10.14	85.50	10.14	1.45	0.00	1.45	0.00	1.45	0.00	0.00	0.00
Rural Housing Service	#	3	1	1	1	1	0	0	0	0	0	0	0
	%		33.3	33.3	33.3	33.3	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Foreign Agricultural Service	#	7	2	5	2	0	0	0	0	0	0	0	0
	%		28.57	71.42	28.57	0	0	0.00	0.00	0.00	0.00	0.00	0.00
Forest Service	#	58	10	43	8	4	1	1	1	0	0	0	0
	%		17.24	74.14	13.79	16.90	1.72	1.72	1.72	0.00	0.00	0.00	0.00
Office of Communications	#	4	1	2	0	1	0	0	0	0	0	0	1
	%		25.20	50	0.00	25.0	0.00	0.00	0.00	0.00	0.00	0.00	25.0
Office of the General Counsel	#	20	2	18	2	0	0	0	0	0	0	0	0
	%		10.0	90.0	10.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Rural Utilities Service	#	6	0	5	0	1	0	0	0	0	0	0	0
	%		0.00	83.33	0	16.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Natural Resources Conservation Service	#	26	4	14	5	7	0	0	0	0	0	0	0
	%		15.38	53.85	19.23	26.92	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Economic Research Service	#	10	5	6	5	0	0	0	0	0	0	0	0
	%		50.00	50.00	50.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
National Agricultural Statistics Service	#	7	1	6	1	0	0	0	0	0	0	0	0
	%		14.28	85.71	14.28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Coop. State. Res., Educ. & Exten.	#	13	5	6	4	2	1	0	0	0	0	00	
	%		38.46	46.15	30.79	15.38	7.69	0.00	0.00	0.00	0.00	0.00	0.00
Office of Inspector General	#	9	3	5	3	0	0	1	0	0	0	0	0
	%		33.33	55.56	33.33	0.00	0.00	11.11	0.00	0.00	0.00	0.00	0.00
Food & Consumer Service	#	15	7	8	5	0	2	0	0	0	0	0	0
	%		46.66	53.33	33.33	0.00	13.33	0.00	0.00	0.00	0.00	0.00	0.00
Rural Business-Cooperative Service	#	4	0	2	0	2	0	0	0	0	0	0	0
	%		0.00	50.	0.00	50	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Animal & Plant Health Inspection Svc.	#	17	3	11	3	3	0	0	0	0	0	0	0
	%		17.65	64.71	17.65	17.65	0.00	0.00	0.00	0.00	0.00	0.00	0.00

U.S. Department of Agriculture
Breakdown by Grade or Level Within Pay Plan for Agency—
Senior Executives as of 9/30/96 *(continued)*

		Total		White		Black		Hispanic		Asian American Pacific Islander		American Indian Alaskan Native	
		All	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Grain Inspection Packers & Stockyard	#	4	0	4	0	0	0	0	0	0	0	0	0
	%		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Food Safety & Inspection Service	#	19	8	9	8	1	0	0	0	1	0	0	0
	%		42.10	47.36	42.40	5.26	0.00	0.00	0.00	5.26	0.00	0.00	0.00
Office of the Chief Economist	#	5	1	4	1	0	0	0	0	0	0	0	0
	%		20.00	80.00	20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office Budget & Program Analysis	#	4	0	4	0	0	0	0	0	0	0	0	0
	%		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Information Resources Mgmt.	#	3	1	2	1	0	0	0	0	0	0	0	0
	%		33.33	66.67	33.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Chief Financial Officer	#	6	2	3	2	1	0	0	0	0	0	0	0
	%		33.33	50.00	33.33	16.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Administrative Law	#	4	1	4	1	0	0	0	0	0	0	0	0
	%		25	75	25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Civil Rights Enforcement	#	2	0	1	0	0	0	1	0	0	0	0	0
	%		0.00	50	0.00	0.00	0.00	50	0.00	0.00	0.00	0.00	0.00
Office of Personnel	#	2	1	1	0	0	1	0	0	0	0	0	0
	%		50	50.00	0.00	0.	50.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Operations	#	3	2	0	1	1	1	0	0	0	0	0	0
	%		66.67	0.00	33.33	33.33	33.33	0.00	0.00	0.00	0.00	0.00	0.00
Alternative Agr. Res. & Comm. Center	#	0											
	%												
Off. of Small & Disadvantaged Bus.	#	1	1	0	0	0	1	0	0	0	0	0	0
	%		100.00	0.00	0.00	0.	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of the Executive Secretariat	#	0											
	%												
Farm Service Agency	#	24	4	18	3	1	1	1	0	0	0	0	0
	%		16.66	75.0	12.5	4.16	4.16	4.16	0.00	0.00	0.00	0.00	0.00
National Appeals Division	#	1	0	1	0	0	0	0	0	0	0	0	0
	%		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Judicial Officer	#	1	0	1	0	0	0	0	0	0	0	0	0
	%	100	0.00	100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Policy Analysis Coordination Pgm.	#	1	0	1	0	0	0	0	0	0	0	0	0
	%	100	0.00	100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: Includes Pay Plans - AL, ES, EX, , SL, ST, CA, LTA"

USDA Agencies and Abbreviations

AARC	Alternative Agricultural Research and Commercialization Corporation
AMS	Agricultural Marketing Service
APHIS	Animal and Plant Health Inspection Service
ARS	Agricultural Research Service
BCA	Board of Contract Appeals
CR	Congressional Relations
CSREES	Cooperative, State, Research, Education, and Extension Service
DAMS	Departmental Administration Management Services
ERS	Economic Research Service
FAS	Foreign Agricultural Service
FCS	Food and Consumer Service
FFAS	Farm and Foreign Agricultural Services
FNCS	Food, Nutrition and Consumer Services
FS	Forest Service
FSA	Farm Service Agency
FSIS	Food Safety and Inspection Service
GIPSA	Grain Inspection, Packers and Stockyards Administration
HWM	Hazardous Waste Management
MAP	Modernization of Administrative Processes
MRP	Marketing and Regulatory Programs
NAD	National Appeals Division
NASS	National Agricultural Statistics Service
NRCS	Natural Resources Conservation Service
NRE	Natural Resources and Environment
OALJ	Office of Administrative Law Judges
OBPA	Office of Budget and Program Analysis
OC	Office of Communications
OCA	Office of Consumer Affairs
OCE	Office of the Chief Economist
OCFO	Office of the Chief Financial Officer

USDA Agencies and Abbreviations (continued)

OES	Office of the Executive Secretariat
OGC	Office of the General Counsel
OIG	Office of Inspector General
OJO	Office of the Judicial Officer
OO	Office of Operations
ORACBA	Office of Risk Assessment and Cost-Benefit Analysis
OSEC	Office of the Secretary
PACC	Policy Analysis and Coordination Center
RBS	Rural Business-Cooperative Service
RD	Rural Development
REE	Research, Education and Economics
RHS	Rural Housing Service
ASA	Assistant Secretary for Administration
CIO	Chief Information Officer
RUS	Rural Utilities Service
WAOB	World Agricultural Outlook Board

USDA's 1994 reorganization affected these agencies, which may be mentioned in the report:

ASCS	Agricultural Stabilization and Conservation Service became part of FSA
FmHA	Farmers Home Administration was split between FSA and Rural Development
SCS	Soil Conservation Service (became NRCS)

Other Abbreviations

AEP	Affirmative Employment Plan
EEOMAS	Equal Employment Opportunity Monitoring and Analysis System
EQIP	Environmental Quality Incentive Program
GAO	General Accounting Office
GLOBE	Gay, Lesbian and Bisexual Employees Organization
NFC	National Finance Center
PATCOB	Professional, Administrative, Technical, Clerical, Other, and Blue Collar
PRB	Performance Review Board
SBA	Small Business Administration
SES	Senior Executive Service

APPENDIX K

United States
Department of
Agriculture

National
Commission on
Small Farms

A Time to Act
A Report of the USDA National
Commission on Small Farms

January 1998

This report is dedicated to the memory, life and work of Dr. Martin Luther King, Jr., who gave his life for expanding opportunities for all Americans; and to Thomas Jefferson, who envisioned the "yeoman" farmer as the bedrock of American democracy.

A Time to Act
A Report of the USDA National
Commission on Small Farms

January 1998
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A Time to Act
A Report of the USDA National Commission on Small Farms

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Letter of Transmittal
January 1998

Secretary Glickman,

The National Commission on Small Farms is pleased to submit to you our report – *A Time to Act*. It is the product of considerable discussion and deliberation based on extensive oral and written testimonies and suggestions gleaned from the Commission's many regional hearings, as well as from written materials submitted to the Commission.

USDA's administrators and staff made themselves accessible to the Commission and provided much useful information about the Department's many and varied agencies, programs, and policies. And USDA staff who worked with the Commission were indispensable in facilitating the Commission's work.

Having gone through the process of developing this report, we are now even more convinced of the necessity to recognize the small farm as the cornerstone of our agricultural and rural economy. We feel that a sustainable rural renaissance can be anchored in a vibrant, dynamic, small farm sector and we believe that the Commission's recommendations, if implemented, will contribute to this renaissance.

We wish to acknowledge and applaud your decisive action in appointing this Commission and in responding to concerns and recommendations made in the Civil Rights Action Team Report.

We look forward to joining with you and others in helping to fashion policies, programs, and partnerships that will bring economic vibrancy to rural communities, wholesome and nutritious food for consumers, stability to our small farm enterprises, and an improved quality of life to our small farmers and our farmworkers.

Respectfully signed and submitted by:

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II. Executive Summary

Not since Secretary of Agriculture Bob Bergland initiated a study of the structure of agriculture in 1979 has USDA made the effort to examine the condition of farming and its place in our food system. The USDA Civil Rights Action Team that recommended formation of a commission recognized that, in addition to racial discrimination, government policies and practices have discriminated against small farm operators. In July of 1997, nearly 20 years later, Secretary of Agriculture Dan Glickman appointed a 30-member National Commission on Small Farms to examine the status of small farms in the United States and to determine a course of action for USDA to recognize, respect, and respond to their needs.

The Commission began its work in Memphis, Tennessee, on July 28. Subsequent public hearings and meetings were held in Sioux Falls, South Dakota, on August 21 and 22; Washington, DC, on September 10 and 11; and Sacramento, California, on September 15 and 16. Three smaller meetings were held in Albany, New York; Albuquerque, New Mexico; and Portland, Oregon. The results of the Commission's work are embodied in the 146 recommendations in this report, *A Time to Act*.

When Secretary Bergland's report, *A Time to Choose*, was published, it warned that "...unless present policies and programs are changed so that they counter, instead of reinforce or accelerate the trends towards ever-larger farming operations, the result will be a few large farms controlling food production in only a few years."

Looking back now nearly 2 decades later, it is evident that this warning was not heeded, but instead, policy choices made since then perpetuated the structural bias toward greater concentration of assets and wealth in fewer and larger farms and fewer and larger agribusiness firms. Federal farm programs have historically benefited large farms the most. Tax policies give large farmers greater incentives for capital purchases to expand their operations. Large farms that depend on hired farmworkers receive exemptions from Federal labor laws allowing them the advantage of low-wage labor costs.

Today, we have 300,000 fewer farmers than in 1979, and farmers are receiving 13 percent less for every consumer dollar. Four firms now control over 80 percent of the beef market. About 94 percent of the Nation's farms are small farms, but they receive only 41 percent of all farm receipts.

Like most major industries, the ownership and control over agricultural assets is increasingly concentrated in fewer and fewer hands. Farmers have little to no control over setting the price for

their products. The basic tenets of a "competitive" market are less and less evident in crop and livestock markets today.

The recent passage of the 1996 Federal Agricultural Improvement and Reform Act was a watershed event in the history of Federal farm policy. It signals the reduction and eventual elimination of government intervention in commodity markets as a means to provide income and price stability for the farming sector.

Agricultural technologies have emerged that use ever greater levels of capital to enable fewer people to produce the Nation's food. As a result, income and opportunities have shifted from farms to the companies that produce and sell inputs to farmers. As farmers focused on producing undifferentiated raw commodities, food system profit and opportunities were shifted to the companies that process, package, and market food. Consequently, from 1910 to 1990 the share of the agricultural economy received by farmers dropped from 21 to 5 percent.[7]

The pace of industrialization of agriculture has quickened. The dominant trend is a few, large, vertically integrated firms controlling the majority of food and fiber products in an increasingly global processing and distribution system. If we do not act now, we will no longer have a choice about the kind of agriculture we desire as a Nation.

A Vision for Small Farms in the 21st Century

The National Commission on Small Farms is certain about its choice for the future of American agriculture:

Small farms have been the foundation of our Nation, rooted in the ideals of Thomas Jefferson and recognized as such in core agricultural policies. It is with this recognition of our Nation's historical commitment to small farms that we renew our dedication to the prominence of small farms in the renewal of American communities in the 21st century. Black, Hispanic, Native American, Asian, women, and other minorities have contributed immensely to our Nation's food production and their contributions should be recognized and rewarded.

It is our resolve that small farms will be stronger and will thrive, using farming systems that emphasize the management, skill, and ingenuity of the individual farmer. We envision a competitive advantage for small farms realized through a framework of supportive, yet responsible, government and private initiatives, the application of appropriate research and extension, and the stimulation of new marketing opportunities. As small farms and farmworkers succeed in this nurturing environment, not only will they continue their valuable contribution to the Nation's food supply, but they will also fuel local economies and energize rural communities all across America. In the process of flourishing, small farms will contribute to the strengthening of society, providing communities and the Nation with opportunities for self-employment and ownership of land, and providing a cultural and traditional way of life as well as nurturing places to raise families.

We emphasize public policies that recognize the value of small farms and actively encourage their growth and continuation. These policies are essential to the realization of this vision; so too, are policies that recognize and reward the contributions of farmworkers and their families. Toward this end, the Commission has articulated goals and made specific recommendations to guide the decision-making of the Secretary of Agriculture, the Executive Branch and Congress into the next century.

This vision is focused on those farms with less than $250,000 gross receipts annually, on which day-to-day labor and management are provided by the farmer and/or the farm family that owns the production or owns, or leases, the productive assets.

Policy Goals for Our Nation's Small Farms

The Commission outlined 8 policy goals for a national strategy for small farms:

Policy Goal 1: Recognize the importance and cultivate the strengths of small farms

USDA's Research, Education and Economics Mission Area should design and implement a small farm research initiative dedicated to optimizing the labor and ingenuity of small farm operators and the biological assets of their farms using less capital-intensive investments.

USDA should re-commit itself as the "lender of last resort" by focusing greater attention to serving the credit needs of small, minority, and beginning farmers; reversing the shift to guaranteed loans; and accelerating action on pending credit regulations.

Congress should repeal the provisions that prohibit farmers who have previously had "debt forgiveness" from receiving any future USDA loans or credit assistance.

USDA policies, programs, and regulations should be reviewed to identify program rules and regulations that are either intentionally or unintentionally biased against small farms, including the Environmental Quality Incentives Program, the Business and Industry Loan Program, and Forestry Stewardship Programs.

Policy Goal 2: Create a framework of support and responsibility for small farms

Establish an Administrator of Small Farm Programs that reports to the Secretary and has Senior Executive Service status.

USDA should develop a Department-wide Small Farm and Ranch Policy that encompasses the vision and the guiding principles set forth by the Commission and that must be reflected in the services, programs, and materials delivered by each agency.

Policy Goal 3: Promote, develop, and enforce fair, competitive, and open markets for small farms

USDA's Rural Business – Cooperative Service should give priority to the development of farmer-owned, value-added cooperatives and farm-based businesses where profits flow to and within the community; where wage-laborers are paid a living wage; where the efforts results in more local and regional competition in the cash market, not less; and where natural resource stewardship is rewarded through the market.

The Secretary should propose legislation clarifying the authority of the Grain Inspection, Packers and Stockyards Administration (GIPSA) to prohibit discriminatory pricing on the basis of volume.

The Secretary should consider Federal production contract legislation to address issues such as contract termination, duration, and re-negotiation; prohibition against discriminatory practices; and responsibility for environmental damages.

The Commission endorses the proposed rule to prohibit packers from procuring cattle for slaughter through the use of a forward contract, and from owning and feeding cattle, with limited exceptions.

USDA should investigate the processing and retailing segments of the dairy industry to determine if excessive profits are being made at the expense of farmers and consumers.

USDA should develop an interagency initiative to promote and foster local and regional food systems featuring farmers markets, community gardens, Community Supported Agriculture, and direct marketing to school lunch programs.

Policy Goal 4: Conduct appropriate outreach through partnerships to serve small farm and ranch operators

Farm Service Agency State Executive Directors, Rural Development State Directors, Natural Resources Conservation Service State Conservationists, and State Cooperative Extension program administrators should support the formation of farmer networks and mentoring programs for small farmers.

USDA should collaborate with and jointly fund community-based organizations to train people to be farmer advocates.
Educational efforts by the Risk Management Agency should address sustainable agriculture practices as a means of managing risk on small farms.

Policy Goal 5: Establish future generations of farmers

USDA should launch an interagency Beginning Farmer Initiative dedicated to researching, developing, and disseminating farm management models that emphasize low-capital investment, optimal use of skilled labor and management potential of beginning farmers, and high-value crop and livestock production and marketing methods.
The Farm Service Agency should clearly define the eligibility requirements for beginning farmers and recognize the farming experience of persons who were raised on family farms, who worked as hired farm labor, or who received training from apprenticeships.
Congress should authorize the Farm Service Agency to guarantee tax-exempt First Time Farmer Bonds used to make loans to beginning farmers and ranchers.
USDA should seek legislative authority to create a Beginning Farmer Matching Grant program for the purpose of supplying equity funds for entry farmers in lieu of loans.

Policy Goal 6: Emphasize sustainable agriculture as a profitable, ecological, and socially sound strategy for small farms

The USDA Office of Communications should conduct a communications campaign to inform farmers of the new farming strategies emerging from the 10 years of sustainable agriculture research.
The Secretary of Agriculture should support policies that preserve the grazing and water use rights of the small and traditionally underserved public land permittees.
USDA's Risk Management Agency should develop an affordable Whole Farm Revenue Insurance pilot project for diversified small farms using sustainable farming practices.
The Secretary should exercise restraint in approving exceptions to the 1,000 animal units eligibility limit on EQIP funding for livestock manure storage structures.

Policy Goal 7: Dedicate budget resources to strengthen the competitive position of small farms in American agriculture

Increase appropriations for the Sustainable Agriculture Research and Education program by $10 million each year over 3 years to reach $40 million.
Increase the Outreach and Technical Assistance Program for Socially Disadvantaged and Minority Farmers (Sec. 2501) program to the current authorized level of $10 million annually.
Increase funding to the maximum authorized levels of $85 million for Farm Ownership Direct Loans and $500 million for Farm Operating Direct Loans.
Increase Rural Technology and Cooperative Development Center Grant Program funding to $20 million.
Ensure GIPSA appropriated funding at $3 million for reorganization, $1.65 million for increased staff, and $750,000 for investigation into unfair market practices in the poultry industry.

Policy Goal 8: Provide just and humane working conditions for all people engaged in production agriculture

President Clinton should establish an interdepartmental task force led by Secretary Glickman involving the Departments of Education, Labor, Health and Human Services, and Environmental Protection Agency, as well as the Internal Revenue Service and the Immigration and Naturalization Service, to address the laws, regulations, and enforcement affecting farmworkers.
A Farmworker Coordinator position should be created within the USDA Office of Outreach.

The Public Value of Small Farms

The dominant belief in agriculture is that large farms are more efficient than small farms. However, Professor Willis L. Peterson from the University of Minnesota found that factors other than size influence the unit costs in agriculture. Peterson asserts that "small family and part-time farms are at least as efficient as larger commercial operations. In fact, there is evidence of diseconomies of scale as farm size increases."[5]

In addition, our economic accounting systems do not take into account the "hidden" costs of large farms. An agricultural system characterized by a limited number of large-scale farms does not take into account the loss of market competition when production is concentrated in oligopsonistic markets. The environmental consequences of concentrating a large number of animals in limited areas is rarely considered.

Small farms contribute more than farm production to our society. Small farms embody a diversity of ownership, cropping systems, landscapes, biological organization, culture, and traditions. Since the majority of farmland is managed by a large number of small farm operators, the responsible management of soil, water, and wildlife encompassed by these farms produces significant environmental benefits. Decentralized land ownership produces more equitable economic opportunity for people in rural communities, and offers self-employment and business management opportunities. Farms, particularly family farms, can be nurturing places for children to grow up and acquire the values of responsibility and hard work.

In 1980, Secretary Bergland proposed a "Time to Choose" the future direction for our Nation's agriculture. However, policy choices made since then have diminished the role and relevance of small farms in this country.

On more than one occasion, farmers who spoke at the public meetings referred to the Commission as "our last hope." It is with conviction and hope that the National Commission on Small Farms is asking the Congress and USDA to *act* on the needs of America's small farmers.

III. Introduction

Not since Secretary of Agriculture Bob Bergland initiated a study of the structure of agriculture in 1979 has USDA made the effort to examine the condition of farming and its place in our food system. In July of 1997, nearly 20 years later, Secretary of Agriculture Dan Glickman appointed a 30-member National Commission on Small Farms to examine the status of small farms in the United States and to determine a course of action for USDA to recognize, respect and respond to their needs through changes in policies, practices, and programmatic approaches.

Early on in the process, members of the National Commission on Small Farms recognized that its focus was not limited to the viability of "small farms," but rather their efforts were to include an examination of the structure of agriculture and how it affects small farm viability. The focus of the Commission was "How do farms, of modest investments, owned and operated by families who supply the majority of labor, remain profitable in an agricultural structure that is increasingly bi-polar?"

When providing the newly formed National Commission on Small Farms with its assignment to develop a National Strategy for Small Farms, Secretary of Agriculture Dan Glickman outlined the challenges facing small farmers today:

> *Its no secret out in farm country that things are changing...and fast. Agriculture, like every other major sector of our economy, is concentrating. From defense to retail stores, to health care, to railroads, to farms and ranches — we're seeing fewer and larger operations, mergers and buyouts, larger market shares and fewer people in those markets.*

At the time of the first meeting, the Commission recognized that there was seemingly a national consensus that larger farms are more efficient and, therefore, in the national interest. However, members of the Commission believe that the primary values of small farms were to be found in our national heritage and that heritage is important to keep alive for future generations. As eloquently stated during the first hearing: "The greatest thing that agriculture furnished this country is not food or fiber, but a set of children with a work ethic and a good set of values."[4]

During the several months since the initial public meeting in Memphis, the Commission heard oral testimony from literally hundreds of owners of small farms and people in the agriculture sector. They have read and studied written testimonies and research papers which stack up over a foot thick. The Commission has engaged in freewheeling debate and in-depth discussions among themselves and with experts on numerous issues affecting all aspects of the American agriculture community. Commission members also spent hundreds of workhours with USDA staff studying various programs. Most importantly, the Commission learned.

The Commission learned that larger farms are not more efficient than small farms at producing crops.[5] They learned that as small farms are consolidated into larger farms, the economic basis of America's rural communities decline, and rural towns are lost.[6] Trends have also been revealing. The land base of America is being concentrated into fewer and fewer owners, in large part due to the concentration of agriculture, and that large agricultural processors are actively acquiring highly productive farm land in some regions, like the Central Valley of California. Another trend which was repeated throughout the written and oral testimony is the tendency of the large agricultural integrators to avoid capital investment in the means of production and pass both the risk and costs on to their contract growers or to society at large in the form of water and soil pollution and increased Federal assistance to those rural communities. Finally, and importantly, a trend which appears in all sectors of American agriculture is a widening spread between what farmers received for their production and what consumers pay at the supermarket (See Figure 1). The setting of prices under near monopoly conditions allows the major processors and retailers of agricultural products to capture an increased price spread, bankrupting farmers while providing the financial ability for these agricultural industries to buy their competition, further concentrating markets and eliminating the free market on which our society depends.

The U.S. Department of Agriculture, established by President Lincoln as the "People's Department," has numerous agencies and programs whose purposes are to ensure an abundant and safe national food supply. Historically, these programs adopted a mission of assisting American small farmers and provided locally driven Federal support to millions of farm families in rural America. Lending programs were established to provide services as the lender "of last resort" when other credit sources were not available. Extension services assisted farmers and their families with crop selection, food preservation, home economics, and youth development through the 4-H program. Conservation programs focused on assisting individual farmers in improving the long-term productivity and sustainability of their lands. Research focused on improved crop cultivars and on-farm improvements to improve production.

The Result of Choices Made

Secretary Bergland committed a year and a half of public hearings, research, and analysis to the structure and performance of agriculture, culminating in a report entitled *A Time to Choose*, published in January 1981, on the eve of a new Administration. The report described the historical trends and changes in the structure of agriculture over time and warned, "...unless present policies and programs are changed so that they counter, instead of reinforce or accelerate the trends towards ever-larger farming operations, the result will be a few large farms controlling food production in only a few years."[7] Looking back now nearly 2 decades later, it is evident that this warning was not heeded, but instead policy choices made since January of 1981

perpetuated the structural bias toward greater concentration of assets in fewer and larger farms and fewer and larger agribusiness firms.

A few statistics illustrate the effects of Federal agricultural policies since Secretary Bergland's study:

In 1978, there were 2.3 million farms in the United States.[8]
Today, there are 2.0 million farms in the United States.[9]

In 1980, 4 firms controlled 36 percent of the beef slaughter.
Today, 4 firms control 80 percent of the beef slaughter.[10]

In 1980, the farmer received 37 cents of every consumer dollar spent on food.
Today, the farmer receives 23 cents of every consumer dollar spent on food.[11]

Within a few years of printing *A Time to Choose*, American agriculture experienced the worst economic crisis in farming since the Great Depression due to record crop production, falling export demand, and the Federal Reserve's anti-inflationary measures of high interest rates and high exchange rates. Many farmers faced a credit crisis, having borrowed on rising land values in the 1970's to expand operations, resulting in high numbers of bankruptcies and foreclosures among farms of all sizes, bank closings, and agriculture-related business failures. The economic stress took its toll on farm families, sometimes resulting in suicide and divorce, and tore at the fabric of rural community life.

Historical large-farm bias

The 1981 farm bill largely continued the design of the farm programs of the 1970's, despite opposition from a new Administration committed to reducing government intervention in agriculture. Domestic grain surpluses soared due to low acreage set-asides and export markets dampened by high exchange rates. Farm subsidy costs were unprecedented. The new Administration, committed to reducing government spending in agriculture, proposed major cuts in farm price support levels in the 1985 farm bill. However, the farm debt crisis made these proposals politically impossible and they were rejected by the Congress. During this same time, "economic emergency" loans were made to highly leveraged large farms; many of these loans would ultimately go uncollected. It is these loans which constitute 78 percent of currently reported 23 percent delinquency in USDA Direct Lending programs. The final 1985 farm bill retained the basic farm policy mechanisms, but began to put downward pressure on farm prices by freezing target prices, lowering loan rates and subsidizing exports. In 1987, the Administration, under the leadership of Secretary Clayton Yeutter, took its proposals for cutting agriculture spending to the General Agreement on Tariffs and Trade (GATT) and eventually succeeded in winning reductions in agricultural subsidies worldwide.[12]

Following record spending on farm subsidies, and the passage of the Gramm-Rudman deficit reduction law, the 1990 farm bill set in motion a movement to reduce government payments to farmers by instituting the "triple base," which reduced the amount of acreage eligible for payments. This set the course for the most recent policy change in the 1996 Federal Agriculture Improvement and Reform Act (FAIR), which decoupled planting decisions from payments and instead provided "transition" payments scheduled to cease in 2002.

Even though only about one-third of U.S. farmers have participated in Federal farm programs, these programs have historically been structurally biased toward benefiting the largest farms. Farm payments have been calculated on the basis of volume of production, thus giving a greater share of payments to large farms, enabling them to further capitalize and expand their

operations. Attempts to place caps on the amount of payments per farm have not resulted in their intended effects.

The present system of "transition" payments perpetuates the large-farm bias because the amount of payment is based on historical payment levels. A new risk management tool, "revenue insurance," also perpetuates a large-farm bias through its provisions of coverage for the few major program commodities with no limit on the amount of coverage provided. Additionally, recent changes in Federal tax policy provide disproportionate benefits to large farms through tax incentives for capital purchases to expand operations. Large-scale farms that depend on hired farmworkers for labor receive exemptions from Federal labor law afforded workers in every other industry, allowing them the advantage of low-wage labor costs.

The Structure of Agriculture Today

The most widely used description of the structure of agriculture is based on the statistic of gross farm sales. USDA Economic Research Service labels three-fourths of the Nation's farms that have annual gross sales under $50,000 as "non-commercial" farms, meaning they do not generate enough sales to be commercially viable on their own. Half of these farmers rely on off-farm income. Many dismiss these farmers as "hobby farmers," implying that their goals do not include making a profit. This categorization fails to recognize that for some of these farmers, off-farm jobs are not a choice, but a necessity due to the inability to obtain an adequate return from farming. And in some places, such as Indian reservations, off-farm jobs are not available at all. Even for farmers in the next highest sales class, from $50,000 gross sales to $250,000 gross sales, where 86 percent of these farmers count farming as their primary occupation, the average return on equity is negative. [3]

Another popular statistic used to describe the structure of agriculture is the contribution of value of production per sales class. Farms with gross sales under $250,000 make up 94 percent of all farms. However, these farms receive only 41 percent of all farm receipts. In other words, out of 2 million farms, only 122,810 of the super-large farms receive the majority of farm receipts.

There is a danger in relying on gross sales statistics to provide the whole picture of the structure and performance of agriculture today. While agriculture has become more segmented and specialized, most analyses of gross sales statistics have failed to distinguish between the differing, and often value-adding levels of production. Of course farms with higher levels of gross sales would appear to be more productive. Yet a closer examination shows many of those high-end operations are dependent on primary-level production constituting cow/calf, lambing, farrowing, or grain production. A simple indicator of the differences can be shown in cattle production. The average size cow/calf operation in the United States is 49 head. A medium-sized feedlot operation averages 10,000 head, yet depends upon the primary calf production as its source for feeder cattle. Without more precise indicators to measure the contribution of the primary level of production, an appreciation of the productive contributions of small farms is diminished.

When a gross sales statistic is used combining all agricultural sectors, it can generate the conclusion that large and super-large farms produce most of the food and fiber in this country, when, in fact, the most critical production occurs at the primary level. Conclusions and policies which focus on the large and super-large farms as an inevitable result of economic progress may be ignoring the small farm as the most vital component of all food production.

Many people consider a few, large farms an inevitable result of economic progress. For example, a Wall Street Journal writer recently expressed with a fair amount of conviction that "In fact, local dairies aren't necessary anymore. Megafarms are springing up in such places as New Mexico and Idaho that produce milk far more cheaply than the postcard pretty Vermont dairy farm. In

addition, processors are experimenting with filters to remove the water from milk, which makes shipping it cross-country cheaper."[14]

The "get big or get out" policy drives of the past fail to recognize the real cost of this kind of "economic progress." This perspective does not consider the loss of market competition when production is concentrated in a monopoly market. It does not consider the cost of potential environmental consequences of concentrating a large number of animals in limited areas. It does not consider the risk to the security of our milk supply should disease or natural disaster strike these few megafarms. It does not consider the cost of increased use of fossil fuels to ship milk across the country. It does not consider the increase in bacteria when water is extracted. Contrary to popular belief, large farms do not produce agricultural products more efficiently than small farms, especially when real costs are taken into account.

Furthermore, the assumption that large farms are more efficient because of economies of scale was challenged by presenters at the Commission's public meetings. Statistical analysis conducted by Professor Willis L. Peterson from the University of Minnesota examined the factors that make up the Census of Agriculture statistical measure of economies of size. Peterson found that factors other than size influence the unit costs in agriculture. After accounting for the quality of land and farm management, subtracting the contribution of the farmhouse to farm output, and considering the effect of opportunity costs related to off-farm employment on farm output and production costs, Peterson asserts "that small family and part-time farms are at least as efficient as larger commercial operations. In fact, there is evidence of diseconomies of scale as farm size increases."[15]

The "diseconomies of scale" extend beyond the farmgate to affecting the farming community. There is a substantial body of literature that suggests that large-scale agricultural production does not bode well for conditions in farming communities. University of California anthropologist Dean MacCannell wrote, "As farm size and absentee ownership increase, social conditions in the local community deteriorate. We have found depressed median family incomes, high levels of poverty, low education levels, social and economic inequality between ethnic groups, etc.... associated with land and capital concentration in agriculture.... Communities that are surrounded by farms that are larger than can be operated by a family unit have a bi-modal income distribution, with a few wealthy elites, a majority of poor laborers, and virtually no middle class. The absence of a middle class at the community level has a serious negative effect on both the quality and quantity of social and commercial service, public education, local governments, etc. [16]

The public value of small farms

The Wall Street Journal writer did not consider the benefits that result from a large number of farms under a system of widespread ownership rather than concentration of our food supply in a few megafarms. Economic statistics speak only to the "product output" of farms by measures of crop and livestock sales and they likely underestimate the economic contributions of small farms stated earlier. These numbers do not reflect the social and environmental goods produced by a large number of small farms. Some of the public values generated by small farms include:

Diversity: Small farms embody a diversity of ownership, of cropping systems, of landscapes, of biological organization, culture and traditions. A varied farm structure contributes to a diversity of cropping systems and, therefore, to biological diversity. A large number of smaller farms contributes to a diverse and esthetically pleasing rural landscape and open space, particularly appreciated by urban people as well as rural neighbors. Connection to the land has always been central to the spiritual and cultural values of our country's indigenous people. Additionally, widespread ownership of land is an essential principle of our Nation's earliest public policies. And land ownership and farming

provided a foundation for community and tradition for the new settlers and pioneers who often fled from oppressive regimes to seek greater opportunity in America.

Environmental benefits: Approximately 60 percent of all farms are less than 180 acres in size, indicating that the majority of farmland is managed by a large number of small farm operators.[iv] Responsible management of the natural resources of soil, water, and wildlife encompassed by these operations produces significant environmental benefits for society to enjoy. Therefore, investment in the viability of these operations will yield dividends in the stewardship of the Nation's natural resources.

Self-empowerment and community responsibility: Decentralized land ownership produces more equitable economic opportunity for people in rural communities, as well as greater social capital. Owner-operated farm structures offer individual self-employment and business management opportunities. This can provide a greater sense of personal responsibility and feeling of control over one's life, characteristics that are not as readily available to factory line workers. Land owners who rely on local businesses and services for their needs are more likely to have a stake in the well-being of the community and the well-being of its citizens. In turn, local land owners are more likely to be held accountable for any negative actions that harm the community.

Places for families: Farms, particularly family farms, can be nurturing places for children to grow up and acquire the values of responsibility and hard work. The skills of farming are passed from one generation to another under family ownership structures. When farm children do not return to farming because of their desire for more financially secure careers, a generation of farming knowledge, skills, and experience is lost.

Personal connection to food: With less than 2 percent of the Nation's population engaged in farming, most consumers have little connection to agriculture and food production. As a consequence, they have little connection with nature, except as a place for recreation, and lack an appreciation for farming as cultivation of the earth for the production of food that sustains us. Through farmers markets, Community Supported Agriculture, and direct marketing strategies of small farmers, people are beginning to connect with the people growing their food. Consumers are developing meaningful, direct relationships with farmers and a connection with food as a product of a farmer's cooperation with nature.

Economic foundations: In some States and regions of the country, dispersed farm operations are key to economic vitality. Historically, decline in U.S. farm numbers were more than offset by increases in productivity and output. However, this does not appear to be the case in places like Wisconsin, a State whose farm economy has been characterized by a large number of moderate-sized family-operated dairy farms. Since 1988, total volume of milk produced in the State has dropped and the real value of gross sales has also decreased. The loss of dairy farms in this case has meant a loss to the State's economic output.

Why are small farms at risk?

As with most major industries, ownership and control over agricultural assets are increasingly concentrated in fewer and fewer hands. Concentration translates into the loss of open and competitive markets at the local level. Farmers operate in a market made of many sellers and few buyers. Farmers have little to no control over setting the price for their products. The basic tenets of a "competitive" market are less and less evident in crop and livestock markets today.

The recent passage of the 1996 FAIR Act is a watershed event in the history of Federal farm policy. It signals the reduction and eventual elimination of government intervention in commodity markets as a means to provide income and price stability for the farming sector.

Finally and most importantly, technology and market changes have shifted economic opportunities off of farms and into the agricultural input and post-harvest sectors. As research was focused on developing technologies that use ever greater levels of capital to enable fewer people to produce the Nation's food, income and opportunities shifted from farms to the companies that produce and sell inputs to farmers. As farmers focused on producing undifferentiated raw commodities, food system profit and opportunities were shifted to the companies that process, package, and market food. Consequently, from 1910 to 1990 the share of the agricultural economy received by farmers dropped from 21 percent to 5 percent.[18]

The combination of increased concentration among food processing companies, loss of competitive markets, and reduction of price stabilizing tools of government will place farmers in increasingly vulnerable situations. Farmers will find themselves with less and less control over their economic security.

A Time to Act

It is with full recognition of this increased economic vulnerability that the National Commission on Small Farms conducted its work. The Civil Rights Action Team report established the rationale for the Commission by recommendation No. 36. In addition to racial discrimination, government policies and practices have discriminated against small farm operators and poor farmers. In some cases, such as commodity program policies, this discrimination was explicit. In other cases, the bias was less intentional and reflected simple ignorance of the specific needs of small farms. This problem was affirmed by the many hours and pages of testimony received by the Commission.

This report addresses both forms of bias. It recommends changes in policies, programs, and administrative management practices that explicitly disadvantage smaller farms. It also recommends changes that will give due recognition to the benefit of small farms to society.

In 1980, Secretary Bergland proposed a "Time to Choose" the future direction for our Nation's agriculture. The National Commission on Small Farms has outlined in the contents of this report, an opportunity for Congress and the USDA to act on these recommendations to improve the well-being of our Nation's small farms and support the contributions they make to our American society.

On more than one occasion, farmers who spoke at the public meetings referred to the Commission as "our last hope." A choice was made nearly 20 years ago to diminish the role and relevance of small farms in this country. It is with conviction and hope that the National Commission on Small Farms is asking Congress and the USDA to *act on the needs of America's small farmers.*

IV. The USDA National Commission on Small Farms

In February 1997, USDA released a report by the internal USDA Civil Rights Action Team (CRAT). The CRAT report included 92 recommendations on changes in management, program delivery, and employment practices to address the long-term bias and discrimination against minority farmers and minority employees at USDA. The CRAT also identified discrimination against small farmers and recommended to Secretary Glickman that he "appoint a diverse commission to develop a national policy on small farms."[19]

In July 1997, Secretary Glickman appointed a 30-member Commission of volunteers from across the country. The Commission consisted of people who are farmers and ranchers, staff of nonprofit farm and farmworker advocacy organizations, Extension professionals, current and former public officials, and philanthropic foundation program staff.

The Commission began its work in Memphis, Tennessee, on July 28 by receiving testimony from farmers and small farm advocates. Subsequent public hearings and meetings were held in Sioux Falls, South Dakota, on August 21 and 22; Washington, DC, on September 10 and 11; and Sacramento, California, on September 15 and 16. Three smaller meetings were held in Albany, New York; Albuquerque, New Mexico; and Portland, Oregon. Additional meetings were conducted by individual Commission members in various locations, including Fresno, California; Lihue, the Island of Kauai, Hawaii; and South Carolina. The meetings were attended by approximately 800 people. In total, the Commission heard oral testimony from 200 people and received written testimony by mail and facsimile from 165 people.

The Commission divided into 5 topical committees: Conservation, Credit, Research and Extension, Marketing, and Definition. Each committee developed recommendations relating to the specific functions of USDA before integrating the recommendations under 8 policy goals. While the Commission could not possibly respond to each individual issue raised in testimony, they deliberated on many issues and identified those most critical to the well-being of small farms.

The time constraint placed upon the Commission did not allow for the conduct of any original research or analysis of the effects of USDA's current programs, practices, and policies on the Nation's small farms. There was not time to conduct in-depth reviews of USDA programs, rules, and regulations. Instead, the Commission evaluated the problems and solutions suggested by the testimony received and relied on their own experience, knowledge, and creativity to craft this set of recommendations for consideration by Secretary Glickman. The Commission feels a strong need for continued dialogue about the status of small farms in this country and USDA's responsiveness to their needs. Therefore, the Commission submits its first recommendation as follows:

Recommendation

Secretary Glickman should prepare a progress report and reconvene the Commission within 9 months of receipt of this report to assess progress in bringing about changes consistent with the recommendations, and to provide input on emerging concerns within the Commission's domain. Upon immediate transmission of this report to Secretary Glickman, Commission members should meet with key Subcabinet members, Agency Administrators, and program staff to review the recommendations in dialogue with USDA officials. If at all possible, the Commission should remain activated through its chartered ending date of 1999. A public and written progress report should be presented at the National Conference on Small Farms scheduled for 1999.

The Commission also recognizes that State and local government policies, programs, and regulations affect the viability of small farms throughout the country. Issues such as property taxes and State assistance programs administered by the State departments of agriculture, land-grant universities and other publicly funded colleges and schools, all impact agriculture and the probabilities of success for small farms in each State. The Commission encourages the Nation's governors, legislatures, State departments of agriculture, and land-grant universities and colleges to examine how their institutions might better serve the needs of small, beginning, women, and minority farmers in their States. This might be accomplished by an appointed commission of diverse stakeholders, community-based organizations, farmers, and public officials, modeled after the USDA National Commission on Small Farms.

V. A Vision for Small Farms in the 21st Century

Small farms have been the foundation of our Nation, rooted in the ideals of Thomas Jefferson and recognized as such in core agricultural policies. It is with this recognition of our Nation's historical commitment to small farms that we renew our dedication to the prominence of small farms in the renewal of American communities in the 21st century. Black, Hispanic, Native American, Asian, women, and other minorities have contributed immensely to our Nation's food production and their contributions should be recognized and rewarded.

It is our resolve that small farms will be stronger and will thrive, using farming systems that emphasize the management, skill, and ingenuity of the individual farmer. We envision a competitive advantage for small farms realized through a framework of supportive, yet responsible, government and private initiatives, the application of appropriate research and extension, and the stimulation of new marketing opportunities. As small farmers and farmworkers succeed in this nurturing environment, not only will they continue their valuable contribution to the Nation's food supply, but they will also fuel local economies and energize rural communities all across America. In the process of flourishing, small farms will contribute to the strengthening of society, providing communities and the Nation with opportunities for self-employment and ownership of land, and providing a cultural and traditional way of life as well as nurturing places to raise families.

We emphasize public policies that recognize the value of small farms and actively encourage their growth and continuation. These policies are essential to the realization of this vision; so too are policies that recognize and reward the contributions of farmworkers and their families. Toward this end, the Commission has articulated goals and made specific recommendations to guide the decision-making of the Secretary of Agriculture, the Executive Branch, and Congress into the next century.

VI. Guiding Principles for Federal Farm Policy

We recommend that farm policy decisions adhere to the following guiding principles for affecting the structure of the U.S. agricultural system:

Safe and healthy food – Farm policy should encourage farming systems that produce safe, healthy, and diverse food.

Relationships between farmers and consumers – Farm and food policy should create greater opportunities to connect farmers with consumers directly to enable farmers to respond to changes in consumer demand and stimulate increased interest in agriculture among consumers.

Community – Farm policy should support an agriculture that sustains and strengthens rural communities and celebrates cultural diversity and a traditional way of life.

Stewardship of natural resources – Farm policy should give incentives to reward responsible stewardship and care of the land, water, and air.

Safe, responsible conditions for farmers and their workers – Farm policy should enable farmers and their workers to work in safe and responsible working environments.

Fair and open markets – Public policy should result in vigorous competition in open markets that are fair to producers of all sizes and devoid of price discrimination. It should strive to create a diversity of markets for a diversity of unique products, producers, and consumers.

Provide opportunity for many – U.S. agricultural policy should open opportunity for more American people to own and operate farms as a livelihood. It should enable people who want to farm to gain access to land and other productive assets whether by lease or purchase. A person's options and abilities to participate in farm ownership or operation should not be compromised or abrogated on account of their ethnicity, gender, or other non-merit related, demographic characteristics.

Farm income – Farm policy should enhance opportunities for people to generate farm incomes comparable to other economic sectors. That must involve efforts to reverse the long-term trend toward a declining share of food system income accruing to farmers and ranchers, in relation to the input and post-harvest sectors.

VII. Description of a Small Farm

In developing its recommendations, the Commission describes small farms as farms with less than $250,000 gross receipts annually on which day-to-day labor and management are provided by the farmer and/or the farm family that owns the production or owns, or leases, the productive assets.

This description is not intended for use as an eligibility guideline. It is intended only to generally describe the farms that we believe should be given priority consideration by USDA, with special emphasis on those with the greatest need to improve their net farm incomes.

We recognize that small farms vary by region and commodity. While $250,000 in gross receipts may not sound small, and in fact may be high for some commodities, in other areas, it is barely sufficient to provide a net farm income comparable to the income of the average non-farmer and farms up to that size are among those whose survival is most endangered. For example, the average farm with annual gross sales between $50,000 and $250,000 has a net cash income of only $23,159. Over 80 percent of a farmer's gross sales are absorbed by farming expenses. (See Figure 2 and Box below.)[20]

This description of small farms includes approximately 94 percent of all U.S. farms. These farms own 75 percent of the total productive assets in agriculture, mostly land, and receive 41 percent of all agricultural receipts. This description includes 41 percent of all farmers who consider farming their primary occupation and an equal percentage of farmers work part-time on the farm and rely on non-farm jobs as their primary source of income. Most of the farm units usually referred to as "family farms."

Looking at farms with gross sales between $100,000 and $250,000, there is great variety in gross sales based on the value of the commodities grown and the mix of commodities, fixed and variable expenses, and ultimately, in net farm income. For example, a typical wheat farm in 1993 received gross cash income of $153,219 but after cash and fixed expenses, depreciation and labor were paid for, the net farm income was $28,575. Cattle producers in 1993 did not fare as well. A typical beef operation received gross cash income of $150,092. But after cash and fixed expenses, depreciation and labor were paid for, the net farm income for a typical beef operation was $13,509.

Prepared by the Economic Research Service from the 1991-1994 Farm Costs and Returns Survey.

Policy Goal 1
Recognize the Importance and Cultivate the Strengths of Small Farms

As outlined in the Introduction, small farms possess unique potential to "produce" not only foodstuffs, but a variety of economic, social, and environmental goods. Small farms are in a better position to respond to specialty products for a narrow consumer taste than larger, more standardized farming operations. When small farms optimize their small landholdings with a variety of crops farmed in rotation and integrated with livestock production, they produce a source of biological diversity and ecological resilience not found in larger, monocropping operations. When they directly market their production to consumers through farmers markets, pick-your-own or Community Supported Agriculture[21] methods, they provide urban people with a social connection to farming, farmers, and rural people and a health, fresh food supply.

The challenge, therefore, is to develop a national policy initiative that builds on the strengths and unique capabilities of small farms, that recognizes the social and ecological benefits of small farms, and that capitalizes on the labor and ingenuity of small farm operators to improve economic opportunity and benefits to rural communities. In situations where farmers have pursued off-farm employment for reasons of lack of farm profitability, the challenge is to create new opportunities for these farmers to increase their farm earnings. Innovative business strategies need to be designed to optimize the mix of labor, capital, and natural resources appropriate to the size and scale of small farms. Opportunities for farmers to use more knowledge and management-intensive production systems, rather than capital-intensive methods, are needed. Methods are needed that generate and sustainably utilize the natural productivity found in biologically diverse farming systems and more inputs can be derived from on-farm biological resources. For example, in some instances, livestock manure or cover crops can replace purchased nitrogen fertilizer.

At the same time, those policies that frustrate the potential of small farms should be identified and removed. In particular, policies that favor large farms disproportionately should be restructured to level the playing field among farms of all sizes and scales.

Some USDA programs disproportionately benefit those farms that are the least in need of government assistance. While about one-third of all farms participate in the Federal commodity programs, they have historically been designed to benefit larger farms. In 1995, the 11 percent of small farms which had gross sales between $100,000 and $249,999 received 28 percent of commodity program payments. Large farms (6 percent of all farms), with gross sales of more than $250,000, received 31 percent of commodity program payments. Small farms averaged payments of $11,174 per farm, while large farms received an average of $20,048 per farm. The larger the farm, the larger the payment. Government payments account for only 2.4 percent of gross cash farm income for the very large farms, but are more critical to the smallest farms that rely on government payments for 41 percent of their gross cash farm income.[22]

Federal farm policy should recognize that large-scale agriculture is not and should not be the only model for agricultural production, but that multiple and diverse models are necessary for economic, ecological, and social stability in our food and agricultural system. This approach requires a new way of thinking about the contributions of small farms. It requires recognition that small farms produce social and environmental goods of value to society that warrant public support.

Research and Extension
A great deal of agricultural research has focused on improving efficiency by utilizing ever greater levels of capital to enable fewer people to produce the Nation's food and fiber. Some of these technological applications demand investments that require increased scale of operation to achieve reasonable rates of return on investment. In other words, farms have grown in acreage

to spread capital costs across more units of production and more of the profit has been captured by companies that sell inputs to farmers. The resulting gains in productivity, as measured in units of land or labor, have been the great success story of publicly funded agricultural research and technological innovation and adoption. But, relatively little research has focused on improving farm efficiency and income by developing new knowledge that enables farmers to use their management to reduce capital expenditures, produce products of higher value, and capture a larger share of the food dollar.

Recommendation 1.1

USDA's Research, Education and Economics (REE) Mission Area should design and implement a small farm research initiative dedicated to optimizing the skilled labor and ingenuity of small farmers and the biological assets of their farms using less capital-intensive investments. The research design should include biological, economic, and social research as an interdisciplinary approach. The initiative should respond both to the threats to small farm viability as well as to future opportunities not yet explored.

Recommendation 1.2

The Economic Research Service (ERS) should analyze the systems, strategies, and technologies used by successful small farms, to learn how USDA can better assist small farm operators in achieving success. Using existing farm records systems, ERS should identify small farms that are performing well (have a low cost of production and are earning attractive family incomes) and conduct in-depth analysis of those farms, including their production systems, management strategies, technologies employed, and marketing approaches. Market research should analyze consumer preference trends that provide opportunities for small farms and identify the potential markets for exports from small-scale producers. For example, sales of organic produce, including exports, have grown 20 percent per year recently and are expected to rise with implementation of the National Organic Standards, but USDA's research portfolio includes only one-tenth of 1 percent of research relevant to organic farming.[23] The results should be used to identify research and other programs that could contribute to small farm success. This analysis should be conducted in partnership with land-grant universities, nonprofit organizations, and farmers themselves. The results of this research should be published in suitable format for reference and use by all farmers who may choose to implement the findings.

At the same time, ERS should assess the impact of national economic and policy forces influencing the prospects for small-scale agriculture. In particular, ERS should examine the threats and opportunities for small farms in the context of the 1996 FAIR Act and the North American Free Trade Agreement. This study should determine how these policies affect risk to small farms on a regional and commodity basis.

Recommendation 1.3

After identifying the principles of successful models, the Agricultural Research Service (ARS) and the Cooperative State Research, Education, and Extension Service (CSREES) should design research according to the principles in order to meet the specific needs of small farmers that maximize the potential productivity of their mix of assets. The research agenda should include the development of technologies appropriate for small-scale farms.

Recommendation 1.4

The ARS should commit to research strategies that will strengthen small farms. By the year 2002, at least two-thirds of the ARS research portfolio should consist of projects that have been determined to contribute to the income-earning capacity of small farms and their competitiveness

in an increasingly industrialized agricultural economy. Adjustments in research directions should be made as needed to ensure that the overall impact of each major initiative is neutral or positive with respect to small farm opportunities. This initiative can be formulated by taking the following steps:

Utilize results from the ERS study (1.2 above) to identify technological models that work for small farms and afford future market opportunities for small farms.

Seek input on priority small farm research needs from small farmers, nonprofit organizations that work with small farmers, and land-grant scientists whose work is focused on strengthening small farms.

Conduct technology assessments to identify program areas and research directions most helpful to small farmers, including beginning farmers.

Increase research to strengthen the competitiveness of small farm livestock production, address the plant breeding needs of small farmers using low-capital sustainable production systems, and develop integrated farming systems for small farms.

Recommendation 1.5

USDA competitive grants programs for agricultural research and extension should prioritize research that contributes to the income-earning capacity and competitiveness of small farms in an increasingly industrialized agricultural economy. Assessments of the impact of alternative research directions should be conducted to determine their impact on small farm viability. The assessments, together with input from small farm operators, nonprofit organizations and land-grant scientists who work with small farm operators, should be used to develop Requests for Proposals that emphasize small farm needs. Qualified small farm operators, and nonprofit organizations and land-grant scientists who work with small farm operators, should be included on proposal review panels. Program guidelines should be reviewed and barriers removed to participation by nonprofit institutions. A goal should be set to devote two-thirds of CSREES production and marketing research by the year 2002 to projects that contribute to the income-earning capacity and competitiveness of small farms. Progress toward that goal should be measured annually.

Recommendation 1.6

The Research portion of the Fund for Rural America should be refined to more effectively support small farm opportunities by:

Making clear, through the Requests for Proposals, as well as instructions to review panels, that increasing opportunities for small and beginning farmers are a priority of the rural development objectives of the Fund;

Directing review panels to give equal importance to scientific merit and project relevance when evaluating proposals;

Directing review panels to give highest scores to projects that address all three of the core Fund objectives — community, environment, and farm competitiveness — in determining the relevance of project proposals to solve real-world problems;

Directing reviewers to give priority to projects that, where appropriate, involve participation of small farm operators and partnerships with nonprofit organizations that work with small farm operators; and

Inviting small farm operators, representatives of nonprofit organizations that work with small farms, and land-grant scientists whose work addresses small farm concerns to serve on the review panels that make the final recommendation (not just as outside reviewers).

Recommendation 1.7

Rural Development's Appropriate Technology Transfer for Rural Areas program (ATTRA) and other small farm programs should develop a clearinghouse of available equipment and systems

and a means to identify unmet needs. ATTRA should be formally consulted on a regular basis to provide analysis of what the small farm research needs are to REE agencies. With this information, USDA should collaborate with land-grant colleges, private companies, and small farmers to design machinery, equipment, and systems appropriate for small-scale agriculture.

Agriculture-based rural development

Up until the 1950's, the economy of rural America was based primarily on agriculture. Today, agriculture is the dominant industry in only one-fourth of rural counties. Nonetheless, there are 556 counties, mostly in the Great Plains States, that derive 20 percent or more of their earned income from farming and are therefore classified by ERS as "farming dependent." From 1980 to 1990, 80 percent of farming-dependent counties lost population and farm jobs declined by 111,000. Young people left these communities in search of greater economic opportunity in careers other than farming. The 18- to 34-year-old population in farming-dependent counties declined 17 percent on average from 1980 to 1990.[v]

Farming-dependent counties, particularly those in the Great Plains, are generally suppliers of raw commodities that are typically shipped out of their communities for processing and value-adding activities elsewhere. Only about 10 cents of the consumer dollar spent on cereal and bakery products are returned to the producers in the grain-growing States of the Great Plains. These communities do not share in the full economic gains from the food industry.

There is a growing recognition among small farmers that if they are to boost their economic returns from farming, they need to find ways to earn a greater share of the consumer dollar by adding value to their own products. These strategies can include farmer-owned cooperatives and other business ventures for the purpose of value-added processing, production, and marketing of crops and livestock.

Because farming is a narrow-margin and high-risk business, rural economic development agencies and professionals have either dismissed or ignored agriculture as an industrial base with potential for growth in rural communities. For example, when contacting some of the State USDA Rural Development offices about upcoming meetings of the Commission in their region, more than once the staff responded by saying, "We no longer do farm programs." While they were referring to the farm credit programs that were moved to FSA, this response was an indication that the rural development programs are not perceived as relevant to farmers. Where agriculture is an important industry, job development could be enhanced through value-added processing, production, and marketing activities.

USDA should dedicate a significant portion of its Rural Business – Cooperative Development loan, grant, and cooperative programs and Extension programming to agricultural-based rural development activities. These activities should be specifically tailored to the generation of greater economic opportunities from the products and potential of small farms in their rural communities.

Recommendation 1.8

USDA Rural Development State Directors should include small farm operators and community-based and nonprofit organizations in their strategic planning processes, particularly with respect to the use of their rural business development programming for purposes of agricultural development. The strategic plan should be reviewed annually, with feedback and input from a variety of customers. Special outreach should be done to involve small farm operators, minorities, women, and non-English-speaking cultures. The strategic plans for the rural business development grant and loan programs should include development of agriculture-based businesses, as well as projects that strengthen a local food and agriculture economy through community farmers markets, public markets, and locally owned, value-added food processing businesses and microenterprises.

Recommendation 1.9

Where Rural Development (RD) State Directors have discretion to add additional priorities to the funding criteria for judging the Rural Business Enterprise Grant (RBEG) and Business & Industry (B&I) loan applications,[25] State Directors should develop a process for receiving input from stakeholders, including small farmers interested in pursuing value-added agricultural development. This process might include one or more of the following options:

Establish State Small Farm-Business Councils to first assess current small farm needs and then develop methods of addressing those needs through the State Rural Development strategic plans. Membership in these Councils should include but not be limited to Farm Service Agency State Executive Directors; Resource Conservation and Development Councils; State economic development agencies; Cooperative Extension Small Farm directors, administrators, and agents; State departments of agriculture; Small Business Development Centers; district offices of the Small Business Administration; small farmers, American Indian and Alaska Native tribes, community-based and nonprofit organizations, and other farming interests.

Set up a process similar to that described above, but utilize the infrastructure of the State Food and Agriculture Council (FAC).

Solicit ideas for determining the kinds of agricultural development that should be funded with the RBEG and B&I funding within any given State. A "request for comment" period could be publicized in all rural newspapers within a State, asking for input in setting the priority criteria for these programs. Public meetings could also be held to gather input. The RD State Director would set the criteria based on input received and announce the criteria, available funds, and information for obtaining applications in State and local rural newspapers.

Recommendation 1.10

Exclusively target Rural Business development funds including Rural Business Enterprise Grants, Business & Industry Loans, and the Intermediary Relending Program, to assisting the development of farmer-owned cooperatives for small farm operators and small business concerns as defined by the Small Business Act.[26] At least 50 percent of all RBEG grant funds should be targeted to give priority to projects that primarily benefit small farm operators, including farmer-owned, value-added businesses, cooperatives, and farmland transition programs. A small farmer-owned value-added business and cooperative should be defined as one in which over two-thirds of the throughput comes from small farms.

Recommendation 1.11

Extension should emphasize market development education and technical assistance to small farmers in addition to production assistance. These educational efforts should be directed at exploring new marketing avenues for small farms, like direct farm-to-consumer markets, local value-added processing, and farmer-owned cooperatives. Market development efforts like those undertaken in the Sustainable Agriculture Research and Education (SARE) program should be used as a model and expanded to other Extension programming. Extension efforts could assist small farmers by developing entrepreneurial training and development in natural resource-based industries. This kind of effort should focus on learning from established farmers and small business entrepreneurs with Extension participating as co-learners with potential entrepreneurs. Extension agents could be most helpful by serving as a facilitator of information and resource providers. This training should include the development of community-based entrepreneurial networks to provide continuous training, mentoring, and support for new business startups within a community. (See also Policy Goal 3, recommendation 3.27).

Farm credit

Agricultural operations require high levels of committed capital to achieve success. The capital-intensive nature of agricultural production makes access to financial capital, usually in the form of credit, a critical requirement. Small farms are no different from larger farms in this regard, but testimony and USDA reports received by this Commission indicate a general under-capitalization of small farms, and increased difficulty in accessing sources of credit.

The reduction of price and income support resulting from the 1996 FAIR Act can directly reduce income levels for farmers reliant on government payments and interject increasing instability in agricultural markets. Increased price volatility decreases the attractiveness of farm lending among commercial lenders. Lenders lose some assurances that their clients will have a reliable source of income to meet loan repayment levels. When commodity prices drop, as is the case currently in the dairy industry, lower on-farm prices combined with the reduction in transition payments from the Federal farm programs, might sharply increase the risk in agricultural lending and increase reluctance in the financial sector to extend agricultural credit.

Direct lending programs of the Federal Government have been increasingly curtailed by Congressional budget actions, diminishing the ability of the USDA to carry out its mission of assistance to America's small farmers. The shift from direct lending to guaranteed lending has been more beneficial to lenders than to farmers. The commercial banks realize virtually the same paperwork and out-of-pocket costs to create a $10,000 FSA guaranteed loan as to create a $250,000 loan under the same program, while income is 25 times higher for the larger loan in this example. The result is that small-sized loans and loans which banks are not comfortable with, are increasingly rare. The USDA farm credit program was created to provide a "lender of last resort" to America's small farmers; however, the move away from the direct lending portion of the program has increasingly thwarted this original purpose. Line-of-credit loans authorized in Section 614 of the 1996 FAIR Act were created in recognition of the long-term nature of agriculture, but are not yet implemented. The "Preferred Lender" and "Short Form Application" for guaranteed loans under $50,000 as required in the 1992 Agriculture Credit Act Amendments are not yet implemented either.

Recommitment to USDA's mission as the "lender of last resort" is needed by focusing greater attention to serving the credit needs of small, minority, and beginning farmers. It should reverse the trend of shifting to guaranteed loans and accelerate action on pending credit regulations to the benefit of small farmers.

Recommendation 1.12

The FSA Administrator should continue a national direct lending and guaranteed lending policy that focuses these programs on small farmers, especially minority and beginning farmers. The policy should include a requirement that repayment periods of the direct acquisition loans reflect the expected useful life of on-farm improvements, equipment, or chattel purchased with loan proceeds.

Recommendation 1.13

Regulatory policy should be changed to limit the FSA County Committee to determining basic eligibility of the borrower as a *farmer*, and not to review credit histories, farm loan applications, or other involvement in the credit process.

Recommendation 1.14

The FSA Administrator should take immediate action to implement the Line-of-credit loans authorized in Section 614 of the 1996 FAIR Act. Line-of-credit loans should be used for all routine and recurring operating loans using either direct or guaranteed authorities and be targeted to

small, beginning, or traditionally underserved farmers. This will extend production credit for a 5-year term without the need for re-application, enable production through good and bad years without interruption, and dramatically reduce staff work required to re-issue production loans yearly.

Recommendation 1.15

The FSA Administrator should give highest priority to the promulgation of regulations to fully implement the "Preferred Lender" and "Short Form Application" for guaranteed loans under $50,000 as required in the 1992 Agriculture Credit Act amendments.

Debt collection and offsets

Statutory provisions defining borrowers' rights and methods of collection of FSA and other USDA debts have been provided in the 1987 Agricultural Credit Act, the 1992 Farm Credit Improvement Act amendments, the 1996 FAIR Act, and the 1996 Debt Collection Improvement Act. The debt collection and offsetting regulations have created unsolvable conditions for small farmers and left some with no options but bankruptcy.

For example, a livestock producer in North Dakota who suffered severe losses in the 1997 blizzards and excessive feed costs will still owe some unpaid balance on the principal of his operating loan due in the spring of 1998. Offset policy requires that the expected Livestock Indemnity Program payments, implemented by Congress to ease this producer's financial crisis, as well as any FAIR Act transition payments, be held by the FSA against the unpaid portion of his debt. This producer, being delinquent and offset, cannot seek operating capital from any other source as he has no assignable source of income, and the 1996 farm bill prevents USDA from providing any continuing credit, loan servicing, or new loans. If this borrower was a client of a commercial bank he could negotiate a longer repayment term and remain in business, eventually repaying his entire note with interest. But, because he is a client of the Federal Government under current Federal collection policies, the result of the bad winter must be bankruptcy and farm dissolution. Legislative and administrative actions are necessary to correct the credit laws that are in conflict and that act together to the disadvantage of small farmers.

Recommendation 1.16

USDA should propose legislation to repeal the provisions that prohibit farmers who have previously had "debt forgiveness" from receiving any USDA loans or credit assistance.

Recommendation 1.17

USDA should propose legislation to re-instate the loan servicing methodologies and timelines provided in the 1992 Farm Credit Improvement Act amendments.

Recommendation 1.18

The Secretary should request the necessary waiver from the Treasury Department to eliminate the offsets in the following conditions:

debt collection, until all loan servicing options have been exhausted (otherwise, offset eliminates loan servicing options);

all loan proceeds, including Commodity Credit Corporation loans and emergency loans;

all emergency program proceeds, including the Livestock Indemnity program;

where a previously approved assignment of proceeds is in place, existing assignments should be honored prior to offset in order to maintain the integrity of the FSA programs and their acceptance in the community.

Recommendation 1.19

The U.S. Attorney should observe the moratorium on foreclosures pending case reviews issued by Secretary Glickman. This action is necessary because, despite assurances to individuals and groups, in many States the U.S. Attorney's Office is continuing to process and enforce foreclosures and indicate that the Secretary of Agriculture's moratorium has "no force or effect" on the U.S. Attorney.

Recommendation 1.20

The Farm Service Agency should develop new lending procedures which substantially reduce the application process and form requirements for direct and guaranteed loans so that all loans can normally be approved or disapproved within 30 days of application; publish a formal check-list of application requirements so that applicants are fully aware of what is needed for a complete application; expeditiously allocate appropriated direct loan funds to the appropriate State FSA Offices with an absolute minimum held at national headquarters in Washington, DC; and, for loans under $50,000, develop a separate short loan application form and a less intensive review process.

Recommendation 1.21

The FSA Administrator should issue a national policy directive to reinforce or establish that an FSA appraisal shall remain in force for 1 full year; that all FSA appraised values for land, equipment, and chattel shall always be based on current agricultural use, not other potential development; that farmers shall be provided with copies of appraisals and supporting documents within 5 working days of completion of the appraisal; that appraisal reports shall be appealable decisions; and the proper method of contesting an appraisal shall be the existing formal USDA appeal process.

Recommendation 1.22

The Secretary should take immediate action to mitigate the pending credit crisis in the shared appreciation cases by asking Congress to extend the 10-year shared appreciation period for small farmers until the land is sold. In addition, the FSA Administrator should issue a national policy that specifies that for purposes of determining the value of shared appreciation, on-farm improvements made during the life of appreciation plus any overall increase in the value as a result of the improvement, shall be subtracted from the appraised value, and that non-program loan fund authorities shall be used to extend appropriate payment terms for small farm operators with shared appreciation debts.

Indifference and discrimination

There has been an indifference to the needs explicitly unique to small farms, including minority and women-owned farms, for the last several decades. While there are USDA programs that assist small farms, they are generally underfunded and at levels that pale in comparison to the needs of the clientele and are not at all commensurate with the number of small farms. An explicit policy focus on small farms is needed to ensure that USDA's research, extension, marketing, credit, rural development, and conservation programs will undergird the performance of these farms.

Most disturbing are the indifference and blatant discrimination experienced by minority farmers in their interactions with USDA programs and staff. The Civil Rights Action Team, through its set of hearings and its report, boldly identified specific concerns of African-American and other minority

farmers regarding relations with USDA's agencies with respect to credit, extension, applied research, and outreach. The history of discrimination by the U.S. Department of Agriculture in services extended to traditionally underserved[27] farmers, ranchers, and small farmers, and to small forestry owners and operators, is well documented. Discrimination has been a contributing factor in the dramatic decline of Black farmers over the last several decades. (See Figure 3). It was the complaints of discrimination against Black farmers in December of 1996 that gave rise to the creation of the National Commission on Small Farms. The Commission heard testimony in Tennessee, California, and Hawaii regarding the need for USDA, the land-grant university system, and nonprofit organizations to specifically target underserved minority farmers. The National Commission on Small Farms makes the following recommendations relative to civil rights and equal opportunity at USDA:

Recommendation 1.23

The Commission supports the full implementation of all 92 recommendations of the CRAT report and urges the Secretary of Agriculture to move expeditiously to take all actions necessary to implement these recommendations. USDA should give full support to legislation sponsored in Congress by members of the Congressional Black Caucus to make statutory changes to facilitate implementation of the recommendations. The Secretary should make sufficient funding available in budgetary requests and pursue these through the Congressional appropriations process. The Secretary should take discretionary actions to fully implement the CRAT recommendations and institutionalize the process of civil rights implementation, compliance, and enforcement within the USDA. In various sections of our report, the Commission supports, emphasizes, and builds upon various recommendations of the CRAT report. These include: CRAT recommendations 9, 38, 39, 40, 60, 61, 62, 63, and 64.

Recommendation 1.24

The Commission strongly endorses CRAT recommendation No. 28 to develop a national registry of minority farmers and landholdings. The registry will be an important source of information to conduct outreach and support services to traditionally underserved farmers nationwide. This action will support the Commission's principles of wider opportunities for and pluralism in the ownership of land in our Nation. The registry should be used as a baseline to record the current ownership of farmland by the traditionally underserved and be used to measure the progress toward expansion of minority land ownership in the future.

Recommendation 1.25

There has been a history of under-allocation of resources to institutions that have served minority farmers. These institutions have developed extensive experience, professional expertise, and grassroots programs to serve this clientele. The Commission recommends that a significant share of any new resources directed at serving these traditionally underserved farmers be allocated to and provided in partnership through the 1890 Land-grant Colleges and Universities, the 1994 Tribal Colleges, and those 1862 Land-grant Universities with demonstrated programs of support for traditionally underserved farmers, and community-based organizations that have a history, demonstrated experience, and expertise in serving minority farmers.

Recommendation 1.26

The failure to elect minority farmers to positions on the Farm Service Agency (FSA) County Committees is disgraceful. Only 192 of 1,849 voting members of FSA County Committees are minority farmers. Therefore, the Commission recommends that in counties or multi-county areas where more than 10 percent of the farm owners and operators registered with the FSA office are

minority farmers, one or more members of the FSA committee be a traditionally underserved person, selected by one or a combination of the following methods:
direct election for this specific seat by minority farmers;
cumulative voting to allow minorities to fill seats on the FSA committee in proportion to their involvement in the farm population; or
the county committee be expanded by at least one seat and appointed by the FSA State Executive Director, based on nominations by traditionally underserved farmers in the area or by organizations that represent these farmers.

Recommendation 1.27

The National Commission on Small Farms urges the Secretary of Agriculture to settle all outstanding claims of discrimination by farmers and employees against the USDA. The Secretary of Agriculture should seek to resolve all court cases as expeditiously as possible.

Recommendation 1.28

USDA should recognize the distinct differences and needs of small farmers in the U.S. territories and possessions, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the Commonwealth of the Mariana Islands. Because of the difference in climate, soils, topography, cultures, and farming traditions, USDA programs applied on the mainland are not always appropriate to serving the needs of farmers in U.S. territories and possessions. The Secretary should assemble a team of field staff from these areas, along with USDA administrators of research, extension, conservation, forestry, and marketing programs, to assess the program barriers to small farm operators from U.S. territories and possessions and make necessary changes to meet their needs.

Tobacco settlement
Farm families and their communities in the tobacco-producing States are experiencing a dramatically uncertain future. For over five decades, small farmers, African-American farmers, and new and beginning farmers in these States were cushioned from many of the economic pitfalls facing other farmers, by a tobacco price support and production control program operated through a partnership with the Federal Government and tobacco farmer organizations. The tobacco program, not simply the crop itself, has enabled small farmers to experience a comfort unlike any other farm group —assurance and certainty based on a system that worked. As they participate in other agricultural markets, count the dwindling profits from other products, and watch neighboring dairy, livestock, and grain farmers failing, tobacco farmers are perplexed by well-intentioned, though profoundly faulty, offerings for their options. It's not the tobacco crop for which there is no alternative, but the tobacco program itself.

It is no accident that the tobacco States and communities, including North Carolina, Kentucky, Tennessee, South Carolina, West Virginia, Virginia, and Maryland, also represent among the highest concentrations of small and African-American farms. Tobacco income is particularly important to limited-resource farmers, African-American farmers, and the Appalachian mountain regions of the upper South. According to the 1992 Census of Agriculture, tobacco accounts for half or more of total farm sales on nearly one-third of African-American-operated farms in the east coast States from North Carolina to Maine. In these same areas, again particularly in the mountain regions, off-farm income is extremely limited, poverty rates are high, and tobacco farm income constitutes a greater proportion not only of agricultural income, but of overall economic income. In the Appalachian counties of Kentucky, the tobacco-income-dependent counties include those farmers most at risk in the Nation. In eastern Kentucky's Owsley County, for example, the poverty rate in 1990 was 50 percent. Because of the limited availability of off-farm

jobs, agriculture is the area's dominant income and the dominant agriculture is tobacco. Welfare reform has only further increased tobacco's importance to the communities.

In the 18th Annual Family Farm Report to Congress, 1993, the USDA reported that although the Corn Belt had the largest number of farms in 1993, the Appalachian Region (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia) was second with 299,000. "Farms, however, were considerably smaller in the Appalachian Region than in the Corn Belt in terms of average acres, average gross cash income, and average gross sales," the report stated, adding that 85 percent of America's tobacco farms are in this region. The USDA reported 91,787 tobacco farms, with 147 acres (mean acres operated), producing $32,000 (mean gross cash income); and as shown in the following table, the tobacco States correspond to those States with large numbers of small farms.

Share of small farms within tobacco states[1]

State	Percentage of Small Farms in the State
Indiana	55
Kentucky[2]	73
North Carolina[2]	63
Maryland	61
Missouri	67
Ohio	61
South Carolina	76
Tennessee[2]	82
Virginia[2]	74
West Virginia[2]	88

Source: 1992 Census of Agriculture

[1] This listing does not include States such as Connecticut and Pennsylvania where tobacco accounts for only a very small proportion of overall agricultural production.

[2] Indicates Appalachian Region State where 85 percent of tobacco is produced.

Although tobacco production has been a source of controversy for years, the tobacco program more recently became the focus of more concerted and serious examination with the landmark "global settlement" between the States' attorneys general and the tobacco companies in June of 1997. This $368 billion settlement, if approved by Congress, will drastically change Federal regulatory and health policy regarding tobacco sales, distribution, and, by all predictions, tobacco production. The tobacco farmers and the tobacco price support program were not addressed in the proposed tobacco settlement.

Since June 1997, several major Congressional proposals have been introduced affecting both the tobacco product sales, tobacco production and the tobacco program. Since the Commission's single meeting in tobacco country, held in Memphis shortly after the settlement was announced, Congressional hearings have begun on the tobacco settlement and bills have been introduced to end the tobacco program. If Congress proceeds to cut this safety net out from under them, all tobacco farmers, their communities and urban centers who rely on the tobacco economy will be at great risk, the extent of which is currently only speculative. Agricultural economists in Kentucky estimate that as many as 50 percent of the tobacco farms will be eliminated if the tobacco program is terminated, primarily the small farms.

Recommendation 1.29

The Commission recommends that USDA, the Office of the President, and Congress carefully examine the success of the tobacco program and clearly evaluate the economic, social, and environmental impact of program changes. USDA should proceed immediately to develop a

comprehensive assessment of the social, economic, and environmental impact of the Federal price support's 50-year program in the tobacco-producing States, particularly with respect to the farmers and the communities, towns, and cities directly affected by a tobacco economy, reporting to the President and Congress within 60 days of receipt of the Commission's report. The assessment should examine both long-term and short-term options and impacts of these options, particularly on small and limited-resource farms and African-American farmers. The study should assess the complex range of social and economic factors associated with the tobacco price support and develop recommendations for systems and processes to stimulate and sustain local economies in the event that the tobacco program is phased out. USDA should conduct this review jointly with other partners and agencies concerned with the full range of a healthy community, including other Federal agencies, such as the Appalachian Regional Commission; Department of Commerce; Environmental Protection Agency; Departments of Health and Human Services, Housing and Urban Development, and Labor; Tennessee Valley Authority; State and local governments, including associations such as the Southern Governors Association, the National Association of Counties, National League of Cities, which provide liaison with State and local governments; private sector representatives including farm service and supply businesses, banks and other lending institutions, manufacturers and small businesses, and organizations which work with local private sector groups; regional and locally based community development corporations; farm organizations and cooperatives; and nonprofit organizations working with farmers, rural development, public health, and community economic development.

As part of this initiative, USDA should request and assist the Office of the President, jointly with States' Governors and Congressional delegations, in convening town meetings and community gatherings throughout the tobacco-producing States to solicit input and recommendations for sustaining healthy tobacco communities, particularly where small and limited- resource farmers, African-American farmers, and new and beginning farmers operate, with recommendations for the systems and programs for ensuring farmer-based, locally driven community development consistent with good stewardship of the region's natural resources.

Recommendation 1.30

The Commission further recommends that USDA, Congress, and the Office of the President target the Commission's suggestions and recommendations which concern access to credit, market development and opportunities, and new farmer initiatives to the tobacco-producing States and communities for priority testing and implementation in 1998. The targeting should be based on the lessons learned from the assessment described above and the process for its development.

Loan performance reporting

Economic Research Service data on USDA loan performance received by the Commission indicates very high levels of delinquencies, with a 23-percent past due rate on principal and interest in direct loans. Highest delinquencies were reported for emergency loan programs, and loss figures for the program are reported at over $1 billion for the past 2 years, a figure projected to remain virtually constant. In contrast, guaranteed loan delinquencies and loss figures are reported at significantly lower levels of 2 percent delinquent and annual loss of $46 million in 1996. With the Commission's increased emphasis on direct lending for small farm operators, it is important to try to determine a reasonable process to improve collections.

In reviewing the data to develop specific recommendations, as well as conferring with representatives of the commercial banking industry, the Commission found that, for numerous critical reasons, the data from commercial lenders and the guaranteed program banks is not comparable with the FSA direct lending data. Federal commercial banking regulations place strict limits on the amount of non-performing or risk-rated loans a bank may have on the books at any one time. These same regulations place specific time limits on the bank's ability to collect unpaid

loan balances. It is in the best interest of bank managers to minimize their non-performing portfolio in reports to management and stockholders.

For these simplified reasons, commercial banks take aggressive action to resolve delinquencies, including restructuring loans, re-appraising collateral when necessary, entering into long-term repayment agreements and, finally, turning over non-performing loans for collection and taking them off their books. The end result is that banks do not report non-performing loans more than a couple years old; these are written off, sold for collection, or otherwise disposed of to keep the bank's balance sheet in compliance with prudent banking practices and Federal regulation. This is a routine, if undesirable operation which is figured into risk equations for determining interest rates and profit, but because it is a constant, ongoing process, no single year results in delinquency of loss figures above acceptable minimums.

The former Farmers Home Administration credit programs, currently included in FSA, never implemented "prudent banking practices" or other procedures to eliminate bad debts or reflect transfer to collection processes. Additionally, at various times Congress has acted to prevent or modify collection actions. The result is FSA records that include as "delinquent balances" forgiven balances from loans that were written down, debt settled, or foreclosed many years ago. Also included is continuously accruing interest on these amounts, leaving an artificial unpaid balance. Finally, the reports received by the Commission from ERS state that emergency loan programs "account for two-thirds of total deficiencies" and "losses continued to be concentrated in the Economic Emergency and EM (emergency disaster loans) programs." The Economic Emergency Loan program is no longer an active program. It is nearly impossible to determine how to improve FSA collection efforts because direct loan records are not in any way comparable with guaranteed loan records or commercial bank records, and a huge proportion of reported delinquencies are so old and tainted as to be totally uncollectable. This problem will continue to create confusion and Congressional opposition to increased appropriations for direct lending until the books are corrected and comparisons of programs can be based on commonalities.

Recommendation 1.31

The FSA Administrator should enter into a short-term contract with a private firm to audit the FSA direct loan records. The purpose of this audit shall be to develop a process to purge these records of old and uncollectable loans; setup a procedure for FSA lending programs to implement prudent banking practices in its collection and recordkeeping process; and maintain records acceptable to and comparable with the banking industry. The result of this audit may include recommendations that can be administratively implemented, as well as those which will require statutory change.

Program bias

If the potential contribution of small farms is to be realized, USDA must make concerted efforts to identify and nurture this potential as suggested in the recommendations above. At the same time, those policies and regulations that intentionally or unintentionally stifle the potential growth and productivity of small farms must be identified and changed.

For example, the Commission heard testimony from a Soil and Water Conservation District Director in the Southwest who raised concerns about NRCS' use of "acres of land treated" and "acres brought under conservation plan.s" These indicators create the incentive for some NRCS conservationists to set high acreage goals to fulfill their progress reporting requirements. Some conservationists shy away from working with small farms due to the high planning goals they are asked to accomplish and tend to accept large tracts over small tracts. However, an NRCS conservationist stated that it takes just as much time to complete a resource management system plan on a small farm as it does for a large farm.[20] Since small and traditionally underserved farmers and ranchers historically own/operate relatively small acreage, the

emphasis should be placed on the number of individuals (farms, ranches) receiving assistance as opposed to how many acres were treated.[28]

Another example of programmatic bias against some small farms is the 5-year requirement for Environmental Quality Incentive Program (EQIP) contracts. For small farmers who lease land, often on a yearly basis, and those who lack the economic security to make long-term commitments, the 5-year requirement prevents them from accessing the conservation benefits of EQIP. A participant at the Sacramento meeting said this about EQIP: "While well intentioned, what this is tending to do is exclude... tenant farmers—two-thirds of our farmers are tenants and the eligibility requirements for becoming part of these programs is a 5-year lease at the minimum. No one's heard of a 5-year lease in California. Two years is typical—some three years."[30]

Recommendation 1.32

USDA policies, programs, and regulations should be reviewed to identify program rules and regulations that are either intentionally or unintentionally biased against small farms or that offer potential to be of greater benefit to small farms if programmatic adjustments were made. A review process should be completed within 6 months with a report delivered to the Secretary.

NRCS conservation technical assistance: The Natural Resources Conservation Service (NRCS) programs should be developed in consideration of the needs of the farms and natural resource concerns, rather than the size of the farm or how far the Federal dollar will go. NRCS should develop a method of employee evaluation that encourages assistance to small farm operators. State and local partners should also be encouraged to develop similar evaluation criteria. Incentives should be offered to encourage small farm operators to develop conservation plans.

EQIP: The 5-year contract must be re-evaluated to accommodate small farms, particularly tenant farmers who have less than 5-year leases. Hardship provisions for small farmers and tenant farmers should be addressed, allowing them to deviate from the 5-year contract in certain circumstances. An "exit" or "temporary suspension" provision should be created for small farms if they encounter financial hardship and cannot fulfill their 5-year contract.

Rural Development's Intermediary Relending Program, Rural Business Enterprise Grant Program, and Business and Industry Guaranteed Loan Program: These 3 rural development programs should be reviewed to assess the types of agricultural-based rural development projects funded in recent years. They should be evaluated according to criteria of sustainable rural development. Regulations should be reviewed to determine to what extent they benefit small farms or large farms. For example, a recent regulation change allows for Business and Industry loans to be made for agricultural production "when it is part of an integrated business also involved in the processing of agricultural products."[31] Projects awarded funding under this regulation should be examined to determine if they limit marketing opportunities for area farmers not involved in the vertically integrated projects.

Risk Management Agency's Revenue Assurance Program: The new revenue assurance programs are offered for the major commodities. These programs are likely to favor large farms growing single crops and are not a good fit for small farmers with diversified cropping systems. There is no limit to the amount of coverage a farmer can purchase. This program should be examined to determine how revenue assurance can be made more appropriate to the needs of small farms. (See also Policy Goal 6, *Recommendation 6.11.*)

Rural Development's Rural Business-Cooperative Service (RBS) programs: A program review should be conducted to assess the research and technical assistance provided by RBS program staff. Reviewers should examine to what extent the needs of small farm operators are met and whether or not the services provided are balanced between the needs of larger, well-established cooperatives and smaller, new and innovative cooperatives.

Forest Stewardship Program, Forestry Incentive Program, Stewardship Incentive Program: Oftentimes forestry programs seem to focus on the large customers at the expense of the small farm and ranch operators and owners of woodlot. The Forest Stewardship program is a good example. This program is designed to provide forestry technical assistance to woodland owners. Small

woodland owners are unable to justify financially the expense of purchasing forestry expertise. Larger landowners can more easily afford expertise because of higher volumes and larger anticipated returns. The Commission recommends that the existing Federal technical and financial support programs for forestry be examined for inadvertent discrimination against small woodlot owners. Federal programs should focus on the successes of individual farmers and ranchers, regardless of the size of operation.

Policy Goal 2
Create a Framework of Support and Responsibility for Small Farms

A farmer advocate at the Memphis hearing told the Commission that USDA should "foster and maintain the family farm system with personnel who understand the particular needs of farmers in a certain area."[52] In serving small farm operators, USDA personnel should work in an environment that rewards initiative to deliver programs effectively, to solve problems of small farm operators quickly, and to find answers for them promptly. For instance, if a USDA employee determines through experience that a certain program or regulation is hindering the viability of small farm operators, the employee should be able to freely bring this to the attention of the agency administrator and start a course of action to modify the program. Sometimes efforts to make changes are suppressed or too easily dismissed by saying, "that is the way it has always been and we cannot do anything about it." The goal should be that small farm operators should be able to identify USDA as a "partner" in making farming decisions that will promote small farm viability and stewardship.

This goal can only be achieved if an organization is structured in a way that allows employees to be focused, creative, accountable, and accessible. USDA leadership should emphasize a cultural change throughout the organization, focusing on the mission clearly understood and practiced by all those in the organization, which is farmer-oriented and customer friendly, emphasizing service through accountable program operation and mindful of the public trust. The Commission believes that USDA's administrative structure has had an impact on how small farm operators have been and are being served. Programs that help small farm operators are dispersed throughout various agencies, including CSREES, NRCS, FSA, Forest Service, FNS, and AMS. There needs to be more cooperation among the various small farm programs in order to effectively meet all the needs of small farms in a coordinated manner. The Commission believes strong continuity and cooperative efforts in USDA programs serving small farm operators and policies affecting them are crucial to their viability. As one participant at the Memphis hearing said, "They (i.e., small farms) need to be a visible part of USDA's mission...."[53]

Once USDA develops a readily identifiable focus on small farms, the organizations and community-based groups that work with small farms can then begin to develop stronger partnerships with USDA. Partners can be critical to program delivery and can improve their effectiveness in serving small farm operators. A witness in Sacramento said, "I believe that a partnership between USDA and the leadership of some of the private sector organizations can — with the blending of their two resources — develop a platform of technical assistance to help the small farmer."[54] This blending is needed to strengthen the framework of support at local, State, and regional levels, and definitely at the national level.

This framework of support is influenced by program regulations, legislation, and appropriations (appropriations are addressed in Policy Goal 7). In this section, the Commission makes recommendations that will change program delivery, with specific programs cited, and suggests legislative changes to influence the delivery of service to small farms.

Small farms as priority

Small farms should be a major focus of USDA. Farms with sales of less than $250,000 in gross sales comprise 94 percent, or 1.9 million, of all farms in the United States. These farms, on average, earn a negative return on equity. It is these farms that are most in need of public attention to create greater economic opportunities for their long-term viability. At present, USDA does not emphasize the needs of small farms in its strategic plan. References to small farms appear seldom in USDA's overall strategic plan submitted in fulfillment of the Government Performance and Results Act.

Land-grant institutions also need to make serving small farms a priority. The Commission heard testimony from farmers indicating a lack of attention from their land-grant universities to addressing the real day-to-day problems of how to improve farm profitability on small farms. Some farmers felt like their land-grant institutions are only interested in serving the needs of very large farms. However, the Commission also heard about land-grant programs taking explicit steps to assist small farms. For example, the University of California-Davis Small Farm Program has had success in educating and assisting a diverse group of small farm operators in a State that is increasing its number of small farm operators. A key element in its success is the small farm advisors designated to serve certain counties in the State. The one-on-one advice has worked well, especially in setting up vegetable trials and research and demonstration plots specifically for specialty crops.

Recommendation 2.1

The Secretary should establish an Administrator of Small Farm Programs who would report to the Secretary of Agriculture and have Senior Executive Service status. This Administrator would have the necessary high-level staff as well as support staff to carry out his or her duties, which will include both working with all USDA agencies to ensure that they are meeting the needs of small farmers, and providing formal input on major programmatic and policy decisions by USDA agencies. Further duties include examining the dispersed responsibilities at USDA and developing a plan for coordination to enhance program delivery.

Recommendation 2.2

Each USDA mission area and agency should designate a small farm coordinator to work directly with the Administrator of Small Farm Programs. The person should be a key leader and decision-maker for the represented agency.

Recommendation 2.3

Mission areas and agencies should address small farm concerns in their mission statements as well as their strategic plans. Performance goals for serving small farms must be instilled at all levels of an agency to ensure effective program delivery.

Recommendation 2.4

The Secretary should provide career enhancement incentives and opportunities that encourage high-quality and sustained performance for USDA employees who deliver programs, conduct research and outreach, or otherwise serve small farm operators.

Recommendation 2.5

USDA should develop a Department-wide Small Farm and Ranch Policy that encompasses the vision and guiding principles set forth by the Commission. Within that framework, each appropriate agency should develop complementary policy. This policy must be reflected in the development of technical materials used to provide service to small farm operators. Specifically,

technical guides and handbooks, such as the NRCS Field Office Technical Guides and the Forest Service Handbook, must reflect circumstances faced on small farms, ranches, or woodlots. Extension publications regarding owning and operating small farms should be updated to reflect current conditions in agriculture.

1890 and 1994 land-grant universities and colleges
The key leaders in serving small farm operators are the 1890 land-grant universities and colleges in the southern region and 1994 land-grant Tribal Colleges serving American Indian and Alaska Native tribes. However, these institutions have been limited in providing services to all small farms in their respective regions due to limited funding. The 1890's have a historical commitment to serving small farms. The focus of these institutions has been to research and develop alternative enterprises and production systems suitable for small-scale agriculture. These institutions are an untapped resource when it comes to developing policies and programs concerning small farms.

Recommendation 2.6

The 1890 and 1994 institutions that serve minority farms should be appropriated significant funds to meet the needs of small farms, including research and outreach. The Secretary should strongly encourage a State match for Federal allocations at 1890 and 1994 institutions. The Secretary should continue to develop research partnerships among USDA, land-grant institutions and private, nonprofit groups to identify, analyze, and propose strategies related to marketing options, such as alternative marketing systems, Community Supported Agriculture, farmers markets, and value-added enterprises.

Recommendation 2.7

The Secretary should fully support passage of legislation that will make the "viability and competitiveness of small and medium-sized dairy, livestock, crop, and other commodity operations" a priority mission area under the "Initiative for Future Agriculture and Food Systems," as proposed by the Senate in the Agricultural Research, Extension, and Education Reform Act (S. 1150) in the 105th Congress. If passed, 1890 and 1994 institutions with experience in assisting small farm operators should be given priority consideration for conducting this research and extension, in partnership with community-based organizations.

Recommendation 2.8

Successful small farm education models at the 1890 and 1994 institutions, as well as the 1862 institutions, should be utilized to develop need-specific programs in each State.

Community-based organizations and other nonprofits
Community-based organizations and nonprofits that work directly to assist small farm operators in local communities have distinct advantages over government agencies or Extension in reaching small farmers. In some cases, they are better able to identify with the needs of small farm operators and earn their trust in a way that government agencies cannot. At the same time, USDA and Extension possess resources, knowledge, and different levels of credibility that nonprofit organizations lack. Collectively, these institutions have the potential to leverage their strengths in creating a framework to best serve the needs of small farm operators.

Recommendation 2.9

USDA agencies, with leadership from the USDA Office of Outreach, should seek to develop and implement innovative ways to partner with the private and nonprofit sectors. Through improved partnerships, USDA funds could be targeted to community-based organizations to help connect

farmers and farmworkers with the technical and organizational information developed by and available from USDA, land-grant institutions, and other agencies. For example, partnerships with community-based organizations and nonprofits, as utilized by the SARE program, should be continued and expanded to other competitive grant programs. The strength of these partnerships should be a critical factor in scoring grant applications.

Recommendation 2.10

The Farm Service Agency can build on its successful partnerships with community-based organizations through the Outreach and Technical Assistance Program for Socially Disadvantaged and Minority Farmers (Sec. 2501 program), by making the DALR$ (Debt and Loan Restructuring System) computer software program available to farmer advocate organizations. The organizations could utilize the software in assisting farmers in completing loan applications, in reviewing for accuracy and in expediting the loan application process.

Recommendation 2.11

The Secretary should ensure that small farm operators and nonprofit organizations working with small farmers are significantly represented on all USDA advisory boards and committees, particularly the National Research, Education and Economics Advisory Board.

Recommendation 2.12

The Secretary should issue a policy requiring that Farm Service Agency State Executive Directors, Rural Development State Directors, and State Conservationists in NRCS establish a supplemental advisory team to provide programmatic and implementation advice on issues affecting small farm operators, farmworkers, and traditionally underserved USDA clients. These State advisory committees shall be comprised of three individuals from the target community, and shall be asked to meet as the need arises. These teams should work closely with the newly established State Outreach Councils.

American Indian farmers

Under the 1990 farm bill, American Indian and Alaska Native tribes were guaranteed USDA agency on-reservation assistance. In the past 7 years, USDA has not provided this assistance to the majority of American Indian farmers and ranchers. Traditionally, the American Indian farmers and ranchers have been deprived of on-reservation assistance by most USDA agencies. Lack of this assistance has contributed to the most economically depressed conditions in the country.

Many of the American Indian reservations fall within the boundaries of several county conservation districts and county committees. These county committees do not provide funding for conservation projects on the reservation, thus adding to the degradation of farm and economic status of the American Indian small farm and ranch operators.

Recommendation 2.13

The Commission strongly recommends that the Secretary immediately conduct a USDA agency review for compliance with provisions of the 1990 farm bill to serve Indian reservations.

Recommendation 2.14

Reservations whose geographical area exceeds 100,000 acres should be recognized as service areas and provided directly with NRCS, FSA, and Extension offices in the same manner afforded counties. Less than 90 USDA offices would be required to service over 80 percent of the 54

million acres of Indian reservations under this recommendation, with adequate additional funding to conduct program activity.

Policy Goal 3
Promote, Develop, and Enforce Fair, Competitive, and Open Markets for Small Farms

Testimony presented to the Commission asserts that the single most critical component to the survival of small farms is the price received for the product produced. A fair price and open cash market are essential to:
secure adequate credit,
repay debt,
test new technologies,
access broad educational sources,
provide a decent standard of living for the farm family and its employees,
ensure the production of a safe, edible commodity, and
foster environmentally sound production.

However, because of increasing levels of market concentration in most commodity markets, a fair price for products at the farmgate has not been forthcoming for some time and must be addressed. At the same time, there has been a rise in the number of farmers marketing directly to consumers. Efforts should be made to enforce fair market competition of existing commodity markets, and at the same time, to develop new competitive markets which more closely link the producer to the consumer, so that the farmer has an opportunity to capture a greater share of the consumer food dollar.

Industrialized Agriculture – Need for Market Enforcement

The first speaker to address the Commission, Dr. Rick Welsh, described the emergence of two food streams shaping the structure of agriculture today.[95]
Contract production affords food processing firms a means to control quality and minimize risk through control over supplies. There are two main types of contracts: production contracts and marketing contracts. Under production contracts, the contractor owns the livestock or crop and pays the producer a flat fee plus additional payments for performance-based incentives. Typically, the contractor supplies the livestock, seed, feed, supplies, veterinary services, transportation, management services, and sometimes financing, while the farmer supplies the labor, equipment, and facilities. Marketing contracts commit the farmer to sell his or her product to a specified processor or contractor but the farmer owns the product until sold and makes all the managerial and production decisions. Almost one-third of the total value of production on U.S. farms is generated under contractual arrangements, mostly under marketing contracts.[96] Most dairy, citrus, and increasingly, grain is produced under marketing contracts. Seed crops, vegetables for processing, poultry, sugar beets, and potatoes are predominantly grown under production contracts, with hog production being the newest commodity to come under contract.[97]

Contract production is generally done on a large scale. For example, the size of operations producing hogs under contract are larger than the average hog farm. In poultry, 97 percent of production is supplied by the largest operations with at least 100,000 birds. Welsh asserts that "the interactive effects of a concentrated processing sector and the gradual replacement of open markets with integrated ownership and contract production does not bode well for small farm agriculture."[98]

Production under contract can infringe upon the competitiveness of the open cash market, particularly in regional and local markets where contract usage is high. Recent cattle organization newsletters in Nebraska and Texas have urged cattle feeders to sell only to the cash market and

avoid locking cattle into captive contracts. The Texas Cattle Feeders Association Market Director, Jim Gill, wrote, "As more and more cattle are 'tied-up' in some type of captive supply arrangements, price discovery on the cash market becomes more and more difficult. And when feeders commit cattle to a packer early in the week – and even begin shipping them – before a price is determined, it just relieves any pressure on the packer to purchase cattle on a bid basis."[39] In a letter to the Nebraska Cattlemen Feedlot Council, Geoffrey M. Stolie, its Vice President of Marketing, stated of growing contracts: "This practice has become so widespread that it periodically allows some packers to become no more than hit-and-miss participants in the cash market....They do not have to aggressively compete for their remaining slaughter needs in the cash market and therefore end up paying less for cash market purchases, as well as the cattle that have already been slaughtered which will be marked at their 'top price'."[40]

Proponents of contract production addressed the Commission, asserting the benefits of a guaranteed price and market outlet, and that it has given farmers an opportunity to "remain on the farm." However, other contract growers, particularly poultry growers, spoke of the imbalance of risk in their contracts, fear of reprisal for attempts at organizing or challenging the contracts, and a general feeling of servitude because of the heavy debt incurred to construct poultry houses.

Competition in the hog, cattle, and lamb industries has been in decline even before the recent rise in livestock contracting. The proportion of the market controlled by the four largest steer and heifer slaughter firms increased from 36 percent in 1980, to 72 percent in 1990, and 82 percent in 1994.[41] Current concentration figures indicate that the four largest firms control 80 percent of the steer and heifer market, with new concentrated movement into the cow and bull markets. Producer testimony at Commission hearings, particularly in Memphis, Albuquerque, and Portland, pointed to increasing pressure to conform to contract markets because of reduced buyer competition in the cash market. Significant and prolonged downward price pressure was also a concern, with testimony in Sacramento pointing directly to the widening gap between the producer and consumer retail price.[42] The producer's share of the retail beef dollar dropped from 64 percent in 1979 to 49 percent in 1997.[43]

Equally significant is the dramatic decline in the domestic sheep industry. Sheep production in the 1940's reached over 52 million head. Today, however, production numbers show less than 8.4 million head, with imports taking up an increasingly larger share of the domestic market.[44] Market concentration is also pronounced in the sheep sector, with the share of the market controlled by the four largest sheep slaughtering firms rising from 51 percent in 1985 to 73 percent in 1996.[45] If market concentration offers greater market efficiencies and greater access to world markets, as many analysts have claimed, U.S. sheep producers would be hard-pressed to quantify the benefits.[46]

Direct Marketing and Adding Value – Opportunities for Market Development

The second food stream described by Welsh is referred to as the "direct marketing stream." Direct marketing efforts have increased significantly in recent years, most notably in the form of farmers markets. The USDA National Farmers Market Directory, 1994 edition, listed 1,755 markets; the 1996 edition listed more than 2,400. According to the 1992 Census of Agriculture, direct sales of agricultural products totaled over $400 million. Although this market stream delivers a relatively small portion of the overall food supply, it does provide greater opportunities for small farms to earn a greater share of the consumer food dollar and maintain a diverse farming structure.

In contrast to the industrialized stream, "the direct marketing stream is characterized by direct contact between producer and consumer, smaller-scale production operations, and a highly decentralized structure.... Direct marketing is based on the concept that farmers and ranchers

control the products of their operations — from cultivation and weaning to final sale."[47] Direct markets are often specialty markets, appropriate for small farmers who have the capacity to move smaller amounts of product that are often higher in value.

Small farmers can also pursue marketing strategies that promote their "smallness" as an attribute. An increasing number of products, particularly in natural food stores, such as Whole Foods Market, are marketed with labels identifying the farm family who raised the product, the location of the farm, and the stewardship efforts taken to grow or raise the product. An identifiable segment of the consumer market is attracted to products that represent a certain set of social and environmental values not as easily identifiable in the industrialized food stream. When farmers and consumers communicate face-to-face, through farmers markets, Community Supported Agriculture, or direct marketing to restaurants, a unique farmer-consumer relationship can develop, giving the small farmer a competitive advantage and giving consumers assurance that their food purchases are returning value to the farmer, the environment, and their community.

Small farmers can also benefit from greater economies of scale and market influence by joining with other farmers to form cooperatives for marketing and adding value to raw commodities. The Commission heard numerous stories of successful and fledgling cooperative efforts emerging throughout the country. There is a growing interest in cooperatives as a means to improve farm income, and with that, a growing need for greater knowledge of cooperatives and the business and marketing skills necessary to succeed. Securing capital for start-up of farmer-owned cooperatives can be a challenge. However, the Commission also heard testimony from dairy farmers who feel that some of their farmer-owned cooperatives are not acting in the best interests of the farmer-members.

Value-added cooperatives do provide a potential means for farmers to capture a greater share of the value of their product, keeping more dollars in their local and regional economies instead of exporting raw commodities (and dollars) away from rural communities. However, care must be taken to structure value-added cooperatives in a way that truly benefits the farmers within the regional farm economy. For example, ValAdCo, a Minnesota cooperative formed by corn producers, established an 8,750-sow farrowing operation with 50 employees. In this case, the value-added cooperative set up direct competition with owner-operator hog farmers by shifting production into an industrial operation operated by wage laborers.[48] Cooperatives, or any value-added operation, must be structured in ways that allow farmers to capture the greatest share of the benefits and that support opportunities for greater market competition rather than more concentration.

The following recommendations of the Commission fall into two categories: market enforcement and market development. Government action to enforce competition in the marketplace is critical in the face of increasing concentration and anti-competitive behavior. At the same time, publicly supported efforts to develop and support new marketing strategies are needed to enable small farmers to capture a greater share of the value of their production.

Market Enforcement

While USDA has begun to address the concerns and recommendations put forth by the USDA Advisory Committee on Agricultural Concentration in June of 1996, the Commission feels strongly about the need to give additional emphasis to the issues of market competition enforcement. Market concentration is one of the strongest forces affecting the viability of small farms. Competitive, fair, and open markets are fundamental to the economic survival of small farms. USDA must play an aggressive role in government oversight and enforcement of market competition.

Packers and Stockyards Act enforcement

While market concentration has increased dramatically in the last 15 years, regulatory pressure from USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) has failed to develop sufficient economic and legal expertise to keep pace with the emerging issues. GIPSA has been traditionally and competently geared toward the regulation of day-to-day livestock transactions, focusing on fraud, prompt payment, and fair buyer practices.[49] Market concentration occurred more rapidly than GIPSA's ability to adjust and address competitive concerns. Only within the last 2 years have there been significant actions to rectify the shortfall.

Key to GIPSA's ability to enforce the Packers and Stockyards Act is proof that there is a violation of the law. To do so, GIPSA must have skilled econometricians and lawyers trained specifically for this highly complex area of law enforcement. Because market access and fair competition are key to the access of our market structure, it is vital that agencies with statutory responsibilities, like GIPSA, be fully staffed, funded, and aggressively supported by the Administration and Congress.

Enforcement of the Packers and Stockyards Act is essential to a healthy market structure for livestock. The Commission agrees with many of the observations in the Inspector General's Evaluation Report in February of 1997. GIPSA needs more economic, statistical, and legal resources to analyze and formulate conclusions about the numerous complex, anti-competitive practices that have arisen in the livestock and meatpacking industries. USDA should immediately implement the reorganization of GIPSA's Packers and Stockyards Programs, by increasing staff and reforming operations to carry out its mandate to enforce the Packers and Stockyards Act.

Recommendation 3.1

The Commission urges USDA to implement the following options presented in the Inspector General's report:

Integrate fully the economics staff into the investigations of anti-competitive practices.
Assess staff qualifications and obtain additional staff with economic, statistical, and legal backgrounds to work on investigations of anti-competitive practices.
Use USDA's other economic resources, such as the Economic Research Service, to assist with research activities.
GIPSA should assemble its own staff with legal backgrounds to assist in the development of evidence for investigations.

Recommendation 3.2

The Commission opposes any legislative action to transfer USDA's responsibilities for investigations of anti-competitive practice to another Federal agency, such as the U.S. Department of Justice.[50] It is vital to keep areas of critical regulatory concern within the purview of the USDA where there is a staff that is knowledgeable about the agriculture sector.

Recommendation 3.3

The Secretary of Agriculture should continue to request increased funding through the President's budget for GIPSA to complete its reorganization and to enable sufficient and able staffing resources necessary to conduct investigations into anti-competitive behavior in the livestock industry, including poultry. An additional $1.6 million and 20 staff years for increased economic, statistical, and legal expertise to pursue investigations of packer competition and industry structure issues is reasonable and prudent. An additional $750,000 of funding is needed for investigation and enforcement activities in the poultry sector. The Secretary should

periodically monitor progress of the development of this new focus of GIPSA to ensure resources are adequate to carry out its mandated function. It should be recognized that this increase in the budget is only sufficient to establish an initial program. As staff become better trained and more experienced, budget increases will be required to fully exercise regulatory authority. A long-term program for GIPSA concerning market concentration must be developed to ensure proper and effective growth of the program.

Recommendation 3.4

The Grain Inspection, Packers and Stockyards Administration should establish and publicize a toll-free number so producers can report evidence of market abuses. The primary criticism often heard from anti-trust enforcement officials is the lack of evidence for prosecution. A toll-free number would provide producers with an accessible and centralized source for registering complaints. The toll-free number could be a voicemail system whereby callers could confidentially record their complaints. They could also leave their names and addresses to request a complaint form to document the complaint with the type of evidence needed by GIPSA to determine the validity of the reported problem.

Recommendation 3.5

The Secretary should ask Congress to pass legislation clarifying the authority of GIPSA to prohibit discriminatory pricing on the basis of volume. The legislation should reaffirm that GIPSA is authorized to take action against undue preferential pricing by packers that damages smaller producers not receiving the preference, irrespective of whether there exists the intent or the effect of reducing competition among packers. The legislation should clarify that the existence of undue preference cannot be disproven by the mere presence of a business reason on the part of the packer for offering the preference and that preferences offered selectively without basis in product value or acquisition costs shall be considered undue preferences. Until such legislation is passed, GIPSA should argue this same position vigorously in the courts. The Commission commends the Secretary for the GIPSA investigation of hog procurement in Iowa and southern Minnesota. We urge the Secretary to release all findings to the public and to move aggressively against any discriminatory practices uncovered.

Contract production

The poultry industry is perhaps the most industrialized subsector of agriculture, with 89 percent of poultry farms using contracts and about 86 percent of the total value of poultry production grown under contract.[51] Testimony presented to the Commission included the results of a 1995 survey of poultry contract growers conducted by Louisiana Tech researchers describing the average poultry grower. The average poultry grower is 48 years old, owns 103 acres of land, 3 poultry houses and raises about 240,000 birds under contract annually. The grower has been contract-growing birds for 15 years and owes over half of the value of the farm to the bank. The contract poultry grower's gross annual income is about $66,000 and the grower's profit, before paying themselves for their labor, is about $12,000.[52] Raising poultry on contract may appear to be a way of reducing price and income risk. However, it provides a modest living at best and, under current contract practices, is far from risk-free. Poultry contracting requires the grower to provide the land, buildings, fuel, and labor while the contractor provides the livestock, feed, medicine, and veterinary services. Contract growers assume a disproportionate share of the risk by owning the fixed production assets – often debt-financed – and being liable for environmental costs and responsible for dead bird removal. Several lawsuits have been filed – and won – based on unfair contract practices. These include early contract termination before the building loans were paid off, company requirements for building improvements at the grower's expense, underweighing of birds and feed, manipulation of quality and quantity of feed and birds, and retaliation against growers for attempting to organize grower associations.[53] The Commission endorses legislative

changes to strengthen the Agricultural Fair Practices Act (AFPA) and the Packers and Stockyards Act to enforce equitable and balanced practices for contract livestock growers.

Recommendation 3.6

Congress should amend the AFPA to provide USDA with administrative enforcement and civil penalty authority that will, in turn, enable growers to organize associations and bargain collectively without fear of discrimination or reprisal. This will shift authority from the Department of Justice to USDA, thereby providing more focused and timely enforcement of violations.

Recommendation 3.7

USDA should pursue legislative changes to amend the Packers and Stockyards Act to include poultry processors under the same administrative enforcement authority for violations to Section 202 used to enforce fair market competition for other meat packers. This change would shift jurisdiction for poultry processor violations from the Department of Justice to USDA, thereby enabling more uniform and efficient enforcement against unfair treatment of contract growers.

Recommendation 3.8

The Secretary should consider and evaluate the need for Federal legislation to provide uniform contract regulations for all growers who are, or wish to be, engaged in agricultural production contracts. The evaluation should include a review of existing State laws on agricultural production contracts, particularly in Minnesota, Wisconsin, and Kansas. It should also include a review of legislation proposed in Louisiana, Alabama, Oklahoma, Iowa, Florida, and North Dakota as models for what might be appropriate in a national law.

The elements that should be considered for inclusion in a Federal law covering agricultural production contracts should include, but not be limited to, the following:

accreditation of producer associations
promise of good faith by both parties
mediation, arbitration, or alternative dispute resolution
administration and enforcement of the law, including judicial review, civil remedies, and investigative powers by USDA
conditions for and notice of termination
notice and guidelines to renegotiate contract terms
recapture of producer investments for contract termination
a producer's lien
reimbursement for the costs of disposal of dead birds
parent company liability for contractors
duration of contract
payment terms, including prompt payment and accurate settlement sheets
formulas used to convert condemnations to live weight
per unit charges for feed and other inputs
factors to be used in ranking growers and determining performance payments
prohibition against discriminatory practices, such as undue preference, coercion against joining an organization, issuing false reports and including employees of the company in the ranking system
an express private right of action
contractor responsibility for environmental damages
grower's right to refuse livestock when delivered if livestock are in less than normal conditions
capital construction requirements.

Marketing fresh produce

Producers of perishables – fruits and vegetables – particularly small-scale producers, typically market their products through brokers, packer-shippers, and commission merchants. Producers often have no knowledge as to the prices or returns they will receive for their produce until well after delivery is made to these entities. At some point an accounting is made to them, detailing expenses of the sale, as well as prices and net returns. Many charge that unethical and illegal practices in the sale of their produce are common. These producers often end up owing money to handlers after the sale of their produce. They further assert that government agencies charged with market enforcement duties are either unwilling or unable to effectively police the produce marketing system. Producers allege that handlers often sell produce to companies that, for various reasons, pay less than market price for the produce. This increases handlers' profitability while decreasing that of the growers.

Recommendation 3.9

The Commission recommends that USDA, working with State departments of agriculture, reinvigorate the role of market enforcement in protecting the integrity of agricultural markets. The involvement of law enforcement agencies may expedite the effectiveness of market enforcement activity. Hence, local District Attorneys need to be informed and educated as to the significance of ethical and legal marketing practices to the welfare of family farmers. A full-scale investigation should be made of the process in which brokers and handlers accept and pool consigned produce. Commission merchants and handlers should be held responsible for their actions. Improper handling of perishable fruits and vegetables should be the responsibility of these merchants and not of the farmer. These investigations should be regarded as serious offenses if there is proof of fraud or manipulation of pricing. The USDA should strengthen the Perishable Agricultural Commodities Act (PACA) program's ability to act swiftly, leaving no time for coverup at the merchant level. In cases of fraud, USDA should prosecute to the full extent of the law.

Captive supplies

Over the last few years, livestock meat packers have begun a practice called "captive supplies" as a means to secure livestock for their slaughtering operations. This practice is born out either through direct ownership of livestock by the packers themselves or through forward contracting with livestock producers. The Commission heard testimony from cattle producers concerned with the effect of captive supplies on reducing the volume of livestock for sale on the cash market. When packers own the livestock they slaughter, it is in the packer's interest to slaughter their own livestock when prices are relatively high on the cash market, effectively dampening the competition in the cash market. USDA published a petition for rule making for public comment in early 1997 restricting the use of forward contracts and packer ownership of livestock for slaughter. More than 1,700 comments were received by the April 97 deadline, and USDA is in the process of reviewing the comments.

Recommendation 3.10

The Commission endorses the petition to:

Prohibit packers from procuring cattle for slaughter through the use of a forward contract, unless the contract contains a firm base price that can be equated to a fixed dollar amount on the day the contract is signed, and the forward contract is offered or bid in an open and public manner.

Prohibit packers from owning and feeding cattle, unless the cattle are sold for slaughter in an open public market.

In addition, USDA should hasten its review of the petition comments and make a final decision no later than April 30, 1998.

Mandatory price reporting

Another practice employed by meat packers that damages competition in the marketplace is nonreporting of certain transactions. This occurs when packers pay above-market prices with an explicit condition that the price not be disclosed. Consequently, the market price upon which all other purchases were based, particularly formula cattle trades, were artificially low. All sellers not privy to this special deal suffer.

Recommendation 3.11

Price reporting for all packer livestock transactions should be mandatory. The information reported should include contract or formula pricing premiums and discounts. Accurate and verifiable data, particularly on all captive supplies, should be made public to enable fair, open, and competitive markets. Both parties to the transaction should be responsible for price reporting.

Dairy prices

The Commission heard testimony from many dairy farmers who were suffering from low prices and many who were going out of business as a result. Many spoke of personal and emotional stress and a farmer reported on farmers he knew who had committed suicide due to their inability to make ends meet for their families. The current crisis in the dairy industry can be attributed to the lowering of the Federal milk price support in recent farm bills, 3 years of historically low non-fed beef prices, unusually high, disaster-driven feed prices, and low and volatile farmgate prices.

USDA's efforts taken to date – cheese purchases for the nutrition assistance and school lunch program, initiation of the National Agricultural Statistics Service (NASS) national survey of Cheddar cheese prices, and increased use of Dairy Export Incentive Program sales — are welcome and have made some difference. However, continued vigilance, leadership, and exploration by any means available to the Secretary of Agriculture are needed to bring relief to the Nation's dairy producers.

In 1981, dairy farmers were receiving a national average of $13.76/cwt. In August of 1997, dairy farmers were receiving a national average of $12.70/cwt. and retail prices were at $2.76/gallon, about 90 cents higher than the retail price in 1981. While farm prices dropped by $1, the price paid by consumers has not.

Some evidence suggests that dairy products in some retail stores are the most profitable products, and are often used to cover losses on other retail products. Using the measure of Direct Product Profit (DPP – profit on the basis of gross margin, after subtracting direct costs associated with selling the item), Cornell University researchers McLaughlan and Russo found that, in 1990, the dairy department produced the highest profit-to-space ratio in the supermarket. The dairy department generated $11.19 per square foot of facings per week, more than twice as much as the next most profitable department, frozen foods, which requires considerably more processing, transportation, and packaging costs than milk and milk products. The same study found profitability on fluid milk was $16.48 per square foot. As a result of the skewed store margins, the New York legislature passed a "price gouging law" which states that the retail price of milk cannot be more than double the Class 1 milk price, plus premiums paid and the cost of transportation.

Recommendation 3.12

The Economic Research Service (ERS) and the USDA Chief Economist should investigate the processing and retailing segments of the dairy industry to determine if excessive profits are being made at the expense of farmers and consumers, by researching the competitive structure of dairy product pricing within retail stores. The study should also examine the profitability of retail dairy pricing in relation to other retail product pricing within a store. Is the dairy case making more profit per square foot relative to other products? The study's findings should be made public.

Recommendation 3.13

The Secretary of Agriculture should ask the Department of Justice to investigate anti-competitive behavior of the dairy industry within the processing and retail segments.

Recommendation 3.14

In order to provide some measure of recovery for dairy producers, the Secretary should work with dairy leaders to press Congress for immediate changes in dairy policy to provide a transition for dairy producers commensurate with the crop commodity transition payments authorized by the 1996 FAIR Act, including the floor price resolution, the Dairy Cow Pay-Up program, or other options.

Economic concentration

While agricultural markets are becoming increasingly concentrated, the rest of the U.S. economic structure is also concentrating and infringing upon the basic tenets of capitalistic markets. As many producers have only one or two buyers for their commodities in their region, they are also facing growing problems in accessing private credit sources, and with recent mergers in railroads, many farmers cannot move their grain in a timely or efficient manner. Not only is this a concern for producers, but for consumers as well, as they face less choice and higher prices for the food they buy. University of Missouri professor, Dr. William Heffernan says, "The food sector of the economy is second only to the pharmaceutical sector in terms of return on investment. But the economic benefits are not shared equally by all portions of the food sector."[52]

With concentration, not only are increasing price spreads a concern, but overall impacts to the social and community structures are increasingly negative. Heffernan points out, "Environmentalists are concerned about the ecological implications as they watch firms circumvent government regulations in one country by moving parts of their operation out of one country and into another. Consumers are concerned about issues of food quality, food safety and especially about the food security issue, or sustainability as it is sometimes called. There are animal welfare issues, rural development issues, labor issues and ethical issues to be raised."[53]

These changes imply a need for greater coordination and attention to the agricultural industry by more agencies than USDA. EPA is responsible for enforcement of environmental protection. The Department of Labor has jurisdiction over employment and worker safety laws, including farmworkers and wage-laborers involved in agricultural industries. The Department of Justice is responsible for upholding anti-trust laws and maintaining market competition in the food industry.

Recommendation 3.15

The Commission recommends that President Clinton establish a Presidential Commission on Market Concentration. This commission should include members of the relevant Cabinet-level agencies, with the Secretary of Agriculture taking leadership for the commission.The commission should include the Secretaries and Administrators of: Environmental Protection Agency; Departments of Labor, Justice, Interior, Health and Human Services, Housing and Urban Development, Commerce, Transportation; Small Business Administration; and the U.S. Trade Representative. The commission should examine the emerging concentration resulting in monopsonies and oligopsonies in all sectors of the economy and its effect on market competition, the environment, worker protection and safety, rural housing, quality of jobs and wages, transportation, banking, international trade, and socio-political structure. The purpose of the commission will be to assess the ability of the Federal Government to respond to the impacts of concentration. The commission should propose legislative and administrative changes accordingly and deliver a Plan of Action to the President within 1 year of initiation.

Market Development

At the same time that USDA pursues increased efforts to mitigate market concentration and ensure greater competition, USDA should also pursue the development of new markets to create more marketing options for small farmers and more opportunities to capture greater value for their production. USDA has a wealth of rural development business loan, grant, and technical assistance programs that could be channeled to facilitate "agricultural development."

"Agricultural development" refers to the recognition that farming, where it is a significant aspect of rural communities, is an asset for rural economic development. Rather than consider farming as an unprofitable "liability" that should be diffused through diversification strategies to attract other industries, rural development officials and practitioners should reconsider value-added processing and innovative marketing opportunities to breathe new life – and – profit into their farming sectors as an agricultural development strategy.

Value-added agriculture

Much of the testimony received by the Commission spoke to the desire for greater technical and financial assistance for small farmers to get involved in value-added processing and marketing as a means to improve farm income. However, "value-added" processing and marketing can take many different forms, some offering greater potential to truly benefit farmers while other forms might be little more than a guise for industrializing agriculture using wage laborers and furthering the demise of local competitive market outlets.

Recommendation 3.16

USDA's Rural Business – Cooperative Service (RBS) financial and technical assistance programs should give priority to assisting the development of cooperatives that will primarily benefit small farm operators. Such cooperatives should be organized to ensure that a large share of their throughput originate from small farms. The financial and technical assistance programs provided by RBS should support value-added efforts where value-added strategies meet the following criteria:

the profit from the value-added business operation flows to and within the community;
wage-laborers are paid a living wage;
the value-added initiative results in more local and regional competition in the cash market, not less;
value-added initiatives should create incentives for resource stewardship and reward sustainable production systems. For example, processing of food-grade oats would provide a market incentive for including oats in a corn-soybean rotation. Another example is natural beef raised using intensive rotational grazing methods that maintains marginal land in pasture instead of row crops.
Value-added initiatives should pursue specialty and differentiated products where small farms and small food processing firms will have a competitive advantage over larger firms.
The research conducted according to Recommendation 1.1, Policy Goal 1 should be used to inform the financial and technical assistance priorities of RBS.

When defining "value-added," the following concepts should be included:
value-added includes direct marketing, by individual farmers or a network of farmers allocating the marketing tasks among the network to achieve economies of scale and share responsibility;
the addition of value must result through application of farmers' own time, management, skills, and production resources to produce products with less capital expenditures and

purchased inputs or to produce products of higher intrinsic value (identity-preserved grains, organic grains, free-range chickens, natural beef, food-grade corn) for which buyers are willing to pay more.

Agriculture-based rural development

USDA Rural Business-Cooperative Service has taken increased steps to give attention to the opportunities for farm-based business development, primarily through value-added processing and marketing. For example, the Business and Industry Guaranteed Loan program regulations were changed recently to allow guaranteed loans for agriculture production if it is part of an integrated business also involved in the processing of agricultural production. The agricultural production portion of the loan cannot exceed 50 percent or $1 million, whichever is less.[∞] This change enables farmers and those not eligible for credit under FSA loan programs (non "family farms" as defined by FSA regulations) to obtain credit for agricultural value-added processing businesses. In addition, there is no "test for credit" like that used for FSA credit eligibility, making the B&I Loan Guarantee program available for non-farming corporations to vertically integrate into crop and livestock production.

The 1996 FAIR Act instituted another recent change allowing "family-sized farmers" to assume B&I guaranteed loans to finance start-up capital stock in value-added processing cooperatives. RBS is in the process of changing the B&I regulations to reflect this change, in particular to define what is meant by "value-added."

RBS also administers a B&I Direct Loan Program that had gone unfunded until FY 1996 appropriations included $50 million. The program is not well-known among rural development practitioners and others who could benefit from it. RBS should revise the B&I loan program regulations to give priority to projects that will primarily benefit small farms. B&I direct and guaranteed loans should be used to finance the development of new marketing infrastructure, including locally owned, value-added processing and marketing opportunities.

Recommendation 3.17

Eliminate B&I regulation 4279-113 (h) because it allows non-farming corporations to become direct competitors with farmers in agricultural production.

Recommendation 3.18

The use of B&I loan guarantees to finance start-up capital in stock should be targeted to give priority to small farmers, including those who are minority, women, and beginning farmers. The types of loans authorized should be consistent with the criteria for value-added listed in Recommendation 3.16.

Recommendation 3.19

The B&I Direct Loan Program should be targeted to the development of agricultural-related businesses for the purpose of creating new marketing avenues for small farmers. The "Community Priority" should include "agriculturally dependent"[±] communities and locations with the greatest concentrations of small farms. Outreach should be conducted to increase awareness of the program's availability. Outreach activities could include local seminars, sponsored by both economic development agencies such as local chambers of commerce, city, and county governments, and farm organizations, to describe the types of assistance available for agricultural development. RBS could also partner with the Council of State Development Agencies and participate in the National Association of Development Organization's annual training conferences.

Recommendation 3.20

The Forest Service should continue to support research and technology transfer efforts of value-added agroforestry products, such as pine straw for landscaping, boughs for holiday decorations, manufacture of biofuels, production of wood chips for home weed control, and cedar oil.

Agriculture-based development by rural electric cooperatives
Rural electric cooperatives have the ability to be a force for rural development in the customer communities by providing loans and grants using funds from their cushion-of-credit account. Some rural electric co-ops, such as in North Dakota, are exercising this authority by assisting with the feasibility studies and start-up of "new generation" cooperatives. Some States do very little to take advantage of this resource as a means of supporting local economic development efforts for their electric customer-borrowers. While loan funds were utilized in their entirety in FY 1997, grant funds were underutilized.

Recommendation 3.21

USDA Rural Development State Directors should conduct outreach to State Rural Electric Cooperative Associations to leverage the available loan and grant funds for agricultural development projects that will create local, value-added agricultural businesses for the products of small farms. The National Rural Electric Cooperative Association should take steps to identify model programs throughout its member cooperatives and promote the best ideas for creating greater economic opportunities for small farm electric customers.

Cooperative development
With the demise of many local and regional central markets due to the increase in vertical coordination and integration, there is a growing need and interest in cooperation among producers through alliances, networks, or formally organized cooperative business organizations. Under the Capper-Volstead Act of 1922, farmers are granted limited antitrust exemption for marketing raw and processed products through their cooperatively owned businesses. Cooperatives are a marketing tool through which producers can build market power on their behalf. To counter recent trends that concentrate production in the operations of the large producers, the members, promoters, and regulators of cooperatives will need to take deliberate steps to refocus the thrust of the cooperative movement toward helping small and disadvantaged farmers.

The recent growth in "new generation" cooperatives has typically focused on matching supplies to effective demand in niche markets through use of delivery rights and upfront investment in the joint value-added activity. A critical need of smaller cooperatives is to overcome weaknesses of fragmented marketing through coordination using marketing agencies-in-common or federations.

New start-up co-ops need professional assistance when they are least able to pay for it. Access to sound financial, legal, and marketing support is key. Seed money for feasibility analysis is needed for small producers to have the ability to assess the marketplace, and to identify an area that offers the greatest potential for the least risk. They also need the capacity to conduct the research and development to bring a new product to market. For a small start-up project, one stumble is fatal. And, the regulatory system and land-grant research structure must be attuned to the needs of these new ventures.

Recommendation 3.22

USDA's Cooperative Services programs should give priority for cooperative development to benefit small farm operators, including women,[58] minority, and beginning farmers. Public sources of technical assistance, research, education/information about cooperatively owned businesses

need to be strengthened and targeted to reflect the needs of small, women, minority, and beginning farmers. Research should be conducted to identify the best strategies and most successful cooperative models for small farmers. Efforts should be taken to expose and train USDA's Cooperative Services program staff to understand the unique strengths and liabilities of small farms in order to better serve their needs. Publications should be specifically tailored to provide information about coooperative opportunities for small farmers.

Recommendation 3.23

Teaching, research, and extension at 1862 and 1890 land-grant universities, as well as secondary schools with vocational agriculture programs, should consider including curriculum and courses on cooperative marketing where it does not currently exist. Educational programs through public television or using distance learning technology should be developed for farmer audiences.

Recommendation 3.24

USDA's Cooperative Services program staff should actively promote the availability of USDA funding sources, such as the Federal-State Marketing Improvement Program (FSMIP), RBEG, B&I, and grants through rural electric cooperatives, to finance co-op feasibility studies and provide assistance in the application process.

Recommendation 3.25

Land-grant universities with food technology and processing research and development programs should make greater efforts to avail themselves of small, minority, women, and beginning farmers interested in developing value-added products appropriate to their size and scale.

Local and regional food economy

The global food economy, where capital and technology are mobile and can be transferred to those parts of the world with the lowest labor costs and least governmentally regulated environmental and health protections, is a playing field upon which small farms are left out of the game. "The food system now resembles an hourglass with many producers and millions of consumers but, with only a few firms controlling the processing, these firms are in a position to control the food industry.... The food sector of the U.S. economy is second only to the pharmaceutical sector in terms of return on investment (20 percent)...The food system is a profitable industry, but farm families get little of the profit in the highly concentrated food system...."[29]

Amidst the dominant talk of a "global economy" are voices articulating the hope of a "local or regional food economy" where small farmers play a central role. In a local or regional food economy, small farmers produce for community food and fiber needs and sell their products through alternative marketing channels. The strength of a local food economy is the relationships between farmers and community citizens. Through this relationship, small farmers provide fresh, in-season food appreciated and purchased by community citizens. The relationship creates an opportunity for mutual trust and support, contributing to the betterment of the community as a whole.

The alternative marketing channels are based on face-to-face relationships. These models currently in use, and increasing in use, are: farmers markets, Community Supported Agriculture, Church Supported Agriculture, on-farm marketing, subscription farming, roadside stands, home delivery routes, and farm-to-chef direct marketing. For some small farmers, these models offer an

opportunity to supply local markets with fresh foods and maintain an economically viable small farm operation.

A local food economy can also address the problems of food insecurity in our urban and rural communities among those with lower incomes. Defined as "access by all persons at all times to a nutritionally adequate and culturally acceptable diet through local non-emergency channels," the concept of "community food security" includes an important role for small farms as suppliers of fresh, nutritious produce for low-income people in local rural and urban areas. Community food security involves the development of linkages between small farmers and the nutrition needs of low-income people.

Local or regional food systems also offer the potential for place-based identification of food products from farms that provide intrinsic value beyond food production alone. For example, farmers in upstate New York have entered into a unique relationship with New York City to implement whole farm planning conservation methods to protect the watershed that supplies New York City's drinking water. At its public meeting in Albany, NY, the Commission heard of current efforts to market upstate farm products (veal, milk, vegetables) to upscale restaurants in New York City, identifying the source of the farm products on the menu and making the connection for customers to the city's water quality.

Recommendation 3.26

USDA should develop an interagency initiative to promote and foster local and regional food systems for the benefit of small farms, rural community citizens, and low-income people in rural and urban areas. This initiative will require a focused and coordinated approach among relevant agencies, through an interagency team including staff from the Food and Nutrition Service, Cooperative State Research, Education, and Extension Service, Agricultural Marketing Service, Farm Service Agency, and Natural Resources Conservation Service. The team would address the following components:

USDA should encourage the use of the Federal-State Marketing Improvement Program (FSMIP) for developing direct marketing strategies and initiatives that primarily benefit small farms. State departments of agriculture, the primary eligible entity for FSMIP grants, should seek to partner with community-based organizations interested in pursuing local or regional food system strategies. FSMIP grants could be used to conduct feasibility studies to establish regional identity of high-quality products produced locally by small, family farmers or "eco-labels" to describe stewardship practices used in the production of the product and benefits to the environment. Efforts should be made to target funding to address the needs of beginning, minority, and women farmers.

gency team should examine the barriers and opportunities for farmers to label their products as a means to differentiate their products so long as the labeling is not anti-competitive and does not harm the public interest. This study should include labeling of point of origin and growing practices, as well as other factors for product differentiation. The study should identify ways that USDA and other government agencies can be supportive of product labeling of these intrinsic values for the purpose of adding value to farm products.

The Commission acknowledges the recent efforts by USDA to create farmers markets at USDA's headquarters in Washington, DC, and with neighboring Federal agencies. USDA should continue to expand the development of farmers markets at USDA office sites throughout the country. However, this should not be a top-down approach. It must include the input and involvement of area farmers in designing the market. Care should be taken to ensure that USDA-sponsored markets do not compete with existing markets. Vendor participation in these markets should be limited to farmers directly involved in growing their produce for sale, and should not include vendors who purchase produce from distributors.

ecent doubling of funds for the Women, Infants and Children/Farmers Market Nutrition Program (WIC/FMNP) for FY 1998, USDA should proceed to expand the program to more States and to areas

where it has only been available in limited areas. USDA should continue to pursue increased funding to eventually serve all 50 States and U.S. Territories and possessions. USDA's WIC/FMNP is a model program that provides small farms with expanded markets for fresh produce ($9 million to 8,250 farmers in 1996) while at the same time meeting the nutrition needs of low-income families. Nutrition education and cooking classes should be coordinated with participating farmers markets to provide WIC recipients with the knowledge needed to prepare fresh produce for consumption.
As USDA's Food and Nutrition Service (FNS) proceeds to replace paper food stamps with the Electronic Benefits System, USDA should fund demonstration projects to find technologies and outreach strategies that enable the uninterrupted use of food stamps at farmers markets. Equipment and training should be available for those markets needing assistance. At the same time, FNS should pursue strategies for enabling food stamp use through Community Supported Agriculture programs.
The Commission endorses the efforts of FNS, AMS, and NRCS to pursue marketing opportunities for small farms to supply local school lunch programs. These agencies should be commended for taking this step, and should pursue the pilot programs in North Carolina, Georgia, and Florida with a commitment to overcoming any barriers to developing this market. Cooperative Extension should also be involved in supporting this effort. The results of the pilots should be published and distributed along with a manual to encourage replication of these efforts throughout the country.
Conduct a feasibility study to support a Federal Government procurement policy that gives priority to local purchasing of fresh farm and food products at Federal agency cafeterias, including national parks.
The Cooperative State Research, Education, and Extension Service should assess the new Community Food Projects and publicize the best projects as models for replicating community food security and connecting low-income people with small farmers.

Entrepreneurial development

Small farmers have the potential to meet specific market niches, but this potential has never been intentionally pursued by USDA. Small farmers have unique needs, constraints, and opportunities that have often been overlooked in the design and delivery of USDA programs. For small farmers to survive in the fast-changing agricultural industry that is dominated by large-scale production and concentration in the food processing sector, creative financing, specialty production, and niche marketing could serve to develop a competitive edge for small farmers.

Small farmers need to be considered as viable forces in shaping community-level economic development. While small farms have difficulty competing with large farms that supply most of the national and international food markets, small farms can be competitive at supplying local and regional food markets and, in some cases, niche export markets. Small farms have the ability to get face-to-face with local consumers, retailers, restaurants, and institutional (schools, government agencies) markets. To pursue these markets and improve farm profitability, small farmers will need to pursue value-added marketing and processing strategies. In addition to operating small farms, farmers need to be adept at running small businesses.

To take advantage of the potential for small farms to be competitive in local and regional markets will require a concentrated effort in entrepreneurial development, including business planning and development, financial management, product development, and market research, analysis, and execution. Small farmers have the ingenuity of entrepreneurialism; however, in most cases, they are only adept at one of the three key areas of business. Farmers are great at production, but some times lack skills and innovations in marketing. And in many cases, financial management skills are also lacking. Testimony from a South Dakota farmer best exemplifies this issue: "I go to meetings where they teach me to tank mix my application of herbicide, they teach me to do no-till. They teach me to be a better marketer. I have never been invited to a meeting where they can teach me to be a processor. Not a one."[92]

Recommendation 3.27

USDA should launch a Small Farm Entrepreneurial Development Initiative to provide small farm operators and beginning farmers with targeted entrepreneurial training, integrated technical assistance, and priority program funding for the purpose of developing farmer owned and operated, value-added processing and marketing enterprises to serve local and regional community food systems.

The initiative could be launched as a pilot program in 5-10 localities/regions of the country for a period of 2 years. The pilots could be distributed geographically in the most agriculturally dependent regions of the country or locations with the greatest concentrations of small farms. Particular emphasis should be given to the tobacco-dependent counties of Appalachia. The initiative could consist of 3 parts:

Entrepreneurial training: The Entrepreneurial Education Foundation's "FASTRAC"tm business development curriculum should be adapted to apply to farm-based business development. The business development curriculum could also be adapted from other programs, such as EDGE supported by US West. The curriculum could be delivered via distance education instruction to downlink pilot sites. Successful farm-related entrepreneurs should serve as guest lecturers to provide real world insights from experienced business people. Each entrepreneur should leave the training with a completed business plan for actual application to an existing or start-up business activity.

Integrated technical assistance: At each pilot site, "co-learning teams" should be established. The teams should consist of entrepreneurs along with USDA field staff from FSA, RD, NRCS-RC&D, Forest Service, Extension, and staff from EPA, Small Business Administration, the Department of Commerce' Economic Development Agency, Department of Interior, land-grant university and ARS scientists along with State, nonprofit, and private consultant rural development professionals. The concept of the teams is three-fold: 1) to provide each entrepreneur with ready access to and support from an integrated source of USDA and non-USDA service providers, 2) to provide experiential training in entrepreneurial development for service providers to build their capacity for assisting would-be entrepreneurs, and 3) to become more adept at leveraging the expertise and resources of each individual agency and organization to provide a comprehensive and integrated array of assistance needed by entrepreneurs.

Priority program funding and assistance: Based on the model of the Empowerment Zone/Enterprise Community and the President's Timber Initiative, the pilot sites could be granted priority in receiving funding and assistance from existing USDA programs to assist the start-up of new enterprises. This could include non-formula research and extension funds, research projects by ARS, marketing assistance through FSMIP grants or economic research provided by ERS, Rural Development's business loan and grant programs, export assistance through the Foreign Agricultural Service, and more. The idea is to apply the full array of USDA resources, expertise, and knowledge, in partnership with other business development providers within the pilot sites, for the purpose of creating farm-based businesses where small farmers can increase their farm income through value-added processing and marketing enterprises.

Meat inspection

Market access is critical for producers who want to direct market their products to consumers. Conflicting regulations can present barriers to small farmers in gaining access to these markets. For example, if a farmer wants to direct market beef to consumers, processing of the animal can be done either in a State or federally-inspected processing plant. The State-inspected plant is the most likely choice for farmers selling locally since they are generally smaller and more locally available. Federal plants may be hundreds of miles away from the farm and are more costly to the farmer. But, the standards are different for the farmer. When selling State-inspected meat, the farmer must sell by live weight, by 1/4's or 1/2's of a carcass, and cannot sell across State lines. In order to sell by the cut, to restaurants, groceries, or across State lines, Federal inspection is required. In many States, the State inspection requirements meet or exceed the Federal requirements, but they limit the access farmers have to potential customers.

Under the provision of the Wholesome Meat Act of 1967, States were given the choice of establishing their own programs or only taking responsibility for inspecting the facility of those who do custom processing of animals sold live to the consumer. Only 27 States established their own program, largely due to prohibitive costs. But States where such a program was established say they are better equipped to deal with the needs of smaller processing plants. The National Association of State Meat and Food Inspection Directors argues that a State program is a better bargain for the taxpayer since it doesn't require the higher wages and expensive bureaucracy that go with hiring Federal inspectors. Federal-based meat inspection officials are geared up to guide the operation of large national packers but often cannot easily adopt regulations to fit small local packers.

Some States, such as Minnesota, have argued that dropping of a USDA restriction on interstate shipping of State-inspected meat would provide an incentive for States to create their own inspection programs. Officials from States like Wisconsin, where there is an inspection program, have argued that their inspection program must be on par with Federal regulations anyway, so there is no reason to restrict interstate shipment of meat that comes from small approved plants.

The National Association of State Departments of Agriculture has proposed legislation that would drop the shipping restriction. Large packers have successfuly lobbied against past reform and maintained dominance in interstate trade. USDA is examining current policy and exploring options to revise the Federal-State meat inspection law.

Recommendation 3.28

The Commission endorses the recommendation of USDA's Advisory Committee on Agricultural Concentration. "Urge USDA to take aggressive action in a timely manner to end the inequities in meat inspection. With regard to Federal and State inspections, the committee recommends that appropriate steps be taken to promote the ability of State-inspected packing plants that meet Federal standards of inspection to compete by selling meat in interstate commerce. Provided, however, that such steps do not undermine the integrity of the U.S. position regarding acceptable inspection standards and safeguards for imported meat."

Statistical data collection

The National Agriculture Statistics Service data collection and ERS analyses fail to adequately measure and describe the current structure of production agriculture. While our food production system has changed from diverse commodity and livestock production per farm unit to largely monoculture production per farm unit, our statistical analysis stops short in its ability to account for the value of specialized or segmented production levels. Reliance on statistics with limited descriptive quality can lead to improper or ineffective policy decisions.

Specifically, when USDA describes that 1.9 million small farms produce only 41 percent of the "value of production" and 122,810 farms produce 59 percent of the "value of production," the measure does not take into account the fact that not all farms are producing the same commodities, much less at the same level of production. For example, 50 years ago a calf was born, weaned, grass fed and later grain fed usually on the same farm or farms of similar size and structure, and then sold direct to slaughter. Today, the calf may be born on one farm and be valued at $400, then sold in the spring for $500, again in the summer at $700 and, later for slaughter at $900. The same animal might begin in a 39-head cow-calf herd and be counted at a much lower "value" than when it is counted again as part of a 10,000-head feedlot.

The use of gross sales as a measure of contribution to farm production value fails to distinguish between the levels of production and the value of the production at each level. Gross sales as an indicator will be biased toward the value-added segments of agricultural production, such as the

cattle feedlot. Without more precise indicators to measure the contribution of the primary level of production, the contributions of small farms will be misrepresented.

Recommendation 3.29

The National Agriculture Statistics Service should redesign its methods for measuring the value of production from U.S. farms to include another level of analysis that fully and adequately distinguishes the separate production levels of our mostly specialized production system. These levels would include:

Primary – This would measure the value of the first-level production; includes cow/calf, lamb, farrowing, grain production, hay, fruit, vegetable, etc.
Secondary – Dependent on the primary level for inputs; includes dairy, cattle feeding, hog feeding, etc.
Tertiary – Processing of raw commodities; includes livestock slaughter, canning, milling, etc.
Retail – The final processed product ready for consumption.

Delineating production according to these levels should provide a more accurate look at the type of farms and their contribution at each level of production. In particular, by isolating the primary level of production from the other levels, analysts should be able to determine the health and performance of this most essential level of production. Differentiation among the levels of production should allow USDA analysts to see the primary farm production without all the added secondary steps in order to make a sound, data-supported, less intuitive leap to expose the real status of the essential production system.

Policy Goal 4
Conduct Appropriate Outreach Through Partnerships to Serve Small Farm and Ranch Operators

At the Memphis hearing the Commission heard that "sometimes, attempts to find the starting place for access to federally generated or federally supported information that is relevant to small family farms were intimidating, confusing, or sometimes led to less visible, underfunded, and overextended offices or people. So it is out there but sometimes it is hard to know where to begin."[xiv] Information is critical in making wise farming decisions and there are many sources of information. USDA has a responsibility to actively provide this information to all its customers. Increasingly, research and extension institutions are underfunded and overextended. This is where partnerships with community-based organizations, nonprofits, land-grant universities, and other interested groups should be fostered by USDA so that small farm operators are given the greatest opportunity to become aware of and use USDA programs. USDA and its partners should actively seek out small farm and ranch operators.

The Commission recognizes that USDA and its partners have various tools to reach their customers, such as newsletters, press releases, workshops, conferences, and World Wide Web pages. However, we heard that information about USDA programs is not reaching all potential customers as effectively as it should. A representative from a community-based organization stated at the Washington, DC, hearing that "we think one of the biggest things that keeps limited-resource farmers from succeeding is their lack of access to services. We believe outreach is absolutely critical to this function."[xv] Effective outreach can make the difference in access to services. At the Sacramento hearing the Commission heard that, "the problem comes when it comes to translating—better said, to disseminating—these results. Usually, we operate under very limited resources, and it's not easy to have an outreach coordinator or someone that can go out and promote the results or promote the adoption of these practices."[xvi] His statement emphasizes that USDA and land-grant universities have information needed by small farm operators; however, there are barriers to its effective transmission. This includes less than

adequate resources for outreach as well as mismatches between the methods and the target groups.

With these types of constraints , USDA must continue to seek partners in providing information about its services. The Civil Rights Action Team (CRAT) report made several recommendations dealing with outreach. Progress has been made in some areas. However, the Commission believes that more needs to be done to ensure that information reaches small and underserved farmers. Outreach opportunities will be enhanced by developing partnerships between USDA, the land-grant universities, community-based organizations, and nonprofits that have direct contacts with small farm and ranch operators. In a August 1997 policy brief from The Urban Institute stated that "experience has shown that when nongovernmental institutions become partners with public agencies, they can sometimes accomplish things that have proved difficult for government to do alone."[65] The time is ripe to forge partnerships and to pay more attention to communication methods, media, and techniques that can enhance our collective level of impact.

Identify small farm and ranch operators
In order to reach clientele more effectively, USDA and its partners need to focus on client identification by obtaining up-to-date information on who and where the clients are. The following are recommended:

Recommendation 4.1

The Commission recommends that USDA develop a voluntary directory of small farms and ranches through the utilization of local county personnel of each agricultural agency and that this directory be developed in cooperation with the voluntary minority farms registry. The Commission recognizes that FSA, NRCS, and Rural Development work with local groups and programs in counties across the country, and USDA should use those resources to complete the directory. Such programs and partners include, but are not limited to, the Resource Conservation and Development (RC&D) Councils, the Outreach and Technical Assistance Program for Socially Disadvantaged/Minority Farmers program (Sec. 2501 program), and community-based organizations.

Recommendation 4.2

Upon completion of a county directory of small farm and ranch operators, the county will present its information to its State Outreach Council. The Council will be a part of the Food and Agriculture Council in each State. The USDA Office of Outreach will then oversee completion of the project. The State lists should be readily available to all agencies for their work with small farmers and ranchers.

Recommendation 4.3

Local USDA agency personnel and supervisors should be held accountable for target audience outreach programming. The Commission fully supports CRAT recommendation No. 9, which requires the establishment of reporting requirements to periodically collect data from USDA field offices to measure program delivery to minority, women, and small and limited-resource farmers and support its immediate implementation. Documented efforts and successes to reach those small farm operators will be used as a measure of performance of each agency's overall performance in serving underserved customers.

Strengthen outreach and program delivery
Creative programs in farm apprenticeships and on-the-job training, such as those of the Rural Development Center in Salinas, California, have trained and educated minority farmers and farmworkers for entry-level farm operations. To take advantage of those working relationships

and programs, partnerships should be developed and strengthened so small and underserved farmers can gain greater access to USDA services and land-grant institutions. The Commission consistently heard that the (1) lack of credit; (2) lack of information; and (3) complexity of program compliance have contributed to the loss of viability by small farm and ranch operators. Effective outreach and program delivery could relieve some of the problems in these areas. The Commission recommends the following:

Recommendation 4.4

The Secretary should request that Congress authorize USDA to develop a program, using direct loan funds, to establish a relending program administered by community-based and nonprofit organizations. Currently, Rural Development administers the Intermediary Relending Program. Through this program, direct loans are made to intermediary borrowers (i.e., private nonprofit corporations, State or local government agencies, Indian tribes, and cooperatives) who, in turn, relend the funds to rural businesses, private nonprofit organizations, and other qualified recipients. The recipients must use the loan for economic and community development projects, the establishment of new businesses and/or the expansion of existing businesses. The proposed relending program should be geared toward small loans to purchase equipment, supplies, and other inputs for production agriculture for small farms, including purchases of land.

Network and mentoring programs; educational services

The Commission determined that the establishment and continued support of farmer support networks, mentoring programs, apprenticeship programs, and consortiums are critical for small farm and ranch operators to exchange information with one another, with key partners who support small farmers and ranchers, and with consumers wanting to learn more about small-scale agriculture. The Commission heard that the feelings of isolation which many farmers experience could be mitigated through farmer networking. Beginning farmers or farmers venturing into new crops can benefit from direct feedback from other farmers with greater experience.

One example of a relatively effective innovation in networking is *The Sustainable Agriculture Network,* a cooperative effort of university, government, farm, business, and nonprofit organizations dedicated to the exchange of scientific and practical information on sustainable agriculture systems. NRCS has also established the National Science and Technology Consortium, a support mechanism used to provide consistency in the development and delivery of technical products and services throughout NRCS. The consortium includes partners such as colleges, universities, non-government organizations, and the private sector.

Another example includes the one-on-one small farm assistance program offered by the Cooperative Extension Service in Kentucky as described to the Commission during the Memphis hearing. USDA could also build upon the work of the Retired Educators for Agriculture Programs (REAP), whose purpose it is to recruit African-American youth and reestablish them in the vocational agriculture and 4-H programs in the public schools in Oklahoma. This group could be considered by USDA as a nucleus to start using the expertise of retired minority USDA employees. They are a valuable resource and in many cases know the people needing the services.

Recommendation 4.5

The Commission recommends that USDA, through the newly formed USDA Office of Outreach, strongly suggest that Farm Service Agency State Executive Directors, Rural Development State Directors, NRCS State Conservationists, and State Cooperative Extension program administrators and directors support the formation of such networks, mentoring programs, and consortiums for small farm and ranch operators. As networks, mentoring programs, and

consortiums are developed, one of the goals of each should be the continued viability of small farms and the wise use of our natural resources on private and public lands.

Recommendation 4.6

The Commission encourages USDA to continue to fund training sessions, newsletters, and other educational materials through our traditional partner organizations, as well as with new ones.

Recommendation 4.7

The Natural Resources Conservation Service and other appropriate USDA agencies should conduct local educational seminars for small and traditionally underserved farmers and ranchers for the purpose of explaining agency programs, including the environmental and economic benefits derived from the programs. These seminars should target conventional and organic farmers.

Farmer advocates

Farmers face many regulations as they operate their farms. The regulations may be governed by the financing arm of USDA or the Farm Credit System, the regulatory arm of EPA, or various local and State authorities overseeing land use and taxes. To understand and comply with these regulations is a part of doing business. However, it is also important that farmers be treated fairly and given timely information that they need to conduct their business. In the 1980's, a number of farmer advocates were established in various areas of the country to help farmers understand their choices and responsibilities under the various USDA programs. Some farmer advocates are supported by organizations and their services are provided at no charge to the farmer. In other cases, farmers must pay a fee to the farmer advocate. Currently, there are approximately 65 groups, in addition to State departments of agriculture, that provide some type of farm advocacy assistance.

Recommendation 4.8

USDA should work with community-based organizations to train people in becoming farmer advocates and create a pool of qualified farmer advocates. This effort could be funded through a grant program, jointly funded by USDA in collaboration with nonprofit funding organizations, to facilitate the establishment of a program or the continuation of programs already established.

Outreach program for cooperating banks

The full potential of programs is not being achieved due to the lack of assertive outreach with specific customers or because the products of a program are slow in getting into the hands of the small farm operator. During the Memphis and Sioux Falls hearings, the Commission heard that educating lenders about USDA programs and the needs of small farm operators is a necessity if USDA lending programs are to be effective in serving small farm and ranch operators. The Commission appreciates the work being done by USDA to garner input from lending stakeholders and attending lending conferences, but more proactive measures are needed in order to meet more fully the needs of small farmers.

Recommendation 4.9

The Secretary should direct the FSA Administrator to develop and implement a formal outreach program directed at the commercial lending community to promote guaranteed lending for small farm and ranch operators, with special emphasis on women, beginning, and minority farmers, and to work with the commercial sector to remove barriers to guaranteed lending. Farm Credit System- and USDA-approved guaranteed loan banks should be encouraged to participate with USDA in improving credit access to small, beginning, and traditionally underserved farmers.

Recommendation 4.10

USDA Rural Development should strengthen its current outreach program for the Business and Industry Guaranteed Loan program to banks as a source of funds for locally owned value-added businesses. The Commission understands that a video is available at State offices at no cost for industry meetings and conferences, a presentation is available upon request, and updated brochures numbering 450,000 were distributed to field offices. To measure effectiveness, the Commission recommends a requirement that loans under this program be prioritized for locally owned, value-added farm-product-related business or small farm business operations.

Recommendation 4.11

USDA should utilize existing regional and national conferences and workshops to inform potential lenders about the Intermediary Relending Program (IRP) program, and about the opportunities for using it for locally based market development for small farms. USDA Rural Development program staff should actively seek opportunities to conduct workshops at annual conferences of small farm organizations and community-based organizations that serve farmers, such as the Small Farm Conference in California, the Federation of Southern Co-ops annual meeting, and the annual Small Farm Trade Show and Conference in Missouri.

Risk management program delivery

Risk management is seen as a major part of the "safety net" in times of disaster and low prices, yet products to match the modern day dilemmas are slow in coming and in reaching the small farm operator. Due to the 1996 FAIR Act, producers are making management decisions in a new era of farm policy. In some programs, major changes are made, yet affected farmers do not receive the information in a timely fashion to make sound business decisions. In some cases, basic training is needed to ensure business decisions are based on sound principles. In April, USDA announced a multi-year $5 million initiative to energize risk management outreach. The initiative is expected to intensify private and public sector efforts to introduce producers to risk management tools.

Recommendation 4.12

Educational efforts by the USDA Risk Management Agency (RMA) (former Federal Crop Insurance Corporation) should address sustainable agriculture practices as a means of managing risk. Efforts should attain a high level of participation by small farm and ranch operators. ("Risk management" is the new terminology for "crop insurance.") RMA should establish and provide information and strategies from data accumulated on small farms. The RMA educational initiative must document the number and type of small farmers and ranchers it has reached; what products of risk management have been developed specifically for small farmers and ranchers to create a safety net; and the number of small farmers and ranchers using those products. In order for USDA to be of assistance to producers, it must conduct research that will allow the producer to have more information about risk management, production practices, marketing techniques, and processing options.

Recommendation 4.13

The Commission recommends that the Secretary of Agriculture support legislation and take administrative action to: (a) expand coverage nationwide to insure non-commodity crops; (b) increase transitional yields to all counties for all crops; (c) increase Federal Government subsidy on crop insurance premiums to support levels of 75 percent without increasing farmer premiums at the current level of 65 percent; and (d) increase the Noninsured Crop Disaster Assistance Program (NAP) levels to 70 percent yield and 80 percent price while maintaining premium cost

currently paid by farmers. The value of coverage should not exceed $250,000 in annual gross sales.

Effective outreach materials
Improvement is needed in agency outreach tools and documents. The way a form is written, the way a brochure is prepared, the way employees present themselves to customers are all important in determining if a potential USDA customer is going to receive the service needed. The Commission is aware that FSA did revise the direct loan assistance form in 1997 and did reduce the number of forms sent to applicants. USDA should continue to make revisions that benefit the applicant.

Recommendation 4.14

The Secretary should direct the FSA Administrator to immediately develop and implement a formal outreach program to directly notify the approximately 8,400 clients faced with shared appreciation of their options and what actions USDA is taking to assist in defusing this situation, as recommended by Policy Goal 1, Recommendation 1.22.

Recommendation 4.15

USDA should streamline applications in all agencies and develop a "low doc" application for smaller grant and loan requests. Program staff should assist small and limited-resource farmers with completing the application process. Agencies should make applications available in appropriate languages and hire or contract with employees proficient in appropriate languages to assist applicants.

Recommendation 4.16

The Commission recommends that each agency should identify and implement effective ways to reach small farmers. The new USDA Office of Outreach should be empowered to evaluate agency plans for effectiveness. The Commission fully supports implementation of CRAT recommendations 38, 39 and 40:
CRAT Recommendation No. 38 - "Develop a strategic outreach plan, as part of USDA's strategic plan, for which Agency Heads will be held accountable through the Civil Rights performance standard."
CRAT Recommendation No. 39 - "Establish in each agency an outreach liaison position to coordinate and direct outreach programs in conjunction with the new USDA Office of Outreach. The agency coordinator must be responsible for monitoring outreach goals and accomplishments to underserved customers."
CRAT Recommendation No. 40 - "Establish State and National Outreach Councils, comparable to the USDA Food and Agriculture Council (FAC), to coordinate outreach efforts of all USDA agencies with State and local-level program delivery. Require that Outreach Councils establish partnerships with community-based organizations and 1890, 1994, and 1862 land-grant institutions, Hispanic Association of Colleges and Universities, and the Research and Employment Access Programs Initiative to enhance program and service delivery to underserved communities."

Recommendation 4.17

Communications should be improved within and between USDA agencies. It has been noted that USDA agencies do not effectively communicate among one another on common issues, such as assistance to small farm operators. Efforts should be taken to increase exchange and collaboration across agencies and programs to better serve small farm operators. For example,

the Sustainable Agriculture Research and Education (SARE) program is a valuable program to small farm operators and USDA agency personnel should be provided an overview and training to foster understanding of the benefits of the program and garner ideas to improve their agency's efforts to reach small farm and ranch operators.

Recommendation 4.18

The Commission recommends that the new USDA Office of Outreach conduct performance and impact evaluations of programs that serve small farms. The evaluations should be used to measure the effectiveness of projects in serving the needs of small farm operators. The Office of Outreach is directed to develop a system to determine the effectiveness of agency outreach efforts. Based on annual appraisals, agencies could determine if small farmers and ranchers are being reached. The Office should work with the Office of Communications and CSREES to develop means of determining effectiveness through focus groups and other measures. As part of project or program implementation, USDA should require impact assessments.

Continuing education
Farmers need on-going development of skills and knowledge and continued education to upgrade their skills. Some people are interested in becoming farmers, but lack farming skills. A process should be developed that encourages farmers to learn and to keep up with the changing trends in agriculture. Constraints on continued skills development include, among others, time of course offering, lack of transportation, language barriers, and schedules that conflict with USDA office hours.

Recommendation 4.19

USDA agencies should develop innovative ways to improve access to learning opportunities and to encourage participation. One example includes USDA offering certificates of completion for courses or meetings attended by small farm operators. Then, local communities and businesses could be encouraged to recognize these certificates with some type of benefit to the farmer, such as a discount for services or with a congratulatory posting by the community showing support for the farmers. USDA's success could be measured by how many new participants were reached within 1 year of this report being issued.

Recommendation 4.20

USDA Administration should review employment policy to provide the flexibility for USDA offices to be partially staffed on Saturday or after regular office hours to accommodate the schedules of small farm and ranch operators and to be accessible for community meetings and other outreach activities. Also, USDA local offices could hold open houses to provide an opportunity for small farm and ranch operators to become familiar with the operations of the office.

Recommendation 4.21

USDA should encourage the use of local paraprofessional technicians, when and where it is cost-effective, to assist in office paperwork processing, assist clientele in the application process, and disseminate timely program information.

Forestry outreach
The Forest Service has a major responsibility to ensure healthy, sustainable forests on Federal as well as non-Federal lands through stewardship planning and professional technical assistance. The Commission heard during the Portland, Oregon, hearing that "any of the USDA programs and activities aimed at maintaining or enhancing the viability of small farms should include the element that focuses on forest production." As timber harvesting on public lands has

decreased, timber companies are increasingly looking to private woodlot owners for their source of timber. About fifty-eight percent of all the forest land in this country with the potential to produce commercial quantities of timber is owned by small farm operators and non-industrial private owners. Clearly, outreach is needed to ensure sustainable forestry for conservation and economic purposes.

Recommendation 4.22

The Secretary should direct the Chief of the Forest Service to intensify outreach efforts directed toward small farm operators and traditionally underserved farmers who own private woodlots. The Commission strongly supports the concept of an Outreach Coordinator position at regional levels within the Forest Service. This concept is described in the Civil Rights Action Team Report, Recommendation No. 39.

Policy Goal 5
Establish Future Generations of Farmers

The future structure of agriculture depends on the ability of a new generation to enter farming. Entry into the farming business necessitates the existence of a well-developed infrastructure of support. The barriers that hinder the next generation from entering farming are significant. Challenges to farm entry include:

Inability to acquire the initial capital investment
Insufficient farm entry strategies
Inadequate access to appropriate financial, managerial, and production assistance for entering and exiting farmers.

The challenges to the continuance of small farms are highlighted by demographic data on the farm population based on the1992 Census :

The average farmer was 53.3 years old in 1992, up from an average of 50.3 in 1978.
Between 1982 and 1992, the percentage of young farmers under 25 was cut in half.
Twenty-five percent of all farmers are 65 years of age and older.

The future of small farms, and the businesses that rely on them, will depend on young people being able to enter careers in farming. USDA-ERS research predicts that between 1992 and 2002, a half million older farmers will retire – approximately one-fourth of all farmers. ERS predicts they will be replaced by only 250,000 farmers.[65] It will be critical to regenerate a trained, skilled base of prosperous, stable, community-involved independent farm business families. These families will provide an element of economic stability for rural America, protect its prime farmland and steward the land into the next century.

At no other point in the history of U.S. agriculture have we faced such a wide generational gap in farm participants. USDA and other researchers have studied this problem but no comprehensive strategy has been launched by USDA to date to improve opportunities to enter farming.

One strategy for the development of new farmers is apprenticeship programs. The Commission heard testimony about an effort to train farmworkers to become farmers in the Salinas Valley of California. The Rural Development Center (RDC) is a nonprofit organization that trains groups of farmworkers in the production, management, and marketing of fresh produce. They receive instruction in organic vegetable production and have access to machinery and land owned by RDC. Upon completion of the training program, they are prepared to begin farming, but often face barriers gaining access to credit to purchase or lease land. According to one of the RDC trainees, the program provides a tremendous opportunity to learn to farm. However, barriers remain in obtaining "...technical assistance; access to credit; assistance and more information in our own

language, being Spanish; more support in organic farming as an alternative; more information regarding marketing; more accessible organic land for small farmers so that we can work in a healthy environment; and more control, because there's an intermediary that controls the prices."[77]

Programs like this one that help create the opportunity for people to begin a career in agriculture can be supported and replicated in order to establish the next generation of farmers. In the same way that Federal Government agencies such as Health and Human Services and private foundations are concerned about the aging of rural doctors, we should be as concerned about the aging of our Nation's farmers and should take the requisite steps to support opportunities and provide incentives for people to enter farming.

The Commission also received testimony describing several State agency and nonprofit organizations that address the barriers to entry for beginning farmers. These efforts include programs that link retiring farmers with beginning farmers; development of new, regionally appropriate transition and tenure models; and development of a National Farm Transition Network to strengthen existing programs and help to establish new programs throughout the country. The need for transition programs was affirmed by a South Dakota banker who said, "I think we need more shared (opportunities) —the guy who is trying to phase out cooperating with somebody trying to phase in. You load enough debt on a beginning farmer or a small farmer to take over a good-sized operation, and his risk of failure just goes through the roof. But if you've got a partnership between somebody who's trying to retire and someone who's trying to get in, the balance of that risk shifts a bit."[78]

Access to capital is a critical component in establishing the next generation of farmers. One-fourth of young farmers (under 35) have a net worth of less than $100,000, well below what ERS classifies as necessary for a viable commercial farming operation of $500,000 in capital. Credit is one critical source for obtaining capital, but "about half of all young, low-equity farmers fail conventional underwriting standards and have difficulty obtaining commercial credit."[79] Instead of credit, young farmers often rely on renting land rather than purchasing. Landlords provide most of the real estate capital managed by beginning farmers. Merchants and equipment dealers are also an important source of operating credit for beginning farmers.

USDA assistance for beginning farmers has been primarily in the form of subsidized credit for operating costs and farm ownership. Beginning in 1992, FSA initiated a downpayment loan program for beginning farmers to purchase land. A beginning farmer can make a downpayment of 10 percent for a farm purchase and FSA will finance 30 percent of the purchase at a subsidized interest rate. Another lender finances the remaining portion, which can be guaranteed by FSA.

The 1996 FAIR Act created additional opportunities for assisting beginning farmers with access to credit. The downpayment guarantee was increased to 95 percent. Beginning farmers are eligible to participate in the joint financing program for farm ownership loans where FSA can provide half the financing of a farm purchase at no less than 4 percent interest. Another lender provides the remaining financing that can be guaranteed 90 percent by FSA. The FAIR Act targets 70 percent of direct farm ownership loans to beginning farmers, 60 percent of which is to be used for downpayment loans. Beginning farmers also have priority in purchasing farmland from FSA inventory.

The South Dakota banker also expressed caution in assuming that access to credit will solve the entry barriers for beginning farmers, noting, "... it is unwise and unhealthy to substitute credit, even if it's subsidized credit, for income."[80] Debt without certainty of income can prove to be a disastrous venture for beginning farmers. While recent changes in USDA credit policy have shifted attention to beginning farmers, non-credit programmatic efforts are needed to create

greater economic opportunity for beginning farmers. Initiatives to assist beginning farmers are needed to tailor research, extension, and marketing assistance to the needs of new entrants.

Tax policy plays a critical role in the transfer of farmland, private woodlands, and other assets from one generation to the next. Neal E. Harl, an Iowa State University agricultural economist, explains that taxes are part of an incentive system. As the level of taxes on assets changes, the incentives to invest or not invest in that asset are affected. With regard to the Taxpayer Relief Act of 1997, agriculture will be most affected by the reduction in capital gains tax rates and the creation of the family-owned business exemption.

Harl projects that different rates of tax for capital gains distort economic activity by encouraging people to invest in response to tax incentives rather than the market and will be used for the primary purpose of tax sheltering. The recent capital gains changes will not "unlock" assets, according to Harl, and will largely benefit the top 5 percent of taxpayers. He States that "the economic fortunes of this country over the next century are likely to be more dependent upon investment in human capital than investment in real capital assets. If we want to create an incentive, it's investment in people that will boost national income."[7]

Beginning farmer eligibility requirements

The Commission heard of several cases where young people seeking FSA loans were denied because the eligibility requirements have been interpreted to discount the farming experience of young people who grew up farming with their parents, worked as hired farm labor, or received training through on-farm internships and apprenticeships. FSA's eligibility criteria for beginning farmers does not adequately take into account the on-farm experience of young potential farmers.

Recommendation 5.1

The Farm Service Agency Administrator should issue a national policy statement that clarifies and defines the documentation necessary to certify eligibility requirements for beginning farmers. The eligibility requirements should include specific allowance for persons raised on family farms or who have farm experience as hired farm labor or from internships and related training programs.

Farm transfer

Currently, if a farmer wishes to transfer the farm to his or her heirs and take some equity for retirement, the heirs must apply for and receive an acquisition loan with which to "buy out" their parent(s) and a separate operating loan. The process is cumbersome and frequently impossible because no credit is given for the fact that the long-term operators are still, for all intents and purposes, engaged in supervising the farm operation. The heirs might have trouble qualifying under beginning farmer elibigility rules even though they have been actively engaged in operating the farm with their parents.

Recommendation 5.2

Both the Farm Service Agency and the Farm Credit system (FCS) should streamline and facilitate improved transfer and assumption programs of existing FSA and FCS loans between family members to improve transferring farms from one generation to another.

First Time Farmer Bonds

Tax-exempt bonds issued by States, called First Time Farmer Bonds, are used in approximately 30 States for the backing of low-interest farm ownership loans for beginning farmers. However, the potential of these programs to help new farmers enter farming has been limited due to the size of these programs. In addition, First Time Farmer Bonds are a small part of the tax-exempt bonds that States use for economic development, but some of the most successful bond

programs are bumping up against their caps. The potential of these programs could be expanded through legislative changes.

Recommendation 5.3

Congress should authorize the Farm Service Agency to guarantee tax-exempt First Time Farmer Bonds used to make loans to beginning farmers and ranchers. Certain agricultural bonds should be exempt from the industrial revenue bond cap each State has under Federal regulations. These bonds should be allowed for use in seller-financed transactions between family members.

Farm Credit System

The Farm Credit System, as a government-sponsored enterprise, is required by law to provide credit and financial services to beginning and small farmers. However, the law does not specify any target levels or accountability to ensure that FCS is serving the needs of these farmers. FCS has a poor record of lending to small, limited-resource, beginning, and minority farmers. USDA-ERS analysis shows that FCS primarily lends to older and well-established farmers. In 1994, only 4 percent of FCS debt was held by farmers under the age of 36, compared to a national share of 14 percent debt owed by young farmers.[29]

Recommendation 5.4

The Commission strongly encourages the Farm Credit System to do a better job providing financing to low-equity farmers across the country. USDA must review carefully and undertake necessary changes to its guaranteed lending programs for FCS institutions to more fully utilize guaranteed lending opportunities. Congress should enact legislation requiring that at least 15 percent of the Farm Credit System borrowers include low-equity, beginning farmers annually. This legislation could be modeled after the lending requirements placed on Fannie Mae and Freddie Mac to serve low-income borrowers and underserved communities.

Beginning farmer development

The National Farm Transition Network as well as the Rural Development Center in Salinas, California, are models that should be replicated throughout the country for the purpose of providing farmworkers and beginning farmers with the information, technical assistance, mentoring, and training needed to make a successful start in farming.

Recommendation 5.5

USDA should develop a new Beginning Farmer Development Program to support the establishment of multiple beginning farmer training and assistance centers throughout the country. The centers should be formed as collaborations among community-based organizations, in particular, the farm link programs of the National Farm Transition Network, land-grant universities, philanthropic foundations, and private sector organizations, such as banks and agricultural cooperatives. These centers would provide direct training in all aspects of farm management, and provide long-term support through mentoring programs with existing farmers and among peers. Five million dollars could be made available through the Fund for Rural America as a competitive grant for seed money to establish the centers. Funding could also be leveraged from existing USDA sources, such as the contract funding provided for FSA borrower training.

Beginning farmer grants

Beginning farmers can currently receive operating loans of up to $100,000, at a subsidized interest rate. This creates an incentive for beginning farmers to borrow and adopt capital-intensive approaches to farming. Instead of loans, a grant could be an alternative, cost-effective strategy for giving beginning farmers seed money to begin to build equity in a farming operation.

The grants would enable beginning farmers to build equity and enter agriculture through lower capital approaches, using low-cost technologies such as hoop houses for swine production, and low-cost approaches such as leasing breeding herds for a share of the production. This approach would reduce risk of farm failure, because beginning farmers would focus on building equity rather than debt. It would create an incentive for saving and investment, rather than borrowing. It would eliminate the potential for large government losses due to default that come with loans.

Recommendation 5.6

The Farm Service Agency should seek legislative authority to create a Beginning Farmer Grant program for the purpose of supplying seed money for beginning farmers. FSA would make grants of up to $7,500 per year, for a maximum of $20,000 total over 5 years. The grants would require a 50 percent cash match by a beginning farmer, or supporting community members or organizations, such as community foundations. To qualify, the beginning farmer would have to meet FSA eligibility criteria as modified in Recommendation 5.1 and submit a suitable farm plan. Beginning farmers who recieve these grants would not be eligible for chattel or other FSA operating loans at the same time. Beginning farmers grants would be no more expensive than operating loans. In recent years, the cost to government for interest subsidies and loan losses on operating loans have averaged about $5,000 per borrower annually. The cost of a grant program would be comparable.

Tax policy

The last comprehensive study of the effects of tax policy on the structure of agriculture was conducted in the early 1980's as part of Secretary Bergland's structure of agriculture project. This research concluded that Federal tax policies altered the structure of agriculture by contributing to higher land prices, providing strong incentives for larger farm operations to grow, and by encouraging high-income taxpayers to invest in certain farming activities to shelter income. The tax code, as well as the structure of agriculture, has changed substantially since this research was completed. However, USDA has conducted little research concerning the ongoing effects of tax policies on farming opportunities and the structure of agriculture.

Recommendation 5.7

The Commission recommends that ERS coordinate a study through cooperative agreements with experts in agricultural tax law and farmland transfer. The study should include a review of the tax code to examine the effect of the current tax code on entry and exit from farming. The study should make recommendations to the President of the United States, the Secretary of Agriculture, the Secretary of the Treasury, and the Chairs of both the House and Senate Finance Committees on how the tax code can be changed to facilitate the transfer of land to a new generation of farmers. This review should be completed and a report prepared by December 1, 1998.

The study should examine ways to provide incentives to retiring farmers to assist new farmers in getting started. Considering the average advancing age of farmers in this country (now at 53+), the Commission recommends that the tax code be revised to exempt from taxation the first $10,000 of income from the lease of farmland, facilities, or equipment to a beginning farmer. The USDA definition of "beginning farmer" should be used.

In addition, the study should reconsider the taxation of profit resulting from depreciation recapture on equipment when the sale is under the installment method. Currently, the seller can often be in a situation where the amount of income tax due in the year of sale substantially exceeds the cash received from the sale in that same year when sold under installment. If this depreciation recapture were exempted from the immediate recognition requirement under the installment sale rules, for sales to beginning farmers only, the farmer would then be able to sell the farm with a

small downpayment, and allow a new farmer, who usually lacks cash, to enter the business. This would allow the farmer to recognize the income and pay the tax ratably over the life of the mortgage as the principal payments are received. This would convert the sale of the farm into an income stream equivalent to a retirement annuity.

Farm entry strategies

In addition to accessing capital, another strategy for entry includes farming methods that require low capital investment to get started. There are fledgling efforts to design, test, and demonstrate these techniques and strategies, mostly among nonprofit organizations and farmers themselves, but intentional public support to research and develop less capital-intensive strategies is needed to provide economically conservative entry strategies for beginning farmers. Strategies are also needed to identify and develop high-value crop and livestock production systems and marketing infrastructure that will reward a beginning farmer for his or her labor and management skills.

Recommendation 5.8

USDA should launch an interagency Beginning Farmer Initiative dedicated to researching, developing, disseminating, and supporting farm management models that emphasize low capital investment, optimal use of skilled labor and management potential of beginning farmers, and high-value crop and livestock production and marketing methods. An interagency coordinating body should include representatives from ARS, CSREES, Cooperative Extension, ERS, NASS, AMS, NRCS, FS, FSA, RBS, and FAS. The USDA Beginning Farmer Advisory Board, authorized in the 1992 Farm Credit Improvement Act, should be appointed expeditiously in order to provide guidance and oversight in the development and delivery of this initiative. The board should include beginning farmers and farmworkers. This initiative should include:

research and educational programs on low-capital options for getting started, innovative means of acquiring capital, business planning, farm management, and marketing skills;

outreach with educational forums for rural communities, about how they can support establishment of new small farms through strategies such as share leases, selling land on contract where the interest is tax exempt, trading of labor for use of equipment, and community-based financing; and collaborative partnerships with community-based organizations, such as the Rural Development Center, and organizational members of the National Farm Transition Network, to train and assist beginning farmers.

Recommendation 5.9

The Secretary's one-third of the Fund for Rural America should include a focus to support beginning small farmers through research and education to strengthen small livestock farms; develop small farm marketing cooperatives and other marketing alternatives; and support State and regional networks and nonprofit farmlink programs.

Recommendation 5.10

The Economic Research Service, in cooperation with legal and financial experts, should conduct research and analysis to design alternative financial and legal methods for the transfer of farms from retiring to beginning farmers. In addition, this focus should utilize unbiased organizations to proactively encourage farm transfer to beginning and small farmers by assisting existing farmers in maintaining the farm asset value and productive potential throughout the life of the farm.

Cooperatives

Farmer-owned cooperatives hold promise as a means for farmers – both established and beginning – to assert greater control over the prices for their products and to retain a greater

share of value added to raw commodities. To ensure the long-term viability of farm cooperatives and to enable the success of beginning farmers, efforts should be taken to include beginning farmers directly in co-op development. For example, one of the limitations of a closed cooperative is that when a farmer quits or dies, usually existing members buy the farmer's shares, and ownership gradually concentrates among a smaller number of existing larger farms instead of replenishing the membership with new farmers.

Recommendation 5.11

USDA's Rural Business-Cooperative Service should research and develop means for cooperatives to enable new small farmers to join cooperatives, to ensure that control remains dispersed. For example, cooperatives could have a plan for allocating a portion of freed-up shares to beginning farmers. Beginning farmers would be given an opportunity to purchase the stock before existing members. In addition, the cooperative could also provide beginning farmers a means to finance or assist in the financing of the stock purchase. USDA should emphasize means to include beginning farmer participation in its assistance to new and existing cooperatives.

USDA's Rural Business-Cooperative Services should also research and develop cooperative models that address the barriers beginning farmers face, particularly models that would ease the high cost of initial capital investment. For example, a farmer from North Dakota proposed the idea of an Op-Co, an operational cooperative. The Op-Co would involve the allocation of farm management operations among several farmers. One farmer might specialize in marketing, another in purchasing, one in bookkeeping, and another in management. This model could also include sharing or joint ownership of equipment and facilities. A feasibility study of this model should be completed and publicized.

Farmland preservation

Land continues to be developed for non-agricultural uses in areas of high agricultural production. According to an American Farmland Trust study, the United States is converting a total of about 1 million acres of farmland per year to other uses.[77] Testimony from the Puget Sound Land Trust in Portland indicated that where farmland is being threatened by development pressure, it "has a very profound effect on small farmers, both those who are in farming now and want to stay in farming, but are facing development pressure from suburbs and subdivisions growing up around them, and people who want to get into farming and are trying to compete with land speculators to buy farmland."[78] Efforts to preserve farmland are critical to enabling the next generation of farmers to enter farming. Assessments of farmland eligible for preservation assistance should include the potential of transition of the farm to a beginning farmer.

Recommendation 5.12

USDA should identify priority factors for farmland preservation, including, but not limited to, soil types and the potential transition of a farm to a beginning farmer. These factors should be shared with counties for use in decisions about land zoning.

Recommendation 5.13

The Natural Resources Conservation Service should consider expanding the Farmland Preservation Program to include matching grants to nonprofit land trusts. Land trust organizations have experience and expertise and contacts with local landowners. Land trusts work with low overhead and effectively extend their budgets to get the most results for the smallest amount of money, making limited Federal dollars go further.

Policy Goal 6

Emphasize Sustainable Agriculture as a Profitable, Ecological and Socially Sound Strategy for Small Farms

Sustainable agriculture integrates three main goals – environmental health, economic profitability, and social and economic equity.[8] Farming systems that simultaneously pursue these three goals hold great potential for maintaining the viability of small farms, and they contribute to the well-being of rural communities and stewardship of our natural resources.

At the Washington, DC, public meeting, an Illinois farmer who raises over six different grain crops pointed out that "a great deal of effort, in both the private and public sectors, has gone into developing technologies, products and marketing structures that require farmers to spend more money on capital-intensive systems to produce raw commodities on a large scale, often at a great harm to the natural environment." This farmer went on to recommend that USDA focus its resources instead on the development of farm management systems and technologies "to enable farmers to develop farming systems which use their management and labor to produce higher value products in ways consistent with long-term environmental enhancement and higher returns per acre."[9]

The underlying trend toward small farm decline reflects fundamental technological and market changes. Simply put, conventional agriculture adds less and less value to food and fiber on the farm and more and more in the input and post-harvest sectors. We spend more on capital and inputs to enable fewer people to produce the Nation's food and look primarily to off-farm processing to produce higher value products. Sustainable agriculture strives to change this trend by developing knowledge and strategies by which farmers can capture a larger share of the agricultural dollar by using their management and skills to cut capital and input costs — so a large share of the prices they receive for their products remain in their own pockets — and by producing products of higher value right on the farm.

The stewardship goal of sustainable agriculture recognizes farming's impact on, and contribution to, environmental quality. Sustainable agriculture emphasizes farming practices, technologies, and management systems that protect water quality, create habitat for wildlife, improve soil quality, and reduce reliance on non-renewable energy sources. The specific farming practices chosen by individual farmers are highly dependent on the farm topography, climate, pest populations, soil characteristics, on-farm availability of resources and the farmer's goals for his or her family. While the practices will vary from farm to farm, the principles of sustainable farming systems are:

Selection of species and varieties that are well suited to the site and conditions on the farm;
Diversification of crops and livestock and farming practices to enhance the biological and economic stability of the farm;
Management of the soil to enhance and protect soil quality;
Efficient and humane use of inputs; and
Consideration of farmers' goals and lifestyle choices.[10]

Diversification enables small farm operators to spread economic risk. At the same time, diversification can provide biological assets to maximize on-farm resources, thus lowering the cost of production. Crop rotation and use of cover crops can provide additional sources of crop diversity, while at the same time suppressing weeds, soil pathogens, and insects. In farming systems that mix crop and livestock production, this diversity allows for rotation of forage and grain crops to enhance soil quality and control erosion, utilize livestock manure as a crop nutrient, and make more efficient use of farm labor. Sustainable farming systems provide small farmers a means to develop efficient, biologically based systems that rely less on purchased inputs and yield greater returns to a farmer's ingenuity and management skills.

In addition to cutting production costs as a means to attain the profitability goal of sustainable agriculture, marketing strategies are also needed that allow farmers to gain a greater return on the value of their products. This includes direct marketing, value-added processing, and production of high-value crops that command market premiums, like those enjoyed by organic foods.

SARE research results

Sustainable agriculture research and education information is not sufficiently available. The research results and new information generated through the USDA-CSREES Sustainable Agriculture Research and Education (SARE) competitive grant program provides valuable management strategies and farming practices for small farms. However, the widespread usefulness and application of these results are limited because sustainable agriculture represents only a fraction of USDA's research and extension funding. For example, a cotton farmer from Alabama told the Commission about the great interest in conducting on-farm research.[c] Out of 101 applications for producer grants in the Southern region, grant awards were made to only 19 applicants due to limited funds. Sustainable agriculture research and education should be given a higher priority for funding (see also Policy Goal 7, *Recommendation 7.1*). At the same time, USDA can do more to supply farmers with the information and research results from past and current SARE research.

Recommendation 6.1

The USDA Office of Communications, working in cooperation with the new Office of Outreach, CSREES, ERS, NRCS, FSA, Forest Service, Cooperative Extension, RBS, and AMS, should develop and conduct a communications campaign to inform farmers of the new farming systems, strategies, practices, and technologies emerging from the 10 years of SARE research. The communications campaign should emphasize those strategies that reduce production costs, make more efficient use of biological assets, diversify economic risk, and earn a higher value for farm products. The campaign could include: placement of articles in farm magazines, presentations to the National Farm Broadcasters, farmer profiles in USDA publications and agency newsletters, and radio stories or Public Service Announcements about SARE research results. USDA field agency staff of NRCS and FSA, as well as Cooperative Extension, should also be targeted to receive SARE research results so that they can provide small farmers with the latest production research to improve farm profitability.

Recommendation 6.2

Cooperative Extension, NRCS, and FSA field staff should identify places where small farms have particularly high reliance on pesticide and nutrient use. Targeted outreach would provide small farmers in those regions with information and technical assistance on sustainable agriculture practices.

Recommendation 6.3

USDA's Office of Communications, in cooperation with the new Office of Outreach, AMS, ARS, CSREES, ERS, NRCS, and FSA, should develop a communications effort on organic farming to coincide with the publication of the final rule for the National Organic Standards. The communications campaign should target consumers to explain what organic food is and how it is produced. It should also target farmers – those who are currently growing organic crops and livestock and those who are potentially interested. In addition to explaining the new standards, the campaign should include information on how to make the transition to organic production and where to get information and assistance.

Recommendation 6.4

The USDA Office of Outreach, with leadership from the USDA Director of Sustainable Development, should work closely with the President's Commission on Sustainable Development (PCSD), linking citizens interested in sustainable development, (often limited in scope to urban and metropolitan issues), with sustainable agriculture and farmers. Through the PCSD's interaction with the Joint Center for Sustainable Communities, the USDA Director of Sustainable Development should develop linkages with those county and city governments interested in sustainable development and agriculture, supporting their efforts to link urban leaders, and thereby urban consumers, with farmers who are producing products with attention to stewardship of our natural resources. The Office of Outreach, RBS, CSREES, and AMS should be involved with the planning of PCSD's upcoming National Conference on Sustainable Development to ensure that involved citizens, urban leaders, rural and community development officials, and non-governmental organizations understand and develop linkages between sustainable communities and sustainable agriculture.

Recommendation 6.5

The Cooperative State Research, Education, and Extension Service should encourage land-grant university colleges of agriculture to offer courses in sustainable agriculture and organic farming as electives for degrees in agriculture.

Public lands grazing

Traditionally, communal grazing rights were granted under Colonial Spanish and Mexican land grants and have been utilized for over three centuries. Due to the climatic conditions of the arid Southwest, livestock grazing was practical and deemed essential for the survival of the people. The United States Government, under the Treaty of Guadalupe Hidalgo, accepted and guaranteed these rights to the descendants of the grantees. Many of these lands are now held in trust by the USDA Forest Service and the Department of the Interior's Bureau of Land Management, which provide permitees with livestock grazing rights. American Indians and other small ranchers in the West also depend on public lands for grazing. Small and traditionally undeserved ranchers still depend — in most cases completely – on these traditional lands for livestock grazing to remain economically viable.

Livestock grazing plays an important role in maintaining a balanced ecosystem. Many lands are not suitable for crop production and must be managed and maintained as traditional savanna grasslands. Livestock grazing, along with other management tools (e.g., controlled burns), maintains the vitality of savanna grasslands by suppressing the encroachment of woody shrubs and trees, enhancing native grass species, improving wildlife habitat, and contributing to biological diversity.

Livestock grazing permits have come under opposition because of increased public land use competition and some groups desire to eliminate livestock grazing from public lands. This controversy has led to a tangle of lawsuits against public agencies, questioning their upholding the Endangered Species Act. A recent court injunction could mean the removal of thousands of cattle from national grazing allotments in the Southwest. For thousands of small ranchers, traditional access to public lands for grazing is critical to their economic livelihood.

Over the past 50 years, 35 – 60 percent of traditional savanna grasslands in many of the Southwestern public lands have been lost due to woody plant encroachment and dense stands of coniferous trees. This dense overgrowth has shaded out plant and wildlife diversity on these public lands. In addition, wildlife ungulate species (elk) have been allowed to increase without regard to range carrying capacity. Public land managers have adjusted range carrying capacity

by reducing livestock stocking rates (permits) for the small ranch permittee, thus causing additional economic hardship to the small ranchers. A sustainable and viable ecosystem can only come about with balances, and not at the expense of the small and traditionally underserved farmers and ranchers.

Recommendation 6.6

The Secretary of Agriculture should support legislative initiatives and administrative policy that recognizes and preserves the grazing and water use rights of the small and traditionally underserved public land permittee as was granted through the Treaty of Guadalupe Hidalgo. USDA should support legislation that is now being introduced to establish a commission to investigate individual rights of land grants and the legal rights given through U.S. treaty to the small and traditionally underserved farmers and ranchers.

Recommendation 6.7

The Economic Research Service should conduct economic impact studies determining the importance of livestock grazing on public lands and the importance to rural economies.

Recommendation 6.8

Reductions in grazing permits should be suspended on U.S. Forest Service allotments while plans are designed to enact sustainable system practices, including conservation improvements (controlled burns, water distribution improvement, reseeding, crossfencing, proper wildlife distribution, etc). Special attention and assistance should be given to public land permittees who wish to develop "grassbank" allotments on unused, underused, and newly acquired public lands. These "grassbanks" can be utilized by permittees while their allotments are undergoing conservation improvement.

Recommendation 6.9

Public land agencies should develop Coordinated Resource Management Teams for those interested in the use of public lands, to develop management plan objectives and seek solutions to the problems facing the multiple use of public lands. These consortiums should consist of the USDA Forest Service, the Department of the Interior's Bureau of Land Management and U.S. Fish and Wildlife Service, farmers, ranchers, environmental groups, recreational enthusiasts, State wildlife departments, and private foundations.

Recommendation 6.10

The USDA Forest Service should use 100 percent of grazing fees to fund conservation programs within the district of origin (where the fees were collected). The Forest Service and other appropriate agencies should continue to provide reliable and credible science in managing public lands and in preparation for future litigation concerning the Endangered Species and the Clean Water Acts. A full-time, sustainable technical force should be in place to provide ongoing research in the monitoring and management of public lands.

Farm revenue insurance

Federal farm revenue insurance programs discriminate against farmers using rotational cropping practices by limiting coverage to a few major crops. Such farmers use diversification, including crop and livestock integration, as a core part of their production system. Thus, much of their production is not eligible for revenue insurance as currently structured and the program is far less useful to them than to farmers who produce only major crops eligible for coverage.

Recommendation 6.11

USDA's Risk Management Agency should develop an affordable Whole Farm Revenue Insurance pilot project for diversified small farms using sustainable farming practices. However, participants in the pilot project would be eligible for no more than $250,000 worth of whole farm revenue insurance. The proposed insurance would provide protection against losses relative to whole farm income based on reasonable price and yield projections.

EQIP

The 1996 FAIR Act consolidated the conservation cost-share programs into the Environmental Quality Improvement Program (EQIP). Half of EQIP is to be used for livestock manure management. Large, confined livestock operations are prohibited from accessing EQIP funds for the construction of animal waste storage or treatment facilities. The regulations define a large, confined livestock operation as one with more than 1,000 animal units; however, each State NRCS State Conservationist, after consultation with the State Technical Committee, has the flexibility to modify this national standard to meet each States' conservation needs. The waiver must by approved by the chief of the NRCS.

Recommendation 6.12

The Commission urges the Chief of the NRCS to exercise restraint in approving exceptions to the 1,000-animal-units eligibility limit on EQIP funding for manure storage structures, taking into consideration the impact of subsidizing large farm expansion on income and opportunities for small farms.

USDA as an advocate

Certain laws not administered by USDA can have a direct influence on the viability of small farm operators. USDA should represent the interests of small farms before other Federal agencies and Congress to ensure that the needs of small farms are understood.

Recommendation 6.13

As Congress considers reauthorization of the Endangered Species Act and other natural resource laws administered by other Federal agencies, the Secretary of Agriculture should provide information to Congress on any impact that they may have on the needs and rights of small farm and ranch operators. The Secretary should advocate means to provide incentives to small farm and ranch operators for recovery of endangered species and preservation of natural resources in general.

Agroforestry

Agroforestry offers small farm operators a means for economic diversification, windbreaks, biological diversity, and habitat for wildlife. USDA Extension, conservation, and forestry services should make greater efforts to promote and support agroforestry as part of an economic and ecological strategy for a healthy agriculture.

Recommendation 6.14

The Cooperative State Research, Education, and Extension Service and the Forest Service should sponsor a series of regional pilot projects that will demonstrate forestry opportunities for small farms and ranches. These pilot projects should demonstrate the concept of sustainable forestry on limited-acreage farms and ranches.

Recommendation 6.15

The Natural Resources Conservation Service should implement a policy that will result in the inclusion of potential commercial values of timber and woodlots in every farm plan. Such documentation is needed to prove loss of property to the Internal Revenue Service in the event of natural disasters.

Recommendation 6.16

USDA's Risk Management Agency should expeditiously investigate and develop new insurance policies for emerging products such as containerized nursery plants, Christmas trees, and other nursery products.

Policy Goal 7
Dedicate Budget Resources to Strengthen the Competitive Position of Small Farms in American Agriculture

USDA has several programs that work very effectively to the benefit of small farms. However, the potential for these programs to serve a greater number of small farms is stymied by funding constraints. Budget cuts over the last several years, particularly to FSA's direct lending programs, have restricted credit availability to minority and limited-resource farms. USDA, through the President's annual budget request, and Congress, through its annual appropriations process, can demonstrate their commitment to small farm vitality by reallocating and/or increasing funds to existing programs that best meet the needs of small farmers.

Recommendation 7.1

Increase appropriations for the Sustainable Agriculture Research and Education (SARE) program by $10 million each year over 3 years to reach its authorized funding level of $40 million. The SARE Chapter 3, Professional Development Training Program, should be funded at $10 million. The funding increase should be specifically tailored to small farm research and education needs, on-farm research and farmer-to-farmer networking as means of technology transfer. Particular attention should be given to traditionally underserved farmers. Currently funded at $8 million, SARE can only fund 17 percent of the projects proposed. The SARE Producer Grants, awarded to farmers to design and conduct their own on-farm research and extend their results to other farmers, are especially popular and have proven effective at creating low-cost production and marketing innovations.

Recommendation 7.2

Increase the Appropriate Technology Transfer for Rural Areas (ATTRA) program appropriations to $3 million. With its toll-free number, ATTRA staff respond to production and marketing questions from across the Nation, mostly from small farms. ATTRA serves as a "crop consultant" that larger farmers can afford to hire. While ATTRA has operated at $1.3 million over the last 6 years, requests for assistance have more than tripled.

Recommendation 7.3

Increase the Outreach and Technical Assistance Program for Socially Disadvantaged/Minority Farmers (Sec. 2501 program) to the current authorized level of $10 million annually through the year 2002 to conduct effective outreach and farm management assistance. The Secretary should request an increase in the authorization for appropriations to $15 million in 2002 and $20 million by 2004.

Recommendation 7.4

The President's Budget should request that Congress appropriate the maximum authorized levels of $85 million per year in Farm Ownership Direct Loans and $500 million per year in Farm Operating Direct Loans.

Recommendation 7.5

Increase CSREES Smith-Lever Formula Funding (3c) for the Small and Part-Time Farmer program from $2.25 million to $10 million by 2000. The Department should hold each State accountable for its portion and document how funds were spent for purposes of small farms. Funding should increase to $15 million by 2004 and keep pace with inflation.

Recommendation 7.6

The Rural Technology and Cooperative Development Center Grant Program should be increased by $10 million annually up to $20 million. The authorization is set at $50 million, but funding has never exceeded $1.7 million. The program is administered as a competitive grant for non-profit educational institutions and community-based organizations for cooperative development, training, and operations on behalf of low- and moderate-income people in rural communities. This program is one of the few that supports rural cooperative development at the grassroots level.

Recommendation 7.7

The Federal-State Marketing Improvement Program (FSMIP) funding should be increased from its current level of $1.2 million to $3 million annually. FSMIP has been an effective source of funding for feasibility studies, market research, product development, and marketing innovations in partnership with State-level organizations, such as State departments of agriculture and community-based organizations. Funding increases should be targeted to niche market development appropriate for small farms.

Recommendation 7.8

Funding for the Grain Inspection, Packers and Stockyards Administration is critical to investigation of concentration in livestock markets. The President's Budget should repeat its request for $3 million for the agency reorganization and $1.65 million and 20 additional staff for increased economic, statistical, and legal expertise to pursue investigations of packer competition and structure of the livestock industry. In addition, $750,000 and 10 additional staff should be requested and appropriated for investigation into unfair market practices in the poultry industry. The agency must have additional economic and legal expertise if it is more aggressively to pursue anti-competitive practices related to industry concentration.

Recommendation 7.9

The Fund for Rural America should be made a permanent program with funding at $100 million annually. The Secretary's discretionary funding should be directed to the following priorities:
The Cooperative Value-Added Program should be continued, with priority given to project proposals involving the development of small farm cooperatives.
Outreach and Technical Assistance Program for Socially Disadvantaged/Minority Farmers (Sec. 2501 program), in FY 1999 to bring the funding level up to $10 million if it does not receive full funding through appropriations.
Research and extension to support beginning farmers, including the development of low-cost livestock systems, small farm marketing cooperatives, and support for State and regional networks or centers to support beginning farmers.

In addition, the Rural Development portion of the Fund should include at least $10 million for the Rural Business Enterprise Grant program for the purposes of funding feasibility studies and development of innovative marketing strategies for small farms. In addition, $3 million for RBEG could be programmed to fund technical assistance programs for nonprofit and State organizations to link retiring farmers with beginning farmers for cost-effective transitions of farms from older to younger generations.

Recommendation 7.10

USDA has released the proposed National Organic Standards, with full implementation expected to occur sometime in 1998. Organic farming has given innovative small farmers an opportunity to enjoy price premiums in one of the fastest growing segments of the food industry. Effective certification and enforcement of the national standards will be critical to maintaining the integrity of organic products, consumer confidence in the organic label, and fair market access to what will continue to be an expanding market with the entrance of large food processing firms. Funding should be provided at $2 million per year for the National Organic Program to support the implementation and on going administration of the national standards.

Recommendation 7.11

The WIC/Farmers Market Nutrition Program funding should be increased to $25 million annually in future budget requests and appropriations. This program allows WIC recipients to redeem their WIC coupons for fresh produce at farmers markets. Now operating in 30 States, Washington, DC, and two Tribal nations, this program provided $9 million in revenue to 8,250 farmers in 1996. With the increased funding, the program will be expanded to more States and farmers will gain more WIC customers at farmers markets.

Recommendation 7.12

Funding for the Farmworker Housing Program should be increased to $50 million. Rural Housing Service farmworker housing funds should be directed to community-based farmworker organizations that have a community development corporation component. Program rules and regulations should be altered to allow more innovation and flexibility, and to leverage other potential sources of support in constructing farmworker housing units.

Recommendation 7.13

The Commission recommends that the Forestry Incentive Program be revitalized and funded at the previous higher levels. Funding should be increased to $6.62 million.

Recommendation 7.14

Funding of the Forest Stewardship Program should be increased to $27.5 million. The increased funding should be targeted to assisting small farm operators and small woodlot owners.

Recommendation 7.15

Funding for the Stewardship Incentive Program should be increased to $10 million annually. This program provides cost-sharing for nine different forestry practices, including riparian and wetland protection, fisheries habitat enhancement, and forest recreation enhancement.

Recommendation 7.16

The Renewable Resources Extension Act should be funded at a level of $6 million annually. Education is an important aspect of all forestry and farm management, and the continued erosion of the Extension budget has had serious negative outcomes at the State and local levels.

Policy Goal 8
Provide Just and Humane Working Conditions for All People Engaged in Production Agriculture

The Commission heard testimony from representatives of farmworker organizations who articulated interests that were common among farmworkers and small farmers. In particular, large farm operators and agribusinesses have unfair advantages because "employer costs have been reduced by the partial or total exclusion of agricultural workers from coverage under key labor laws." In addition, "the authorized importation of foreign workers for agricultural work (H2A program),[79] by adding workers to the pool of available labor, has helped keep wages for agricultural workers, and thus labor costs for agricultural producers, below what they would have been without such interventions."[80]

This creates an atmosphere where farmworkers can be subject to unsafe working conditions, substandard living conditions, and lack of worker protection and safety nets available to most U.S. wage laborers. Because large farm operators who hire farmworkers are exempt from some national labor laws, their "economies of scale" are deceivingly greater than they appear and "competitiveness" is supported by government-sanctioned access to low-wage labor. The benefits received by large farm operators come at the expense of the farmworker and small farmer who cannot compete with large farms because they have access to cheap labor.

Small farm operators cannot pay themselves a middle class income for their own labor and compete with farms that minimize labor costs by paying farmworkers less than a living wage. Ultimately, small farmers will earn fair incomes only if farmworkers on large farms are paid fair incomes.

It is critical to recognize the basic human rights of all agricultural workers (including small farm operators personally engaged in agricultural production, as well as farmworkers) to be treated with respect and be able to earn a decent income to support family members and provide for decent housing, living conditions, education, health care, and continuing income for the elderly and disabled.

Farmworker protection
The need for concern surrounding the treatment of farmworkers is well documented and analyzed. Many of the recommendations outlined below resemble recommendations made by the Commission on Agricultural Workers in its November 1992 report to Congress.[8] The Civil Rights Action Team articulated six recommendations for USDA to act on to improve the working conditions of farmworkers. Now, it is important for USDA, under the leadership of the Secretary of Agriculture, to work with other relevant Federal agencies to take action on these and previous recommendations.

There is a lack of a common policy on farmworker protection laws from those government agencies charged with protecting farmworkers. This void has hampered the ability of the regulatory agencies to develop adequate farmworker protection laws and to effectively implement and enforce the laws. Historically, these agencies have not involved farmworkers in the process of developing, implementing, and enforcing the laws. A concerted effort from all government agencies involved, dealing directly with the farmworker community, needs to occur in order to address the issues of respect and dignity for this community.

Recommendation 8.1

The Secretary of Agriculture should implement the Civil Rights Action Team Report (CRAT) Recommendation No. 60: "to establish an initiative to address the needs of farmworkers that could be addressed through USDA programs." While various ideas and plans have been discussed, action on this initiative has yet to occur. Action should be taken on this initiative as soon as possible. The initiative should include the following components:

The Secretary of Agriculture should request authority from the President to establish an interdepartmental task force, with USDA as the lead agency, to address laws, regulations, and enforcement of regulations affecting farmworkers. The task force should consist of, but not be limited to: USDA, the Departments of Labor, Health and Human Services, Education, as well as the Environmental Protection Agency, Internal Revenue Service (IRS), and Immigration and Naturalization Service. It is recommended that the task force address, but not be limited to, the following issues:

elimination of employer exemptions for agribusinesses and large farm operators. Large farm operators need to be held accountable for paying a decent wage, overtime, compensation insurance,[xx] compliance with Occupational Safety and Health Administration (OSHA) regulations, and other labor laws.

repeal of the H2A foreign guest agricultural worker program.

development of specific OSHA standards to protect the health and safety of agricultural workers.

inclusion of agricultural workers in the unemployment insurance compensation laws.[xx]

inclusion of all agricultural employment in the computations of individual employee base period earnings. Allow farmworkers to document their past quarters of earnings for Social Security purposes without late penalties. Prohibit the IRS from pursuing claims for unpaid taxes against farmworkers when agricultural employers fail to report wages or pay taxes prior to the most recent 3-year period.

provide assistance to small farm operators to comply with minimum labor standards. Continue exemptions for small farm operators with fewer than four employees. All Federal Insurance Compensation Act (FICA) earnings and taxes should be the direct responsibility of the farm operator.

collaboration among USDA, EPA, and Labor to protect the health and safety of farmworkers, particularly as it relates to the issue of pesticides.

inclusion of farmworkers under protections afforded workers by the National Labor Relations Board.

As the task force addresses the above issues, they should give attention to how small farms will be affected.

A Farmworker Coordinator position should be created within the new USDA Office of Outreach. Candidates for the USDA Farm Worker Coordinator position should be solicited from community-based farmworker organizations. The Coordinator should immediately begin arranging regularly scheduled listening sessions between USDA, the interdepartmental task force, and farmworkers. Satellite or mobile offices should be established in communities where high populations of farmworkers reside in order to reach farmworkers with limited transportation access. The offices should be jointly staffed and funded by the Federal agencies involved in the interdepartmental task force. Staff should be bilingual and have farmworker experience. Culturally appropriate educational and technical assistance publications in the language of the farmworkers should be made available on issues such as pesticide safety and health care services.

The Cooperative State Research, Education, and Extension Service and the Rural Business-Cooperative Service staff, along with the Farmworker Coordinator and farmworker organizations, should conduct a feasibility study to research and design "farmworker harvesting" cooperatives. Such a cooperative would be designed to match the job skills of agricultural workers with employers as an alternative to the system of farm labor contractors. The cooperative would serve the functions of recruitment, employment, and transportation of farmworkers. The cooperative could also provide job training programs for individuals interested in learning skilled agricultural techniques.

USDA, either through its own competitive grants program or in collaboration with other Federal agencies, should conduct research to investigate the impact of pesticides on farmworkers and mitigation of those impacts. Farmworkers have historically been neglected in past studies, as

evidenced by the recent collaboration between the Environmental Protection Agency, the National Cancer Institute (NCI), and the National Institute of Environmental Health Sciences' (NIEHS) $15 million, 10-year epidemiological study on farm family health. This important study excluded Hispanic farmworkers, who make up 70 percent of seasonal and 91 percent of the migrant agricultural labor force. In addition, researchers should collaborate with and provide financial support for community-based research by people directly affected by pesticides, such as small farmers and farmworkers. Resources are needed to encourage collaboration in order for the land-grant universities and colleges to work more closely with community-based farmworker organizations on issues related to farmworkers and pesticides. The Fund for Rural America should strongly consider issues relating to farmworkers and proposals submitted by farmworker organizations that directly work with this underserved USDA constituency.

Recommendation 8.2

The Commission endorses CRAT recommendations 61, 62, 63, and 64 and suggests continued progress toward implementation of the recommendations:

CRAT Recommendation No. 61: *"Enforce the requirement that those who use "restrictive use pesticides" keep records of the application of their products."* Top priority should be given to farms that employ farmworkers.

CRAT Recommendation No. 62: *"Immediately provide pesticide information to health care providers treating pesticide-related illnesses."* Congress should appropriate the $3.5 million requested by CSREES for updating and maintaining the Extension Toxicology Network database. The national computerized pesticide recordkeeping network on restricted use pesticides should be accessible to all health care professionals treating pesticide-related illnesses. Training should be provided for community health care providers in the diagnosis, treatment, and proper reporting of pesticide and other work-related illnesses in communities with high farm worker populations. This training should be conducted in collaboration with farmworker organizations that are familiar with pesticide practices and the accompanying symptoms exhibited from pesticide exposure. This combination of information and training will ensure that quality medical care is being provided to farmworkers as well as small farm operators.

CRAT Recommendation No. 63: *"Require USDA to use this information to prepare comprehensive annual pesticide use reports, as mandated in the 1990 and 1996 farm legislation."* Currently, it is extremely difficult to get an accurate account of pesticides used in States other than California. This mandate was included in both the 1990 and 1996 farm bills and needs to be implemented now. Congress should appropriate the $2 million increase in the NASS budget with the purpose of preparing the annual pesticide use reports and also to enhance future pesticide use surveys. The increased appropriation should be used to expand the survey to include crops that are more labor intensive.

CRAT Recommendation No. 64: *"Enforce the Environmental Justice Executive Order at USDA."* The Environmental Justice Executive Order requires that "each agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands."[64]

Farm-related stress

Underlying much of the testimony received by the Commission were signs of emotional and physical stress due to the uncertainties and high risk associated with farming. Family farms, like

other family businesses, put family relationships among spouses, children, parents, and grandparents in the context of the day-to-day operation of the farm. Crop failures and low prices can have significant impacts on the emotional well-being of farm families as well as on farm families within the context of rural communities.

Recommendation 8.3

USDA and land-grant university researchers should look to rural sociologists and specialists in the behavioral sciences to understand the social impacts resulting from a rapidly evolving farm policy and changing rural society. Research should examine the social, psychological, and emotional issues relating to farm operations. This research should be used to design intervention programs by USDA, Extension, and other groups to provide personal counseling, family counseling, stress management, lifestyle assessment and change, and farm management. In addition, researchers should develop a set of indicators to assess community-level social stress in order to monitor and improve the conditions of rural communities. This research should be conducted as a collaboration between land-grant university researchers and community-based organizations.

In another area of concern, the Commission encourages the Secretary to give consideration to recommendations regarding the need to support farmers with disabilities. They were not received in time for full review by the Commission. The National Easter Seal Society has suggested that USDA expand the AgrAbility Program and establish a Center on Disability and Agriculture.

U.S. Department of Agriculture
Washington, DC
DR 1043-43 July 9, 1997
Natural Resources Conservation Service

PURPOSE
This regulation establishes the National Commission on Small Farms (Commission). The purpose of the Commission is to gather and analyze information regarding small U.S. farms and ranches and recommend to the Secretary of Agriculture a national strategy to ensure their continued viability, including specific measures the public, nonprofit and private sectors can take to enhance the economic livelihood of small farms.
The Commission is in the public interest and within the duties and responsibilities of the Department of Agriculture (USDA). Establishment of the Commission also implements the recommendation of the USDA Civil Rights Action Report to develop a national policy on small farms.

SPECIAL INSTRUCTION
This regulation will expire two years from the date of filing.
Unless renewed, the Commission will terminate two years from the date of filing.

OFFICERS AND MEMBERSHIP
The Commission may have as many as 30 members, one of who will serve as chair and two who will serve as vice-chairs. Members will represent small farms and ranches, finance, commerce, rural communities, nonprofit organizations, academia, state and local governments, Native Americans, farmworkers, and the diverse groups USDA programs serve, and other interests as the Secretary determines. USDA will follow equal opportunity practices in making appointments to the Commission. Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.
The Secretary of Agriculture shall make all appointments to the Commission and the members will serve at the Secretary's discretion.

The Commission may establish subcommittees as it determines necessary subject to the provisions of the Federal Advisory Committee Act and the approval of the Chair or the Chair's designee.

EVALUATION AND ANALYSIS

The Commission will gather and evaluate information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. This evaluation and analysis should include:

USDA and other studies, information and data, such as transcripts of public hearings for the Civil Rights Action Team, the Rural Summit, the Civil Rights Action Report, and the reports of the USDA Sustainable Agriculture Working Group and the Advisory Committee on Agricultural Concentration:

Current USDA programs that serve small farms and ranches and the effectiveness of those programs, including but not limited to farm loans, rural development loans and grants, research, extension, and education programs, outreach and technical assistance, natural resource conservation, private forestry, risk management, marketing, fair trade practices, trade and export promotion, farm labor, and mediation;

Other Federal, state, and private sector programs and policies that serve small farms and ranches and the effectiveness of those programs;

The needs of individuals and families starting and operating small farms and ranches, including but not limited to credit, agricultural production and diversification, specialty crops, private forestry, marketing, risk management, research, education, extension, mediation and alternative dispute resolution, natural resource conservation, outreach, and technical assistance;

The effectiveness of different types of farm operations and production systems in ensuring the viability of small farms and ranches, including, but not limited to, sustainable agriculture, diversified and integrated operations, specialty and niche crops, direct marketing, alternative uses of agricultural products, community supported agriculture, and cooperative or coordinated production, processing, and marketing systems, including locally-owned, value-added cooperatives, as well as barriers to and ways in which to promote the adoption of the most effective and efficient operations and production practices by small farm and ranch operators;

Availability and accessibility of credit and other financing options;

Ways to assist beginning farmers and ranchers as well as to assist farmworkers including facilitating the transition from farmworker to farm or rancher owner or operator;

Relationships among USDA programs, estate planning, and other factors influencing land ownership and the conversion of productive farm land to non-farm uses;

The effects, if any, of USDA's organizational and management structure on the viability of small farms and ranches;

Agricultural market, structural, and organizational trends as they relate to small farms;

The role of USDA, if any, in facilitating the fair and effective operation of small farms and ranches in vertically integrated agricultural systems;

The interdependence of small farms and ranches and rural economies and communities; and

The social, cultural, and environmental contributions of small farms.

FINDINGS AND RECOMMENDATIONS

Based on the evaluation and analysis described in Section 4 and the public hearings described in Section 8, the Commission shall make findings and shall recommend a national strategy to ensure the continued viability of small farms and ranches in U.S. agriculture. The findings and strategy shall address the issues analyzed by the Committee under Section 4, including, but not limited to:

Ways to make existing USDA or other Federal, state, private or non-profit programs, policies and practices more effective at meeting the needs of and practices more effective at meeting the needs of and provide a stronger safety net for small farms and ranches;

New USDA or other Federal, state, private, or non-profit programs, policies, and practices, that would benefit small farms and ranches and provide a stronger safety net for small farms and ranches;

The types of production systems and practices noted in number (5) of Section 4 that are likely to be the most effective for small farms and ranches and ways in which to improve and facilitate the adoption by small farms and ranches of such systems and practices;
Ways to assist beginning farmers, farmworkers, including addressing minorities, women, and persons with disabilities, to become farm owners or operators; and
The role of USDA in assisting small farms and ranches in vertically integrated agricultural systems, such as producer education about contract production or regulatory action to ensure fair contracts and practices, as well as any additional steps USDA should take to address issues of agricultural concentration.

HEARINGS AND PUBLIC PARTICIPATION

The Commission will hold public forums and hearings as specified in Section 8 and may hold additional forums and hearings and solicit public comment as necessary and appropriate within budgetary constraints.

ESTIMATED ANNUAL OPERATING COSTS

Commission members shall serve without pay and without reimbursement of travel or per diem costs, except reimbursement of travel and per diem costs shall be made to a Commission member who requests and otherwise would be unable to serve without such reimbursement.
Annual operating costs are estimated to be $155,000 including .33 staff year support for fiscal year 1997, and $35,000 including .20 staff years for fiscal year 1998.

NUMBER AND FREQUENCY OF MEETINGS

The Commission will meet as necessary to perform its functions as determined by the chair. The Commission will hold at least three public hearings, which may be in conjunction with working sessions of the Commission.
The designated Federal official shall be responsible for the prior approval of the agenda for all full Commission meetings and notification of Commission meetings and agendas in the Federal Register.

REPORTS/SUPPORT

The Commission shall submit its findings and recommendations to the Secretary of Agriculture by September 30, 1997.
Funding and support for the Commission will be provided by the Natural Resources and Conservation Service.

AFPA	Agricultural Fair Practices Act
AMS	Agricultural Marketing Service
APHIS	Animal and Plant Health Inspection Service
ARS	Agricultural Research Service
ATTRA	Appropriate Technology Transfer for Rural Areas
B&I	Business and Industry
CRAT	Civil Rights Action Team
CRIT	Civil Rights Implementation Team
CSREES	Cooperative State Research, Education, and Extension Service
EQIP	Environmental Quality Incentive Program
ERS	Economic Research Service
FAC	Food and Agriculture Council
FAIR	Federal Agriculture Improvement and Reform Act
FAS	Foreign Agricultural Service
FCS	Farm Credit System
FFAS	Farm and Foreign Agricultural Service

FICA	Federal Insurance Compensation Act
FmHA	Farmers Home Administration
FMNP	Farmers Market Nutrition Program
FNS	Food and Nutrition Service
FS	Forest Service
FSA	Farm Service Agency
FSMIP	Federal-State Marketing Improvement Program
GATT	General Agreement on Tariffs and Trade
GIPSA	Grain Inspection, Packers and Stockyards Administration
IRP	Intermediary Relending Program
IRS	Internal Revenue Service
MRP	Marketing and Regulatory Programs
NAFTA	North American Free Trade Agreement
NASS	National Agricultural Statistics Service
NCI	National Cancer Institute
NIEHS	National Institute of Environmental Health Sciences
NRCS	Natural Resources Conservation Service
NRE	Natural Resources and Environment
OBPA	Office of Budget and Program Analysis
OGC	Office of the General Counsel
OSHA	Occupational Safety and Health Administration
PACA	Perishable Agricultural Commodities Act
PCSD	President's Commission on Sustainable Development
RBEG	Rural Business Enterprise Grant
RBS	Rural Business-Cooperative Service
RC&D	Resource Conservation and Development
RD	Rural Development
REE	Research, Education and Economics
RMA	Risk Management Agency
SARE	Sustainable Agriculture Research and Education
USDA	United States Department of Agriculture
WIC	Women, Infants and Children

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[23] Written testimony of Mark Lipson, Organic Farming Research Foundation, Santa Cruz, CA. September 22, 1997.

[24] Understanding Rural America. Research report. 25 pp. February 1995. Stock # ERS-AIB-710.

[25] RD Instruction 1942-G, 1942.305 (b) (3) and RD Instruction 4279-B, 4279.156 (b) (5), respectively.

[26] Sec. 3(a) (1) For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: Provided, that notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000.

[27] "Traditionally underserved" generally refers to ethnic minority farmers, including African-American, American Indian, Hispanic or Asian-Pacific Islanders, as well as women farmers.

[28] Letter received from Patricia Mari, USDA-NRCS, Geenfield, MA. September 4, 1997.

[29] Omar Garza, dryland farmer and Starr County, Texas Soil and Water Conservation District Director, public meeting in Albuquerque, NM. September 4, 1997.

[30] Daniel Mountjoy, testimony at the public meeting in Sacramento, CA, on September 15, 1997.

[31] RD Instruction 4279.113 (h).

[32] Testimony of Betty Puckett, farmer advocate, representing the National Family Farm Coalition, Louisiana Interchurch Conference and the National Catholic Rural Life Conference, public meeting in Memphis, TN. July 28, 1997.

[33] Testimony of Teresa Maurer, Appropriate Technology Transfer for Rural Areas, Fayetteville, AR, at public meeting, Memphis, TN. July 28, 1997.

[34] Testimony of Drew Brown, principal owner, Ag Sell, diversified consulting and management company, and chair, Minority Agricultural Resource Center, Sacramento, CA, at public meeting, Sacramento, CA. September 15, 1997.

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[53] Hamilton, Neil D. A Farmers' Legal Guide to Production Contracts. Farm Journal. January 1995. p. 124-125.
[54] Heffernan, William D. Agricultural Profits: Who Gets Them and Who Will in the Future?" Gulf Coast Cattleman. Volume 68, Number 2, April 1997. p. 11.[55] Ibid.
[55] Rural Development Instruction 4279-B. 4279.113 (h). Previously, agricultural production was prohibited from B & I loans because they are available through FSA.[57] "Agriculturally dependent" refers to counties with 20 percent or more of their earnings coming from production agriculture.
[58] This refers to women who are the primary farm operator within a household; it does not refer to women in a household where the man is the primary farm operator.
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[60] Paul Casper, farmer and member of South Dakota Soybean Processors, testimony at the Sioux Falls, South Dakota public meeting, August 22, 1997.
[61] "FASTRAC" is a proven business development curriculum program, developed with support from the Kaufman Foundation, and offers comprehensive business training in financing, production, and marketing through a multiple-week training program.
[62] Testimony of Teresa Maurer, Appropriate Technology Transfer for Rural Areas, Fayetteville, AR, at public meeting, Memphis, TN. July 28, 1997.
[63] Testimony of Lorette Picciano, Rural Coalition, Washington, DC, at public meeting, Washington, DC. September 10, 1997.
[64] Testimony of Jose Montenegro, Rural Development Center, Salinas, CA, public meeting at Sacramento, CA. September 15, 1997.

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Small farms cannot exist in a vacuum as relics of days gone by preserved for the tourists or nostalgia for how most everyone's great grandparents lived. Small farms are a vital functioning part of a working landscape that includes Jeffersonian entrepreneurs of all kinds—locally owned grocery stores, garages, machinery dealerships and other businesses operating on a similar scale as the farmers they both serve and depend on.
— Clark Hinsdale, Vermont

Our elders say that money is just money for it is the land and water that will house, feed, and nourish the Hopi people in the distant future. It is the land that will remain to remind the children about traditions, beliefs, customs and life ways. It is this land that we will call home.
— Michael Elmer, Hopi Tribe

The opportunities that exist for small-scale agriculture have to do with relatively minor crops, specialty crops, high-value crops, in many cases, organic fruit and vegetable

production, and those types of commodities are not currently served by traditional experiment station structure or traditional USDA programs.
– Mark Gaskell, California

The fact that we have fewer and fewer extension agents and fewer and fewer dollars going into our genetic preservation and into research and education, it's just tragic. The privatization of information and technology is the greatest hurdle faced by agriculture.
– John Happala, Oregon.

I would strongly urge the remarriage of agriculture as an engine of change in rural development. It would culminate in a much more comprehensive approach to rural development.
– Michael Sligh, North Carolina

We've made a lot of noise. We've done a lot of testifying as Native American people. But unless you can make that local service delivery happen, then you can have all the Commission hearings you want. I'm sorry, that's just the way it is. It's not happening, and we're becoming apathetic about it out in Indian country.
— Claryca Mandan,
North Dakota

We're told daily that supply and demand are the market forces that provide for market price, but when we examine the real world with the theory of perfect competition, we have to have perfect knowledge, unperishable products, and a large enough number of market participants, and [assurance] that no single participant could influence the market. Well, that's not the case in the food chain today.
– Bill Brey, Wisconsin

You have the Packers and Stockyards Act of 1921. You don't need any new laws. You just need to enforce the one that you've got.
– Coy Cowart, Oregon

There has to be something done in Congress soon to get at least a 13.50 price for dairy farmers. There's not a one that's cash-flowing out there. We cannot survive on this.
– Sharie Lien, Minnesota

Whatever we do or do not do in relationship to our structure of food production will illustrate the type of nation we are about to become — a nation that concentrates the wealth and resources in the hands of fewer and fewer people, or whether we are still a nation that believes that many people were intended to share in the great abundance and wealth God blessed this country with.
– Gary Lamb, Iowa.

We have to provide an opportunity for vertically integrated companies to be owned by the folks at the bottom, and not just the folks at the top.
– Dave Carter, Colorado

The marketing is the tough thing. I mean, as farmers, we were not trained to be marketers. We were hauling the stuff to town and saying, "What'll you give me for it?"
– Ron Macher, Missouri

USDA can support community-based organizations not just through funding, but also through collaborative projects that help guide university research and extension programs to better serve minority farmers.

- Jose Montenegro, California

For me, as a small, young farmer, if I'm going out right now, and I'm going to try to start a farm or start a program, I go to get money, they just kind of look at me and laugh. They just don't really understand the reason why I'm there or what I'm trying to do.
– Joel Harper, Kentucky

Because if it's a cost-prohibitive answer, it's no answer at all…
— Richard Edgar, Alabama

Small farms have a role in urban and suburban areas as well as the traditional view of rural areas. Small farms have a role in preserving some of the farmland that's rapidly disappearing.
– John Fawcett-Long,
Washington.

Small family farms have kept our water pure, our environment clean, for over a hundred years. Factory livestock farming and corporate farming could end all of that.
- Bob Weber, South Dakota

Attention needs to be given to the fact that the small farmer, the crops that he grows are just as important to him as the cotton is to the large farmer.
– Melvin Crum, South Carolina.

Because the large corporations pay lower wages, it's hard for the small farmers who pay better and invest more in their workers—It's hard for them to compete with the corporations who can produce for lower costs.
– Tirso Moreno, Florida

The land is a symbol of family welfare and safety, of family status in the community and the world, and is a sacred trust for their ancestors, other family members, future descendants and God, and a sense of family pride. These values in human terms are what contribute to the social fabric of our communities.
— Mary Ellen McKay,
New Mexico

APPENDIX L

United States and State Data

Preliminary Report

AC-02-A-PR

2002
CENSUS OF
AGRICULTURE

Issued February 2004

U.S. Department of Agriculture
Ann M. Veneman, Secretary
Dr. Joseph J. Jen, Under Secretary for
Research, Education, and Economics
NATIONAL AGRICULTURAL STATISTICS SERVICE
R. Ronald Bosecker, Administrator

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Introduction

Preliminary 2002 Census of Agriculture statistics presented in this report describe the number of farms and ranches by size and type for each State and the Nation. Selected demographic items portray the American farmers and ranchers who are the source of U. S. agricultural production. Demographic data include gender of operator, age group categories, race, years on present farm, days worked off farm, number of persons living in farm households, and number of households deriving income from this farm or ranch. Data are presented as preliminary because the comprehensive census review of all items to the county level is continuing. These data are therefore subject to some limited change when final census results are released. The expected date for the release of the complete report is June 3, 2004.

The Abbreviated Historical Highlights table provides selected data items for each census from 1974. Since 1969, the census of agriculture has been conducted principally via mail returns using a list of known and potential operators. Although comprehensive in measuring the vast majority of U.S. economic activity in agriculture, the mail list provides an incomplete measure of all operations that qualify as farms or ranches. The official definition of a farm or ranch includes all places where $1,000 or more of agricultural products were sold, or normally would have been sold, during the census year. Many small operations meeting the farm definition do not appear on any list of agricultural producers or farm program recipients and therefore have not been represented by the census mail enumeration.

The 2002 Census of Agriculture introduced new methodology to account for all farms in the United States. Incompleteness in the census mail list has been measured by matching list names against all qualifying operations found by canvassing sample land areas throughout the nation. Information from an area based sample has historically been used to evaluate the coverage achieved in agricultural censuses. It is primarily new and small operations, and often women and minority operators, who are underrepresented on the mail list.

To assist data users to transition to the new, more complete census basis, the 1997 Census of Agriculture results are provided two ways. Data for 1997 are shown as published earlier with comparisons to previous censuses and then reweighted for undercoverage to be more comparable to the 2002 Census of Agriculture results. The 1997 Census thereby provides a "bridge" from the data that were based solely on the mail list to the current 2002 representation of all U.S. farms and ranches. Only one set of 1997 data is presented for Alaska and Hawaii as no coverage adjustment occurred for these two states.

The total number of farms in the United States serves as an example of the impact of the change. In the 1997 Census of Agriculture, the mail list accounted for 1,911,859 farms and ranches. Adding in the measured undercoverage resulted in a 1997 total of 2,215,876 farms and ranches as shown in the Historical Highlights table.

The comparable total for all U.S. farms and ranches in 2002 is 2,129,226 representing a decline of approximately 4 percent since 1997. Most of the farm land has historically been included in the mail census totals since the larger operations are on the mail list. Therefore, there are proportionally larger changes to number of farms as a result of coverage adjustment than to land in farms. This lowers the average farm size on the new basis.

General Terms

The following definitions and explanations apply to the terms and phrases used in this publication. Definitions are essentially the same as those used in earlier censuses, but new items have been added and are explained below.

Farm. In 2002, a farm is defined as any place where $1,000 or more of agricultural products were produced and sold, or normally would have been sold. The $1,000 threshold can be met by any combination of sales and government payments. Abnormal farms are institutional, experimental, and research farms.

Land in farms. The acreage designated as "land in farms" consists primarily of agricultural land used for crops, pasture, or grazing. It also includes woodland and wasteland, provided it was part of the farm operator's total operation. Land in farms includes acres in the Conservation Reserve Program (CRP) and Wetlands Reserve Programs (WRP).

Land in farms is an operating unit concept and includes land operated by owners, by those renting from others, and operated by hired managers. Land used rent free was to be reported as land rented from others. All grazing land, except land used under government permits on a per-head basis, was included as "land in farms" provided it was part of a farm or ranch. Land under the exclusive use of a grazing association was to be reported by the grazing association and included as land in farms. All land in American Indian reservations used for growing crops or grazing livestock was to be included as land in farms. Land in reservations not reported by individual American Indians or Alaska Natives or others was to be reported in the name of the tribal group that used the land. In many instances, an entire American Indian reservation was reported as one farm.

Value of sales. This category represents the gross market value of agricultural products, before taxes and production expenses, for all agricultural products sold or removed from the place in the census year, regardless of who received the payment. It includes sales by the operator(s) as well as the value of any shares received by partners, landlords, contractors, or others associated with the operation. The value of commodities placed in Commodity Credit Corporation (CCC) loans is included in this figure. It does not include payments received for participation in other federal farm programs. Also, it does not include income from farm-related sources such as custom work and other agricultural services, or income from non-farm sources. Sales are expressed in current dollars for each census of agriculture with no adjustment for inflation.

Demographic Terms

The term operator designates a person who operates a farm or ranch, either doing the work or making day-to-day decisions about such things as planting, harvesting, feeding, and marketing. An operator may be the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper. A person renting land to others or having land worked on shares by others is considered the operator only of the land retained for his/her own operation. A farm may have more than one operator. However, each operation was asked to designate one principal operator, defined below.

Total Operators. This category represents the total reported number of operators on farms and ranches. The 2002 census is the first census to ask for the total number of operators associated with the operation. It is also the first time the total number of women operators has been determined.

All (Multiple) Operators. The 2002 Census of Agriculture is the first census to collect data for more than one operator per farm. Demographic and other information was collected for up to three operators per farm, the principal operator plus one or two additional operators. This may be fewer than the total number of operators on some farms. Table columns designated as "all operators" refer to these multiple operators. Demographic data on up to the 3 operators reported are presented separately for women, by race categories, and for Hispanic origin.

Demographic information for multiple operators was collected for place of residence; days worked off farm; year began operating farm; age; sex; primary occupation; Spanish, Hispanic, or Latino origin; race; residence on an American Indian reservation; and

number of persons living in household. If data were not reported for any of the items, they were imputed based on information reported by nearby farms with similar acreage, tenure, and value of sales.

Principal operator. The person responsible for the on-site, day-to-day operation of the farm or ranch business. This person may be an owner, renter, a hired manager, or business manager.

Primary occupation. Primary occupation classifications were "Farming" and "Other". Operators selected the category associated with where they spend more than 50 percent of his/her work time.

Race. Data are provided for six race categories: White, Black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, Asian, and for operators reporting more than one race. The 2002 census is the first to provide respondents the opportunity to choose more than one race category; operators classified as "more than one race" are not included in any of the single race categories. Operators of Spanish, Hispanic, or Latino origin are found in all of the racial groups listed in the census and were tabulated according to reported race.

American Indian and Alaska Native farm operators. This category was previously labeled American Indian operators; and included Alaska Native operators. To ensure complete coverage of this category the term Alaska Native was added in 2002 census.

Number of households sharing in net income of farm. These data are new in the 2002 Census of Agriculture. The principal operator reported the number of households sharing net income. Hired managers were excluded from reporting this item.

Symbols and abbreviations. The following symbols and abbreviations are used throughout the tables:

-	Zero
(X)	Not Applicable
(NA)	Not Available or Not Published

If you have any questions about the census of agriculture, please call the National Agricultural Statistics Service at 800-727-9540.

United States

Abbreviated Historical Highlights: 2002 and Earlier Census Years

[For meaning of abbreviations and symbols, see introductory text]

All farms	2002	1997	Not adjusted for coverage					
			1997	1992	1987	1982	1978	1974
Farms ..... number	2,129,226	2,215,876	1,911,859	1,925,300	2,087,759	2,240,976	2,257,775	2,314,013
Land in farms ..... acres	939,506,813	954,752,502	931,795,256	945,531,506	964,470,625	986,796,579	1,014,777,234	1,017,030,357
Average size of farm ..... acres	441	431	487	491	462	440	449	440
Farms by size:								
1 to 9 acres	179,184	205,390	153,515	166,496	183,257	187,665	151,233	128,254
10 to 49 acres	562,952	530,902	410,933	387,711	412,437	449,252	391,554	379,543
50 to 179 acres	658,804	654,488	592,972	584,146	644,849	711,852	759,047	827,864
180 to 499 acres	389,442	426,215	402,769	427,548	478,294	528,510	581,631	816,068
500 to 999 acres	161,879	179,447	175,690	188,367	200,058	203,925	213,209	207,297
1,000 to 1,999 acres	99,068	103,007	101,468	101,923	102,078	97,395	97,800	92,712
2,000 acres or more	78,037	74,426	74,612	70,989	66,786	64,577	63,301	62,225
Farms by value of sales [1]:								
Less than $2,500	827,504	693,026	498,514	422,767	490,296	536,327	489,535	649,448
$2,500 to $4,999	211,941	269,667	228,477	231,867	262,916	278,208	300,699	257,283
$5,000 to $9,999	222,640	267,576	237,975	251,983	274,972	281,902	314,086	296,373
$10,000 to $24,999	256,576	293,639	274,040	301,804	328,166	340,254	384,876	
$25,000 to $49,999	156,270	179,829	170,705	195,354	219,835	248,823	309,516	[4] 956,992
$50,000 to $99,999	140,584	163,510	156,150	187,760	218,050	251,501	263,022	
$100,000 to $499,999	240,998	252,422	277,194	280,951	263,698	274,580	203,698	141,187
$500,000 or more	70,812	70,408	68,794	46,914	32,023	27,800	17,973	11,412
Farms by type of organization:								
Family or individual	1,909,211	1,922,590	1,643,424	1,653,491	1,809,324	1,945,639	1,985,860	(NA)
Partnership	129,831	185,607	169,462	186,905	189,559	223,274	232,538	(NA)
Corporation	73,966	80,432	84,092	72,567	68,969	58,792	50,231	(NA)
Other-cooperative, estate or trust, institutional, etc	16,198	17,247	14,871	12,436	11,907	12,271	9,146	(NA)
Total operators	3,119,573	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
Total women operators	647,690	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
Principal operator by days of work off farm [2]:								
None	962,903	832,595	755,254	801,861	844,478	881,798	942,809	829,943
Any	1,166,323	1,254,537	1,042,158	992,773	1,115,580	1,167,374	1,203,256	1,011,476
200 days or more	832,987	870,945	709,279	665,570	737,206	774,844	770,045	657,971
Principal operator by primary occupation [3]:								
Farming	1,225,954	1,044,388	961,560	1,053,150	1,138,179	1,234,787	1,209,306	1,427,368
Other	904,172	1,171,488	950,299	872,150	949,580	1,006,189	986,470	851,902
Average age of principal operator [4] ..... years	55.3	54.0	54.3	53.3	52.0	50.5	50.3	51.7
Number of persons living in household of-								
Principal operator	5,717,496	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
Second operator	712,245	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
Third operator	186,020	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
Farms by number of households sharing in net income of farm:								
1 household	1,646,543	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
2 households	314,943	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
3 households	83,152	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
4 households	28,704	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
5 households or more	21,380	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)

[1] Data for 1982 and prior years exclude abnormal farms.
[2] Data for 1997 and prior years do not include imputation for item nonresponse.
[3] Data for 1974 apply only to individual or family operations (sole proprietorships) and partnerships.
[4] Farms with value of sales of $10,000 to $99,999.

Principal Operators by Race: 2002 and 1997

[For meaning of abbreviations and symbols, see introductory text]

Item	2002	1997	1997 Not adjusted for coverage
White	2,067,391	2,154,284	1,864,201
Black or African American	29,145	26,785	18,451
American Indian or Alaska Native	15,417	12,911	10,936
Native Hawaiian or Other Pacific Islander [1]	970	(NA)	(NA)
Asian	8,390	9,620	8,731
More than one race reported	7,913	(NA)	(NA)
Other race	(NA)	12,276	9,836

[1] In 1997, Asians and Native Hawaiians or Other Pacific Islanders were tabulated in one group.

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The Honorable Steve Chabot, Chairman
House Judiciary Committee Subcommittee on Constitution
362 Ford House Office Building
Washington, D.C. 20515

October 4, 2004

Dear Chairman Chabot,

To supplement my written testimony for the September 28, 2004 hearing on the Status of the Implementation of the Pigford v. Veneman Settlement, I have attached for your consideration, supplemental materials regarding the U.S. Department of Agriculture's (USDA) underestimation of damages for Pigford Track B cases, based primarily on information from two publicly reported civil rights cases brought against USDA, Haynie v. Veneman and *In re* Will Sylvester Warren. An explanation of the additional information follows.

At the center of the issue is USDA's use of a damages model that estimates damages based on the average income of all farmers in a geographic area. USDA used geographic-defined averages to estimate damages in Pigford Track B cases as well as in the Haynie and Warren cases. *See* U.S. Department of Agriculture Economic Research Service Assessment of Potential Economic Losses for Track B Damages Assessments (redacted due to protective order), attached herein as Appendix 1. USDA's expert, Ronald Trostle, testified in a deposition that the U.S. Department of Justice (DOJ) hired USDA's Pigford team of economists to handle the Haynie damages assessment because it was considered a Pigford-like case. *See* Haynie v. Veneman Deposition of Ronald G. Trostle, at 7:11-21:4, attached herein as Appendix 2. This methodology, when applied to a farmer with a larger-than-average farm and crop yield, who uses innovative technologies and efficient techniques such as double-cropping, and farms full-time, yields a significantly lower estimate of damages than one that calculates damages based on the income of farms with similar characteristics related to efficiency and productivity. *See* Haynie v. Veneman, Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment as to Liability and Damages in Civil Action 00-251 at §IIB, attached herein as Appendix 3; Haynie v. Veneman, Plaintiffs' Corrected Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment as to Liability and Damages in Civil Action 00-2516, at §IV, attached herein as Appendix 4; *In re* Will Sylvester Warren, December 17, 2002 Determination, at 26-28, attached herein as Appendix 5. USDA's expert admitted that the use of a geographic average could underestimate damages when applied to a large farm that uses best practices. *See* Haynie v. Veneman Deposition of Ronald G. Trostle, at 184:3-10, attached herein as Appendix 2. Additionally, the USDA model was discredited by a USDA administrative law judge in a December 2002 opinion, which found that the method yielded "virtually impossible results" that were "totally implausible." *See* *In re* Will Sylvester Warren, December 17, 2002 Determination at 26-28, attached herein as Appendix 5.

To provide you with further details of the experts' theories in the cases, I have also attached the Declaration of the Haynie's economist, S. Murthy Kambhampaty, and that of USDA's economist, Ronald Trostle. *See* Haynie v. Veneman, Declaration of S. Murthy Kambhampaty Regarding Estimated Damages to the Haynies' Farming Operation in Civil Action 00-2516, attached herein as Appendix 6; *See also* Haynie v. Veneman, Declaration of Ronald Trostle regarding Estimated Damages to the Haynies' Farming Operations in Civil Action 00-2516, attached herein as Appendix 7.

Overall, these materials raise important concerns regarding DOJ and USDA use of an economic damages model that underestimates damages incurred by farmers in Track B of the Pigford settlement.

Thank you for giving this information your consideration. Please do not hesitate to contact me if I can be of any further assistance in your investigation.

Sincerely,

Arianne Callender
General Counsel

enc

cc: Bobby Vassar

APPENDIX 1

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0001

U.S. Department of Agriculture
Economic Research Service
Assessment of Potential Economic Losses

Complainant: Claim No.
Location:
Agency: Farm Service Agency (FSA)

Assessment of Potential Economic Losses

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

Economic Modeling

Standard economic budgeting and accounting analyses were conducted for an average farm in with the crop mix of the Complainant's operation. This analysis of the complainant's farming operation addresses the farms potential to have generated net farm income in each year for the period of alleged discrimination. For each crop enterprise on the farm and for the participation in government programs, this income analysis estimates the net returns to the operator assuming average production practices, crop yields, prices, and economic costs for the geographical area. (Attachment 1 provides the results of this analysis). Economic costs include variable, overhead, capital replacement, and operating capital costs of farming in the region. (See Attachment 2 for a description of costs used in the analysis.)

In the Income Analysis, full budgeted costs in which all factors used in production are paid an average rate of return are taken as the relevant measure of production costs to derive Net Farm Income. The operator is credited with the returns to all owned factors that he supplies. Variable operating costs are adjusted to reflect differences between average yields in County and those of the region.

The first question that needs to be determined is could this operation have been economically viable? If that question is answered in the affirmative, then the second question for determining economic damages is what net worth could the operation have generated over the period of the alleged discrimination?

Assumptions

- The period of discrimination used in the analysis was 1987 to 1999.
- The complainant rented land to grow rice, cotton, soybeans, and double-cropped wheat, as stated in the complainant's claim.
- Although the complainant actually ceased farming in 1994, as stated in the complainant's claim, it was assumed that the complainant continued to farm from 1995 to 1999.
- It was assumed that the complainant would have used sufficient inputs and management to achieve average yields for all crops each year from 1987 through 1999.

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RGT 0002

- Average State prices and county yields for all crops, as published by NASS/USDA, were assumed in the analysis.
- Cost of Production Accounts published by ERS/USDA, with variable costs adjusted to the county average yield, were assumed to represent an average farm growing these crops and achieving these yields in For soybeans, cotton, and double-cropped wheat; cost of production data for the Region were used in the analysis. For rice, cost of production data for the were used, as was done in the Complainant's analysis, since County rice growing conditions are more like those of the than of the area.
- Cash components of costs of production that would have been paid to others, include:
  (1) variable operating costs,
  (2) general farm overhead expenses, such as rental payments for renting land, property taxes on owned land, insurance, licenses, building and fence repair costs, and the farm share of utilities, telephone, and motor vehicles were used to estimate the net returns to the operator.
  (3) capital replacement (machinery maintenance and replacement)
  (4) operating capital charges to cover the interest payments on loans to purchase inputs.
  (Definitions of costs included in the analysis are presented in Attachment 2.)
- All costs must be met for the farm to remain viable over the 13-year period of the scenario analysis.
- Variable costs were adjusted to the county average yield (indexed by the ratio of the county-average yield to the regional yield used in the cost of production data) that was assumed to represent an average farm growing these crops in
- Costs not deducted from farm income include compensation for nonland capital (it was assumed that the owned all their machinery and equipment free and clear and therefore paid no interest on loans to purchase machinery and equipment), and for unpaid labor.
- The operator was assumed to receive the average rate of return from the ERS cost of production budgets for each factor he supplied into the production process, i.e. unpaid labor, owned land, and non-land capital.
- The complainant is assumed to have no off-farm income
- The Farmers Home Administration (later FSA) was assumed to extend to the complainant sufficient credit to finance operating expenses plus any shortfall in Net Farm Income below obligations for interest payments, principal payments, and family living expenses each year.
- The Complainant's land rental and cropping patterns for 1987 through 1999 are assumed to be the same as shown in the Complainant's analysis.
- For set-aside acres in Government Programs, the land cost was assumed to be the same as for planted acres. Operating costs associated with the management of any set-aside acreage required for participation in the government program are included (from ERS data).
- For CRP, the land cost was assumed to be equal to the rental cost for pasture land in (as published by ERS).

Scenarios

The following specific scenarios were examined:

Scenario 1: Complainant's Claim - - Assuming Discrimination: The Complainant provided insufficient information to analyze his farming operation during the 1987-1994 period. The Claimant's analysis, itself, assumes zero income (neither profits nor losses).

Scenario 2: The Counter-Factual Scenario - - Without Discrimination: To estimate the potential net farm incomes, by year for 1987 through 1999, assuming the complainant yields, prices, costs of production, and government benefits similar to an average farmer producing the same crop mix as the Complainant claims to have used during the 187-1994 period that he did farm.

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Results

Scenario 1: Complainant's Claim - - Assuming Discrimination:
Assumes zero net farm income from farming.

Scenario 2: The Counter-Factual Scenario - - Without Discrimination:
The results of the analysis of the Counter-Factual Scenario 2 are described in Attachment 1. The Scenario indicates that an average farm producing the complainant's assumed mix of crops with the assumed acreage would have generated between 1987 and 1999:
$1,929,664 of farm income in excess of variable operating costs,
$ 874,667 of farm income in excess variable operating costs and cash overhead expenses,
$ **289,257** of farm income in excess of **costs paid to others** (variable operating, cash overhead, capital replacement, and operating capital costs). This is the appropriate measure to use for net farm income *if the owned their own machinery and equipment free and clear.*

$ **117,868** This alternative measure of net farm income assumes the did not own their machinery and equipment free and clear, but borrowed money to purchase it. This is net farm income in excess of all costs listed above plus a deduction for nonland capital (the interest cost associated with debt incurred to purchase machinery and equipment).

In conclusion, *assuming the did not own their own machinery and equipment free and clear,* the estimated damages to farm income from the alleged discrimination for the 1987-1999 crop years is $117,868. However, because the Complainant received funds from a $36,084 "Discharge of Indebtedness" associated with his farming operation, damages are reduced by that amount, leaving net damages of **$81,784.**

This analysis and other indicators show that the 1987 to 1994 period was a difficult time for farm similar to
(1) The analysis shows that in 4 of the 8 years from 1987 to 1994, when the were farming, an average farm operation similar to the would have had a loss rather than a profit (farm income minus **all costs paid to others**).
(2) During the 8 years, an average farmer's return to unpaid labor, investment in machinery and equipment, and management, would have totaled $91,925 - - and average of $11,490 per year.
(3) USDA data shows that loss claims on all USDA guaranteed operating loans increased sharply (nearly tripled) in 1992, 1993, and 1994; then dropped back to long-term average levels.

Attachments

Damage Calculations
Definition Used in the Net Income Analysis

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TO PROTECTIVE ORDER

Attachment 1

Analysis of Damages

Page	Portion of Analysis
1	Land use and tenure
2-4	Analyses of Individual Crops Rice Soybeans Cotton Wheat (double cropped) Total of all crops
5-6	Government Programs Set-Aside acreage for Rice, Cotton, and Wheat CRP
7	Summary and comparisons with analysis
8	Costs Excluded from analysis

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0005

Cases: 07/16/00 Economic Income Analysis Counter Factual Class + Without Discrimination

LAND USE & TENURE	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Total Acres:													
Total Acres (from Case, p 29)	769	892	892	892	892	892	892	892	892	892	892	892	892
Total Base Acres (from Case, P. 29)	696.3	810.3	872.3	872.3	872.3	872.3	872.3	872.3	872.3	872.3	872.3	872.3	872.3
Rice Base(From Case), (p. 29)	64	178.0	178.0	178.0	178.0	178.0	178.0	178.0	178.0	178.0	178.0	178.0	178.0
Soybeans	204	204	204	204	204	204	204	204	204	204	204	204	204
Wheat / Double Crop	0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Others (From Case)	307.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3	390.3
CRP	135	138	138	138	138	138	138	138	138	138	138	138	138
Total CROP Acre allocation including set aside lands	733.3	1,028	1,010	1,010	1,010	1,010	1,010	1,010	1,010	1,010	1,010	1,010	1010
Total Acres	896.3	1,028.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1,010.3	1010.3
Total excluding CRP and wheat double crop	696.3	710.3	772.3	772.3	772.3	772.3	772.3	772.3	772	772	772	772	772
Total excluding CRP and wheat double crop	696.3	710.3	772.3	772.3	772.3	772.3	772.3	772.3	772	772	772	772	772
Land Tenure													
Total Acres Rented* (from Case, pp 15, 23)	733.3	1028.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3	1010.3
Rented from	570	570	570	570	570	570	570	570	570	570	570	570	570
Other Rented Land (from Case) (p.29)	163.3	458.3	440.3	440.3	440.3	440.3	440.3	440.3	440.3	440.3	440.3	440.3	440.3
Planted Area													
Rice (From Case) (p. 9)	65	132	134	142	169	178	169	178	169	178	178	178	178
Soybeans	204	204	204	204	204	204	204	204	204	204	204	204	204
Wheat / Double Crop	0	97	91	95	95	95	100	100	100	100	100	100	100
Cotton (From Case)	231	342	293	342	371	351	381	347	390	390	390	390	390
Total Planted	490.0	795.0	721.0	783.0	828.0	828.0	854.0	829.0	863.0	872.0	872.0	872.0	872.0
Set Aside Area													
Rice Set Aside Land	29	44	44	36	9	0	9	0	9	0	0	0	0
Wheat Set Aside Land	0	33	10	5	15	5	0	0	0	0	0	0	0
Cotton Set Aside Land	75	49	97	48	19	39	29	43	0	0	0	0	0
Total Set Aside	106	126	152	89	43	44	38	43	9	0	0	0	0
CRP	135	138	138	138	138	138	138	138	138	138	138	138	138
Total Land allocation including set aside lands	734	1029	1011	1010	1010	1010	1030	1010	1010	1010	1010	1010	1010

(1)

196 - CRP
190 - Planted
6 - Set aside

49%

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CROP ANALYSIS		1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Rice Crop Analysis	10/1/2000													
Mississippi Delta, rather than	Rice													
Rice Base (From Case)	84	178	178	178	178	178	178	178	178	178	178	178	178	178
Rice Yield (From Case)	6.45	6.45	6.45	6.45	6.45	0	0	0	0	0	0	0	0	0
Maximum Rice Acreage	54.6	132	133.5	142.4	169.1	178	178	169.1	178	169.1	178	178	178	178
Rice Yield Adjustment Factors	Crop Rotation													
Published Rice COP Yield POR	(by R	53.8	53.49	56.87	49.41	51.99	56.86	60.89	56.86	55.74	63.96	58.81	60.25	60.230
NASS County Yield, Rice (From NASS)		53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.800
Rice Crop Analysis	Rice Yield Adjustment Factors													
Yield Adjustment Factor	non-delta (County Yield	0.970	1.010	1.047	0.930	1.009	0.917	0.976	0.954	0.935	0.933	0.986	0.975	0.976
NASS County Yield, Rice (From NASS)		7.8	6.9	7.46	8.76	7.69	8.93	7.87	8.62	9.14	10.2	9.67	8.55	8.62
State Price of Rice (From NASS)		395.20	372.60	435.41	326.70	403.11	309.31	386.55	386.75	484.79	696.74	572.46	502.14	353.199
Gross Revenue per Acre, Rice														
Yield Adjustment Factor used in analysis		1.08	1.07	1.10	0.97	1.08	0.95	0.99	0.99	0.97	0.99	1.03	1.03	1.03
Per Acre Costs, for Rice														
Variable Operating Costs, MISS. DELTA, Rice (From		288.00	299.07	315.00	329.66	336.77	277.86	270.11	294.22	284.46	316.20	314.32	300.83	303.03
Variable Operating Costs Scaled to County Yield		289.25	318.72	347.18	320.65	362.64	264.23	265.87	280.57	265.47	314.72	322.66	309.83	310.89
Variable Operating Costs Scaled to County Yield, Rice		312.57	341.05	381.90	311.03	391.47	251.02	263.06	277.76	247.11	312.57	332.34	319.03	317.69
General farm overhead		19.08	19.61	19.63	22.03	20.00	12.61	14.74	15.94	16.50	15.44	18.14	17.12	17.12
Taxes & Insurance		10.93	10.35	10.60	10.76	10.82	14.57	17.89	20.00	19.61	21.56	20.61	25.99	25.99
Land costs		26.08	29.89	71.18	44.61	61.85	61.26	73.23	85.36	106.70	119.97	119.40	123.27	123.27
Operating Interest, Rice (From ERS)		40.09	39.64	41.86	43.75	45.72	47.71	47.47	50.38	51.56	57.74	57.66	57.68	57.68
Operating Capital		5.43	10.33	12.66	12.31	9.16	4.96	4.21	6.66	8.23	8.10	8.14	7.39	7.39
Non-Land Capital		7.64	15.87	19.18	21.12	23.58	19.64	19.59	20.22	20.17	19.11	20.32	18.27	18.27
Value of Unpaid Labor (From ERS)		14.65	15.26	15.82	17.57	18.40	15.68	16.91	16.55	18.61	17.57	19.18	19.40	19.40
Total Economic Costs, Total Farm, Rice (From ERS)		413.83	460.40	527.36	483.40	535.77	490.68	504.44	550.65	555.45	586.20	586.50	579.06	577.84
Economic Costs, Fixed vs. Others, (TIE-IN)		988.48	479.23	921.47	479.21	533.77	445.00	443.80	480.99	509.94	541.24	561.43	555.68	556.34
Other Costs, (INCOME from COP)		82.29	31.13	35.00	38.69	41.89	35.32	36.80	36.77	36.78	39.68	39.51	37.67	37.67
Net Economic Returns, per acre		-17.93	-117.89	-101.05	-170.10	-149.05	-151.37	-85.15	-130.79	-41.78	49.83	-9.16	-72.84	-223.74
Residual Net Operating Returns to Operator, R		-3.26	-102.63	-85.26	-152.53	-130.65	-135.69	-48.24	-122.24	-25.15	67.50	11.03	-55.84	-204.34
Total For the Farm, for Rice														
Rice Acres (PLANTED)		54.6	132.0	133.5	142.4	169.1	178.0	169.1	178.0	169.1	178.0	178.0	178.0	178.0
Gross Revenue, Total Farm, Rice	$	21,578	$ 49,183	$ 58,281	$ 46,522	$ 69,166	$ 55,057	$ 69,868	$ 69,282	$ 81,977	$ 109,355	$ 101,898	$ 89,381	$ 63,011
Total Economic Costs, Total Farm, Rice (From	$	22,597	$ 54,746	$ 70,594	$ 68,744	$ 90,373	$ 74,002	$ 77,995	$ 87,947	$ 89,039	$ 109,458	$ 105,151	$ 102,995	$ 103,019
Economic Costs, Fixed vs. Others, (TIE-IN)	$	53,977	$ 63,731	$ 69,944	$ 68,244	$ 90,073	$ 72,311	$ 76,545	$ 87,441	$ 88,233	$ 101,141	$ 104,737	$ 99,338	$ 99,338
Total Variable Operating Costs		18,793	42,072	46,346	45,961	61,323	47,033	49,076	51,718	48,442	58,020	57,434	55,115	55,515
Total Overhead Costs		3,056	11,666	13,498	11,591	15,670	19,306	17,901	21,538	24,200	28,339	28,199	28,705	28,705
Total Capital Replacement Costs		2,184	5,232	5,988	6,230	7,731	8,452	8,044	8,784	8,786	9,139	9,267	9,041	9,819
Total Operating Capital		2,096	4,168	4,886	3,959	3,048	2,772	2,221	3,103	3,192	3,462	3,446	3,206	3,206
Other Costs, (INCOME from COP)		1,217	4,169	4,673	5,009	7,069	6,287	6,172	6,545	6,219	6,528	7,033	6,705	6,705
Total Nonlevel Capital Costs		417	2,096	2,561	3,007	3,987	3,496	3,313	3,599	3,411	3,402	3,617	3,252	3,252
Net Economic Returns, Rice		(979)	(15,562)	(13,495)	(24,222)	(23,207)	(20,945)	(11,018)	(24,765)	(7,062)	(1,203)	(3,253)	(13,114)	(39,827)
Net Economic Returns, Returns to Operato		(48,576)	(18,563)	(14,313)	(24,222)	(23,207)	(21,145)	(11,018)	(24,765)	(7,062)	(1,203)	(3,253)	(13,114)	(39,827)
Soybean Crop Analysis														
Published Soybean COP Yield, (by, From ERS)		20.93	24.74	20.63	23.64	26.77	32.82	23.32	32.82	23.66	32.02	31.37	25	31
NASS County Yield, Soybean (By, From NASS)		26	27	24	25	28	34	21.8	34	22	31	30.6	28.4	28.4
Yield Adjustment Factor, Soybeans (County Yield/C		1.238	1.091	1.163	1.058	1.045	1.036	0.935	1.036	0.966	0.969	0.975	1.136	1.084
State Price of Soybeans (From NASS)		$5.92	$7.55	$5.99	$5.91	$5.71	$5.64	$5.65	$5.88	$6.85	$7.36	$6.88	$5.70	$5.10
Gross Revenue per Acre, Soybeans		$153.92	$203.85	$141.12	$147.75	$159.88	$191.76	$144.97	$223.62	$190.70	$228.15	$210.53	$161.88	$158.10
Per Acre Costs, for Soybeans														
Variable Operating Costs, Soybeans (From ERS)		46.02	49.38	71.24	74.23	78.10	80.54	78.97	81.00	79.68	85.97	87.55	87.55	88.19
Variable Operating Costs Scaled to County Yield		57.17	53.86	82.66	78.83	81.69	83.95	73.92	83.92	74.07	83.62	85.56	99.49	95.19
Allocated Cash Overhead Costs (Including Tent, Soyb		38.82	54.73	48.45	45.20	47.04	50.13	47.41	53.89	61.52	62.47	66.78	71.38	70.81
General farm overhead		6.93	10.09	7.62	8.51	7.25	6.96	7.81	8.63	8.97	8.63	8.03	10.05	9.20
Taxes & Insurance		8.30	8.34	9.18	8.89	9.18	11.83	12.75	13.95	13.78	14.83	14.35	15.42	15.42
Land costs		23.55	26.45	30.10	28.30	30.87	31.35	27.85	31.33	38.46	44.29	46.46	55.48	55.48
Capital Replacement, Soybeans (From ERS)		28.65	30.56	20.84	22.34	24.08	27.08	28.80	28.34	28.77	28.39	43.48	43.69	43.12
Operating Capital		1.28	1.54	2.66	2.77	2.12	1.44	1.23	1.89	2.23	2.20	2.27	2.27	2.27
Non-Land Capital		5.45	5.89	12.84	9.34	11.21	13.23	12.97	14.26	14.45	13.53	12.07	12.07	12.07
Value of Unpaid Labor (From ERS)		9.52	9.83	10.87	12.04	12.63	12.37	12.91	12.91	13.66	13.60	14.18	14.18	14.18
Total Economic Costs per Acre, (From ERS)		140.00	165.24	176.74	166.52	176.17	186.38	170.44	191.83	193.60	203.81	224.13	243.34	231.46

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GOVERNMENT PROGRAM PAYMENTS & COSTS	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Base: REVISED 10/12/00	10/12/00		Counter Factual Base = Without Discrimination										
Government Program Analyses: new													
Rice Deficiency Payment Acreage (Payment % *Rice Base	54.8	132.0	130.5	142.4	169.1	178.0	169.1	178.0	169.1	178.0	178.0	178.0	178.0
Program Yield, Rice (from Table 6)	45.70	45.71	45.87	45.79	45.83	45.83	45.83	45.88	45.57	46.67	46.67	46.67	46.67
Rice Deficiency Payment Rate (From Government Re	4.57	4.57	4.58	4.58	4.58	4.58	4.58	4.58	1.57	2.35	2.30	2.48	2.40
Per Acre Deficiency Payment	220.27	197.01	183.30	182.19	116.82	164.07	164.07	163.72	163.76	107.09	104.58	112.77	109.13
Total Deficiency Payment, for Farm	12,027	26,008	21,800	23,083	20,227	29,205	27,744	29,142	27,691	19,062	18,615	20,072	19,425
LDP Payment Rate	-	-	-	-	-	-	-	-	-	-	-	-	0.88
Total LDP Payment (Ac * LDP Payment Rate * Co	-	-	-	-	-	-	-	-	-	-	-	-	17,088
Total Government Payment, Rice	12,027	26,008	21,800	23,083	20,227	29,205	27,744	29,142	27,691	19,062	18,615	20,072	37,114
Cost of Set-Aside													
Acres Setaside, Rice	29.40	44.00	44.50	35.80	8.90	-	8.90	-	8.90	-	0	0	0
Variable Costs per Acre Setaside (From ERS)	23.61	26.08	26.49	27.28	27.56	27.67	28.61	24.35	24.56	-	-	-	-
Land Cost (IMSE Data from ERS)	24.84	85.68	77.19	48.61	61.05	81.28	73.23	85.36	108.76	110.97	119.50	123.77	123.77
Per Acre Economic Costs Paid to Others, Setaside	48.57	85.76	97.58	75.87	83.41	108.95	101.84	109.71	131.26	110.97	119.50	123.77	123.77
Total Variable Costs	891.19	1,163.52	1,174.80	970.46	245.29	-	254.83	-	218.88	-	-	-	-
Total Overhead Costs	799.46	2,668.72	3,126.41	1,752.52	562.97	-	645.73	-	1,645.03	-	-	-	-
Total Costs for Set Aside Land	$1,691	$3,777	$4,377	$2,723	$808	$0	$900	$0	$1,864	$0	$0	$0	$0
Total Net Return for Rice Set Aside Land	$10,336	$22,232	$17,423	$20,362	$19,431	$29,205	$26,835	$29,142	$26,823	$19,062	$18,615	$20,072	$37,114
Government Program Analyses: Soybeans													
LDP Payment Rate	-	-	-	-	-	-	-	-	-	-	-	-	0.93
Total LDP Payment (Ac * LDP Payment Rate * Co	-	-	-	-	-	-	-	-	-	-	-	-	5,881
Total Government Payment: Soybeans	-	-	-	-	-	-	-	-	-	-	-	-	5,881
Government Program Analysis: Cotton													
Cotton Payment Acreage (Payment % *Cotton Base	231.0	342.0	293.0	342.0	371.0	351.0	351.0	341.0	390.0	390.0	390.0	390.0	390.0
Program Yield, Cotton (From Table 6, Abbr. Yield, 1983)	640	627	626	632	635	627	626	628	835	645	643	639	638
Cotton Deficiency Payment Rate (From Government I	$0.17	$0.18	$0.13	$0.08	$0.09	$0.17	$0.17	$0.04	$0.00	$0.08	$0.05	$0.07	$0.07
Per Acre, Deficiency Payment	108.80	115.13	81.29	37.92	57.18	106.59	106.42	25.12	-	51.80	38.58	44.73	44.73
Total Deficiency Payment, for Farm	25,133	40,742	23,806	12,969	21,203	37,413	37,413	8,717	-	20,124	15,046	17,445	17,445
LDP Payment Rate	-	-	-	-	-	-	-	-	-	-	-	-	0.20
Total LDP Payment (Ac * LDP Payment Rate * Co	-	-	-	-	-	-	-	-	-	-	-	-	63,024
Total Government Payment, Cotton	25,133	40,742	23,806	12,969	21,203	37,413	37,413	8,717	-	20,124	15,046	17,445	80,469
Cost of Set-Aside													
Acres Setaside, Cotton	7.6	4.6	9.7	4.6	1.9	3.9	2.9	4.3	24.56	0	0	0	0
Variable Costs per Acre Setaside (From ERS)	23.61	26.08	26.49	27.28	27.56	27.67	28.61	24.35	24.56	-	-	-	-
Land Cost, per acre	23.59	35.10	31.75	29.70	31.96	35.32	31.97	36.46	33.92	44.29	46.26	55.49	55.49
Per Acre Economic Costs Paid to Others, Setaside L	47.10	61.18	58.15	56.98	59.52	63.19	60.48	60.83	58.48	44.29	46.25	55.49	55.49
Total Variable Costs	179.4	119.4	256.9	125.5	51.2	108.9	82.9	104.4	-	-	-	-	-
Total Overhead Costs	1,794	1,211	2,469	1,437	812	1,397	934	1,560	-	-	-	-	-
Total Costs for Set Aside Land	3,984	2,685	5,668	2,751	1,149	2,483	1,772	2,834	0	0	0	0	0
Total Net Return for Set Aside Land	$ 21,529	$ 37,787	$ 18,140	$ 10,217	$ 20,054	$ 34,930	$ 35,646	$ 6,083	$ -	$ 20,724	$ 15,046	$ 17,445	$ 80,469
Government Program Analysis: Wheat													
Wheat Deficiency Payment Acreage (Payment % *Wheat Base)	0	87	90	85	85	95	100	100	100	100	100	100	100
Program Yield, Wheat (from Cats, line 6)	40.0	39.0	39.4	39.4	39.4	39.4	39.4	39.4	39.4	39.4	39.4	39.4	39.4
Wheat Deficiency Payment Rate (From Government Rec	$1.81	$0.66	$0.32	$1.08	$1.16	$0.66	$0.88	$0.52	$0.00	$0.74	$0.54	$0.56	$0.54
Per Acre, Deficiency Payment	72.40	25.91	12.61	42.56	45.31	27.19	35.07	20.48	-	29.16	21.26	22.06	21.26
Total Deficiency Payment, for Farm	-	2,341	1,135	4,060	3,851	2,583	3,507	2,048	-	2,916	2,129	2,206	2,128
LDP Payment Rate	-	-	-	-	-	-	-	-	-	-	-	-	0.48
Total LDP Payment (Ac * LDP Payment Rate * Count	-	-	-	-	-	-	-	-	-	-	-	-	4,672
Total Government Payment, Wheat	-	2,341	1,135	4,060	3,851	2,583	3,507	2,048	-	2,916	2,129	2,206	4,672
Cost of Set-Aside													
Acres Setaside, Wheat	0	33	10	6	15	5	0	0	24.56	0	0	0	0
Variable Costs per Acre Setaside (From ERS)	23.61	26.08	26.49	27.28	27.56	27.67	28.61	24.35	24.56	-	-	-	-
Land Cost for DOUBLE CROP	0	0	0	0	0	0	0	0	0	0	0	0	0
Per Acre Economic Costs Paid to Others, Setaside Land	23.61	26.08	26.49	27.28	27.56	27.67	28.61	24.35	24.56	-	-	-	-
Total Variable Costs	-	868	264	166	413	138	-	-	-	-	-	-	-
Total Overhead Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Costs for Set Aside Land	0	928	264	166	413	138	-	-	-	-	-	-	-
Total Net Return for Set Aside Land	$ -	$ 1,514	$ 871	$ 3,944	$ 3,438	$ 2,444	$ 3,507	$ 2,048	$ -	$ 2,916	$ 2,129	$ 2,206	$ 4,672

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UMMARY OF TOTAL GOVERNMENT PAYMENTS	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
RP Payments (138 acres @ $49.19 / acre)	6,788.22	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788
Rental value, per acre, of pasture land,	14.10	16.00	19.90	18.90	15.50	18.60	19.90	18.00	15.60	15.73	17.08	17.08	16.12
Total Rental value land	1,945.80	2,208	2,746	2,332	2,139	2,567	2,746	2,484	2,153	2,171	2,357	2,357	2,224
Total Net Return for CRP Land	4,842.42	4,580	4,042	4,456	4,649	4,221	4,042	4,304	4,635	4,618	4,431	4,431	4,564
otal Government Program Payments													
Total Deficiency Payments	37,159.76	69,089	46,741	40,131	45,281	69,200	69,669	39,908	27,691	42,102	35,789	39,723	38,997
Total LDP Payments	-	-	-	-	-	-	-	-	-	-	-	-	89,338
Total Crop Payments	37,159.76	69,089	46,741	40,131	45,281	69,200	69,669	39,908	27,691	42,102	35,789	39,723	128,336
Total CRP Payments	6,788.22	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788	6,788
Total Government Payments to Farm	43,947.98	75,877	53,529	46,919	52,069	75,989	76,457	46,696	34,479	48,890	42,577	46,512	135,124
otal Costs Associated with Government Programs													
Total Variable Costs for Set-Aside	2,485.01	3,143	4,009	2,423	1,191	1,226	1,093	1,054	219	-	-	-	-
Total Overhead Costs for Set-Aside	2,566.08	4,414	6,257	3,185	1,167	1,396	1,586	1,580	950	-	-	-	-
Total Costs for Set-Aside	$5,051.09	7,556	10,264	5,598	2,358	2,622	2,678	2,634	1,168	-	-	-	-
Total Cost (fixed) for CRP	1,945.80	2,208	2,746	2,332	2,139	2,567	2,746	2,484	2,153	2,171	2,357	2,357	2,224
Total Costs	$6,996.89	9,764	13,011	7,921	4,497	5,189	5,425	5,118	3,321	2,171	2,357	2,357	2,224
otal Net Returns from Government Programs	$ 36,951	66,113	40,519	38,999	47,572	70,800	71,032	41,578	31,158	46,719	40,220	44,154	132,900

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Attachment 2

Definitions Used in the Net Income Analysis

The objective of the net income analysis is to produce an estimate of the annual return to producer-owned inputs (capital such as land, machinery; and labor) over the relevant time period of each case. In this respect, costs are not included for any unpaid labor (i.e. that supplied by the operator, family members, or partners) and land or machinery owned free and clear of any debt by the operator. If information about the farm debt position is available, the information is used to specify the annual principal and interest costs for the farm over the time period. If information about the debt position is not available, it is assumed that the land owned by the operator is free and clear of any debt, and capital charges are made on the operating inputs and on the average investment in machinery and equipment used in production.

Net income is estimated as the difference between farm revenue (e.g. the value of farm production, government payments, etc.) and farm production costs paid by the operator to others. The value of farm production is computed using county average yields and state product prices in each year (from NASS data). Government payments are those from the farm income support program that provided participating producers a deficiency payment in exchange for setting aside a portion of their cropland, Loan Deficiency Payments, and payments under the Conservation Reserve Program. Annual program parameters are used to specify the deficiency payment and set-aside levels (from FSA data). In addition to farm production costs, costs associated with the management of any set-aside acreage required for participation in the government program are included (from ERS data).

The source of production cost data is the time-series (1975-98) of costs published by ERS (from ERS web site: http://www.ERS.USDA.gov/briefing/farmincome/data.htm). Production costs charged in the analysis are divided into 3 categories:1) operating costs, 2) cash overhead costs, and 3) capital maintenance costs.

1) *Operating costs* -- These are costs of the basic materials used in the production process and include such items as seed, fertilizer, chemicals, custom operations, livestock feed, veterinary services and medical supplies, fuel and lubrication, repairs, and hired labor.

   Operating capital -- In cases where actual debt information is not available, an interest charge on operating capital is also made. This charge assumes that the producer would have to borrow the money to pay for the operating inputs. The loan period is from planting to harvest at which time receipts from the crop would be used to repay the loan. Interest is charged on the amount invested in the operating inputs using the 6-month U.S. Treasury Bill rate. Operating capital would not be charged in cases where the actual debt position of the operation is known and actual principal and interest payments can be incorporated into the analysis.

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2) *Cash overhead costs* -- These are the overhead costs that must be paid regardless of whether or not the farm produces, including a charge for rented land, taxes and insurance, and general farm overhead. Land rent on any acreage rented must be paid in order to obtain access to the land. Real estate taxes and any property casualty and liability insurance are paid by the land owner and thus are charged only on the portion of the land that is owned by the producer. General farm overhead includes costs for farm tools and supplies, the farm share of utilities (electric, gas, and water), and the maintenance and repair of general use structures such as farm fencing, barns, and hired labor dwellings.

3) *Capital maintenance costs* --These are the costs for maintaining the stock of farm machinery and equipment so that the operation can remain in business over time. This includes the charges for capital replacement and nonland capital. *Capital replacement* and *nonland capital* charges approximate the amount of principal and interest that would be paid in order to acquire and replace the stock of machinery and equipment as it wears out. Capital replacement is an estimate of the annual principal payment, while the nonland capital charge is an estimate of the annual interest that would be paid in order to finance acquisition and replacement of the machinery and equipment. Capital replacement and nonland capital are estimates of the capital maintenance costs incurred by the average producer and would not be charged in cases where the actual debt position of the operation is known and actual principal and interest payments can be incorporated into the analysis.

The estimate of net farm income is the residual return to producer owned inputs (land and labor. This is the amount available to service land debt (i.e., pay principal and interest on mortgages), pay income tax, and pay for family living expenses. In cases where the actual debt position is known, loan principal and interest payments would also be charged in the analysis.

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RGT 0014

U.S. Department of Agriculture
Economic Research Service
Assessment of Potential Economic Losses

Complainant:
Location:
Agency: Farm Service Agency (FSA)

Claim No. _____

Assessment of Potential Economic Losses

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

Economic Modeling

Standard economic budgeting and accounting analyses were conducted for an average farm in . County, with the crop mix of the Complainant's operation. This analysis of the complainant's farming operation addresses the farms potential to have generated net farm income in each year for the period of alleged discrimination. For each crop enterprise on the farm, this income analysis estimates the net returns to the operator assuming average production practices, crop yields, prices, and economic costs for the geographical area. (The Attachment provides the results of this analysis). Economic costs include variable, overhead, capital replacement, and operating and non-land capital costs of farming in the region.

In the Income Analysis, full budgeted costs in which all factors used in production are paid an average rate of return are taken as the relevant measure of production costs to derive Net Returns to the Operator (i.e., Net Farm Income). The operator is credited with the returns to all owned factors that he supplies. Variable operating costs are adjusted to reflect differences between average yields in County and those of the region.

The first question that needs to be determined is could this operation have been economically viable? If that question is answered in the affirmative, then the second question for determining economic damages is what net worth could the operation have generated over the period of the alleged discrimination?

Assumptions

- The period of discrimination used in the analysis was 1989 to 1998.
- As stated in the complainant's claim, the complainant actually ceased farming in 1989. However, it was assumed that the complainant continued to farm from 1989 to 1998.
- It is assumed that the complainant would have rented land to grow corn, soybeans, and wheat, as stated in the complainant's claim. It was further assumed that the complainant would have used sufficient inputs and management to achieve average yields for all crops each year

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Assumes zero net farm income from farming.

Scenario 2: The Counter-Factual Scenario -- Without Discrimination:
The results of the analysis of the Counter-Factual Scenario 2 are described in Attachment 1. The Scenario indicates that an average farm producing the complainant's assumed mix of crops with the assumed acreage would have generated between 1989 and 1998:

$ 66,889 average revenue from crop sales and from government program payments
$ 70,919 average annual expenses paid to others for crop production costs and for the costs of participating in farm programs,
$ -4,030 average annual loss (negative residual return to operator), representing an excess of **all costs paid to others** (variable operating, cash overhead, capital replacement, and capital costs). This is the appropriate measure to use for net farm income. Thus, during the 10-year period, the claimant would have generated a net loss of $40,300.

In conclusion, the average farmer would have had a negative farm income during the period under consideration. As a result, there are no damages due to the alleged discrimination assuming that the claimant's net farm income in the "with discrimination" scenario is zero. It would only be possible to calculate a positive damage estimate if the claimant can document a negative farm income during this period that was greater than $40,300.

NOTE: This analysis, and other indicators, show that the 1989 to 1998 period was a financially difficult time for a farm producing the crops that the claimant planned to produce.

This analysis assumes that the claimant would have farmed 412 acres of cropland, as "planned" in the 1989 Farm and Home Plan. However, the documentation indicates that only 228 acres of the 365 acres that the claimant leased was designated as cropland. This would reduce the revenues and expenses in the above analysis, but still result in a negative income. This discrepancy does not change the nature of the damage estimate however, since the smaller acreage would have only resulted in a small net loss from the farming operation.

Attachments

Damage Calculations

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RGT 0016

Case:

Counter Fac: at = Without Discrimination 08/27/00 = date printed

TOTAL FARM NUE AND COSTS	1989	1990	1991		1993	1994	1995	1996	1997	1998	10-yr avg
SUMMARY - TOTAL FARM											
Total Farm Revenue	49,104	58,342	69,343	56,270	68,211	77,523	74,555	94,669	64,448	56,424	66,689
Total Costs Paid to Others (VOR + OH + CR+ OC+NLC)	56,343	61,572	65,515	63,625	68,398	74,444	77,795	81,604	82,563	77,334	70,819
Residual Return to Operator (revenue-costs paid to others)	-7,239	-3,230	3,829	-7,355	-187	3,079	-3,241	13,064	-18,115	-20,909	-4,030
Cumulative	-7,239	-10,470	-6,641	-13,996	-14,183	-11,103	-14,344	-1,280	-19,395	-40,304	
TOTAL FARM REVENUE											
Crop Revenue	44,222	50,742	61,223	48,976	63,308	72,018	74,555	89,972	58,843	50,192	61,405
Crop Expense	53,776	59,249	64,356	62,872	66,654	74,108	77,106	81,604	82,563	77,334	69,963
Crop net returns	-9,557	-8,507	-3,133	-13,896	-3,346	-2,091	-2,551	8,368	-23,719	-27,141	-8,557
Govt program revenue	4,882	7,600	8,120	7,294	4,903	5,506	0	4,696	5,804	6,232	5,484
Govt program expense	2,564	2,322	1,159	753	1,744	336	690	0	0	0	957
Govt program net return	2,318	5,277	6,961	6,541	3,159	5,170	-690	4,696	5,804	6,232	4,527
1 TOTAL FARM COSTS											
2 Total Variable Operating Costs	28,944	32,647	35,140	33,505	35,852	37,384	39,040	40,341	38,518	37,820	35,893
3 Total Overhead Costs	14,356	15,444	16,858	17,289	18,514	21,082	22,452	22,704	24,355	22,998	19,614
4 Total Common Overhead	2,731	2,851	3,523	2,869	3,070	3,707	3,243	2,888	2,833	2,917	2,983
Taxes & Insurance	3,216	4,165	3,850	3,683	4,217	4,937	4,936	4,915	5,612	3,644	4,317
5 Land costs	8,905	8,749	10,196	10,937	11,267	13,058	14,252	14,992	15,811	15,538	12,368
7 Total Capital Replacement Costs	5,937	6,973	7,086	7,162	7,451	8,745	9,623	12,413	14,046	12,430	9,248
8 Total Operating Capital	1,248	1,299	1,120	701	649	1,025	1,283	1,194	1,163	1,109	1,079
9 Total Non-land Capital	3,295	3,236	4,042	4,215	4,458	4,853	4,727	4,961	4,679	3,875	4,223
Total Costs, excl unpaid labor & govt programs)	53,779	59,249	64,356	62,872	66,654	74,108	77,106	81,604	82,563	77,334	69,963
Total Costs Paid to Others (VOR + OH + CR+ OC+NL	53,779	59,249	64,356	62,872	66,654	74,108	77,106	81,604	82,563	77,334	69,963
12 Total Costs Associated with Government Programs	2,564	2,322	1,159	753	1,744	336	690	0	0	0	957
13 Total Govt Program costs paid to others	2,564	2,322	1,159	753	1,744	336	690	0	0	0	957
Total Costs Paid To Others	56,343	61,572	65,515	63,625	68,398	74,444	77,795	81,604	82,563	77,334	70,819
RESIDUAL RETURNS TO OPERATOR, TOTAL FARM											
Revenue - VC - OH - CR - OC - NLC	-4,675	-908	4,988	-6,602	1,567	3,415	-2,551	13,064	-18,115	-20,909	-3,074
Cumulative: Revenue - VOC - OH - CR - OC - NLC	-4,675	-5,583	6,687	-795	4,900	14,169	13,422	30,883	8,966	-8,055	5,892
Revenue - VC - OH - CR - OC - NLC - Govt Prog Costs (G	-7,239	-3,230	3,829	-7,355	-187	3,079	-3,241	13,064	-18,115	-20,909	-4,030
Cumulative returns to operator	-7,239	-10,470	-6,641	-13,996	-14,183	-11,103	-14,344	-1,280	-19,395	-40,304	-13,896
OPPOSITION'S ANALYSIS											
Total Cash Receipts											
Total Government Payments											
Total Farm Receipts											
Total Crop Related Expenses											
Total Costs Associated with Govt Programs											
Total Farm Expenses											
Net Farm Income	22,954	22,954	22,954	22,954	22,954	22,954	22,954	22,854	22,854	22,954	22,954
Cumulative	22,954	45,908	68,862	91,816	114,770	137,724	160,678	183,632	206,586	229,540	
DIFFERENCE IN ANALYSES: (ERS minus ...											
Total Cash Receipts											
Total Government Payments											
Total Farm Receipts											
Total Crop Related Expenses											
Total Costs Associated with Govt Programs											
Total Farm Expenses											
Net Farm Income	-30,193	-26,184	-19,125	-30,309	-23,141	-19,675	-26,195	-9,880	-41,069	-43,863	-26,984
Cumulative	-30,193	-56,378	-75,503	-105,812	-128,953	-148,627	-174,822	-184,912	-225,981	-269,844	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0017

Base:
Counter Factual Case = Without Discrimination 08/31/00 = date printed

CORN ANALYSIS	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	10-yr avg
Per Acre Crop Analysis											
NASS County Yield, Corn (by, From NASS)	34.2	89.7	83.2	38.1	107	103.8	89.8	86.5	35.5	77	74.83
State Price of Corn (From NASS)	2.67	2.53	2.63	2.26	2.65	2.48	3.54	3.43	2.63	2.33	
Gross Revenue per Acre, Corn	91.31	226.94	218.82	86.37	283.55	257.42	317.89	295.70	100.47	179.41	206.89
Per Acre Costs, for Corn											
Published Corn COP Yield (py, From ERS)	101.08	80.46	89.34	112.98	84.23	111.91	105.37	111.32	102.40	102.40	100.1
Yield Adjustment Factor, Corn (County Yield/COP Yield)	0.745	0.745	0.745	0.745	0.745	0.745	0.745	0.745	0.745	0.745	0.745
Variable Operating Costs Scaled to County Yield	107.11	105.13	112.14	113.22	110.70	117.16	126.05	122.03	120.27	120.27	
Variable Operating Costs (From ERS)	143.83	141.17	150.59	152.04	148.65	157.32	169.26	163.86	161.50	161.50	
General farm overhead	7.27	8.41	9.36	9.57	8.00	12.30	11.31	8.68	8.28	7.38	
Taxes & Insurance	9.08	8.61	11.75	12.72	12.14	14.08	13.01	12.09	11.22	7.80	
Land costs	43.45	32.75	44.69	49.61	45.08	52.90	59.03	49.72	53.11	35.43	46.88
Capital Replacement	28.39	27.54	25.05	27.80	28.11	30.10	29.79	51.02	51.85	24.05	
Operating Capital	4.34	4.01	4.10	2.72	2.32	3.86	4.73	4.13	4.18	4.10	
Non-Land Capital	7.63	7.79	9.29	10.79	10.13	12.05	11.73	12.96	13.38	4.51	
Economic Costs Paid to Others (Tot EcCost-UL)	207.27	194.24	216.38	226.23	214.48	242.25	255.65	260.63	262.29	203.54	228.80
Value of Unpaid Labor (From ERS)	21.30	22.49	19.59	20.63	20.16	20.31	19.28	16.53	17.21	12.41	
Total Economic Costs per Acre, Corn (From ERS)	228.57	216.73	235.97	246.86	234.64	262.56	274.93	277.16	279.50	216.95	
Residual Net Operating Returns to Operator	-137.26	10.21	-17.16	-158.50	48.91	-5.13	42.96	18.54	-179.03	-36.54	-41.20
TOTAL FARM (from ERS)											
Corn Base (From Case)	110	110	110	110	110	110	110	110	110	110	
ARP reduction percentage (From USDA)	0.275	0.1	0.05	0.15	0.05	0	0	0	0	0	
Maximum Corn Acreage	80	99	105	94	105	110	110	110	110	110	
Corn Acres (PLANTED)	80	99	105	94	105	110	110	110	110	110	
Gross Revenue, Total farm, Corn	7,282	22,467	22,666	8,262	29,631	28,317	34,968	32,636	11,051	19,735	21,722
Variable Operating Costs	8,542	10,408	11,719	10,586	11,568	12,867	13,865	13,423	13,230	13,230	
General farm overhead	580	833	978	895	836	1,353	1,244	955	911	812	
Taxes & Insurance	724	852	1,228	1,189	1,269	1,549	1,431	1,330	1,234	856	
Land costs	3,465	3,242	4,670	4,639	4,711	5,819	6,493	5,459	5,842	3,897	4,625
Capital Replacement	2,264	2,726	2,618	2,581	2,728	3,311	3,277	5,612	5,704	2,646	
Operating Capital	346	397	428	254	242	403	520	454	463	451	
Non-Land Capital	608	771	971	1,009	1,059	1,326	1,290	1,426	1,472	496	
Economic Costs Paid to Others	16,530	19,230	22,812	21,153	22,413	26,647	28,121	28,669	28,852	22,389	23,662
Value of Unpaid Labor (From ERS)	1,699	2,227	2,047	1,929	2,107	2,234	2,121	1,818	1,893	1,365	
Total Economic Costs, Total Farm, (From ERS)	18,228	21,456	24,859	23,082	24,520	28,881	30,242	30,487	30,745	23,754	
Residual Net Operating Returns to Operator from enterprise	-9,247	3,237	254	-12,891	7,218	1,670	6,847	3,968	-17,801	-2,654	-1,940
Cumulative	-9,247	-6,010	-5,756	-18,646	-11,429	-9,759	-2,912	1,055	-16,745	-19,399	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0018

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PRODUCED SUBJECT TO PROTECTIVE ORDER

RGT 0019

Case:
Counter Factual Case = Without Discrimination 08/31/00 = date printed

WHEAT ANALYSIS	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	10-yr avg
Per Acre Crop Analaysis											
NASS County Yield, Wheat (by, From NASS)	35	39.9	36.3	51.7	40.3	44.8	33.8	42.6	49.1	37.4	41.09
State Price of Wheat (From NASS)	3.40	3.00	2.85	3.25	2.60	3.00	3.65	4.20	3.20	2.55	3.19
Gross Revenue per Acre, Wheat	119.00	119.70	103.46	168.03	112.84	134.40	123.37	176.92	157.12	95.37	
Per Acre Costs, for Wheat											
Published Wheat COP Yield (by, From ERS)	37.62	30.95	24.09	41.64	35.41	47.03	42.73	49.61	48.41	44.74	40.243
Yield Adjustment Factor, Wheat (County Yield/COP Yield)	1.021	1.021	1.021	1.021	1.021	1.021	1.021	1.021	1.021	1.021	1.0210
Variable Operating Costs Scaled to County Yield	85.38	94.52	84.60	88.53	88.73	83.12	88.02	95.95	96.24	89.96	
Variable Operating Costs (From ERS)	83.62	82.78	82.86	86.71	86.90	81.41	86.21	93.97	94.26	88.11	
General farm overhead	6.43	6.54	6.84	6.72	8.19	3.91	5.13	4.31	4.95	3.89	
Taxes & insurance	8.51	14.72	8.33	8.25	10.11	11.39	12.04	11.68	13.30	12.63	
Land costs	16.85	13.63	10.88	16.98	14.81	18.06	20.00	25.90	21.85	21.60	18.06
Capital Replacement	8.83	8.17	9.68	10.06	10.52	18.60	18.64	22.78	20.60	21.30	
Operating Capital	3.36	3.09	2.25	1.55	1.36	1.90	2.41	2.39	2.44	2.14	
Non-Land Capital	8.37	9.06	10.61	11.52	11.96	10.37	10.25	11.93	11.20	10.31	
Economic Costs Paid to Others (Tot EcCost-ULI)	137.73	139.73	133.19	143.61	145.68	147.35	156.49	174.94	170.58	161.83	
Value of Unpaid Labor (From ERS)	7.33	7.70	8.42	9.07	9.03	6.61	6.41	6.75	7.44	7.37	
Total Economic Costs per Acre, Wheat (From ERS)	145.06	147.43	141.61	152.68	154.71	153.96	162.90	181.69	178.02	169.20	
Residual Net Operating Returns to Operator	-18.73	-20.03	-29.74	24.41	-32.84	-12.95	-33.12	3.98	-13.46	-66.46	-19.90
TOTAL FARM (from ERS)											
Wheat Base (From Case)	151	151	151	151	151	151	151	151	151	151	
Setaside Percentage (From Gov't Records)	0.275	0.1	0.05	0.15	0.05	0	0	0	0	0	
Maximum Wheat Acreage	109	136	143	128	143	151	151	151	151	151	
Wheat Acres (PLANTED)	109.5	135.9	143.5	126.4	143.5	151.0	151.0	151.0	151.0	151.0	
Gross Revenue, Total farm, Wheat	13,028	16,267	14,841	21,566	16,187	20,294	18,629	27,017	23,725	14,401	16,395
Variable Operating Costs	9,347	11,467	12,136	11,383	12,726	12,552	13,282	14,488	14,533	13,585	
General farm overhead	704	899	961	863	1,175	590	775	651	747	587	
Taxes & insurance	932	2,009	1,195	1,059	1,450	1,720	1,818	1,764	2,008	1,907	
Land costs	1,845	1,852	1,561	2,179	2,124	2,727	3,020	3,911	3,299	3,262	2,578
Capital Replacement	967	1,110	1,389	1,291	1,509	2,809	2,815	3,440	3,111	3,215	
Operating Capital	368	420	323	199	195	287	364	361	368	323	
Non-Land Capital	916	1,231	1,522	1,479	1,716	1,568	1,548	1,801	1,691	1,557	
Economic Costs Paid to Others	15,078	18,990	19,107	18,453	20,898	22,250	23,531	26,416	25,758	24,437	21,600
Value of Unpaid Labor (From ERS)	802	1,046	1,208	1,164	1,295	998	868	1,019	1,123	1,113	
Total Economic Costs, Total Farm, (From ERS)	15,880	20,036	20,315	19,597	22,193	23,248	24,399	27,435	26,882	25,550	
Residual Net Operating Returns to Operator from enterprise	-2,050	-2,722	-4,266	3,133	-4,711	-1,956	-5,002	601	-2,033	-10,036	-2,904
Cumulative	-2,050	-4,773	-9,039	-5,906	-10,617	-12,573	-17,574	-16,973	-19,006	-29,042	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0020

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PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0021

Case:
Counter Factual Case = Without Discrimination 08/31/00 = date printed

SOYBEAN ANALYSIS	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	10-yr avg
Per Acre Crop Analysis											
NASS County Yield, Soybean (hy, From NASS)	27.88	14.00	28.01	23.14	18.97	28.92	19.97	28.40	23.86	21.14	23.34
State Price of Soybeans, (From NASS)	$5.68	$5.68	$5.56	$5.48	$6.41	$5.36	$6.85	$7.07	$5.68	$5.03	5.89
Gross Revenue per Acre, Soybeans	$158.36	$79.52	$155.74	$126.81	$115.83	$155.01	$136.79	$200.79	$ 158.38	$106.33	
Per Acre Costs, for Soybeans (ERS - S.E. Region)											
Published Soybean COP Yield (py, From ERS)	24.77	21.88	28.94	28.77	22.94	31.65	28.28	30.90	34.05	30.17	28.93
Yield Adjustment Factor, Soybeans (County Yield/Cop Yield	0.832	0.832	0.832	0.832	0.832	0.832	0.832	0.832	0.832	0.832	0.832
Variable Operating Costs Scaled to County Yield	73.21	71.21	74.73	76.52	74.74	79.17	78.70	82.32	71.23	72.89	
Variable Operating Costs, Soybeans (From ERS)	87.94	85.54	89.77	91.92	89.78	95.10	94.53	98.88	85.58	87.55	
General farm overhead	6.30	5.69	8.38	6.04	6.75	7.64	8.12	7.96	7.78	10.05	
Taxes & Insurance	10.33	8.69	9.46	9.50	9.92	11.05	11.17	12.08	15.69	6.82	
Land costs	23.81	24.20	26.19	27.26	28.35	28.88	31.38	37.10	44.17	55.49	32.89
Capital Replacement	17.92	18.12	20.46	21.79	21.28	24.01	23.39	22.26	34.65	43.50	
Operating Capital	3.54	3.19	2.44	1.64	1.40	2.22	2.64	2.51	2.22	2.22	
Non-Land Capital	11.72	8.17	10.26	11.44	11.15	12.99	12.51	11.42	9.38	12.07	
Economic Costs Paid to Others (Tot. EcCost-UL)	146.83	139.27	149.91	154.21	154.59	166.96	167.91	173.63	185.12	202.04	164.26
Value of Unpaid Labor (From ERS)	13.60	14.33	15.63	15.64	15.49	15.98	15.75	16.53	4.10	14.58	
Total Economic Costs per Acre, Rice (From ERS)	160.43	153.60	165.54	169.85	170.08	182.94	183.66	192.26	189.22	216.62	
Residual Net Operating Returns to Operator	11.53	(59.75)	5.82	(27.41)	(38.76)	(11.95)	(29.11)	25.16	(25.73)	(95.70)	-24.59
Total For the Farm, from Soybeans											
Soybean Acres (PLANTED)	151	151	151	151	151	151	151	151	151	151	
Gross Revenue	23,912	12,008	23,516	19,148	17,490	23,407	20,958	30,319	24,067	16,056	21,088
Variable Operating Costs	11,055	10,753	11,285	11,555	11,286	11,955	11,883	12,430	10,796	11,006	
General farm overhead	951	859	963	912	1,019	1,154	1,226	1,202	1,175	1,518	
Taxes & Insurance	1,560	1,312	1,427	1,435	1,498	1,669	1,697	1,821	2,369	879	
Land costs	3,595	3,654	3,965	4,119	4,432	4,512	4,738	5,602	6,670	8,379	4,986
Capital Replacement	2,706	2,736	3,089	3,290	3,213	3,626	3,532	3,361	5,232	6,569	
Operating Capital	535	482	368	248	211	335	399	379	335	335	
Non-Land Capital	1,770	1,234	1,549	1,727	1,694	1,961	1,889	1,724	1,416	1,823	
Economic Costs Paid to Others	22,171	21,030	22,637	23,286	23,343	25,211	25,354	26,520	27,953	30,507	24,801
Value of Unpaid Labor (From ERS)	2,054	2,164	2,360	2,362	2,339	2,413	2,378	2,511	619	2,202	
Total Economic Costs, Total Farm, Rice (From ERS)	24,225	23,194	24,997	25,648	25,682	27,624	27,732	29,031	28,572	32,709	
Residual Net Operating Returns to Operator from enterprise	1,741	-9,023	879	-4,138	-5,853	-1,804	-4,396	3,799	-3,886	-14,451	-3,713
Cumulative	1,741	-7,282	-6,403	-10,541	-16,394	-18,199	-22,595	-18,796	-22,682	-37,132	
Government Program Analysis: Soybeans											
LDP Payment Rate	0	0	0	0	0	0	0	0	0	0	
Total LDP Payment (Ac.* LDP Payment Rate * County Yie	0	0	0	0	0	0	0	0	0	0	
Total Government Payment: Soybeans	0	0	0	0	0	0	0	0	0	0	
Costs of Program Participation	0	0	0	0	0	0	0	0	0	0	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0022

U.S. Department of Agriculture
Economic Research Service
Assessment of Potential Economic Losses

Claimant: Claim no.: Arbitration no.:
Location:

Assessment of Potential Economic Losses

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

Economic Modeling

NOTE: The farming operation modeled for this assessment of damages is significantly different that the one modeled by the claimant's economic expert 2/18/2000). The farming operation assumed in the following analysis is much more consistent with a variety of documented information and with expert agronomic opinion about cropping patterns.

Standard economic budgeting and accounting analyses were conducted for an average farm in with the scale of operation and cropping patterns that were assumed for the claimant. This analysis addresses the assumed farming operation's potential to have generated net farm income in each year. For each crop enterprise on the farm, the following income analysis estimates the net returns to the operator assuming average production practices, crop yields, prices, and economic costs for the geographical area. (The Attachment provides the detailed results of this analysis). Economic costs include variable, fixed, capital replacement, and operating and non-land capital costs of farming in the region.

In the Income Analysis, full budgeted costs in which all factors used in production are paid an average rate of return are taken as the relevant measure of production costs to derive Net Returns to the Operator (i.e., Net Farm Income). The operator is credited with the returns to all owned factors that he supplies. Variable operating costs are adjusted to reflect differences between average yields in the three Counties and those of the region.

The question that needs to be determined is could this operation have been economically viable? If that question is answered in the affirmative, then the second question for determining economic damages is stream of annual net income earnings could the operation have generated over the period of the alleged discrimination?

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0023

This Analysis vs. Claimant's Analysis (, dated 2/18/2000)

Stuby's analysis appears to be based on considerable amounts of misinformation. Based on documents found in the record, other publications, information from county FSA and extension officials, and consultations with rice and cropping experts from State University; the following errors of fact, incorrect data, and unjustified assumptions were found in the analysis:

- The Claimant would not have been able to purchase the entire 952-acre farm due to FmHA lending limits (Also, contrary to information provided by the claimant, the entire 952 acres were never offered for sale as a unit.)
- The claimant would not have been able to plant crops in 1988 or in 1989. The claimant appears to have not talked to FmHA until August of 1988, well past the planting date for rice and soybeans. The land was not advertised for sale until June 1989. Tract # 2 was readvertised in September 1989. The individual who actually bought Tract # 2 was not able to complete the transaction until May 1990.
- The land could not have been purchased for the low price of $218 per acre - - a price way below even low quality cropland prices in the county. (The actual sales price in 1990 was $484 per acre for Tract #1 and $460 for Tract #2.)
- The claimant would not have been able to obtain a Farm Ownership loan from the FmHA at a 7% interest rate. The lowest interest rate between January 1988 and May 1990 was 8.75%.
- The entire acreage was not able to produce crops, as claimed in analysis. (Significant acreage was waste or restricted-use wetlands.)
- There is no evidence that the land ever had wheat base acreage. In most years between 1988 and 1996, if the claimant would have planted wheat he would have forfeited participation in, and payments from, U.S. government programs.
- Government program payment limitations were exceeded in analysis (which assumes 952 acres with wheat and rice base acres). Government program payments exceeded the $50,000 limitation on government payments ($40,000 after 1996) in every year, and estimated total 1988-1998 government payments were $365,683 in excess of payment limitations.
- The cropping intensity assumed in analysis would have required some rice to be planted on the same land in sequential years. This practice is not generally followed because it leads to weed problems and lower yields.
- County-average yields over an extended would have been unlikely. (Much of the land is a clay soil that has somewhat lower soybean, wheat, and cotton yields in most years. Also, the intensive double cropping crop rotation proposed in the analysis would have resulted in lower average soybean yields in some years.

The combination of these incorrect facts, erroneous assumptions, and less than optimum cropping practices, results in a significantly inflated estimate of the land's income earning potential. For these reasons, this analysis is based on an alternative set of assumptions that are more realistic.

Assumptions Related to Switching from -Whole-Farm Scenario" to the Following Analysis's " -Tract #2 Scenario."

- Maximum limits on the amount of a Farm Ownership Loan prohibited FmHA from making a loan for the whole Loan. Than is why they split it into two separate parcels. This analysis assumes that the Claimant would have been eligible to obtain a loan to purchase the Tract #2 parcel of the property.
- Reduce the total farm acreage from 952 to 466 acres (see Appraisal Report).

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0024

- Reduce the cultivated acres from 952 to 384 acres (see Appraisal Report). The difference between 466 total acres and 384 cultivated acres is 43 acres of Wetlands in a wildlife refuge controlled by the U.S. Fish and Wildlife Service, and a 39-acre residual (roads, ditches & waste). (see Appraisal Report)
- Reduce rice base acres from 533.8 to 242.2 acres (see Appraisal Report and Farm Sale advertisement.)
- Allow claimant a wheat base acreage of 47 acres. (NOTE: The record does not indicate that the property had any wheat base acres allotted to it. This analysis gives the claimant the benefit of the doubt by allocating to him a wheat base equal to one-third the area he could have planted to soybeans. This is the average crop acreage allocation in County.) This area (47 acres) could have been doubled dropped with soybeans.
- Use 1990 as the beginning year, rather than 1988 as in the analysis.
- Use 8.75% interest rate, rather than the 7% rate used by .

General Assumptions

- The period of analysis used in this case was 1990 to 1998.
- USDA/ERS publishes regional Cost of Production Accounts (COP) for individual crops. Components of the costs of production include:
  (1) Variable operating costs,
  (2) Fixed Costs, including:
    - General farm overhead expenses, such as insurance, licenses, building and fence repair costs, and the farm share of utilities, telephone, and motor vehicles were used to estimate the net returns to the operator.
    - Taxes and insurance.
    - Land costs: The following analysis substitutes the annual costs of principal and interest in place of the value of rental payments for renting land. This analysis assumes a 10-year Farm Ownership loan rather than the 5-year loan assumed by Paying off the loan in 5 years would have resulted in negative net farm income in 2 of the first 5 years of the analysis.

  (3) Capital replacement (ownership cost that is equivalent to the principal payment portion of a loan to finance machinery and replacement).
  (4) Operating capital charges to cover the interest payments on loans to purchase inputs.
  (5) Nonland capital represents the interest portion of ownership costs associated with machinery and equipment.
- All costs must be met for the farm to remain economically viable in the long term.
- These costs were used in the analysis, with an adjustment to variable costs to reflect county conditions. Variable costs from the regional COP were adjusted to more accurately represent an average farm growing these crops in County. Variable costs were indexed to the average county yield by the ratio of the county's period-average yield to the COP's regional period-average yield. Since County average yields are lower than the state average yields (in the Base Scenario), this reduced the estimated variable costs of production.
- The operator was assumed to receive the average rate of return from the ERS cost of production budgets for each factor he supplied into the production process, e.g., unpaid labor.
- The Farmers Home Administration (later FSA) was assumed to extend to the complainant credit, up to the $200,000 legal limit, to finance purchasing of the Tract #2. The claimant would have had to arrange financing of the additional $5,000.

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- Government Farm Programs: It is assumed that the claimant participated in the government's Acreage Reduction Program (ARP). Thus, it was assumed that the claimant had to set aside land and maintain that land in conserving uses. Beginning in 1996, it was assumed that the claimant would have received Production Flexibility Contract (PFC) payments.

Assumptions for the Tract #2 Base Scenario

- Although the claimant had other farming operations, this analysis only considers farming operations related to the application for a Farm Ownership loan related to the property. It assumes that the 384 acres of cropland was used to produce rice to the maximum extent of the rice base acreage, and that the remainder was used to produce soybeans. It further assumes that one-third of the soybean acreage was double-cropped with wheat (even though there is no indication that the property had any wheat base acres. This gives the claimant the benefit of the doubt on two counts: (1) That there really was a wheat base or that the claimant could have obtained one. (2) It is assumed in the Base Scenario that yields were not lowered due to double cropping (even though lower yields generally result).
- In the "Base Scenario" it was assumed that the claimant would have used sufficient inputs and management to achieve County average yields for all crops each year of the period of analysis.
- Average state prices for all crops, as published by NASS/USDA, were assumed in the analysis.
- Data for average yields in County were used.

Scenarios

The following specific scenarios were examined:

Scenario 1: Tract #2 Scenario - - Assuming Discrimination: The Complainant provides tax returns information about farm income for his whole farming operation for most years. This is presented as the net income in the "With Discrimination" scenario. Since the USDA analysis only considers the property, net farm income "With Discrimination" was assumed to be equal to the per acre amount in the claimants analysis. I.e., if the claimant reported a net loss (as defined in income tax terms) of $5,000.00 and he was farming 1,000 acres, then the per acre net loss was $5.00 per acre. This amount amount was calculated for each year (from data in analysis) and was multiplied by the 466 acres in the Tract #2 to obtain an estimate of the income for the "With Discrimination" scenario

Scenario 2: An Average Farmer - - Without Discrimination: This scenario estimates the potential net farm income, for each year of the period of analysis, assuming the complainant's yields, prices, costs of production, and government benefits were similar to the average farmer producing the crop mix assumed for this scenario. All the assumptions mentioned above apply to this "Without Discrimination Scenario."

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Results

Scenario 1: Tract #2 Scenario - - Assuming Discrimination:

-$122,069 is the cumulative stream of net income (loss) presented in analysis.

Scenario 2: Tract #2 Scenario:An Average Farmer - - Without Discrimination:

The detailed results of the analysis of an average farm (Scenario 2) are described in Attachment 1. The Scenario indicates that, between 1990 and 1998, an average farm producing the assumed mix of crops with the assumed acreage would have generated:

$ 163,224	average annual revenue from crop sales and government program payments.
$ 131,275	average annual expenses paid to others for crop production costs.
$ 31,949	average annual net income (residual return to operator), representing an excess of revenues over all costs paid to others (variable operating, fixed, capital replacement, and capital costs). This is the appropriate measure to use for net farm income.
$ 275,213	The cumulative sum of annual net incomes.

Total Damages:

$397,282	The damage estimate is the difference between Scenario 2 (Without discrimination) and Scenario 1 (With the Alleged Discrimination).

Attachment 1: Income Analysis: Scenario 2 - - Land Purchase, Tract #2, Average Farmer, Without Discrimination

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Scenario 2: Land Purchase, Tract #2 — *p. 1*

1 **SCENARIO:** **...and Purchase, Tract #2, AVERAGE FARM** 03/15/01 = Date printed.
2 **Case:**
3 Scenario: No Discrimination; Avg county yield, Avg state price; Avg regional COP Begin 1990; Interest rate = 8.75%, 10-year loan.

		1990	1991	1992	1993	1994	1995	1996	1997	1998 Avg 88-98	
4	**TOTAL FARM REVENUE AND COSTS**										
5	SUMMARY - TOTAL FARM										
6	Net farm income (total revenue minus total costs)	7,059	10,019	28,121	32,454	20,291	31,239	72,913	-44,651	28,465	31,849
7	Cumulative	7,059	17,078	45,199	77,653	97,944	129,183	202,097	246,748	275,213	
8	Net income from production	-30,601	-23,875	-20,099	-10,913	-22,962	-2,206	45,983	13,616	-4,663	-4,576
9	Cumulative	-30,601	-54,475	-74,574	-85,487	-108,448	-110,653	-64,669	-55,973	-60,926	
10	Net income from Government Programs	37,659	33,894	48,157	43,367	43,243	33,446	31,920	31,035	33,418	36,528
11	Cumulative	37,659	71,554	119,711	163,077	206,321	239,766	271,686	302,721	336,139	
12											
13	TOTAL FARM REVENUE	131,479	152,016	160,494	158,972	161,372	168,137	221,497	195,630	177,139	163,224
14	Market receipts from sale of production	91,765	117,539	112,317	115,085	118,129	134,153	169,576	164,595	143,721	126,245
15	Gov't program payments	39,714	34,477	48,178	43,905	43,243	33,985	31,920	31,035	33,418	36,979
16											
17	TOTAL FARM COSTS	124,420	141,996	132,373	127,518	141,081	136,898	148,584	150,979	148,674	131,275
18	Production expenses	122,366	141,414	132,352	126,979	141,081	130,359	148,584	150,979	148,674	130,824
19	Expenses associated with Farm Program Participation	2,054	582	21	539	0	539	0	0	0	451
20											
21	ITEMS OF TOTAL FARM COSTS										
22	**Production expenses**										
23	Total Variable Costs (=27+28)	80,733	94,101	83,760	78,358	89,301	85,117	95,773	95,036	92,386	84,782
24	Total Overhead Costs (=29+30+31)	23,796	25,546	26,576	26,493	28,275	27,161	28,164	29,030	29,535	23,826
25	Total Capital Costs (=32+33)	17,837	21,767	22,997	22,128	24,505	24,081	24,647	26,913	26,751	22,214
26											
27	Variable Operating Costs	77,816	91,603	82,305	77,150	86,281	82,793	93,387	92,628	90,209	82,559
28	Operating Capital	2,916	2,499	1,475	1,207	2,019	2,324	2,387	2,409	2,180	2,223
29	Fixed Costs: General farm overhead	5,485	5,805	4,328	4,857	5,197	5,311	5,196	5,798	5,964	5,279
30	Fixed Costs: Taxes & Insurance	4,447	4,572	6,777	6,567	7,607	6,770	7,497	7,792	8,110	6,147
31	Fixed Costs: Land costs	13,864	15,069	15,471	15,069	15,471	15,069	15,471	15,471	15,471	12,402
32	Capital Replacement Costs	12,014	14,329	15,647	15,217	17,098	16,817	17,537	18,751	21,641	15,794
33	Non-land Capital	5,823	7,441	7,150	6,911	7,410	7,175	7,110	7,662	4,910	6,920
34	Total Costs, (excl unpaid labor & gov't programs)	122,366	141,414	132,352	126,979	141,081	130,359	148,584	150,979	148,674	130,824
35	**Government Programs**										
36	Total Variable Costs	447	160	21	137	0	137	0	0	0	195
37	Total Overhead Costs	1,607	402	0	402	0	402	0	0	0	256
38	Total Farm Program Participation Costs	36,916	32,447	46,752	41,969	42,097	33,985	30,524	29,649	32,172	35,665
39											
40	**WITH DISCRIMINATION" SCENARIO**										
41	Net Farm Income Reported on Income Tax (from case)	0	-22565	-10830	-65791	292	-30800	-2923	-36186	-50470	-21,727
42	Acres Actually Farmed (from case: Scenario I, page 1)	1078	1073	1668.6	2254	501	441	688.8	693.6	628.8	1,018
43	Net Farm Income Per Acre	0.00	-20.93	-8.41	-28.30	0.58	-69.84	-4.24	-52.54	-80.26	-35
44	Income from tract #2, assuming same per acre as ot	0	-9,754	-2,969	-13,188	272	-32,546	-1,976	-24,463	-37,440	-11,961
45										cumulative =	-122,069
46	**DIFFERENCE (WIthout vs. With Discrimination)**	7,059	19,774	31,110	45,842	20,020	53,765	74,891	69,134	65,866	43,900
47	Cumulative	7,059	26,833	57,943	103,584	123,604	187,369	262,260	331,414	397,282	

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1 SCENARIO Land Purchase, Tract #2, AVERAGE FARM
2 Case: 03/15/01 = date printed

3 LAND USE & TENURE	1990	1991	1992	1993	1994	1995	1996	1997	1998
4 *Land Tenure*									
5 Total acres Owned	466	466	466	466	466	466	466	466	466
6 Total acres Owned	0	0	0	0	0	0	0	0	0
7 Total Acres Rented	0	0	0	0	0	0	0	0	0
8 Total Acres	466	466	466	466	466	466	466	466	466
9									
10 *Total Acres:*									
11 Farmland (from appraisal report)	466	466	466	466	466	466	466	466	466
12 Cropland Acres (from appraisal rpt)	384	384	384	384	384	384	384	384	384
13 Not Cropland	82	82	82	82	82	82	82	82	82
14 Wetlands (U.S. Fish & Wildlife Service)	43	43	43	43	43	43	43	43	43
15 Waste (residual: roads, ditches)	39	39	39	39	39	39	39	39	39
16									
17 Total Base Acres (from Case)	289	289	289	289	289	289	289	289	289
18 Sorghum	0	0	0	0	0	0	0	0	0
19 Soybeans	0	0	0	0	0	0	0	0	0
20 Wheat	47	47	47	47	47	47	47	47	47
21 Rice	242	242	242	242	242	242	242	242	242
22									
23 *Acreage Reduction Program Area*									
24 Wheat Acreage Reduction Prog. Percentage (from USDA)	5.00	15.00	5.00	0.00	0.00	0.00	0.0	0.0	0.0
25 Wheat Acreage Reduction Land	2.4	7.1	2.4	0.0	0.0	0.0	0.0	0.0	0.0
26 Maximum Planted Area, if in program	44.7	40.0	44.7	47.0	47.0	47.0	47.0	47.0	47.0
27 Normal Flex Acres available for alternative crops	0	7.1	15.0	15.0	15.0	15.0	0	0	0
28 Minimum Planted Area, if in program	45	33	30	32	32	32	47	47	47
29 Rice Acreage Reduction Prog. Percentage (from USDA)	20.00	5.00	0.00	5.00	0.00	5.00	0.0	0.0	0.0
30 Rice Acreage Reduction Land	48.4	12.1	0.0	12.1	0.0	12.1	0.0	0.0	0.0
31 Maximum Planted Area, if in program	193.8	230.1	242.2	230.1	242.2	230.1	242.2	242.2	242.2
32 Normal Flex Acres available for alternative crops	0	36.3	36.3	36.3	36.3	36.3	0	0	0
33 Minimum Planted Area, if in program	193.8	193.8	205.9	193.8	205.9	193.8	242.2	242.2	242.2
34									
35 Total Acreage Reduction Land	51	19	2	12	0	12	0	0	0
36									
37 *Maximum Planted Area, if in program*									
38 Soybeans	142	142	142	142	142	142	142	142	142
39 Wheat	45	40	45	47	47	47	47	47	47
40 Rice	194	230	242	230	242	230	242	242	242
41 Other									
42 Total Planted	380	412	429	419	431	419	431	431	431
43 Total Set Aside	51	19	2	12	0	12	0	0	0
44 Total Acreage	431	431	431	431	431	431	431	431	431

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45															
46	***Land use*** *(for this Scenario)*														
47	Waste (roads, ditches, etc)	39	39	39	39	38	39	39	39	39	39				
48	Soybeans	142	142	142	142	142	142	142	142	142	142				
49	Wheat (double cropped)	47	47	47	47	47	47	47	47	47	47				
50	Rice	194	230	242	230	242	230	242	242	242	242				
51	Wetlands, Fish & Wildlife Service	43	43	43	43	43	43	43	43	43	43				
52	Set-Aside	51	19	2	12	0	12	0	0	0	0				
53	**Total Planted**	515.9	520.8	515.9	513.5	513.5	513.5	513.5	513.5	513.5	513.5				
54															
55	**AMORTIZATION OWNERSHIP LOAN**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**					
56	Land Loan Interest Rate (Commercial)	0.10	0.10	0.10	0.10	8	8	7	7	7					
57	Land Loan Interest Rate (FmHA)	0.0875	0.0875	0.0875	0.0875	0.0875	0.0875	0.0875	0.0875	0.0875					
58	Land Ownership Loan	205,000	191,345	178,495	166,346	142,784	123,685	102,915	80,328	55,764					
59	Length of loan (Number of years)	10													
60	Year of loan	1	2	3	4	5	6	7	8	9					
61	Total Mortgage Payment	31,592	31,592	31,592	31,592	31,592	31,592	31,592	31,592	31,592					
62	Interest Portion	17,938	16,743	15,443	14,030	12,494	10,822	9,005	7,029	4,879					
63	Principal Portion	13,655	14,850	16,149	17,562	19,098	20,770	22,587	24,564	26,713					
64	Total Payment per Acre	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19					
65	Interest Payment per acre	18.84	17.59	16.22	14.74	13.12	11.37	9.46	7.38	5.1					
66	Principal Payment per acre	14.34	15.60	16.96	18.45	20.06	21.82	23.73	25.80	28.0					

Scenario

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1	SCENARIO:	Land Purchase, Tract #2, AVERAGE FARM						03/15/01 = date printed							
2	Case:					NOTE: COP data are for:		n (81-97) and							
3	Scenario: No Discrimination; Avg county yield, Avg state price, Avg regional COP				Source:	County Yield & State Price:		NASS Web Site:		2/10/2001		http://www.nass.usda.g			
4	SOYBEANS ANALYSIS -- (Delta Region)		1980	1991	1992	1993	1994	1995	1996	1997	1998 Avg 88-98				
5	SUMMARY														
6	Net farm income (total revenue minus total costs)		-2,158	-1,613	3,544	-302	1,481	-3,832	7,344	1,255	-9,618	816			
7		Cumulative	10,721	9,108	12,652	12,349	13,830	9,998	17,343	18,597	8,979				
8	Net income from production		-2,158	-1,613	3,544	-302	1,481	-3,832	7,344	1,255	-9,618	816			
9		Cumulative	10,721	9,108	12,652	12,349	13,830	9,998	17,343	18,597	8,979				
10	Net income from Government Programs		0	0	0	0	0	0	0	0	0	0			
11		Cumulative	0	0	0	0	0	0	0	0	0				
12															
13	TOTAL FARM REVENUE		20,141	21,682	27,951	23,891	26,744	21,399	33,444	29,797	19,405	24,606			
14	Market receipts from sale of production		20,141	21,682	27,951	23,891	26,744	21,399	33,444	29,797	19,405	24,606			
15	Gov't program revenue		0	0	0	0	0	0	0	0	0	0			
16															
17	TOTAL FARM COSTS		22,299	23,506	24,407	24,193	25,263	25,232	26,099	28,543	29,023	23,790			
18	Production expenses		22,299	23,506	24,407	24,193	25,263	25,232	26,099	28,543	29,023	23,790			
19	Expenses associated with Farm Program Participation		0	0	0	0	0	0	0	0	0	0			
20															
21	ITEMS OF TOTAL FARM COSTS														
22	**Production expenses**														
23	Total Variable Costs (=27+28)		11,171	11,641	11,898	11,666	12,029	11,883	12,853	13,028	14,118	11,674			
24	Total Overhead Costs (=29+30+31)		6,629	6,954	6,787	6,919	7,185	7,212	7,294	7,626	7,047	6,234			
25	Total Capital Costs (=32+33)		4,499	5,011	5,721	5,619	6,049	6,137	5,953	7,888	7,858	5,883			
26															
27	Variable Operating Costs		10,778	11,349	11,894	11,481	11,761	11,566	12,540	12,706	13,807	11,381			
28	Operating Capital		393	301	204	175	268	317	312	322	311	294			
29	Fixed Costs: 'General farm overhead		924	1,030	974	1,081	1,225	1,274	1,254	1,140	1,624	1,184			
30	Fixed Costs: Taxes & Insurance		993	1,112	1,101	1,126	1,247	1,225	1,328	1,774	710	1,194			
31	Fixed Costs: Land costs		4,712	4,712	4,712	4,712	4,712	4,712	4,712	4,712	4,712	3,856			
32	Capital Replacement Costs		3,172	3,419	3,843	3,777	4,024	4,085	4,031	6,174	7,858	4,335			
33	Non-land Capital		1,326	1,592	1,879	1,842	2,025	2,052	1,921	1,714	0	1,548			
34	Total Costs, (excl unpaid labor & gov't programs)		22,299	23,506	24,407	24,193	25,263	25,232	26,099	28,543	29,023	23,790			
35	**Government Programs**														
36	Total Variable Costs		0	0	0	0	0	0	0	0	0	0			
37	Total Overhead Costs		0	0	0	0	0	0	0	0	0	0			
38	Total Farm Program Participation Costs		0	0	0	0	0	0	0	0	0	0			
39	**SOYBEANS ANALYSIS -- Details**		**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**Avg**			
40	**Case:**		**Scenario**												
41	**REVENUE, per acre of production**														
42	County Yield (NASS)		24.0	27.0	34.9	25.3	33.1	22.0	32.0	30.5	25.4	27.47			
43	State Price of Soybeans (From NASS)		5.91	5.71	5.84	6.65	5.69	6.85	7.36	6.88	5.38	6.32			
44	Gross Revenue per Acre, Soybeans		141.84	154.17	196.84	168.25	188.34	150.70	235.52	209.84	136.65	173.28			
45															

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Scenario 2: Land Purchase, Tract #2 *p. 5*

46	**Costs of Production, Per Acre Planted**												
47	Published Soybeans COP Yield (py From ERS)	23.54	26.77	32.62	23.32	31.88	23.66	32.02	31.37	25	26.67
48	Yield Adjustment Factor, Soybeans (County Yield/COP Yield)	1.0225	1.0225	1.0225	1.0225	1.0225	1.0225	1.0225	1.0225	1.0225	1.0225
49	Variable Operating Costs Scaled to County Yield	75.50	79.86	82.35	80.85	82.82	81.45	86.31	86.48	91.23	
50	**Variable Operating Costs (From ERS)**	74.23	78.10	80.54	79.07	81.00	79.66	86.37	87.51	95.09	78.36
51	Operating Capital	2.77	2.12	1.44	1.23	1.89	2.23	2.20	2.27	2.19	2.07
52	Fixed Costs: General farm overhead	6.51	7.25	8.66	7.61	8.63	8.97	8.63	8.03	11.44	8.34
53	Fixed Costs: Taxes & insurance	6.89	7.83	7.75	7.33	8.78	8.63	9.35	12.49	15.00	8.41
54	Fixed costs: Land costs (from - scenario of Case)	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	27.15
55	Capital Replacement	22.34	24.08	27.06	26.60	28.34	28.77	28.39	43.46	95.54	30.53
56	Total Non-land Capital (after 1997, included in capital replac	9.34	11.21	13.23	12.97	14.26	14.45	13.53	12.07	0	1/
57	**Economic Costs Paid to Others (Total Ec. Cost - UL)**	157.04	165.53	171.88	170.37	177.91	177.69	183.80	201.00	204.38	167.54
58	Land Cost: from COP	29.70	31.96	35.62	31.87	36.48	33.92	44.28	46.26	33.64	35.61
59	Land Cost: from principle & interest payments	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	27.15
60	Difference (Mortgage payment minus COP cost)	3.49	1.23	-2.33	1.32	-3.29	-0.73	-11.10	-13.07	-0.65	-8.46
61											
62	Per acre, Net Operating Returns to Operator from production	-15.20	-11.36	24.96	-2.13	10.43	-26.99	51.72	8.84	-67.73	5.75
63											
64	**ACREAGE FOR Soybeans**										
65	Soybeans Base (From Case)	0	0	0	0	0	0	0	0	0	
66	ARP reduction percentage (From USDA)	0	0	0	0	0	0	0	0	0	
67	Soybeans Acreage Reduction Land	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
68	Soybeans Payment Acreage (Maximum Program Acreage)	0	0	0	0	0	0	0	0	0	
69	Normal Flex Acres percentage (From USDA)	0	0	0	0	0	0	0	0	0	
70	Soybeans Acres Planted (Max., or, from Case)	142	142	142	142	142	142	142	142	142	142.00
71											
72	**GOVERNMENT PROGRAM ANALYSIS: Soybeans (acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CR**										
73	Total Net Benefits from Gov't Programs	0	0	0	0	0	0	0	0	0	
74	Total Revenue from Gov't Programs	0	0	0	0	0	0	0	0	0	0
75	Total Costs Associated with Gov't Programs	0	0	0	0	0	0	0	0	0	0

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TO PROTECTIVE ORDER

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1	SCENARIO:	Land Purchase, Tract #2, AVERAGE FARM				Source:	COP data are for SE Region (1981	http://www.nass.usda.gov:81/ipedb			03/15/01 = date printed.		
2	Case:					Source:	County Yield & State Price:	NASS Web Site:			2/10/2001		
3	Scenario:	No Discrimination: Avg county yield, Avg state price, Avg regional COP											
4	WHEAT ANALYSIS -- (Southeast Region)		1990	1991	1992	1993	1994	1995	1996	1997	1998	Avg 88-98	
5	SUMMARY												
6	Net farm income (total revenue minus total costs)		1,078	-926	1,595	855	867	-347	4,990	1,614	1,293	1,404	
7		Cumulative	5,204	4,678	6,174	7,029	7,896	7,549	12,539	14,153	15,446		
8	Net income from production		-1,720	-2,655	169	-1,081	-280	-347	3,594	428	47	90	
9		Cumulative	1,117	-1,539	-1,369	-2,450	-2,730	-3,077	516	944	991		
10	Net income from Government Programs		2,798	2,029	1,425	1,936	1,147	0	1,396	1,186	1,246	1,314	
11		Cumulative	4,088	6,117	7,543	9,479	10,626	10,626	12,022	13,208	14,454		
12													
13	TOTAL FARM REVENUE		6,301	3,951	6,822	6,534	6,501	5,599	11,483	8,092	7,405	6,836	
14	Market receipts from sale of production		3,483	1,848	5,376	4,597	5,354	5,599	10,087	6,906	6,159	5,497	
15	Gov't program revenue		2,818	2,103	1,447	1,936	1,147	0	1,396	1,186	1,246	1,339	
16													
17	TOTAL FARM COSTS		5,223	4,577	5,227	5,678	5,634	5,946	6,494	6,478	6,112	5,432	
18	Production expenses		5,203	4,503	5,206	5,678	5,634	5,946	6,494	6,478	6,112	5,407	
19	Expenses associated with Farm Program Participation		21	74	21	0	0	0	0	0	0	25	
20													
21	ITEMS OF TOTAL FARM COSTS												
22	**Production expenses**												
23	Total Variable Costs	(=27+28)	3,484	3,087	3,574	3,761	3,553	3,781	4,111	4,125	3,850	3,527	
24	Total Overhead Costs	(=29+30+31)	949	606	668	860	719	807	752	856	776	743	
25	Total Capital Costs	(=32+33)	769	811	964	1,057	1,362	1,358	1,631	1,495	1,486	1,137	
26													
27	Variable Operating Costs		3,346	2,997	3,505	3,698	3,464	3,668	3,998	4,011	3,749	3,425	
28	Operating Capital		138	90	69	64	89	113	112	115	101	102	
29	Fixed Costs: 'General farm overhead		262	273	300	385	184	241	203	233	183	258	
30	Fixed Costs: Taxes & Insurance		657	333	368	475	535	566	549	625	594	485	
31	Fixed Costs: Land costs		0	0	0	0	0	0	0	0	0	0	
32	Capital Replacement Costs		365	387	449	494	874	876	1,071	968	1,001	688	
33	Non-land Capital		405	424	514	562	487	482	561	526	485	449	
34	Total Costs, (excl unpaid labor & gov't programs)		5,203	4,503	5,206	5,678	5,634	5,946	6,494	6,478	6,112	5,407	
35	**Government Programs**												
36	Total Variable Costs		21	74	21	0	0	0	0	0	0	25	
37	Total Overhead Costs		0	0	0	0	0	0	0	0	0	0	
38	Total Farm Program Participation Costs		21	74	21	0	0	0	0	0	0	25	
39	**WHEAT ANALYSIS -- Details**		**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**Avg**	
40	Case:		Scenario		nass								
41	**REVENUE, per acre of production**												
42	County Yield (NASS)		38.0	18.0	50.0	40.0	45.3	43.7	55.0	51.3	50.0		
43	County Yield Used in This Analysis		25.0	16.7	34.3	34.2	35.6	33.0	49.0	42.1	48.0	36.63	
44	State Price of Wheat (From NASS)		3.12	2.77	3.61	2.86	3.2	3.61	4.38	3.49	2.73	3.34	
45	**Gross Revenue per Acre, Wheat**		78	46.259	120.393	97.812	113.92	119.13	214.62	146.929	131.04	124.17	

TO PROTECTIVE ORDER

46														
47	**Costs of Production, Per Acre Planted**													
48	Published Wheat COP Yield (ph, From ERS)	30.95	24.09	41.64	35.41	47.03	42.73	49.81	48.41	44.74	40.46			
49	Yield Adjustment Factor, Wheat (County Yield/COP Yield)	0.9053	0.9053	0.9053	0.9053	0.9053	0.9053	0.9053	0.9053	0.9053	0.91			
50	Variable Operating Costs Scaled to County Yield	74.94	75.01	78.50	78.53	73.70	78.05	85.07	85.33	79.77	76.78			
51	Variable Operating Costs (From ERS)	74.94	75.01	78.50	78.53	73.70	78.05	85.07	85.33	79.77	76.78			
52	Operating Capital	82.78	82.86	86.71	86.90	81.41	86.21	93.97	94.26	88.11	84.81			
53	Fixed Costs: General farm overhead	3.09	2.25	1.55	1.36	1.90	2.41	2.39	2.44	2.14	2.32			
54	Fixed Costs: Taxes & Insurance	6.54	6.64	6.72	6.19	3.91	5.13	4.31	4.95	3.89	5.91			
55	Fixed costs: Land costs (assumes double crop)	14.72	8.33	8.25	10.11	11.39	12.04	11.86	13.30	12.63	10.81			
56	Capital Replacement	0.00	0.00	0.00	33.19	33.19	33.19	33.19	33.19	33.19	16.10			
57	Total Non-land Capital (after 1997, included in capital rep	9.68	9.17	10.06	10.52	15.80	19.64	22.78	20.60	21.30	15.45			
58	Economic Costs Paid to Others	9.06	10.61	11.52	11.86	10.37	10.25	11.93	11.20	10.31	8.97			
59	**Excluding land cost for double cropped wheat**	116.52	112.72	116.50	154.00	152.06	169.10	171.36	171.01	163.22	139.34			
60	Land Cost: from COP	116.52	112.72	116.60	120.81	119.87	126.52	138.16	137.82	130.04	121.24			
61	Land Cost: from principle & interest payments	13.63	10.88	16.88	14.81	16.06	20.00	25.90	21.85	21.60	19.92			
62	Difference (Mortgage payment minus COP cost)	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	27.15			
63		19.56	22.31	16.21	18.38	15.13	13.19	7.29	11.34	11.59	8.23			
64	Per acre, Net Operating Returns to Operator from production	-38.52	-66.47	3.79	-56.18	-38.14	-40.57	43.27	-24.08	-32.16	-15.17			
65	Ditto, for double cropped wheat	-38.52	-66.47	3.79	-23.00	-5.95	-7.39	76.46	9.10	1.00	2.93			
66														
67	**ACREAGE FOR Wheat**													
68	Wheat Base (From Case)	47	47	47	47	47	47	47	47	47				
69	ARP reduction percentage (From USDA)	5.00	15.00	5.00	0.00	0.00	0.00	0	0	0				
70	Wheat Acreage Reduction Land	2.4	7.1	2.4	0.0	0.0	0.0	0.0	0.0	0.0				
71	Wheat Payment Acreage (Maximum Program Acreage)	44.7	40.0	44.7	47.0	47.0	47.0	47.0	47.0	47.0				
72	Normal Flex Acres percentage (From USDA)	0	15.0	15.0	15.0	15.0	15.0	0	0	0				
73	Wheat Acres Planted (Max., or from Case)	45	40	45	47	47	47	47	47	47				
74	**Acreage for Non Double-Cropped Wheat**	0	0	0	0	0	0	0	0	0				
75	**Acreage for Double-Cropped Wheat**	45	40	45	47	47	47	47	47	47				
76														
77	**GOVERNMENT PROGRAM ANALYSIS: Wheat (acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CRF**													
78	Total Net Benefits from Govt Programs	2,798	2,029	1,426	1,936	1,147	0	1,396	1,186	1,246	1,314			
79	Total Revenue from Govt Programs	2,818	2,103	1,447	1,936	1,147	0	1,396	1,186	1,246	1,339			
80	Total Costs Associated with Govt Programs	21	74	21	0	0	0	0	0	0	25			
81														
82	Acreage reduction; Production Flexibility Contracts													
83	Total farm net return from acreage reduction & PFC	2,798	2,029	1,426	1,936	1,147	0	1,396	1,186	1,246	1,314			
84	*Total Farm Revenue from Govt Payments*	2,818	2,103	1,447	1,936	1,147	0	1,396	1,186	1,246	1,339			
85	Wheat Payment Acreage (Maximum Program Acreage)	45	40	45	47	47	47	47	47	47				
86	Program Yield, Wheat	39.0	39.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0				
87	Wheat Deficiency Payment Rate (From USDA)	1.2557	1.3360	0.8170	1.0300	0.6700	0.0	0	0	0				
88	Wheat Production Flexibility Contract (From USDA)	0	0	0	0.0000	0.0000	0.0	0.874	0.831	0.663				
89	Per Acre Govt Payment (Prog Yld * Pymt Rate *	49.01	52.65	32.40	41.20	24.40	0.00	29.71	25.23	26.51				
90														

PRODUCED SUBJECT
TO PROTECTIVE ORDER

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PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0035

1	SCENARIO:	Land Purchase, Tract #2, AVERAGE FARM			Source: COP data are for DeltaRegion (1981-99)						03/15/01 = date printed		
2	Case:										http://www.nass.usda.gov:81/ipedr		
3	Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional COP Sources: County Yield & State Price: NASS Web Site: 2/7/02001												
4	Rice ANALYSIS -- (DELTA Region)		1990	1991	1992	1993	1994	1995	1996	1997	1998	Avg 88-98	
5	SUMMARY												
6	Net farm income (total revenue minus total costs)		11,572	15,618	28,462	35,471	21,645	39,538	63,699	44,906	40,023	32,609	
7	Cumulative		72,318	87,936	114,418	149,889	171,534	210,072	273,770	318,676	358,699		
8	Net income from production		-23,289	-16,247	-20,249	-5,959	-20,452	5,092	33,175	15,057	7,851	-2,605	
9	Cumulative		-26,926	-43,175	-63,424	-69,383	-89,834	-84,742	-51,667	-36,610	-28,760		
10	Net income from Government Programs		34,862	31,865	48,731	41,430	42,097	33,446	30,524	29,849	32,172	35,214	
11	Cumulative		99,246	131,110	177,842	219,272	261,368	294,814	325,337	355,186	387,359		
12													
13	TOTAL FARM REVENUE		105,037	126,172	125,721	129,547	126,127	141,139	176,570	157,741	150,330	131,782	
14	Market receipts from sale of production		68,141	93,799	78,980	87,578	86,030	107,154	146,047	127,892	118,157	96,141	
15	Gov't program revenue		36,895	32,373	46,731	41,969	42,097	33,985	30,524	29,849	32,172	35,640	
16													
17	TOTAL FARM COSTS		93,464	110,554	99,239	94,076	106,482	102,601	112,872	112,836	110,307	99,173	
18	Production expenses		91,430	110,046	99,239	93,537	106,482	102,062	112,872	112,836	110,307	98,747	
19	Expenses associated with Farm Program Participation		2,034	508	0	539	0	539	0	0	0	426	
20													
21	ITEMS OF TOTAL FARM COSTS												
22	**Production expenses**												
23	Total Variable Costs (=27+28)		69,078	79,374	68,307	62,941	72,718	69,452	78,810	77,882	74,421	69,581	
24	Total Overhead Costs (=29+30+31)		12,783	14,727	14,620	15,143	16,670	16,013	16,999	17,423	18,478	13,971	
25	Total Capital Costs (=32+33)		12,569	15,945	16,312	15,453	17,094	16,598	17,063	17,530	17,407	15,195	
26													
27	Variable Operating Costs		63,692	77,266	67,105	61,972	71,057	67,559	76,848	75,911	72,653	67,754	
28	Operating Capital		2,385	2,108	1,201	969	1,661	1,894	1,962	1,972	1,768	1,827	
29	Fixed Costs: 'General farm overhead		4,269	4,602	3,054	3,382	3,788	3,766	3,740	4,394	4,146	3,836	
30	Fixed Costs: Taxes & Insurance		2,085	2,490	3,529	4,116	4,844	4,581	5,222	4,992	6,295	3,815	
31	Fixed Costs: Land costs		6,430	7,636	8,037	7,636	8,037	7,636	8,037	8,037	8,037	6,320	
32	Capital Replacement Costs		8,477	10,520	11,555	10,945	12,197	11,955	12,435	12,609	12,982	10,771	
33	Non-land Capital		4,092	5,426	4,757	4,507	4,897	4,641	4,628	4,822	4,425	4,424	
34	Total Costs (excl unpaid labor & gov't programs)		91,430	110,046	99,239	93,537	106,482	102,062	112,872	112,836	110,307	98,747	
35	**Government Programs**												
36	Total Variable Costs		426	107	0	137	0	137	0	0	0	0	
37	Total Overhead Costs		1,607	402	0	402	0	402	0	0	0	0	
38	Total Farm Program Participation Costs		36,895	32,373	46,731	41,969	42,097	33,985	30,524	29,849	32,172	35,640	
39	**Rice ANALYSIS -- Details**		**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**Avg**	
40													
41	**REVENUE, per acre or production**												
42	Chicole County Yield / Harv Ac. (NASS)		5,210	5,301	5,500	4,776	5,448	5,095	5,912	5,350	5,500	5,373	
43	County Yield Used in This Analysis		5,210	5,301	5,500	4,776	5,448	5,095	5,912	5,350	5,500	5,373	
44	State Price of Rice (From NASS)		6.75	7.69	5.83	7.97	6.52	9.14	10.20	9.87	8.87	7.94	
45	**Gross Revenue per Acre, Rice**		351.68	407.66	326.14	380.63	355.20	465.70	603.00	528.05	487.85	427.03	

PRODUCED SUBJECT TO PROTECTIVE ORDER

RGT 0036

Scenario 2: Land Purchase, Tract #2 *p. 10*

Costs of Production, Per Acre Planted													
Published Rice COP Yield (gy, From ERS)	4,976	4,868	5,405	5,029	5,696	5,452	6,034	5,650	5,706	5,388			
Yield Adjustment Factor, Rice (County Yield/COP Yield)	0.9971	0.9971	0.9971	0.9971	0.9971	0.9971	0.9971	0.9971	0.9971	0.9971			
Variable Operating Costs Scaled to County Yield	329.72	336.51	277.07	269.34	293.38	293.62	317.29	313.42	299.97	303.72			
Variable Operating Costs (From ERS)	329.66	336.77	277.86	270.11	294.22	294.46	318.20	314.32	300.83	304.59			
Operating Capital	12.31	9.16	4.96	4.21	6.86	8.23	8.10	8.14	7.30	8.39			
Fixed Costs: General farm overhead	22.03	20.00	12.61	14.74	15.64	16.50	15.44	18.14	17.12	17.35			
Fixed Costs: Taxes & Insurance	10.76	10.82	14.57	17.89	20.00	19.91	21.56	20.61	25.99	19.64			
Fixed costs: Land costs (from scenario of Cas	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	27.15			
Capital Replacement	43.75	45.72	47.71	47.57	60.36	51.96	51.34	52.06	53.80	47.78			
Total Non-land Capital (after 1997, included in capital rep	21.12	23.58	19.64	19.59	20.22	20.17	19.11	20.32	18.27	19.73			
Economic Costs Paid to Others	471.87	478.27	409.74	406.62	439.65	443.57	466.03	465.88	455.44	440.77			
Land Cost: from COP	46.61	61.85	81.28	73.23	85.36	106.70	110.97	119.50	123.77	85.76			
Land Cost: from principle & interest payments	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	27.15			
Difference (Mortgage payment minus COP cost)	-15.42	-28.66	-48.09	-40.04	-52.17	-73.51	-77.78	-86.31	-90.58	-58.61			
Per acre, Net Operating Returns to Operator from production	-120.20	-70.61	-93.61	-26.90	-84.44	22.13	138.97	62.17	32.41	-14			
ACREAGE FOR Rice													
Rice Base (From Case)	242.2	242.2	242.2	242.2	242.2	242.2	242.2	242.2	242.2	242			
ARP reduction percentage (From USDA)	20.00	5.00	0.00	5.00	0.00	5.00	0.00	0	0				
Rice Acreage Reduction Land	48.4	12.1	0.0	12.1	0.0	12.1	0.0	0.0	0.0	19			
Rice Payment Acreage (Maximum Program Acreage)	193.8	230.1	242.2	230.1	242.2	230.1	242.2	242.2	242.2	223			
Normal Flex Acres percentage (From USDA)	0	15.0	15.0	15.0	15.0	15.0	0	0	0				
Rice Acres Planted (Max.: or from Case)	193.8	230.1	242.2	230.1	242.2	230.1	242.2	242.2	242.2	223			
GOVERNMENT PROGRAM ANALYSIS: Rice (acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CRP)													
Total Net Benefits from Govt Programs	34,862	31,865	46,731	41,430	42,097	33,446	30,524	29,849	32,172				
Total Revenue from Govt Programs	36,895	32,373	46,731	41,969	42,097	33,985	30,524	29,849	32,172	35,640			
Total Costs Associated with Govt Programs	2,034	508	0	539	0	539	0	0	0	426			
Acreage reduction; Production Flexibility Contracts													
Total farm net return from acreage reduction & PFC	34,862	31,865	46,731	41,430	42,097	33,446	30,524	29,849	32,172	35,214			
Total Farm Revenue from Gov't Payments	36,895	32,373	46,731	41,969	42,097	33,985	30,524	29,849	32,172	35,640			
Rice Payment Acreage (Maximum Program Acreage)	193.8	230.1	242.2	230.1	242.2	230.1	242.2	242.2	242.2				
Program Yield, Rice	4,579.0	4,583.0	4,583.0	4,583.0	4,586.0	4,587.0	4,587.0	4,547.0	4,547.0				
Rice Deficiency Payment Rate, $/cwt. (From USDA)	4.1585	3.070	4.210	3.990	3.790	3.220	2.710	2.710	2.710				
Rice Production Flexibility Contract (From USDA)	0	0	0	0	0	0	0	0	0	0			
Per Acre Gov't Payment (Prog Yld * Pymt Rate *,	190.42	140.70	192.94	182.40	173.81	147.70	126.03	123.24	132.83				
Total Farm Costs Associated with Set-Aside Land	2,034	508	0	539	0	539	0	0	0	426			
Acres reduced for programs, Rice	48.4	12.1	0.0	12.1	0.0	12.1	0.0	0.0	0.0				
Per Ac Variab. Costs for ARP (for constant ARP ac)	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8				
Per Ac Variab. Costs for ARP (for increased ARP ac)	11.33	11.33	11.33	11.33	11.33	11.33	11.33	11.33	11.33				
Total Variable Costs for all acres in ARP	426	107	0	137	0	137	0	0	0				
Per Acre Land Cost	33.19	33.19	33.19	33.18	33.19	33.19	33.19	33.19	33.19				
Total Land Costs for all acres in ARP	1,607	402	0	402	0	402	0	0	0				

TO PROTECTIVE ORDER

RGT 0037

1 **SCENARIO:** **Land Purchase, Tract #2, AVERAGE FARM** 03/15/01 = date printed
2 **Case:**
3 Scenario: No Discrimination; Avg county yield, Avg state price, Avg regional COP

	1990	1991	1992	1993	1994	1995	1996	1997	1998	Avg 88-98
4 LAND NOT CROPPED ANALYSIS										
5 **S U M M A R Y**										
6 Net farm income (total revenue minus total costs)	-3,434	-3,359	-3,500	-3,571	-3,702	-3,119	-3,120	-3,123	-3,233	-2,880
7 Cumulative	-4,953	-8,312	-11,813	-15,383	-19,085	-22,204	-25,324	-28,447	-31,680	
8 Net income from production	-3,434	-3,359	-3,500	-3,571	-3,702	-3,119	-3,120	-3,123	-3,233	-2,880
9 Cumulative	-4,953	-8,312	-11,813	-15,383	-19,085	-22,204	-25,324	-28,447	-31,680	
10 Net income from Government Programs	0	0	0	0	0	0	0	0	0	0
11 Cumulative	0	0	0	0	0	0	0	0	0	
12										
13 TOTAL FARM REVENUE	0	0	0	0	0	0	0	0	0	0
14 Market receipts from sale of production	0	0	0	0	0	0	0	0	0	0
15 Gov't program revenue	0	0	0	0	0	0	0	0	0	0
16										
17 TOTAL FARM COSTS	3,434	3,359	3,500	3,571	3,702	3,119	3,120	3,123	3,233	2,880
18 Production expenses	3,434	3,359	3,500	3,571	3,702	3,119	3,120	3,123	3,233	2,880
19 Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0	0
20										
21 ITEMS OF TOTAL FARM COSTS										
22 **Production expenses**										
23 Total Variable Costs (=27+28)	0	0	0	0	0	0	0	0	0	0
24 Total Overhead Costs (=29+30+31)	3,434	3,359	3,500	3,571	3,702	3,119	3,120	3,123	3,233	2,880
25 Total Capital Costs (=32+33)	0	0	0	0	0	0	0	0	0	0
26										
27 Variable Operating Costs	0	0	0	0	0	0	0	0	0	0
28 Operating Capital	0	0	0	0	0	0	0	0	0	0
29 Fixed Costs: 'General farm overhead	0	0	0	0	0	0	0	0	0	0
30 Fixed Costs: Taxes & Insurance	713	638	779	850	981	398	399	402	512	654
31 Fixed Costs: Land costs	2,721	2,721	2,721	2,721	2,721	2,721	2,721	2,721	2,721	2,226
32 Capital Replacement Costs	0	0	0	0	0	0	0	0	0	0
33 Non-land Capital	0	0	0	0	0	0	0	0	0	0
34 Total Costs, (excl unpaid labor & gov't programs)	3,434	3,359	3,500	3,571	3,702	3,119	3,120	3,123	3,233	2,880
35 **Government Programs**										
36 Total Variable Costs	0	0	0	0	0	0	0	0	0	0
37 Total Overhead Costs	0	0	0	0	0	0	0	0	0	0
38 Total Farm Program Participation Costs	0	0	0	0	0	0	0	0	0	0
39 **LAND NOT CROPPED ANALYSIS -- Details**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**Avg**
40 **Case:**										
41 **REVENUE, per acre of production**										
42 Non crop sources of income	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
43 **Gross Revenue per Acre**	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
44										

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45	**Costs of Production, Per Acre**															
46	Variable Operating Costs (From ERS)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
47	Operating Capital	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
48	Fixed Costs: General farm overhead	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
49	Fixed Costs: Taxes & Insurance	8.89	7.78	9.5	10.36	11.96	4.85	4.86	4.9	6.24						
50	Fixed costs: Land costs	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19	33.19						
51	Capital Replacement	0	0	0	0	0	0	0	0	0						
52	Total Non-land Capital (after 1995, included in capital replac	0	0	0	0	0	0	0	0	0						
53	**Economic Costs Paid to Others**	41.88	40.97	42.69	43.55	45.15	38.04	38.05	38.09	39.43						
54																
55	Revenue minus Costs Paid to Others	-41.88	-40.97	-42.69	-43.55	-45.15	-38.04	-38.05	-38.09	-39.43						
56																
57	**ACREAGE NOT USED FOR CROP PRODUCTION**															
58	Acres Not Planted (Max.; or from Case.)	82	82	82	82	82	82	82	82	82						

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U.S. Department of Agriculture
Economic Research Service
Assessment of Potential Economic Losses

Claimant: Claim no.: Arbitration no.:
Location:

Assessment of Potential Economic Losses

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

Economic Modeling

Standard economic budgeting and accounting analyses were conducted for an average farm in with the crop mix of the Complainant's operation. This analysis of the complainant's farming operation addresses the farms potential to have generated net farm income in each year for the period of alleged discrimination. For each crop enterprise on the farm, this income analysis estimates the net returns to the operator assuming average production practices, crop yields, prices, and economic costs for the geographical area. (The Attachment provides the detailed results of this analysis). Economic costs include variable, fixed, capital replacement, and operating and non-land capital costs of farming in the region.

In the Income Analysis, full budgeted costs in which all factors used in production are paid an average rate of return are taken as the relevant measure of production costs to derive Net Returns to the Operator (i.e., Net Farm Income). The operator is credited with the returns to all owned factors that he supplies. Variable operating costs are adjusted to reflect differences between average yields in and those of the region.

The first question that needs to be determined is could this operation have been economically viable? If that question is answered in the affirmative, then the second question for determining economic damages is what net worth could the operation have generated over the period of the alleged discrimination?

General Assumptions

- The period of analysis used in this case was 1981 to 1999.
- Even though the claimant apparently ceased farming in 1987, this analysis assumes claimant would have stayed in business until 1999.

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- USDA/ERS publishes regional Cost of Production Accounts (COP) for individual crops. Components of the costs of production include:
  (1) Variable operating costs,
  (2) Fixed Costs, including:
    - General farm overhead expenses, such as insurance, licenses, building and fence repair costs, and the farm share of utilities, telephone, and motor vehicles were used to estimate the net returns to the operator.
    - Taxes and insurance,
    - Land costs, rental payments for renting land, property taxes on owned land,
  (3) Capital replacement (ownership cost that is equivalent to the principal payment portion of a loan to finance machinery and replacement).
  (4) Operating capital charges to cover the interest payments on loans to purchase inputs.
  (5) Nonland capital represents the interest portion of ownership costs associated with machinery and equipment.
- All costs must be met for the farm to remain economically viable in the long term.
- These costs were used in the analysis, with an adjustment to variable costs to reflect county conditions. Variable costs from the regional COP were adjusted to more accurately represent an average farm growing these crops in . Variable costs were indexed to the average county yield by the ratio of the county's period-average yield to the COP's regional period-average yield. Since average yields are lower than the state average yields (in the Base Scenario), this reduced the estimated variable costs of production.
- The operator was assumed to receive the average rate of return from the ERS cost of production budgets for each factor he supplied into the production process, e.g., unpaid labor.
- The Farmers Home Administration (later FSA) was assumed to extend to the complainant credit, up to the $200,000 legal limit, to finance operating expenses plus any shortfall in Net Farm Income below obligations for interest payments, principal payments, and family living expenses each year. Since the complainant was a very large farmer, annual operating costs exceeded the $200,000. It is assumed that the claimant obtained the residual credit from commercial lending sources. This seems to be a reasonable assumption, if the claimant's large net worth and relatively low debt load were as set forth in the analysis.
- Government Farm Programs: There is not indication that the claimant participated in the government's Acreage Reduction Program (ARP). Thus, it was assumed that the claimant did not have to set aside land or maintain any land in conserving uses. This means that the claimant could plant all of his land, to what ever crops he wanted, and did not incur any costs to maintain set aside land. As a result, it was assumed the claimant did not receive government payments during the ARP period. Beginning in 1996, it was assumed that the claimant would have applied for Production Flexibility Contracts (PFC), and undertaken the paper work to establish a payment base, and thus received PFC payments, and subsequently in 1998 and 1999, would have received Marketing Loan Program benefits.

Assumptions for the Base Scenario

- Although the claimant apparently had a very large farming operation, this analysis only considers 2,300 acres. It assumes that the 2,300 acres was used to produce soybeans, and that 1,500 of the 2,300 acres were used to double crop wheat (even though there are indications that some of the wheat was planted on other acreage

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that was not double cropped. This gives the claimant the benefit of the doubt on two counts: (1) There is no land cost for wheat. (2) It is assumed in the Base Scenario that yields were not lowered due to double cropping (even though lower yields generally result).

- In the "Base Scenario" it was assumed that the claimant would have used sufficient inputs and management to achieve average yields for all crops each year of the period of analysis.
- Average state prices for all crops, as published by NASS/USDA, were assumed in the analysis.
- yield data is not available for all years. When yields were not available, they were interpolated using percent changes in state yields.

Scenarios

The following specific scenarios were examined:

Scenario 1: Complainant's Claim - - Assuming Discrimination: The Complainant provided insufficient documentation about his farming operation to determine his actual net farm income during the period of analysis (1981-1999). Since no information is available about the claimant's actual farm revenue, expenses, and net income during the period, it is assumed that farm income was zero (neither profits nor losses).

Scenario 2: An Average Farmer - - Without Discrimination: This "Base Scenario" estimates the potential net farm income, for each year of the period of analysis, assuming the complainant's yields, prices, costs of production, and government benefits were similar to the average farmer producing the same crop mix as the complainant claims he would have used during the period. All the assumptions mentioned above apply to the "Base Scenario," including the assumption that the claimant did not participate in the Acreage Reduction Program.

Scenario 3: ***Higher Than Average Yields:*** This scenario differs from Scenario 2 in that it assumes the claimant was able to attain significantly higher than average yields. It accepts the claimant's alleged higher yields (26% for wheat and 38% for soybeans, as reported in analysis). Achieving higher than average yields generally requires higher costs of production. If obtaining higher yields were costless, then everyone would do it, and the county average yields would be higher. Obtaining higher yields can be the result of paying more to buy or lease higher quality land, as well as of increasing variable inputs. This alternative to the Base Scenario assumes the higher yields are associated with higher variable costs only. Variable operating costs are increased proportionately to the ratio of the assumed yields to the COP yields.

Results

Scenario 1: Complainant's Claim - - Assuming Discrimination:

Assumes zero net farm income from farming.
NOTE: An estimate of damages due to alleged discrimination is the difference in cumulative net income between a "without discrimination" scenario and the "with discrimination" scenario. When the "with discrimination" scenario's net income is zero, then the damage due to alleged discrimination is simply the cumulative net income from the "without discrimination" scenario.

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Scenario 2: An Average Farmer - - Without Discrimination:

The detailed results of the analysis of an average farm (Scenario 2) are described in Attachment 1. The Scenario indicates that, between 1981 and 1999, an average farm producing the complainant's assumed mix of crops with the assumed acreage would have generated:

$ 484,657 average annual revenue from crop sales and government program payments.
$ 500,877 average annual expenses paid to others for crop production costs.
$ -16,221 average annual net income (residual return to operator), representing an excess of revenues over all costs paid to others (variable operating, fixed, capital replacement, and capital costs). This is the appropriate measure to use for net farm income. Thus, during the period of analysis, the claimant would have generated a net loss of income of $294,935.

The claimant's income was significantly diminished because he did not participate in the Acreage Reduction Program for wheat between 1981 and 1995. In some years of low wheat prices, program payments far surpassed the costs of processing the application paper work, of getting acreage certified, and of maintaining set-aside acres in conserving uses. In some years program payments generated about as much revenue as did the sales of wheat.

NOTE: This analysis, and other indicators, show that the 1980s period was a financially difficult time for an farm producing the crops that the claimant produced. During much of the 1980s, the market prices of grains and oilseeds were unusually low. Farmers with high debt loads incurred additional risks. It was a financially difficult period for the average U.S. and farmer producing grains and oilseeds. The combined low prices and high debt burdens caused a spike in involuntary exits and foreclosures throughout the entire U.S. farm sector during the mid 1980s.

Scenario 3: Higher Than Average Yields - - Without Discrimination:

NOTE: There was not sufficient time to complete the analysis of this scenario.
Obtaining higher yields will increase revenues relatively more than costs of production. Thus, the profit margin will increase significantly, and is expected to turn positive.

The detailed results of the analysis of Scenario 3 are included in Attachment 2.
$ average annual revenue from crop sales.
$ average annual expenses paid to others for crop production costs.
$ average annual return to operator. During the period of analysis, the claimant would have generated a net profit of $_____.

Attachment 1: Income Analysis: Scenario 1 - - Average Farmer, Without Discrimination.
Attachment 2: Income Analysis: Scenario 2 - - Higher Than Average Yields.

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Attachment 1, page 1

1981-1991

1 BASE SCENARIO: AVERAGE FARM											
2 Case: .				11/9/00 = Date printed.							
3 Scenario: no Discrimination: Avg county yield, Avg state price, Avg regional COP				11/9/00 = Date last updated.						= date printed	
4 TOTAL FARM REVENUE AND COSTS	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
5 SUMMARY - TOTAL FARM											
6 Net farm income (total revenue minus total costs)	130,203	47,868	131,893	51,169	54,722	-56,276	-62,433	100,820	-131,978	-226,489	-160,841
7 Cumulative	130,203	178,071	309,964	361,133	415,855	359,579	297,145	397,965	265,988	39,499	-121,352
8 Net income from production	130,203	47,868	131,893	51,169	54,722	-56,276	-62,433	100,820	-131,978	-226,489	-160,841
9 Cumulative	130,203	178,071	309,964	361,133	415,855	359,579	297,145	397,965	265,988	39,499	-121,352
10 Net income from Government Programs	0	0	0	0	0	0	0	0	0	0	0
11 Cumulative	0	0	0	0	0	0	0	0	0	0	0
12											
13 TOTAL FARM REVENUE	593,672	496,661	570,649	499,801	477,627	331,130	335,807	562,894	364,771	260,838	345,505
14 Market receipts from sale of production	593,672	496,661	570,649	499,801	477,627	331,130	335,807	562,894	364,771	260,838	345,505
15 Gov't program payments	0	0	0	0	0	0	0	0	0	0	0
16											
17 TOTAL FARM COSTS	463,469	448,792	438,756	448,632	422,905	387,407	398,240	462,074	496,749	487,326	506,346
18 Production expenses	463,469	448,792	438,756	448,632	422,905	387,407	398,240	462,074	496,749	487,326	506,346
19 Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0	0	0
20											
21 ITEMS OF TOTAL FARM COSTS											
22 Production expenses											
23 Total Variable Operating Costs	252,497	247,388	240,185	242,998	216,992	189,117	190,528	239,291	274,173	268,428	278,867
24 Total Overhead Costs	112,884	103,388	101,419	104,856	99,601	96,315	100,694	134,337	115,422	120,624	118,401
25 General farm overhead	24,733	21,457	21,385	21,979	15,527	16,549	21,964	35,293	24,135	22,887	24,934
26 Taxes & Insurance	16,856	16,977	17,865	18,990	26,482	26,866	28,015	28,998	36,524	42,067	34,230
27 Land costs	71,093	64,952	62,169	63,917	57,592	52,900	50,715	69,046	54,763	55,669	60,237
28 Total Capital Replacement Costs	86,799	71,269	74,694	74,045	82,428	82,123	86,070	92,159	54,461	53,351	51,578
29 Total Operating Capital	20,372	15,807	12,223	13,914	9,574	6,139	6,755	8,469	13,162	11,972	8,967
30 Total Non-land Capital	11,117	10,951	10,235	12,789	14,310	13,713	14,193	17,627	39,511	32,381	39,513
31 Total Costs, (excl unpaid labor & gov't programs)	463,469	448,792	438,756	448,632	422,905	387,407	398,240	462,074	496,748	487,326	506,346
32 Government Programs											
33 Total Variable Costs	0	0	0	0	0	0	0	0	0	0	0
34 Total Overhead Costs	0	0	0	0	0	0	0	0	0	0	0
35 Total Farm Program Participation Costs	0	0	0	0	0	0	0	0	0	0	0

1992-1999

1 BASE SCENARIO: AVERAGE FARM									
2 Case:									
3 Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional COP									
4 TOTAL FARM REVENUE AND COSTS	1992	1993	1994	1995	1996	1997	1998	1999	Average
5 SUMMARY - TOTAL FARM									
6 Net farm income (total revenue minus total costs)	34,753	-14,217	2,390	-42,364	204,815	-72,334	-137,244	-149,384	-16,221
7 Cumulative	-86,596	-100,815	-98,425	-140,789	64,026	-8,307	-145,552	-294,935	
8 Net income from production	34,753	-14,217	2,390	-42,364	159,007	-114,106	-232,856	-302,536	-26,997
9 Cumulative	-86,596	-100,815	-98,425	-140,789	18,218	-95,888	-328,744	-631,281	
10 Net income from Government Programs	0	0	0	0	45,808	41,772	95,611	153,154	10,776
11 Cumulative	0	0	0	0	45,808	87,580	183,192	336,346	-145,552
12									
13 TOTAL FARM REVENUE	556,335	514,402	559,193	525,814	807,281	550,647	479,807	467,868	484,657
14 Market receipts from sale of production	556,335	514,402	559,193	525,814	761,473	508,874	384,196	314,514	473,881
15 Gov't program payments	0	0	0	0	45,808	41,772	95,611	153,154	10,776
16									
17 TOTAL FARM COSTS	521,582	528,619	556,803	568,178	602,466	622,980	617,051	617,051	500,877
18 Production expenses	521,582	528,619	556,803	568,178	602,466	622,980	617,051	617,051	500,877
19 Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0
20									
21 ITEMS OF TOTAL FARM COSTS									
22 Production expenses									
23 Total Variable Operating Costs	265,745	261,754	265,631	290,290	308,218	282,296	293,683	293,683	257,858
24 Total Overhead Costs	120,941	133,296	134,961	142,296	155,961	152,847	140,424	140,424	123,883
25 General farm overhead	23,972	27,810	23,437	26,371	24,773	25,319	32,147	32,147	
26 Taxes & Insurance	34,225	37,981	42,500	43,751	45,258	56,037	30,445	30,445	
27 Land costs	62,744	67,505	68,724	72,174	85,930	101,591	77,832	77,832	
28 Total Capital Replacement Costs	85,207	84,724	83,123	81,757	85,968	110,595	159,232	159,232	81,539
29 Total Operating Capital	6,097	5,290	7,956	9,827	9,358	8,798	8,247	8,247	9,552
30 Total Non-land Capital	43,592	43,585	45,432	44,148	44,161	38,374	15,465	15,465	28,246
31 Total Costs, (excl unpaid labor & gov't programs)	521,582	528,619	556,803	568,178	602,466	622,980	617,051	617,051	500,877
32 Government Programs									
33 Total Variable Costs	0	0	0	0	0	0	0	0	
34 Total Overhead Costs	0	0	0	0	0	0	0	0	
35 Total Farm Program Participation Costs	0	0	0	0	45,808	41,772	95,611	153,154	10,776

Attachment 1, Pg 2

1	BASE SCENARIO: AVERAGE FARM											
2	Case:					Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional CDP						
3		11/09/00 = date printed										
4	SOYBEANS ANALYSIS	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
5	SUMMARY											
6	Net farm income (total revenue minus total costs)	38,859	28,631	91,314	-17,491	25,113	-47,338	-86,880	130,553	-155,485	-155,898	-101,370
7	Cumulative	38,859	67,490	158,804	141,313	166,425	119,088	32,227	161,080	45,595	-110,303	-211,673
8	Net income from production	38,859	28,631	91,314	-17,491	25,113	-47,338	-86,880	130,553	-155,485	-155,898	-101,370
9	Cumulative	38,859	67,490	158,804	141,313	166,425	119,088	32,227	161,080	45,595	-110,303	-211,673
10	Net income from Government Programs	0	0	0	0	0	0	0	0	0	0	0
11	Cumulative	0	0	0	0	0	0	0	0	0	0	0
12												
13	TOTAL FARM REVENUE	350,579	335,938	391,092	287,567	314,226	217,955	206,957	448,054	297,271	189,338	248,584
14	Market receipts from sale of production	350,579	335,938	391,092	287,567	314,226	217,955	206,957	448,054	297,271	189,338	248,584
15	Gov't program revenue	0	0	0	0	0	0	0	0	0	0	0
16												
17	TOTAL FARM COSTS	311,720	307,307	299,778	305,058	289,113	265,292	274,917	317,201	342,757	325,236	349,954
18	Production expenses	311,720	307,307	299,778	305,058	289,113	265,292	274,917	317,201	342,757	325,236	349,954
19	Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0	0	0
20												
21	ITEMS OF TOTAL FARM COSTS											
22	Production expenses											
23	Total Variable Operating Costs	154,536	156,698	151,382	151,954	134,875	118,782	121,780	139,728	173,431	168,666	177,040
24	Total Fixed Costs	97,159	90,521	87,814	90,668	83,536	78,992	82,409	110,262	93,012	86,734	96,646
25	General farm overhead	14,743	14,122	13,915	14,229	16,442	10,534	15,019	24,173	14,480	13,987	14,674
26	Taxes & Insurance	11,293	11,247	11,730	12,420	15,502	15,916	16,875	17,043	23,759	19,987	21,735
27	Land costs	71,063	64,952	62,168	63,917	57,592	52,900	50,715	69,046	54,765	52,660	60,237
28	Total Capital Replacement Costs	41,564	44,985	46,969	48,460	58,038	64,763	57,813	61,019	41,216	41,676	47,068
29	Total Operating Capital	11,477	9,177	7,153	8,004	5,014	3,289	3,880	4,485	8,142	7,337	5,812
30	Total Non-land Capital	6,982	6,946	6,440	8,004	9,860	8,108	9,453	11,707	26,968	15,791	23,596
31	Total Costs, (excl unpaid labor & gov't programs)	311,720	307,307	299,778	305,058	289,113	265,292	274,917	317,201	342,757	325,236	349,954
32	Government Programs											
33	Total Variable Costs	0	-	-	-	-	-	-	-	-	-	-
34	Total Overhead Costs	0	0	0	0	0	0	0	0	0	0	0
35	Total Farm Program Participation Costs	0	0	0	0	0	0	0	0	0	0	0
36	SOYBEANS ANALYSIS -- Details	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
37	Case:	11/09/00 = date printed				Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional CD						
38	REVENUE, per acre or production											
39	Yield: (from Claimant)	30	32	37	25	23	41	15.5	25.7	15.7	12.5	19.3
40	County Yield			21.8	20.6	27	19.3	15.5	25.7	15.7	12.5	19.3
41	County Yield (NASS)				20.6	27	19.3	15.5	25.7	15.7	12.5	19.3
42	State Yield (NASS)	25	25	20	21	27	22	16	25	21	17	22
43	County Yield Used in This Analysis (adjusted by state % cha	25.07	27.26	21.8	20.6	27	19.3	15.5	25.7	15.7	12.5	19.3
44	State Price of Soybeans (From NASS)	6.05	5.36	7.60	6.07	5.05	4.91	5.78	7.55	5.74	5.89	5.60
45	Gross Revenue per Acre, Soybeans	152.43	146.06	170.04	125.04	136.62	94.76	89.59	194.01	90.12	73.63	108.06
46				18.4	20.6	27	19.3	15.5	25.7	15.7	12.5	19.3
47	Costs of Production, Per Acre Planted											
48	Published Soybeans COP Yield (by Farm ERS)	22.84	25.61	17.67	23.39	25.76	22.13	21.73	24.79	24.77	21.88	28.84
49	Yield Adjustment Factor, Soybeans (County Yield/COP Yield)	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575
50	Variable Operating Costs Scaled to County Yield	67.19	67.78	65.82	66.07	58.64	51.64	52.64	56.40	75.40	73.35	76.97
51	Variable Operating Costs (From ERS)	78.36	79.05	76.76	77.06	68.39	60.23	61.74	65.78	87.94	85.64	89.77
52	Fixed Costs: General farm overhead	6.41	6.14	6.05	6.23	7.84	4.58	6.83	10.51	6.29	5.86	6.38
53	Fixed Costs: Taxes & Insurance	4.91	4.89	5.10	5.40	6.74	6.92	7.26	7.41	10.33	8.69	9.45
54	Fixed costs: Land costs	30.91	28.24	27.03	27.79	25.04	23.00	22.05	30.02	23.81	24.20	26.19
55	Capital Replacement	18.06	19.56	20.43	20.29	24.35	23.81	25.06	26.53	17.92	18.12	20.46
56	Operating Capital	4.99	3.99	3.11	3.48	2.18	1.43	1.69	1.95	3.54	3.19	2.44
57	Total Non-land Capital (after 1997, included in capital replac	3.04	3.02	2.80	3.48	4.29	3.96	4.11	5.09	11.72	6.87	10.26
58	Economic Costs Paid to Others (Total Ec. Cost - UL)	135.53	133.81	130.34	132.65	125.79	115.34	119.53	137.91	149.02	141.41	152.15
59												
60	Per acre, Net Operating Returns to Operator from production	16.90	12.45	39.70	-7.60	10.92	-20.58	-39.94	56.89	-58.91	-67.78	-44.07
61												
62	ACREAGE FOR Soybeans											
63	Soybeans Base (From Case)	2300	2300	2300	2300	2300	2300	2300	2300	2300	2300	2300
64	ARP reduction, percentage (From USDA)	0	0	0	0	0	0	0	0	0	0	0
65	Normal Flex Acres percentage (From USDA)	0	0	0	0	0	0	0	0	0	0	0
66	Soybeans Acreage Reduction Land	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
67	Soybeans Payment Acreage (Maximum Program Acreage)	2300	2300	2300	2300	2300	2300	2300	2300	2300	2300	2300
68	Soybeans Acres Planted (Max,; or from Case)	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300
69												
70	GOVERNMENT PROGRAM ANALYSIS: Soybeans	(acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CRP)										
71	Total Net Benefits from Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
72	Total Revenue from Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
73	Total Costs Associated with Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
74												
75	Acreage reduction; Production Flexibility Contracts											
76	Total farm net return from acreage reduction & PFC	0	0	0	0	0	0	0	0	0	0	0
77	Total Farm Revenue from Gov't Payments	0	0	0	0	0	0	0	0	0	0	0
78	Soybeans Payment Acreage (Maximum Program Acreage)	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300
79	Program Yield	0	0	0	0	0	0	0	0	0	0	0
80	Soybeans Deficiency Payment Rate (From USDA)	0	0	0	0	0	0	0	0	0	0	0
81	Soybeans Production Flexibility Contract (From USD	0	0	0	0	0	0	0	0	0	0	0
82	Per Acre Gov't Payment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
83												
84	Total Farm Costs Associated with Set-Aside Land	0	0	0	0	0	0	0	0	0	0	0
85	Acres reduced for programs; Soybeans	0	0	0	0	0	0	0	0	0	0	0
86	Per Acre Variable Costs for acreage reduction (From ER	0	0	0	0	0	0	0	0	0	0	0
87	Per Acre Land Cost	0	0	0	0	0	0	0	0	0	0	0
88	Per Acre Economic Costs Paid to Others	0	0	0	0	0	0	0	0	0	0	0
89												
90	Marketing Loan Benefits											
91	Total Farm LDP Benefits	0	0	0	0	0	0	0	0	0	0	0
92	Acres Planted	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0
93	Yield	25.1	27.3	21.8	20.6	27.0	19.3	15.5	25.7	15.7	12.5	19.3
94	LDP Payment Rate	0	0	0	0	0	0	0	0	0	0	0
95	LDP Payment / Ac harvested	0	0	0	0	0	0	0	0	0	0	0

TO PROTECTIVE ORDER

RGT 0045

Attachment 1, Page 3

1	BASE SCENARIO: AVERAGE FARM										
2	Case:	NOTE: COP data are for SE Region (81-87) and Southern Seaboard (88).									
3		2000									
4	SOYBEANS ANALYSIS	1992	1993	1994	1995	1996	1997	1998	1999	Average	
5	SUMMARY										
6	Net farm income (total revenue minus total costs)	-36,242	-1,546	-80,187	-90,717	34,858	-137,119	-212,509	-281,516	-53,516	
7	Cumulative	-247,815	-249,461	-329,648	-420,365	-385,707	-522,826	-735,334	-1,016,851		
8	Net income from production	-36,242	-1,546	-80,187	-90,717	34,858	-137,119	-226,602	-306,531	-66,882	
9	Cumulative	-247,815	-249,461	-329,648	-420,365	-385,707	-522,826	-752,427	-1,057,959		
10	Net income from Government Programs	0	0	0	0	0	0	17,093	24,015	2,164	
11	Cumulative	0	0	0	0	0	0	17,093	41,108		
12											
13	TOTAL FARM REVENUE	323,725	309,168	309,291	300,893	444,277	293,565	222,956	153,978	293,924	
14	Market receipts from sale of production	323,725	309,168	309,291	300,893	444,277	293,565	205,863	129,963	291,761	
15	Gov't program revenue	0	0	0	0	0	0	17,093	24,015	2,164	
16											
17	TOTAL FARM COSTS	359,967	360,714	389,478	391,610	409,619	430,684	435,495	435,495	347,443	
18	Production expenses	359,967	360,714	389,478	391,610	409,619	430,684	435,495	435,495	347,443	
19	Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0	
20											
21	ITEMS OF TOTAL FARM COSTS										
22	Production expenses										
23	Total Variable Operating Costs	181,280	177,058	187,551	186,427	195,008	168,737	187,532	187,532	168,643	
24	Total Fixed Costs	95,488	105,846	113,711	116,541	131,376	155,572	115,644	115,644	102,666	
25	General farm overhead	13,992	15,525	17,572	18,676	18,308	17,844	26,312	26,312	18,527	
26	Taxes & Insurance	21,850	22,818	25,415	25,891	27,736	36,067	11,500	11,500	18,942	
27	Land costs	60,744	67,505	68,724	72,174	85,330	101,661	77,832	77,832	67,198	
28	Total Capital Replacement Costs	80,117	46,844	66,223	58,797	51,196	79,365	127,262	127,262	59,627	
29	Total Operating Capital	3,772	3,220	5,106	6,072	5,773	5,105	5,037	5,037	5,921	
30	Total Non-land Capital	26,312	25,649	29,877	28,773	28,266	21,574	0	0	15,584	
31	Total Costs, (excl unpaid labor & gov't programs)	359,967	360,714	389,488	391,610	409,619	430,684	435,495	435,495	347,443	
32	Government Programs										
33	Total Variable Costs	-	-	-	-	0	0	0	0	0	
34	Total Overhead Costs	0	0	0	0	0	0	0	0	0	
35	Total Farm Program Participation Costs	0	0	0	0	0	0	17,093	24,015	2,164	
36	SOYBEANS ANALYSIS -- Details	1992	1993	1994	1995	1996	1997	1998	1999	Avg	
37	Case: A										1984-94
38	REVENUE, per acre of production										
39	Yield: (from Claimant)	25									
40	County Yield	25									
41	County Yield (NASS)	25	24.4	23.8							
42	State Yield (NASS)	29	24	31	24	34	25	22	16	23.58	
43	County Yield Used in This Analysis (adjusted by state % cha	25	24.4	23.8	18.43	26.10	19.19	16.89	12.28	20.66	1984-94
44	State Price of Soybeans (From NASS)	5.63	6.40	5.85	7.10	7.40	6.85	5.30	4.80	6.03	
45	Gross Revenue per Acre, Soybeans	140.75	156.16	134.47	130.82	193.16	127.64	89.52	58.51	126.85	
46		25	24.4	23.8							
47	Costs of Production, Per Acre Planted										
48	Published Soybeans COP Yield (pv, From ERS)	28.77	22.94	31.66	28.25	30.90	34.05	30.0	23.00	24.36	1984-94
49	Yield Adjustment Factor, Soybeans (County Yield/COP Yield)	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	0.8575	1984-94
50	Variable Operating Costs Scaled to County Yield	76.82	78.98	81.54	81.06	84.79	73.36	81.54	81.54		
51	Variable Operating Costs (From ERS)	91.62	89.78	96.10	94.53	98.88	85.56	95.10	95.10	82.86	
52	Fixed Costs: General farm overhead	6.04	6.75	7.64	8.12	7.96	7.76	11.44	11.44		
53	Fixed Costs: Taxes & Insurance	9.50	9.92	11.06	11.17	12.06	15.69	5.00	5.00		
54	Fixed costs: Land costs	27.28	29.35	29.88	31.38	37.10	44.17	33.84	33.84	29.22	
55	Capital Replacement	21.79	21.28	24.91	23.39	22.26	34.65	55.34	55.34		
56	Operating Capital	1.54	1.40	2.22	2.64	2.51	2.22	2.22	2.22		
57	Total Non-land Capital (after 1997, included in capital replac	11.44	11.15	12.99	12.51	11.42	9.38	0	0.00		1/ Where=0
58	Economic Costs Paid to Others (Total Ec. Cost - UL)	168.51	168.63	189.33	176.27	178.10	167.25	189.35	189.35	151.08	
59											
60	Per acre, Net Operating Returns to Operator from production	-15.76	-0.67	-34.86	-39.44	15.07	-59.62	-98.03	-132.84	-24.21	
61											
62	ACREAGE FOR Soybeans										
63	Soybeans Base (From Case)	2300	2300	2300	2300	2300	2300	2300	2300		
64	ARP reduction percentage (From USDA)	0	0	0	0	0	0	0	0		
65	Normal Flex Acres percentage (From USDA)	0	0	0	0	0	0	0	0		
66	Soybeans Acreage Reduction Land	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
67	Soybeans Payment Acreage (Maximum Program Acreage)	2300	2300	2300	2300	2300	2300	2300	2300		
68	Soybeans Acres Planted (Max,; or from Case)	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300		
69											
70	GOVERNMENT PROGRAM ANALYSIS: Soybeans	(acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CRP)									
71	Total Net Benefits from Gov't Programs	0	0	0	0	0	0	17,093	24,015		
72	Total Revenue from Gov't Programs	0	0	0	0	0	0	17,093	24,015	2,164	
73	Total Costs Associated with Gov't Programs	0	0	0	0	0	0	0	0	0	
74											
75	Acreage reduction: Production Flexibility Contracts										
76	Total farm net return from acreage reduction & PFC	0	0	0	0	0	0	0	0	0	
77	Total Farm Revenue from Gov't Payments	0	0	0	0	0	0	0	0	0	
78	Soybeans Payment Acreage (Maximum Program Acreage)	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300		
79	Program Yield	0	0	0	0	0	0	0	0		
80	Soybeans Deficiency Payment Rate (From USDA)	0	0	0	0	0	0	0	0		
81	Soybeans Production Flexibility Contract (From USD	0	0	0	0	0	0	0	0		
82	Per Acre Gov't Payment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
83											
84	Total Farm Costs Associated with Set-Aside Land	0	0	0	0	0	0	0	0	0	
85	Acres reduced for programs, Soybeans	0	0	0	0	0	0	0	0		
86	Per Acre Variable Costs for acreage reduction (From ER	0	0	0	0	0	0	0	0		
87	Per Acre Land Cost	0	0	0	0	0	0	0	0		
88	Per Acre Economic Costs Paid to Others	0	0	0	0	0	0	0	0		
89											
90	Marketing Loan Benefits										
91	Total Farm LDP Benefits	0	0	0	0	0	0	17,093	24,015	2,164	
92	Acres Planted	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0	2300.0		
93	Yield	25.0	24.4	23.8	18.4	26.1	19.2	16.9	12.3		
94	LDP Payment Rate	0	0	0	0	0	0	0.44	0.85		
94	LDP Payment / Ac harvested	0	0	0	0	0	0	7.43	10.44		

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0046

Attachment 1, Page 4

		1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
1	BASE SCENARIO: AVERAGE FARM											
2	Case:			Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional COP								Source: C
3	= date printed											Source: C
4	WHEAT ANALYSIS	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
5	SUMMARY											
6	Net farm income (total revenue minus total costs)	91,343	19,238	40,579	68,660	29,609	-8,939	6,427	-30,033	3,508	-70,600	-58,471
7	Cumulative	91,343	110,581	151,160	219,820	249,430	240,491	246,918	216,885	220,393	149,792	90,321
8	Net income from production	91,343	19,238	40,579	68,660	29,609	-8,939	6,427	-30,033	3,508	-70,600	-58,471
9	Cumulative	91,343	110,581	151,160	219,820	249,430	240,491	246,918	216,885	220,393	149,792	90,321
10	Net income from Government Programs	0	0	0	0	0	0	0	0	0	0	0
11	Cumulative	0	0	0	0	0	0	0	0	0	0	0
12												
13	TOTAL FARM REVENUE	243,093	160,723	179,557	212,204	163,401	113,175	129,750	114,840	157,500	91,500	96,921
14	Market receipts from sale of production	243,093	160,723	179,557	212,204	163,401	113,175	129,750	114,840	157,500	91,500	96,921
15	Gov't program revenue	0	0	0	0	0	0	0	0	0	0	0
16												
17	TOTAL FARM COSTS	151,749	141,485	138,978	143,544	133,792	122,114	123,323	144,873	153,992	162,100	156,392
18	Production expenses	151,749	141,485	138,978	143,544	133,792	122,114	123,323	144,873	153,992	162,100	156,392
19	Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0	0	0
20												
21	ITEMS OF TOTAL FARM COSTS											
22	Production expenses											
23	Total Variable Operating Costs	97,958	91,490	88,803	91,044	82,117	70,334	68,768	79,563	100,742	99,730	99,627
24	Total Fixed Costs	15,555	13,065	13,605	14,220	16,065	16,965	18,285	24,076	22,410	31,890	22,755
25	General farm overhead	9,990	7,335	7,470	7,650	5,085	6,015	6,945	12,120	9,645	9,810	10,260
26	Taxes & Insurance	5,565	5,730	6,135	6,570	10,980	10,950	11,340	11,956	12,765	22,080	12,495
27	Land costs (excluded from double cropped cost	0	0	0	0	0	0	0	0	0	0	0
28	Total Capital Replacement Costs	25,215	26,295	27,705	27,585	26,400	27,360	28,455	31,140	13,245	12,255	14,520
29	Total Operating Capital	8,895	6,630	5,070	5,910	4,560	2,850	3,075	3,975	5,040	4,635	3,375
30	Total Non-land Capital	4,125	4,005	3,795	4,785	4,650	4,605	4,740	6,120	12,556	13,590	15,915
31	Total Costs, (excl unpaid labor & gov't programs)	151,749	141,485	138,978	143,544	133,792	122,114	123,323	144,873	153,992	162,100	156,392
32	Government Programs											
33	Total Variable Costs	0	-	-	-	-	-	-	-	-	-	-
34	Total Overhead Costs	0	0	0	0	0	0	0	0	0	0	0
35	Total Farm Program Participation Costs	0	0	0	0	0	0	0	0	0	0	0
36	WHEAT ANALYSIS -- Details	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
37	Case:		11/09/00 = date printed			Scenario: No Discrimination: Avg county yield, Avg state price, Avg regional C						
38	REVENUE, per acre of production											
39	Yield: (from Claimant)	35	45	52	34	41	38					
40	County Yield			36.8	39.3	26.6	25	34.6	23.2	30	20	30
41	County Yield (NASS)							34.6	23.2	30.0	20.0	26.7
42	State Yield (NASS)	44	32	33	39	32	26	31	43	30	36	25
43	County Yield Used in This Analysis (adjusted by state 9	49.1	35.7	36.8	43.5	35.7	29.0	34.6	23.2	30.0	20.0	26.7
44	State Price of Wheat (From NASS)	3.30	3.00	3.25	3.25	3.05	2.60	2.50	3.30	3.50	3.05	2.42
45	Gross Revenue per Acre, Wheat	162.0519	107.1484	119.7046	141.4694	108.9342	75.45032	86.5	76.56	105	61	64.614
46				30.46	36.56	25.16	26.46	34.6	23.2	30	20	26.7
47	Costs of Production, Per Acre Planted											
48	Published Wheat COP Yield (py, From ERS)	39.40	34.09	32.38	36.46	26.79	27.33	32.19	42.61	37.62	30.95	24.09
49	Yield Adjustment Factor, Wheat (County Yield/COP Yield)	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032	0.8032
50	Variable Operating Costs Scaled to County Yield	65.31	60.99	59.20	60.70	54.74	46.89	45.85	53.04	67.16	66.49	66.55
51	Variable Operating Costs (From ERS)	81.31	75.94	73.71	75.57	68.16	58.38	57.08	66.04	83.62	82.78	82.86
52	Fixed Costs: General farm overhead	6.66	4.89	4.98	5.10	3.39	4.01	4.63	8.08	6.43	6.54	6.84
53	Fixed Costs: Taxes & Insurance	3.71	3.82	4.09	4.38	7.32	7.30	7.56	7.97	8.51	14.72	8.33
54	Fixed costs: Land costs	24.94	21.86	21.18	22.81	21.13	20.54	20.13	27.53	16.85	13.63	10.88
55	Capital Replacement	16.81	17.53	18.47	18.39	17.60	18.24	18.97	20.76	8.83	8.17	9.68
57	Operating Capital	5.93	4.42	3.38	3.94	3.04	1.90	2.05	2.65	3.36	3.09	2.25
57	Total Non-land Capital (after 1997, included in capital re	2.75	2.67	2.53	3.19	3.10	3.07	3.16	4.08	8.37	9.06	10.61
58	Economic Costs Paid to Others	126.11	115.98	113.83	118.51	110.32	101.95	102.35	124.11	119.51	121.70	115.14
58	Excluding land cost for double cropped wheat	101.17	94.32	92.65	95.70	89.19	81.41	82.22	96.58	102.66	108.07	104.26
60												
61	Per acre, Net Operating Returns to Operator from productio	35.96	-8.83	5.87	22.96	-1.39	-26.50	-15.85	-47.55	-14.51	-60.70	-50.53
62	Ditto, for double cropped wheat	60.90	12.83	27.05	45.77	19.74	-5.96	4.26	-20.02	2.34	-47.07	-39.66
63												
64	ACREAGE FOR Wheat											
65	Wheat Base (From Case)	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
66	ARP reduction percentage (From USDA)	0.00	15.00	15.00	20.00	20.00	22.50	27.50	27.50	10.00	5.00	15.00
67	Normal Flex Acres percentage (From USDA)	0	0	0	0	0	0	0	0	0	0	15.0
68	Wheat Acreage Reduction Land	0.0	225.0	225.0	300.0	300.0	337.5	412.5	412.5	150.0	75.0	450.0
69	Wheat Payment Acreage (Maximum Program Acreage)	1500	1275	1275	1200	1200	1162.5	1087.5	1087.5	1350	1425	1050
70	Wheat Acres Planted (Max.; or from Case)	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
71	Acreage for Non Double-Cropped Wheat	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230
72	Acreage for Double-Cropped Wheat	270	270	270	270	270	270	270	270	270	270	270
73												
74	GOVERNMENT PROGRAM ANALYSIS: Wheat	(acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CRP)										
75	Total Net Benefits from Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
76	Total Revenue from Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
77	Total Costs Associated with Gov't Programs	0	0	0	0	0	0	0	0	0	0	0
78												
79	Acreage reduction; Production Flexibility Contracts											
80	Total farm net return from acreage reduction & PFC	0	0	0	0	0	0	0	0	0	0	0
81	*Total Farm Revenue from Gov't Payments*	0	0	0	0	0	0	0	0	0	0	0
82	Wheat Payment Acreage (Maximum Program Acreage)	1,500	1,275	1,275	1,200	1,200	1,163	1,088	1,088	1,350	0	1,050
83	Program Yield, Wheat										27.00	
84	Wheat Deficiency Payment Rate (From USDA)	0.150	0.500	0.650	1.000	1.080	1.980	1.810	0.690	0.320	1.2567	1.25
85	Wheat Production Flexibility Contract (From USD	0	0	0	0	0	0	0	0	0	0	0
86	Per Acre Gov't Payment (Prog Yld * Pymt R	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	33.93	0.00
87												
88	*Total Farm Costs Associated with Set-Aside Land*	0	0	0	0	0	0	0	0	0	0	0
89	Acres reduced for programs, Wheat	0	0	0	0	0	0	0	0	0	0	0
90	Per Acre Variable Costs for acreage reduction (From	24.31	24.31	24.31	24.78	24.06	22.89	23.51	25.08	26.4	27.26	27.56
91	Per Acre Land Cost	24.94	21.86	21.18	22.81	21.13	20.54	20.13	27.53	16.85	13.63	10.88
92	Per Acre Economic Costs Paid to Others	49.25	45.97	45.49	47.59	45.19	43.53	43.64	52.61	43.25	40.89	38.44
93												
94	Marketing Loan Benefits											
95	Total Farm LDP Benefits	0	0	0	0	0	0	0	0	0	0	0
92	Acres Planted	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0
93	Yield	49.1	35.7	36.8	43.5	35.7	29.0	34.6	23.2	30.0	20.0	26.7
94	LDP Payment Rate	0	0	0	0	0	0	0	0	0	0	0
95	LDP Payment / Ac harvested	0	0	0	0	0	0	0	0	0	0	0

PRODUCED SUBJECT
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Attachment 1, Page 5

1 BASE SCENARIO: AVERAGE FARM									
2 Case:									
3								http://www.nass.usda.gov:81/ipedb/	
4 WHEAT ANALYSIS	1992	1993	1994	1995	1996	1997	1998	1999	Average
5 SUMMARY									
6 Net farm income (total revenue minus total costs)	70,995	-12,670	82,577	46,353	170,157	64,785	75,064	132,133	37,996
7 Cumulative	161,317	148,646	231,223	279,576	449,733	514,518	589,583	721,715	
8 Net income from production	70,995	-12,670	82,577	46,353	124,349	20,013	-3,254	2,994	22,457
9 Cumulative	161,317	148,646	231,223	279,576	403,925	426,938	423,684	426,677	
10 Net income from Government Programs	0	0	0	0	45,808	41,772	78,518	129,139	15,539
11 Cumulative	0	0	0	0	45,808	87,580	166,098	295,238	
12									
13 TOTAL FARM REVENUE	232,610	155,234	249,912	224,921	369,004	257,081	256,821	313,890	155,578
14 Market receipts from sale of production	232,610	155,234	249,912	224,921	317,196	215,309	178,303	184,650	140,057
15 Gov't program revenue	0	0	0	0	45,808	41,772	78,518	129,139	15,539
16									
17 TOTAL FARM COSTS	161,615	167,904	167,335	176,568	192,847	192,296	181,657	181,657	157,580
18 Production expenses	161,615	167,904	167,335	176,568	192,847	192,296	181,657	181,657	157,580
19 Expenses associated with Farm Program Participation	0	0	0	0	0	0	0	0	0
20									
21 ITEMS OF TOTAL FARM COSTS									
22 Production expenses									
23 Total Variable Operating Costs	104,485	104,694	98,080	103,853	113,212	113,561	106,152	106,152	95,818
24 Total Fixed Costs	22,455	27,450	22,950	25,755	29,985	27,975	24,780	24,780	21,486
25 General farm overhead	10,080	12,285	5,985	7,695	6,465	7,425	5,835	5,835	8,095
26 Taxes & Insurance	12,375	15,165	17,085	18,060	17,520	19,950	18,945	18,945	13,401
27 Land costs (excluded from double cropped cost	0	0	0	0	0	0	0	0	0
28 Total Capital Replacement Costs	15,090	15,780	27,900	27,900	34,170	30,900	31,950	31,950	28,046
29 Total Operating Capital	2,325	2,040	2,850	3,615	3,885	3,860	3,210	3,210	4,132
30 Total Non-land Capital	17,280	17,940	15,555	15,375	17,895	16,800	15,465	15,485	11,087
31 Total Costs, (excl unpaid labor & gov't programs)	161,615	167,904	167,335	176,568	192,847	192,296	181,557	181,557	157,580
32 Government Programs									
33 Total Variable Costs	-	-	-	-	0	0	0	0	0
34 Total Overhead Costs	0	0	0	0	0	0	0	0	0
35 Total Farm Program Participation Costs	0	0	0	0	45,808	41,772	78,518	129,139	15,539
36 WHEAT ANALYSIS -- Details	1992	1993	1994	1995	1996	1997	1998	1999	Avg
37 Case:	nass								
38 REVENUE, per acre or production									
39 Yield: (from Cleimann)									
40 County Yield	39.7								
41 County Yield (NASS)									
42 State Yield (NASS)	44	34	48	36	44	42	42	44	
43 County Yield Used in This Analysis (adjusted by state %	47.0	36.3	51.3	38.4	47.0	44.9	44.9	51.3	26.90 1987-91
44 State Price of Wheat (From NASS)	3.30	2.85	3.25	3.80	4.50	3.20	2.65	2.40	3.12
45 Gross Revenue per Acre, Wheat	155.5736	103.4862	166.808	149.6472	211.464	143.5362	115.4884	123.0336	120.02
46	37.06	31.76							
47 Costs of Production, Per Acre Planted									
48 Published Wheat COP Yield (by, From ERS)	41.64	35.41	47.03	42.73	49.81	48.41	44.74	47.00	29.40 1987-91
49 Yield Adjustment Factor, Wheat (County Yield/COP Yield)	0.9032	0.8032	0.9032	0.9032	0.9032	0.9032	0.9032	0.9032	0.9032 1987-91
50 Variable Operating Costs Scaled to County Yield	68.64	68.80	85.39	89.24	75.47	75.71	70.77	70.77	
51 Variable Operating Costs (From ERS)	86.74	86.90	81.41	86.21	89.97	94.26	88.11	88.11	78.53
52 Fixed Costs: General farm overhead	6.72	8.19	3.91	5.13	4.31	4.95	3.89	3.89	
53 Fixed Costs: Taxes & Insurance	8.25	10.11	11.39	12.04	11.68	13.30	12.63	12.63	
54 Fixed costs: Land costs	16.96	14.81	18.06	20.00	23.90	21.85	21.90	21.90	20.11
55 Capital Replacement	10.06	10.52	18.60	18.64	22.78	20.60	21.30	21.30	
56 Operating Capital	1.55	1.36	1.90	2.41	2.59	2.44	2.14	2.14	
57 Total Non-land Capital (after 1997, included in capital re	11.52	11.96	10.37	10.25	11.93	11.20	10.31	10.31	V
58 Economic Costs Paid to Others	124.72	126.75	129.82	137.71	154.46	150.05	142.64	142.64	126.16
59 Excluding land cost for double cropped wheat	107.74	111.94	111.56	117.71	128.56	128.20	121.04	121.04	105.05
60									
61 Per acre, Net Operating Returns to Operator from productio	30.35	-23.28	36.99	12.24	57.00	-6.51	-23.77	-19.80	-5.14
62 Ditto, for double cropped wheat	47.33	-8.45	55.05	32.24	82.90	16.34	-2.17	2.00	14.97
63									
64 ACREAGE FOR Wheat									
65 Wheat Base (From Case)	1500	1500	1500	1500	1500	1500	1500	1500	
66 ARP reduction percentage (From USDA)	0.00	0.00	0.00	0.00	0	0	0	0	
67 Normal Flex Acres percentage (From USDA)	15.0	15.0	15.0	15.0	0	0	0	0	
68 Wheat Acreage Reduction, Land	300.0	225.0	225.0	225.0	0.0	0.0	0.0	0.0	
69 Wheat Payment Acreage (Maximum Program Acreage)	1200	1275	1275	1275	1500	1500	1500	1500	
70 Wheat Acres Planted (Max.; or from Case)	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	
71 Acreage for Non Double-Cropped Wheat	1,230	1,230	1,230	1,230	1,230	1,230	1,230	1,230	
72 Acreage for Double-Cropped Wheat	270	270	270	270	270	270	270	270	
73									
74 GOVERNMENT PROGRAM ANALYSIS: Wheat	(acreage reduction, production flexibility contracts, marketing loan benefits (Loan Deficiency Payments), CR								
75 Total Net Benefits from Gov't Programs	0	0	0	0	45,808	41,772	78,518	129,139	
76 Total Revenue from Gov't Programs	0	0	0	0	45,808	41,772	78,518	129,139	15,539
77 Total Costs Associated with Gov't Programs	0	0	0	0	0	0	0	0	0
78									
79 Acreage reduction - Production Flexibility Contracts									
80 Total farm net return from acreage reduction & PFC	0	0	0	0	45,808	41,772	43,631	492	6,926
81 Total Farm Revenue from Gov't Payments	0	0	0	0	45,808	41,772	43,631	492	6,926
82 Wheat Payment Acreage (Maximum Program Acreage)	1,200	1,275	1,275	1,275	1,500	1,500	1,500	16.7	
83 Program Yield, Wheat					41.12	44.14	43.79	46.28	
84 Wheat Deficiency Payment Rate (From USDA)	0.810	1.030	0.810	0.0	0	0	0	0	
85 Wheat Production Flexibility Contract (From US	0	0	0	0	0.574	0.631	0.663	0.857	
86 Per Acre Gov't Payment (Prog Yld * Pymt R	0.00	0.00	0.00	0.00	30.64	27.85	29.02	29.47	
87									
88 Total Farm Costs Associated with Set-Aside Land	0	0	0	0	0	0	0	0	0
89 Acres reduced for programs, Wheat	0	0	0	0	0	0	0	0	
90 Per Acre Variable Costs for acreage reduction (From	27.57	26.61333	29.16	31.27	30.37	29.93	27.44	27.44	
91 Per Acre Land Cost	16.96	14.81	18.06	20.00	25.90	21.85	21.90	21.90	
92 Per Acre Economic Costs Paid to Others	44.65	43.42333	47.22	51.27	56.27	51.78	49.04	49.04	
93									
94 Marketing Loan Benefits									
95 Total Farm LDP Benefits	0	0	0	0	0	0	34,886	126,647	8,612
96 Acres Planted	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	
97 Yield	47.0	36.3	51.3	38.4	47.0	44.9	44.9	51.3	
98 LDP Payment Rate	0	0	0	0.0	0	0	0.52	1.67	
99 LDP Payment / Ac harvested	0	0	0	0	0	0	23.32	85.76	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

U.S. Department of Agriculture
Economic Research Service
Assessment of Potential Economic Losses

Claimant: Claim no.: . Arbitration no.:
Location:

Assessment of Potential Economic Losses

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

Economic Modeling

Standard economic budgeting and accounting analyses were conducted for an average farm in Counties (hereafter referred to as County), with the crop mix of the Complainant's operation. This analysis of the complainant's farming operation addresses the farms potential to have generated net farm income in each year for the period of alleged discrimination. For each crop enterprise on the farm, this income analysis estimates the net returns to the operator assuming average production practices, crop yields, prices, and economic costs for the geographical area. (The Attachment provides the detailed results of this analysis). Economic costs include variable, fixed, capital replacement, and operating and non-land capital costs of farming in the region.

In the Income Analysis, full budgeted costs in which all factors used in production are paid an average rate of return are taken as the relevant measure of production costs to derive Net Returns to the Operator (i.e., Net Farm Income). The operator is credited with the returns to all owned factors that he supplies. Variable operating costs are adjusted to reflect differences between average yields in the two counties and those of the region.

The first question that needs to be determined is could this operation have been economically viable? If that question is answered in the affirmative, then the second

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question for determining economic damages is what net worth could the operation have generated over the period of the alleged discrimination?

General Assumptions

- The period of analysis used in this case was 1981 to 2000.
- Even though the claimant apparently ceased farming in 1987, this farm income analysis assumes claimant would have stayed in business until 2000.
- USDA/ERS publishes regional Cost of Production Accounts (COP) for individual crops. Components of the costs of production include:
  - (1) Variable operating costs,
  - (2) Fixed Costs, including:
    - General farm overhead expenses, such as insurance, licenses, building and fence repair costs, and the farm share of utilities, telephone, and motor vehicles were used to estimate the net returns to the operator.
    - Taxes and insurance,
    - Land costs, rental payments for renting land, property taxes on owned land,
  - (6) Capital replacement (ownership cost that is equivalent to the principal payment portion of a loan to finance machinery and replacement).
  - (7) Operating capital charges to cover the interest payments on loans to purchase inputs.
  - (8) Nonland capital represents the interest portion of ownership costs associated with machinery and equipment.
- All costs must be met for the farm to remain economically viable in the long term.
- These costs were used in the analysis, with an adjustment to variable costs to reflect county conditions. Variable costs from the regional COP were adjusted to more accurately represent an average farm growing these crops in County. Variable costs were indexed to the average county yield by the ratio of the county's period-average yield to the COP's regional period-average yield. Since the weighted county average yields for rice and soybeans are lower than the regional Cost of Production yields, this reduced the estimated variable costs of production. Conversely, the weighted wheat yield is higher than the Southeast Regional Cost of Production Yield, the revised variable costs of production for rice are revised upward.
- The operator was assumed to receive the average rate of return from the ERS cost of production budgets for each factor he supplied into the production process, e.g., unpaid labor.
- The Farmers Home Administration (later FSA) was assumed to extend to the complainant credit, up to the $200,000 legal limit, to finance operating expenses plus any shortfall in Net Farm Income below obligations for interest payments, principal payments, and family living expenses each year.
- Government Farm Programs: It was assumed that the claimant participated in the Government farm support programs.

Assumptions for the Base Scenario

- The "Base Scenario" assumes all farm land operated by the claimant was rented for the period 1981-2000. No documents were encountered in the case files that explicitly indicate purchase of specific land. E.g., no loan application, no identification of a specific property, no appraisal report, no price for the

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property, and no acreage information for the property to be purchased.

- In the "Base Scenario" it was assumed that the claimant would have used sufficient inputs and management to achieve weighted average yields for all crops each year of the period of analysis.
- Average state prices for all crops, as published by NASS/USDA, were assumed in the analysis.
- The cropland and crop acreage bases used in the analysis come from the case file. The claimant rented land from a number of different land owners. Various documents in the case file provide information about the acreage on these farms for various years during the 1981-1986 period (e.g. total farmland, cropland, and acreage bases for wheat and rice). "Acreage Reports" provide information about actual planted area. These records indicate that some of the farms had considerable land that was not "cropland." The "land costs" related to this non-cropland acreage should be included in the claimant's total farm production costs. However, because it was not possible to accurately estimate this acreage, the associated costs are not included in this analysis. This reduces the estimate of economic damages because it excludes some costs. (The available farm acreage information is summarized in Attachment 2.

Scenarios

The following specific scenarios were examined:

Scenario 1: Complainant's Claim - - Assuming Discrimination: The Complainant provided insufficient documentation about his farming operation to determine his actual net farm income during the period of analysis (1981-2000). Since no information is available about the claimant's actual farm revenue, expenses, and net income during the period, it is assumed that farm income was zero (neither profits nor losses).

Scenario 2: An Average Farmer - - Without Discrimination: This "Base Scenario" estimates the potential net farm income, for each year of the period of analysis, assuming the complainant's yields, prices, costs of production, and government benefits were similar to the average farmer producing the same crop mix as the complainant claims he would have used during the period. All the assumptions mentioned above apply to the "Base Scenario."

Results

Scenario 1: Complainant's Claim - - Assuming Discrimination:

Assumes zero net farm income from farming.
NOTE: An estimate of damages due to alleged discrimination is the difference in cumulative net income between a "without discrimination" scenario and the "with discrimination" scenario. When the "with discrimination" scenario's net income is zero, then the damage due to alleged discrimination is simply the cumulative net income from the "without discrimination" scenario.

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Scenario 2: An Average Farmer - - Without Discrimination:

The detailed results of the analysis of an average farm (Base Scenario) are described in Attachment 1. The Scenario indicates that, between 1981 and 2000, an average farm producing the complainant's assumed mix of crops with the assumed acreage would have generated:

$ 133,094	average annual revenue from crop sales and government program payments.
$ 123,303	average annual expenses paid to others for crop production costs.
$ 9,792	average annual net income (residual return to operator), representing an excess of revenues over all costs paid to others (variable operating, fixed, capital replacement, and capital costs). This is the appropriate measure to use for net farm income. Thus, during the period of analysis, the claimant would have generated a net income of $151,146.

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RGT 0052

1 SCENARIO: AVERAGE FARM — 10/19/01 ▸ Date printed
2 Farm: NOTE: WHEAT FROM SE REGION, RICE & SB FROM DELTA REGION
3 Sample: (no selection sets) — 12/2000 ▸ Date last updated — Begin 1996 — Interest rate = 8.75% — 30-year loan — 10/19/01 ▸ Date printed

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	2000
4 TOTAL FARM REVENUE AND COSTS																			
5 TOTAL FARM REVENUE	1,041	1,852	1,963	1,994	1,955	1,956	1,957	1,958	1,959	1,960	1,961	1,962	1,963	1,964	1,965	1,966	1,967	1,968	2,000
6 Net Farm Income (total income minus total costs)	560	5,338	4,357	15,963	9,595	-3,980	24,047	23,206	8,984	7,747	6,337	4,058	17,877	6,006	17,885	36,586	16,172	6,957	27,838
Cumulative	560	5,898	10,255	26,218	35,813	31,833	55,880	79,086	88,070	95,817	102,154	106,212	124,089	130,095	147,980	184,566	200,738	207,695	235,533
7 Net Income from production	784	1,153	2,782	7,457	4,438	-5,387	21,453	19,548	4,326	3,089	-1,445	-3,236	13,273	2,702	13,282	32,983	12,569	2,748	24,562
Cumulative	784	1,937	4,719	12,176	16,614	11,227	32,680	52,228	56,554	59,643	58,198	54,962	68,235	70,937	84,219	117,202	129,771	132,519	157,081
9 Net income from crop production	384	-1,173	-2,628	-2,861	-8,699	-34,215	-31,726	-3,305	-4,671	-15,943	-31,439	-37,739	-57,485	-68,240	-80,049	-72,690	-73,690	-68,106	-153,113
Cumulative	384	-789	-3,417	-6,278	-14,977	-49,192	-80,918	-84,223	-88,894	-104,837	-136,276	-174,015	-231,500	-299,740	-379,789	-452,479	-526,169	-594,275	-747,388
10 Net income from Government Programs	627	6,670	5,418	15,564	9,823	21,068	21,637	19,610	16,251	23,690	21,783	20,438	27,622	27,270	18,694	25,680	19,860	29,662	30,614
Cumulative	627	7,497	12,915	28,480	38,141	61,640	83,605	103,215	119,552	143,242	165,025	185,463	213,085	240,355	259,049	284,729	304,589	334,251	364,865
11																			
12																			
13 TOTAL FARM REVENUE	24,789	41,480	35,836	80,437	44,697	62,630	83,901	107,843	90,879	100,709	115,360	118,041	126,664	103,231	141,085	179,201	169,049	140,284	113,676
14 Farm-related income (value of production	24,149	39,628	29,422	65,033	35,771	59,376	64,565	84,776	71,153	76,212	93,980	98,514	97,714	76,964	105,457	138,870	114,133	87,000	82,562
15 Gov't program payments	827	7,845	6,414	21,563	11,838	24,354	24,366	23,179	18,845	26,481	22,680	36,617	28,240	27,270	20,851	20,850	19,960	28,662	30,090
16																			30,014
17 TOTAL FARM COSTS	23,805	36,142	31,279	73,474	41,222	65,521	59,854	84,738	82,894	92,962	109,054	114,983	108,078	102,615	123,800	137,715	149,877	141,537	141,414
18 Production expenses	23,805	35,197	30,260	68,895	39,228	63,483	67,046	81,170	69,300	91,171	108,217	114,804	107,460	102,615	122,694	137,715	140,877	141,537	141,414
19 Expenses associated with Farm Program Participation	0	973	996	4,779	2,014	2,428	2,808	3,568	3,595	1,790	827	79	618	0	1,107	0	0	0	0
20																			
21 ITEMS OF TOTAL FARM COSTS																			
22 Production expenses																			
23 Farm Variable Costs (+27+29)	13,922	21,498	17,717	38,080	20,212	38,502	38,146	44,628	53,948	56,387	64,349	68,851	62,583	63,497	68,970	78,811	78,016	72,211	71,353
24 Total Overhead Costs (+29+30+31)	7,078	8,495	7,560	18,858	12,058	13,057	14,318	21,255	21,796	18,581	24,182	27,414	25,018	30,984	33,870	38,452	41,003	43,277	43,479
25 Total Capital Costs (+32+33)	2,735	5,173	4,815	11,780	6,938	14,336	14,582	15,285	15,166	16,324	16,705	20,639	19,792	22,166	21,854	22,452	24,856	26,049	26,582

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RGT 0053

1	SCENARIO: AVERAGE FARM									
2	Case:			10/18/01						
3	LAND USE & TENURE	1981	1982	1983	1984	1985	1986	1987	1988	1989
4	*Land Tenure*									
5	Total acres Owned	0	0	0	0	0	0	0	0	0
6	Total acres Owned	0	0	0	0	0	0	0	0	0
7	Total Acres Rented	0	0	0	0	0	0	0	0	0
8	Total Acres	0	0	0	0	0	0	0	0	0
9										
10	*Total Acres:*									
11	Farmland (from appraisal report	0	177	337	517	366	541	0	0	0
12	Farm #: 23 --> 122						160.0			
13	Farm #: 40 --> 1325 (Est.), (E.M. / 100%)				80		80.0			
14	Farm #: 51 --> 1039 in '86 (owned by				100		100.0			
15	Farm #: 54		40	40	40	40				
16	Farm #: 59 --> 1332 in '86			160	160	160	160.0			
17	Farm #: 125						112.0			
18	Farm #: 149 --> 241									
19	Farm #: 150		137	137	137	137				
20	Farm #: 171 --> 333					29	29.0			
21	Farm #: 165 --> 265 (						60.0			
22	Farm #: 1155									
23	Cropland-Acres (from appraisal rep	0	82	198	311	219	341.8	0	0	0
24	Farm #: 23 --> 122						138.4			
25	Farm #: 40 --> 1325 (Est.), (E.M. / 100%)				46		45.6			
26	Farm #: 51 --> 1039 in '86				67		67.0			
27	Farm #: 54		25	25	25	25				
28	Farm #: 59 --> 1332 in '86			106	106	106	105.7			
29	Farm #: 125 (35%)						83.8			
30	Farm #: 149 --> 241 (									
31	Farm #: 150		67	67	67	67				
32	Farm #: 171 --> 333					21	20.9			
33	Farm #: 165 --> 265 (						38.6			
34	Farm #: 1155									
35	Not Cropland	0	0	0	0	0	0	0	0	0
36	Wetlands (U.S. Fish & Wildlife Service)	0	0	0	0	0	0	0	0	0
37	Waste (residual: roads, ditchese)	0	0	0	0	0	0	0	0	0
38										
39										
40	Total Base Acres (from Case)	58	211	145	292	179	495	495	495	495
41	SOYBEAN --> Planted ---->				168 (F&HP)					
42	Soybeans	0	62	44	62	49	160.0	160	160	160
43	Farm #: 40 --> 1325 (Est.), (E.M. / 100%)						45.6	=disaster paymt		
44	Farm #: 54									
45	Farm #: 59 --> 1332 in '86 (E.M. = 100%)						30.8	=disaster paymt		
46	Farm #: 104 (75%)						14.0			
47	Farm #: 125 (25% share)		61.7	43.8	61.7	49.1	48.8	=disaster paymt		
48	Farm #: 149 --> 24									
49	Farm #: 165 --> 265 (									
50	Farm #: 171 --> 333					=20.7??	20.9			
51	WHEAT --> Planted ---->				39 (F&HP)					
52	Wheat (Base)	0	0	55	98	54	61	61	61	61
53	Farm #: 40 --> 1325 Est.), (E.M. / 100%)				46.0		27.6	27.6		
54	Farm #: 51 --> 1039 in '86 (owned by		0		25.0		15.4			
55	Farm #: 59 --> 1332 in '86 (E.M. / 100%)			54.5	26.5	54.0	18.5	21.6		
56	Farm #: 149 --> 241									
57	Farm #: 165 --> 265									
58	RICE --> Planted ---->				133 (F&HP)					
59	Rice	58	88	58	168	82	175	175	175	175
60	Farm #: 23 --> 122						47.7			
61	Farm #: 51 (owned by	29	1	20.0	29.0					
62	Farm #: 59 --> 1332 in '86 (E.M. / 10		20 Max =52		99.9	81.5	87.2	81.1		
63	Farm #: 149 --> 241						33.3			
64	Farm #: 150	37.7	66.8	37.7	52.3					
65	Farm #: 171 --> 333						17.4	7.9		
66	Farm #: 165 --> 265 (						37.4			
67	Farm #: 1155						0.0			
68										
69	Soybeans double cropped (= wheat area)	0.0	0.0	54.5	97.5	54.0	61.4	61.4	61.4	61.4
70	Soybeans NOT double cropped (=SB ac - Wh a	0.0	61.7	-10.7	-35.8	-5.0	98.6	98.6	98.6	98.6
71										
72	PAYMENT YIELD									
73	Soybeans									
74	Farm #: 40						24.0			
75	Farm #: 54									
76	Farm #: 59 --> 1332 in '86 (E.M. / 100%)						24.0			
77	Farm #: 125									
78	Farm #: 171									

PRODUCED SUBJECT
TO PROTECTIVE ORDER

79	Wheat							
80	Farm #: 40 ---> 1325							
81	Farm #: 51 ---> 1038 in '86 (owned by			38				
82	Farm #: 59 ---> 1332 in '86	E.M. / 100%)			40.0	40.0		
83	Rice							
84	Farm #: 23 --> 122				4,086		193948	48
85	Farm #: 54							
86	Farm #: 59 ---> 1332 in '86	E.M. / 100%)			4,149	4,149	361793	87
87	Farm #: 149 --> 241				2,368		78854	33
88	Farm #: 150							
89	Farm #: 171 ---> 333				4,356	4,356	75794	17
90	Farm #: 166 --> 265				4,133		154674	37
91	Farm #: 1155						864804	223
92	Weighted avg program Yield =							

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0055

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0056

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0057

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0058

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PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0059

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0060

| | | |

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0061

	LAND USE & TENURE	1981	1982	1983	1984	1985	1986	1987	
SB	Farm #: 104						14.0		
CR	Farm #: 1155								
FL	Farm #: 1155								
RI	Farm #: 1155						0.0		
CR	Farm #: 125						63.8		
FL	Farm #: 125						112.0		
SB	Farm #: 125		61.7	43.8	61.7	48.7	48.7		=disaster pa
CR	Farm #: 149 --> 241								
FL	Farm #: 149 --> 241								
RI	Farm #: 149 --> 241						33.3		
SB	Farm #: 149 --> 241								
WH	Farm #: 149 --> 241								
y PY RI	Farm #: 149 --> 241						2,358		
CR	Farm #: 150		67	67	67	67			
FL	Farm #: 150		137	137	137	137			
RI	Farm #: 150	37.7	66.8	37.7	52.3				
CR	Farm #: 165 --> 265	)					38.6		
FL	Farm #: 165 --> 265	)					60.0		
RI	Farm #: 165 --> 265	)					37.4		
SB	Farm #: 165 --> 265	)							
WH	Farm #: 165 --> 265								
y PY RI	Farm #: 165 --> 265						4,133		
CR	Farm #: 171 ---> 333	)				21	20.9		
FL	Farm #: 171 ---> 333	)				29	29.0		
RI	Farm #: 171 ---> 333	)					17.4	7.9	
SB	Farm #: 171 ---> 333	)				=20.7??	20.9		
y PY RI	Farm #: 171 ---> 333	)					4,356	4,356	
CR	Farm #: 23 --> 122						138.4		
FL	Farm #: 23 --> 122						180.0		
RI	Farm #: 23 --> 122						47.7		
y PY RI	Farm #: 23 --> 122						4,066		
y PY SB	Farm #: 40						24.0		
CR	Farm #: 40 --> 1325	); (E.M. / 100%)			46		45.6		
FL	Farm #: 40 --> 1325	); (E.M. / 100%)			80		80.0		
SB	Farm #: 40 --> 1325	); (E.M. / 100%)					[redacted]		=disaster pa
WH	Farm #: 40 --> 1325	); (E.M. / 100%)			46.0		27.5	27.5	
CR	Farm #: 51 ---> 1039 in '86				67		67.0		
FL	Farm #: 51 ---> 1039 in '86 (owned by				100		100.0		
WH	Farm #: 51 ---> 1039 in '86 (owned by		0		25.0		15.4		
PY WH	Farm #: 51 ---> 1039 in '86 (owned by				38				
CR	Farm #: 54		25	25	25	25			
FL	Farm #: 54		40	40	40	40			
SB	Farm #: 54								
RI	Farm #: 54 (owned by	20	1	20.0	20.0				
CR	Farm #: 59 ---> 1332 in '86 (			106	106	106	105.7		
FL	Farm #: 59 ---> 1332 in '86 (	)		160	160	160	160.0		
SB	Farm #: 59 ---> 1332 in '86 (	) E.M. / 100%)					30.8		=disaster pa
RI	Farm #: 59 ---> 1332 in '86 (	) E.M. / 10	20	Max =52.9	95.9	81.5	87.2	81.1	
WH	Farm #: 59 ---> 1332 in '86	) E.M. / 100%)		54.5	26.5	54.0	18.5	21.5	
y PY RI	Farm #: 59 ---> 1332 in '86	) E.M. / 100%)					4,149	4,149	
y PY SB	Farm #: 59 ---> 1332 in '86	) E.M. / 100%)					24.0		
PY WH	Farm #: 59 ---> 1332 in '86	) E.M. / 100%)					40.0	40.0	
TOTAL	TOTAL Cropland Acres	0	92	198	311	219	341.8	0	
TOTAL	TOTAL Farmland	0	177	337	517	366	541	0	
TOTAL	Soybeans	0	62	44	62	49	160.0	0	
TOTAL	Wheat (Base)	0	0	55	98	54	61	49	
TOTAL	Rice	58	88	58	168	82	175	89	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0062

Effective Dates and Interest Rates for Farm Ownership (FO) Program (Soil and Water, Recreation)

Effective Date	FO Interest Rate (%)	FO (Limited Resource) Interest Rate (%)
January 1, 1977	5.00	
August 4, 1978	8.50	
August 11, 1978		3.00
March 28, 1979	9.00	
November 1, 1979	10.00	4.00
March 6, 1980	11.00	5.00
April 12, 1980	12.00	
June 17, 1980	11.00	
December 20, 1980	12.25	
April 4, 1981	13.25	
October 1, 1981		7.00
January 30, 1982		6.625
October 1, 1982	13.00	6.50
November 1, 1982	11.50	5.75
January 17, 1983	10.75	5.25
October 1, 1983 (Soil and Water, Recreation Only)	11.75	
February 1, 1985 (Soil and Water Only)	10.25	
April 1, 1986	10.25	5.00
May 1, 1986	9.25	
June 1, 1986	8.25	
July 1, 1987	9.25	
October 1, 1987	9.50	
November 1, 1987	10.00	
January 1, 1988	9.50	
April 1, 1980	9.00	
June 1, 1988	9.50	
October 1, 1988	9.75	
December 1, 1988	9.50	
February 1, 1989	9.75	
August 1, 1989	9.00	
September 1, 1989	8.75	
May 1, 1990	9.25	
August 1, 1990	9.00	
February 1, 1991	8.75	
December 1, 1991	8.25	
October 1, 1992	7.75	
May 1, 1993	7.25	
November 1, 1993	6.50	

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0063

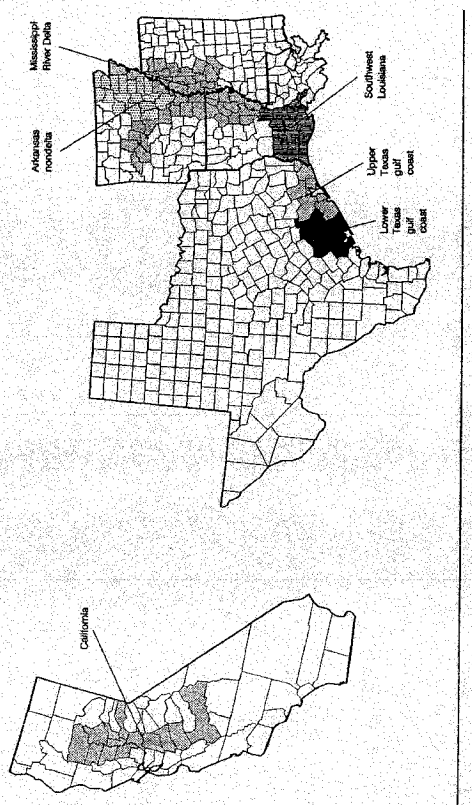
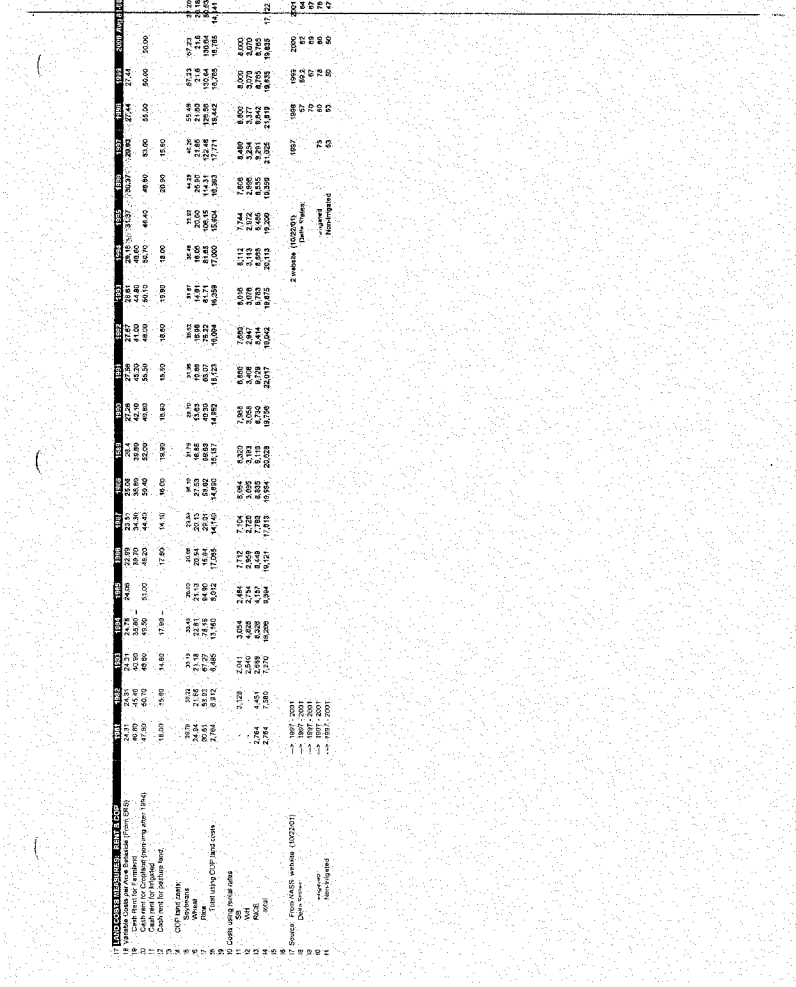


Figure 2
Major rice production areas

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0064



PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0065

PRODUCED SUBJECT
TO PROTECTIVE ORDER

RGT 0066

Assessment of Potential Economic Losses
Summary --

Location:`

Claim no.:

The economic analysis concludes that the claimant's farming operation was not economically viable. The claimant had debt totaling $411,414 at the beginning of 1981and was already $40,987 in arrears.

The principal payments due in 1981 totaled $103,089, including $89,919 in loans currently due, and $13,170 of debt with final payments due between 1990 and 2019.

The interest payments due in 1981 were at least $34,000.

Thus the claimant would have required a net income from his farming operation of $137,000 just to service his debt load. He would have needed an additional $20,000 to cover normal family living expenses.

In 1981, an average farmer in with a farming operation equivalent to the claimant's, would have earned a net farm income of slightly less than $20,000 -- not even sufficient to cover normal family living expenses, let alone make the principal and interest payments on the claimant's debt.

The only option to stay in business would have been to borrow even more money - - which would have increased the claimant's total debt load and debt servicing payments in future years. If the claimant would have borrowed more money, even at the lowest preferable Limited Resource rate provided by FmHA, the result would have been a steadily declining net worth in every future year. If the claimant would have left farming in 1981 he would have had a positive net worth of about $150,000. By borrowing more money to keep operating, his net worth declines to a negative $24,000 in 1985, a negative $$478,000 by 1989, and a negative of about $1,500,000 by 2001.

Because of the large debt load that had been accumulated before 1981, the farming operation was not economically viable.

Assessment of Potential Economic Losses provides a quick overview of agricultural production conditions for an average farmer similar to the complainant in the same location. This assessment relies primarily on public information maintained by the Economic Research Service for the State or region in which the complainant operates. Standard budgeting practices and Generally Accepted Accounting Principles are used to simulate average production conditions, by year, using county average yields, State average prices, and regional estimates of average production costs, for a farm that is similar to the complainants.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, :
Plaintiff, :
vs. : Civil Action No:
ANN VENEMAN, Secretary of the : 00-2493 (PLF/DAR)
United States Department of :
the Agriculture, et al., :
Defendants. :

PHILIP J. HAYNIE, II, et al., :
Plaintiffs, :
vs. : Civil Action No:
ANN VENEMAN, Secretary of the : 00-2516 (PLF/DAR)
United States Department of :
the Agriculture, et al., :
Defendants. :

Washington, D.C.
Wednesday, January 14, 2004

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Deposition of: RONALD G. TROSTLE, a witness herein, called for examination by counsel for Plaintiffs in the above-entitled matters, pursuant to notice, taken at the offices of Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C., beginning at 9:40 a.m. before Curtis R. Cloward, CSR, a court reporter and notary public in and for the District of Columbia.

APPEARANCES:

On behalf of the Plaintiffs:
STEPTOE & JOHNSON, LLP
BY: ELLEN HOCHSTEDLER STEURY, ATTORNEY AT LAW
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-6271

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APPEARANCES (CONTINUED):

On behalf of the Defendants:
UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
BY: ROBERT J. KATERBERG, ESQ.
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
(202) 616-8298

On behalf of the Defendants:
UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
CIVIL RIGHTS DIVISION
BY: DEBORAH L. MCARTHUR, ATTORNEY AT LAW
1400 Independence Avenue, S.W.
Room 3324, South Building
Washington, D.C. 20250-1400
(202) 720-3963

ALSO PRESENT: S. Murthy Kambhampaty
Phillip J. Haynie, II

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WITNESS
RONALD G. TROSTLE

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PROCEEDINGS

(9:40 a.m.)

Whereupon,
RONALD G. TROSTLE,
was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS
BY MS. STEURY:

Q. Good morning, Dr. Trostle, we met yesterday; correct?
A. Correct.
Q. And today we're going to -- I'm going to depose you on your expert report.
I understand that you've been deposed before; is that correct?
A. In arbitration hearings.
Q. Not for a civil court case?
A. That's correct.
Q. Okay.
Well, you observed yesterday's proceedings, so you know what some of the ground rules are. Speak when no one else is speaking; give audible answers so the

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court reporter can take them down; feel free to ask for a break when you need one. The only caveat on that is it's generally not approved for you to ask for a break while there's a question pending, but once an answer has been given then that's no problem.

Do you have any questions about the process?

A. I don't think so.

Q. Okay.

Are you on any medications that might affect your ability to concentrate this morning or give accurate answers?

A. No, I am not.

Q. Okay.

I'm going to introduce this first exhibit that should be familiar to you. It is your declaration of Ronald Trostle regarding estimated damages to the Haynies' farming operations in Civil Action 00-2516.

Will you look that over and let me know if you recognize that as what you submitted in this case?

A. (Complies). Yes, I believe it is what I submitted.

(Trostle Exhibit No. 1, marked

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for identification.)

BY MS. STEURY:

Q. And am I correct that you are the person assuming responsibility for this report?

A. Yes, that is correct.

Q. And did you intend for the declaration to be understood to have been given under oath, what you wrote there in the first place?

A. Yes.

Q. Okay.

How were you selected to prepare the expert report in this case?

A. I was a part of a team that the Economic Research Service had to work on Pigford cases. And when the Office of General Counsel was seeking assistance or an economist to do this (indicating) they came to the Economic Research Service. And the final result is that I was assigned to do this.

Q. Okay, and how did that process focus on you?

A. In the way of background, the Economic Research Service, even at the beginning of the Pigford process, did not think we were the appropriate agency to

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do this. Because doing this sort of work isn't, by nature, what we have done in the past. But because we have people -- we are part of the data-collection process, have been for decades, we have experts who understand farm management, farm accounting procedures, we were -- and we have a body of economists who can do this work.

We were assigned to do the work for Pigford. Then when this particular case came up, they came back to the Economic Research Service and asked for additional assistance and the administrator asked if I would take on the case.

Q. And when you said by way of background it was originally considered best not to use the ERS as experts in this, what was the reason for that original --

A. No, it was ERS's position that we didn't want to do it.

Q. I see.

A. Because the people that would end up on it would have to be diverted from other work. And the people that were selected to do this were fairly well-experienced people in this area and they would have

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to be pulled off of research and analysis, data collection, reporting activities. So, it wasn't -- it wasn't only ERS that was not in favor of it, everybody else was in favor of having ERS do it.

Q. I see.

And when you said they were certified in this area, you mean the data collection and -- what do you mean?

A. Well, we have a group of people, a division and branches within our agency, Economic Research Service, which focuses on the survey of data, to collect this sort of data and other data about the agriculture sector, farm and non-farm agriculture sector. We have people who do research, write journal articles, do situation outlook forecasting work about this. So, we have a lot of expertise within the Economic Research Service to do this sort of work.

Q. You said you referred to a team of people; how big is this team?

A. The team at one point included ten people. As the Pigford class action suit process has slowed down, I now have seven people still assigned to the team,

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although a number of those people are not very active right now.
Q. And you said "I have". Are you the team leader?
A. I am currently, yes. I have been for the last two years.
Q. Two years, okay.
And what -- trying to think of a better way to put this, but it's not coming to me. And I mean this not in a pejorative way, what qualifies you to become the team leader?
A. I have had a fairly long history in the agency and working with teams, of coordinating teams, pulling people together with different expertise to work on a specific project or issue. And that, I think, was primarily the reason.
I have background in farming and farm management and -- and I tend to be interested in such things, so I think that was the reason why I was selected.
Q. Interested in the subject matter or the litigation?

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A. The subject matter.
Q. Okay.
So, I understand your answer to be that you think the primary reason was because of your people skills, your people management skills, staff management skills; is that fair?
A. The reason that I was selected to be team leader --
Q. Yes.
A. -- asked to be team leader, I think that was probably a large part of it.
Q. Okay.
You also referred to your experience in farming and interest in farm management.
In looking at your vita, I inferred that you were a farmer many, many years ago; is that correct?
A. That's correct.
Q. And that you haven't been a farmer since 1971; is that correct?
A. Not as a farmer, per se. I still have farming interests and involved in some management decisions, as well as selling products and participation in government

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programs.
Q. Okay, so do I understand that you own farmland --
A. That is correct.
Q. -- that other people farm?
A. (Nodding head up and down, inaudible response.)
Q. In your work at the USDA since 1982, I believe -- no, since 1980, you have been with the ERS; is that correct?
A. That is correct.
Q. And has your work -- it appears from your résumé that your work is primarily focused on international issues; is that fair?
A. Primarily.
Q. So, in some respects has your Pigford teamwork been a diversion or a new phase? Because I assume it focuses more -- well, it focuses on domestic issues.
A. Well, it certainly was a diversion from what I was doing before, but I was in a transition in my career where I was getting out of management and back into research anyway.

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Q. Um-hum.
A. So, it was a diversion in that respect.
But in terms of some of the contacts I have and some of the issues I had, it was not so much of a diversion because I've been involved in several projects that compare the costs of production across countries.
Q. Um-hum.
A. And that would have been consistent with this type of work as well.
Q. The methodology would have been consistent but not necessarily the data you were familiar with; is that correct?
A. That's right, yeah. Well, the international data and the comparison, trying to make comparisons between the U.S. methodology and the methodology in other countries, I was familiar with the U.S. methodology.
Q. Okay.
On your résumé there's -- I did not notice anyplace that said you were the Pigford team leader. Can you -- is that because it's a minor assignment or not an official position or --
A. It's not an official position. This is really

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a task force of people that have been drawn from different divisions and branches in the agency to work on the Pigford cases.

I think if you will look at the last sentence --

Q. Um-hum.

A. -- under the first entry, Senior Economist, Trade & Outlook Branch.

Q. Yes, it does mention Pigford cases there. And you describe that as a task force?

A. We call it a team. I would characterize it in how it operates as a task force.

Q. And you said you've been the leader for two years?

A. Approximately.

Q. And when did you first assume duties with the team?

A. About a year prior to that.

Q. Okay, so since about the first of 2000?

A. Actually, my first Pigford case was assigned to me in -- I believe it was April of 2000.

Q. As team leader have you done more Pigford cases than other team members?

A. More than some, less than others.

Q. And you said at one time you had ten people on the team.

Can you identify those people?

A. Yes, I can. Let me think about it for a moment. Do you want me to just list their names?

Q. That's fine.

A. Dave Harrington, Bob Collendar, Bill Mackelroy (sp.) George Harrison, Lee Christensen, Roger Hoskin, Bob Dubman, Fakir Bagi, George Wallace and myself.

Q. Okay.

A. No, and one who is no longer on the team was Kelley White.

Q. Okay.

Are there other people who have done Pigford-type or Pigford case expert damage reports that were not on your team?

A. That have done damage reports?

Q. Um-hum.

A. No, not to my knowledge.

Q. Okay, Dargan Glaze, was he on your team ever?

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A. No, he was not.

Q. What is considered a Pigford case?

A. Pigford Track-B cases were the ones that were assigned to the agency. When we received those I requested from the Department of Justice an attorney to do the case, that they would be assigned to the case. I made that assignment and those people followed up with their attorneys that was on the case.

Q. This is not a Pigford Track-B case; do you agree?

A. Yes, that's my understanding.

Q. But the agency turned to the Pigford team for this report; correct?

A. The Department turned to the agency.

Q. Because why?

A. Because we had the experience. For the same reasons they turned to us to do the Pigford cases.

Q. And so, is this considered a Pigford-like case as far as you know? And by that, let me explain, present something of the same issues?

A. There are some of the same issues. The scale, magnitude is different.

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Q. Okay.

Have Pigford-like cases that might not necessarily have been Pigford Track-B been handled by the team in the past?

MR. KATERBERG: Objection to the form.

Pigford-like cases that might not involve --

MS. STEURY: I'm sorry.

MR. KATERBERG: It's just a little bit vague.

MS. STEURY: I'll clear it up. Thank you.

Let me rephrase.

BY MS. STEURY:

Q. Is this case the only non-Pigford Track-B case that went to the Pigford team?

A. No, it is not.

Q. Could you identify some others that have?

A. There is only one other. And -- and I don't know offhand the name of the plaintiff.

Q. Okay, is it currently pending?

A. I think it seems to be stayed or not much has happened to my knowledge. I don't -- I suppose I've only talked to the economist who is assigned to that three or four times over the last six or seven months, just in the

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hallway, so I don't know what the status is.
Q. Okay, but as far as you know, as of today it's not resolved?
A. As far as I know, it's not.
Q. And do you know when it was assigned?
A. It -- offhand, I can't say specifically. I would guess it was sometime in the summer.
Q. Of this year?
A. Last summer, of 2003.
Q. Of 2003, sorry, yes.
As team leader do you have -- can you describe your supervisory or oversight role with respect to the damage reports? And I'm specifically trying to find out whether you read them before they are submitted, whether you have sign-off approval.
How much involvement do you have in other people's reports in the Pigford cases?
A. I have very little involvement. In most cases I never see the report before it is submitted. Essentially, we're a team of economists who work on individual cases.
Early in the Pigford process we would get

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together to talk about methodological issues, data issues, presentation questions, but the case work is done independently one from another.
Q. Okay.
So, extrapolating from what you just said, would I be correct if I understood that you might, for example, or you did, for example, have a group meeting where you discussed the methodology of the damages question as a general concept?
A. Early in the process there were some meetings. That was -- actually, most of those took place before I joined the team. And they were early meetings because we were given an assignment to work on a number of cases. And at that time I think there were only six people on the team and they wanted to try to figure out how to do this as expeditiously as possible using a consistent methodology in order to meet the deadlines that were placed upon them.
Q. Okay.
If there are non-Pigford cases that present what I'm going to call Pigford-like issues, where it's a race discrimination case by a farmer for a time period

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that stretches back several years, am I correct in understanding that that might go to some other economists rather than your Pigford team?
A. If there were --
Q. Um-hum.
A. -- a Pigford-like case it might go to some other economist, not on the Pigford team? Yes. Certainly that would be a decision made by the Department, or the Department of Agriculture.
Department of Justice, they can pick those they want.
Q. Do they identify individuals that they want to do these reports?
A. My name was suggested on this particular case.
Q. By?
A. Not mandated, but suggested.
I think by both Department of Justice and Office of General Counsel, on the other case which started before my involvement.
In this particular case they just asked for somebody. And I, as I try to do when I'm assigning, I look for people on the team who have had experience in

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the same state or county, same commodities, because that's just the economies of scale and getting up and getting started on the case. So, I picked somebody who had that type of experience for the other case.
Q. And when you say "experience" you don't necessarily mean personal experience in that kind of farming, but experience in the data relating to that kind of farming?
A. That's right.
Essentially the objective is to minimize the start-up cost. So, people who may have already a farm model that has the state data, the county data, the regional costs of production data for those commodities, that's what we look for.
Q. Okay.
Do you know why your name was suggested?
A. No, I do not.
Q. Do you have any reasonable guesses?
A. I perhaps am a little bit more known by some people than other people on the team who dealt with individual Department of Justice attorneys and weren't known by other people. I think my own personal opinion

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is that there were four or five people on the team that were just as qualified as I.
Q. You mention that one of the goals is to reduce the start-up costs so that the team member or whoever is writing the report doesn't have to start from scratch necessarily but is able to build a body of knowledge they already have.
A. That was the objective in the Pigford cases when we had a very high caseload with multiple attorneys coming to an individual economist with different schedules and interruptions and some of those people still trying to do their normal work time.
As an agency of economists, we look for efficiencies.
Q. Do you fit that model for this case? In other words, have you already done other damage reports that have a lot of similarities to this case so that you had some start-up savings?
A. Yes.
Q. And can you identify which, among the ones that are listed in your disclosure statement, might be -- you would consider to have those similarities?

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A. Some of these have been so long I have difficulty remembering and separating out these. I have other cases assigned to me which never got to a deposition or a report stage, but which I did preliminary work on.
Q. Well, this is a question that you can't fail, so I'm not trying to put you to that type of test. But if one jumps -- a couple jump out that you could direct me to, that would be helpful.
A. I can't remember for these which states are represented and which commodities are represented. But I do know that at least one of them was in the state -- well, no, I'm sorry, I don't.
One of the cases that I've worked on, whether it got to the point of a report or not -- I don't know -- was in the state of Virginia. And I have certainly done reports that included all of the commodities listed.
Q. Um-hum.
A. I don't know whether -- in fact, none of these would have hogs. It was another case that I did hogs. I can't, I'm sorry.
Q. Now, when you received this assignment, can

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you tell me who first spoke to you about it?
A. Who first spoke to me about it? The administrator of the Economic Research Service.
Q. Who is that?
A. Susan Offutt.
Q. Okay, what did she tell you?
A. She said that there had been a request by the Office of General Counsel for help in a -- at that point, in non-Pigford cases.
Q. And was she asking about your availability?
A. At that point the issue was should we continue to do this type of work.
Q. And what were the considerations that went into that?
A. One of the questions that she was concerned about is that the Economic Research Service has a reputation for doing objective economic analysis work on policy issues. And she felt that the longer we did these types of cases, then we run the risk of losing the reputation for doing objective work. That, you know, the question would eventually arise well, are you just working for the defense or are you simply an agency

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providing expertise, data, analytical capability to deal with an issue, as we did on other things.
Q. Is that one of the reasons you stated in the opening paragraphs of your declaration that this was an objective report, that your task was to objectively estimate economic damages?
MR. KATERBERG: Where are you referring to?
MS. STEURY: Paragraph two of his report.
THE WITNESS: First line.
Yes. Well, one of the -- I think the Economic Research Service -- at two levels. At one level the Economic Research Service prides itself on doing objective work. We have this reputation of coming out differing with the Administration, differing with Congress, differing with trade associations about the implications of certain policy issues. And we have tried very diligently to maintain that representation of objectivity, even to the point of having been denied by the Administration the right to produce reports. Which, you know, in previous days would have been considered politically incorrect. So, at that level, I mean, the administrator is very concerned about maintaining that

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reputation of objectivity.
But the other level is, this is work which the agency does which is not part of our core mandate, which we don't get paid for, and is a diversion of resources for doing the things that Congress has funded us to do.
BY MS. STEURY:
Q. When you're doing a defense damages expert report, are you free -- are you as free, as when doing the other kind of research analysis, to be objective?
A. As free to be objective -- I'm actually freer about what I write in this report (indicating) because if I produce a report under the normal ERS it gets routed through a bunch of clearance processes. This report essentially has not been cleared by anybody in the Economic Research Service.
Q. Okay.
Have you ever written a report that did find economic damages?
A. Yes, I have.
MR. KATERBERG: If I could just -- I want to caution the Witness. We do -- we are awaiting the order from the Court which would allow us to produce the past

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reports that Dr. Trostle has submitted. And I would caution the Witness to not identify any specific conclusions or the substance of any report and link that to a particular individual or any claimant until we get the clearance of that order.
MS. STEURY: Right. And am I correct that your caution is don't link it to a particular individual?
MR. KATERBERG: Or reveal the substance of a particular report.
MS. STEURY: In an identifying way.
MR. KATERBERG: Exactly.
MS. STEURY: But I'll stick to dollars in my questions.
BY MS. STEURY:
Q. What was the largest economic damages that you found, do you know?
A. That I've found in a report that I submitted for deposition, I believe it was $560,000.
Q. And that advises me that there was at least one where you found positive damages.
Did you find any more?
A. Yes.

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Q. And they ranged less than that?
A. Um-hum, yes.
Q. Did you talk to the Office of General Counsel about this task, anyone in the Office of General Counsel for the USDA?
A. Your question is have I, at any time, talked to anybody in the Office of General Counsel about this case? The answer is yes.
Q. Okay, thank you.
Did they define the assignment for you, someone from the Office of General Counsel?
A. Define, the assignment? Not to any extent greater than would have been the types of things we had talked about very occasionally with respect to Pigford.
Q. Can you give me an example?
A. On several occasions I had meetings with the Office of General Counsel to brief them on our methodology with respect to Pigford, the data sources that we used, the way that we presented the materials.
Q. Were there ever any discussions about outcomes?
A. Not to my knowledge.

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Q. I assume you had some interaction with the DOJ lawyers that are handling this case?
A. With this case?
Q. Yes.
A. Yes, I have.
Q. Would that have been primarily Mr. Kennedy or Mr. Katerberg?
A. Primarily, both of them.
Q. Both of them, okay.
Who defined the task for you?
A. Will you please elaborate "define the task"?
Q. Okay, sure.
I'm going to start with the premise that they say we need a damages report and an estimate of economic damages. Then did they tell you how to do that, where they wanted you to come out on that, those sorts of things defining the task?
A. They defined the task to the extent that they needed a damage report. There was no discussion about methodology, about where they thought it should come out, about any questions about either liability or damages.
Q. Okay.

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So, did they communicate to you any position on liability?
A. No. We've never talked about anything about liability.
Q. So, did you understand, as part of your task, that you were to assume liability and, therefore, that's what triggers the damages report?
A. That is the standard methodology that we use in both the Pigford -- in these types of cases.
Q. Okay.
So, it's fair for me to assume that you believe your damages report assumes liability and answers the subsequent damages question?
A. The way the methodology is developed is that we assume that a farmer with a comparable type of farming operation, operating without discrimination, what their income would have been. Then to the extent that their income was less than that, we attribute that to the alleged discrimination.
Q. When it came down to the facts of the case that you needed to work with, did you receive those from Mr. Kennedy, from Mr. Katerberg or was that mostly from

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documents? How did you --
A. There are quite a number of sources of information that was useful for developing this case. One of them was Dr. Kambhampaty's report. Then there was the information from the USDA's regional cost of production. There's data off the Web sites for prices, state average prices, county average yields. I got data from many of the sources that we talked about yesterday.
Q. It was an unclear question I posed to you.
What I was interested in was the facts of the case as they relate to the Haynies in particular.
A. I have read the deposition of Mr. Haynie, and I've read the -- both the previous report and the current report of Dr. Kambhampaty.
Q. Okay.
And so, is that where you got the case information from and not through conversation with the attorneys?
A. Yes. I did spend some time going through case file materials to get some of the information there.
Q. Would these -- these were files that were produced to us in this litigation?

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MR. KATERBERG: If you know.
THE WITNESS: They were part of files that the Department of Justice had. I presume they were produced for you as well.
BY MS. STEURY:
Q. Did you happen to notice that down in the corner there was a little stamp on them?
A. No, I did not initially because the Pigford cases did not have BATES stamps. So, before this case I had no idea what a BATES stamp was. So, I don't know whether they had BATES stamps or not.
Q. Okay.
Now, before we leave the issue of objectivity, let me pose this question to you: Do you believe that your report represents -- I'm going to use the word "scientifically" -- and by that I think I mean provably or demonstrably, given the evidence that exists, the very best, most valid, most defensible choice or set of choices in estimating the damages? Or would you say that it represents one of perhaps multiple very good choices?
A. I believe that if you take into consideration what I know about this particular case, about what I know

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about the data that is available, that is both comprehensive, thorough and covers a consistent time series over time and what I know about the methodology that has been accepted for analyzing such cases. That draws on consistent data then I believe it is the best estimate of economic damages.
Q. Okay.
Did you hear anything yesterday, either with respect to the -- and by "yesterday" I mean at Dr. Kambhampaty's deposition -- that either with respect to methods, data or the facts -- and by that I mean the facts of Mr. Haynies' farming operation -- that gave you second thoughts about some of the choices that you made?
A. I heard a number of interesting, innovative, intriguing ideas yesterday. But I had reservations about their consistency, about how they, in fact, did or did not represent the Haynies' farming operation in Northumberland County.
So, although it was interesting discussion, and certainly there are alternative approaches, but it did not change my opinion that my analysis is the best estimate of economic damages.

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Q. Okay.
Now, can you identify the things you heard yesterday about the Haynies' farming operation that you weren't sure -- I forget your exact words, but it sounded to me like you questioned whether they were accurate or not.
A. You're talking about the Haynies' farming operation or the analysis, methodology and data that was applied that we talked about yesterday?
Q. I was asking specifically about the Haynies' farming operation.
And perhaps I misunderstood your previous answer, but I thought you had said some of the things you heard about the Haynies' farming operation yesterday you essentially questioned, although that wasn't your term, but you had some questions about the accuracy of that. And if I misunderstood that, please let me know.
A. I apologize, I may have misunderstood your question. I thought your question was not limited to about the farming operation, I thought your question was about what I heard yesterday about the whole analysis of that.

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Q. You are right. My question was multifaceted. And I thought you gave me an answer to all those facets and I wanted to zero in on one of those facets. But I may have misunderstood your answer, so let me back up. Let's focus specifically on the Haynie farming operation.
Did you hear anything yesterday that was different than what you understood about the Haynies' farming operation as you wrote your report?
A. I do not believe I heard anything that I would consider documentable evidence that led me to understand the Haynie operation differently.
I did hear discussion about the contiguousness of some farms which is alleged, that there would be more contiguous than what I was led to believe. That is one thing.
Q. And we can take these serially. If there was evidence that convinced you that there was more contiguousness to the tracts of land than you had so assumed in your report, would that change your view of the correct way to estimate damages? Would it change your damages estimate?
A. That depends on whether the Haynie operation

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participated in government programs, commodity programs.
Q. And in what way would your answer make a difference?
A. If the Haynie farming operation participated in government programs during the 80s and early 90s, then each farm, which, by the Farm Service Agency is designated as a separate farm number, each has an acreage allotment and set-aside requirements, then he would have to farm each of those plots of ground rather independently even though they were contiguous.
Because he has to have -- if you have a farm with ten acres, and an acreage allotment for wheat and an acreage allotment for barley and an acreage allotment for corn, you have to have set-aside acreage for each of those. So those would all have to be measured and documented. And so you couldn't just farm a bunch of ten-acre -- contiguous ten-acre plots as one.
But if he did not participate in government programs -- if he did not participate in government programs, and I would be surprised at that, because generally the Farmers Home Administration required farmers to participate in government programs, as well as

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to maintain crop insurance.
But let's say for a moment that they did not require that, in this particular circumstance that they waived that general requirement, then he would have been able to farm them contiguously. And that would make some difference in the efficiency of machinery use, the acres per hour that machinery could cover and the labor efficiency of the operator of that machinery.
Q. Let me make sure I understand the situation you're setting up.
Are you telling me that, as you understand the government set-aside programs in place in the 80s, that if there was a ten-acre plot of land on the east side of town, and a ten-acre plot of land on the west side of town with different farm numbers, that the set-aside would have to be for each of those plots -- let me rephrase.
Is there no mechanism for accumulating the set-asides to make farming more efficient? For example, if you have, hypothetically speaking, ten small plots of land and you need a ten percent set-aside, and they are all ten-acre plots, could you use one of those plots as a

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set-aside and the other nine to farm?
A. No, you could not.
Q. You believe that's against the regulations?
A. The set-aside is per farm.
Q. Okay.
Let's turn -- this always happens, that you go way out of order -- but what do you understand the term "farm" to mean as it is used by the ASCS and as it is reflected in your Exhibit E to your declaration?
A. The FSA has farm numbers --
Q. Um-hum.
A. -- so, a farm might have more than one tract of land if by some historical reason that those two had always been farmed by the same owner, same operator, so that could be the case.
Q. Now let me make sure I understand.
You could have one farm number with two separate plots of land?
A. That's right.
Q. Identified by that single farm number?
A. That is correct.
Q. Okay.

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A. But once you have that farm number with two tracts, and then you go over here and you decide to rent, lease or buy another farm, that that farm number remains separate from the first farm that I have described.
Q. Before you go on, let me make sure.
This first farm that you described --
A. The first farm with two tracts.
Q. -- with two tracts, are those necessarily contiguous tracts or could they be across town?
A. They need not be.
Q. Could they be in different counties?
A. That's a good question. I do not know.
Q. Okay. All right. We can continue.
A. Good question.
So, you get the third tract of land that already has its own farm, it remains a separate one unless there is something done, some action taken to join them. In these cases those actions were not taken.
Q. What kind of actions could be taken?
A. If I own the first two tracts, and I buy the second -- the third tract, then there is a provision -- at least at some points in time there has been a

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provision where I could aggregate those. That's usually not done, is my understanding. It's usually not done; they remain separate farming operations. In an estate when it's settled, there may be provisions for aggregating some as well.
But these farms here, each has a separate farm number, each has its own base acres, and if participating in the government program, would have their own set-aside.
If I may continue a moment, you used the example of two tracts across town. Let's say there are two tracts adjacent to each other. Each farm would need its own set-aside. That does not mean that the farmer, the operator, couldn't put those two set-asides joining each other, but if you have one ten-acre tract and another ten-acre tract right beside them, each has to have its own set-aside acres.
Q. Let me make sure I understand.
If you have a ten-acre tract that abuts another ten-acre tract --
A. Um-hum.
Q. -- is this under the scenario of two different

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or one different -- sorry, of two different farm numbers or one?
A. Two different farm numbers.
Q. Two different farm numbers, and you have a ten-percent set-aside, you have to take one acre from the one tract and one acre from the other tract.
A. (Nodding head up and down, inaudible response.)
Q. You could not choose, let's say, the low-lying corner of the 20-acre tract and set that aside, because that's the reasonable farming thing to do, because it stays wet all the time, for example, and the yield in that two-acre corner is always worse, you could not do that?
A. It's my understanding that is not done. It cannot do that.
Q. Do you have any information, one way or another, whether these -- I'm going to call them policies -- were actually enforced in operation?
A. I do not know if they were enforced in operation and in Virginia. I know that they were enforced in the state of Kansas rigorously.

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Q. Was that at the time that you were farming?
A. It's been over a ten, 15-year period.
Q. Okay.
Would there be any data collected on that that the ERS would have?
A. What kind of data are you referring to?
Q. Whether or not these policies were, in fact, observed in the field?
A. It is my understanding that the ASCS, during those periods of time, did spot checking. That's not to say that they checked every field every year. But a farmer had to certify their acreage, identify their acreage for each crop and the set-aside, and there was spot checking done on that. And if it found that a farmer was not in compliance he could have lost his -- the benefits of participating in the government programs.
Q. Okay.
Now, as I set up the example it was designed to show that this would be kind of a foolish thing for the farmer to do, to not take advantage of the best soil in the 20-acre tract that we were discussing earlier, hypothetically.

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What's the government's thinking, do you know?
A. No, I'm not sure what the government's thinking is because I'm not part of the organization that makes these regulations or administers them.
But I think the provision is that -- or the thinking is, my presumption is, that you have a number of farms that one farmer might own. The reason for having this set-aside program is supply controls. Back in the 80s and the acreage reduction program, the objective was supply controls. If you let a farm plant only the best acreage, selected from all of his farms, that is what the profession refers to as slippage, that would go against the grain of the objectives of the program.
Q. I understand. Thank you.
So, it is possible that one farmer could -- I'm sorry, one landowner could have several adjacent farm numbers in this list.
A. (Nodding head up and down, inaudible response.)
Q. Is it also possible that one landowner -- sorry, is it also possible that there could be multiple landowners of any particular farm number in this list?

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A. You mean one farm number that is jointly owned by more than one person?
Q. Yes.
A. Yes.
Q. Okay. And I'm thinking more in the nature of siblings and cousins rather than spouses.
A. It could be either.
Q. Okay.
What is the magic then of a farm number? What does it represent other than an historical artifact?
A. It represents a history of acreage and production from which is generated base acres and program yields for the purpose of participating in government programs which is used to generate the benefits, the payments under those government programs.
You have to have a history of base acres and program yields in order to -- in order to calculate the program payments that are generated.
Q. So, these farm numbers are like location units, much like a county might be; is that a fair thing to say? That they are just a way of tracking things, they don't necessarily -- they are not coterminous with

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owner, they are not coterminous with land, but they provide a counting mechanism?
A. Coterminous with owner and coterminous with land?
Q. Yes. What I'm saying is, that the farm number 88 might have five owners, or conversely, farm number 88 might have one owner and be comprised of three of four different plots of land in different areas, so it's neither coterminous with a farm number, does not identify a single owner, nor does it identify a single piece of land but it's a counting mechanism.
A. It identifies land, but not necessarily a single tract.
Q. Right.
So, as a unit, farm number 88, is it really a counting mechanism, a historical --
A. Yes, I think that's fair.
Q. Okay. Now I'm going to back up.
Can you estimate about how much time you spent preparing this report?
A. That would be difficult to do. Essentially, since -- since I got started on this report I've had two

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full-time jobs, because I have responsibilities to the Department for a publication for which the clearance draft went out Friday. And because I was working on both simultaneously, work days, weekends, nights, the number of hours I don't know.

I suppose I would say -- well, some weeks it was half-time on this and sometimes -- some weeks it was almost full-time on this. Last month, I'd say about -- I don't know. 80, a hundred -- no, more than that. 120 hours maybe.

Q. Okay.

A. I don't know. I really don't know.

Q. Fair enough. You gave me some estimate that I can work with.

Did you start on this before you saw Dr. Kambhampaty's report?

A. Yes, I did.

I'm sorry, let me correct that. Yes, I did, but shortly after I started on it I saw his preliminary report, his previous report.

Q. Okay.

When in the year did you start working on this?

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A. Well, the meetings about working on this occurred in August, I believe. And then I had my first meeting at the Department of Justice, which would probably have been in early to mid-September.

Q. And was that meeting with Brian Kennedy?

A. Yes, it was.

Q. Was it with anyone else?

A. Paul Dillard, I believe his name was, came in for part of that meeting. As I recall, he came in part way through and left before the meeting was done.

Q. Okay.

Did anyone else work on this product, your expert report?

A. Nobody else specifically worked on the report. I have asked a few of my colleagues questions about various issues and topics and data and information.

Q. Did someone else read it before you finalized it?

A. No. There is a couple of paragraphs that have been read by people.

Q. Colleagues or the lawyers?

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A. Colleagues.

Q. Colleagues.

So, did the lawyers see any part of this?

A. Yes, the lawyers have seen this; I have provided them a draft. I was wanting to know whether, in the nature of the amount of detail, and there are also formatting questions, because what we did for Pigford was very different, much more streamlined process. And since I had not done one of these, the only essentially prototype I had was Dr. Kambhampaty's, and I wanted to check with them to make sure I was meeting the requirements.

And so, I wasn't aware of, say, the list of references, for example, and I wasn't aware that I needed to put in a list of the cases that I worked before, so it was that type of review.

Q. Okay. Okay.

And did the -- did the lawyers' review of your draft expert report result in any feedback to you from them? Not in terms of the list of references or the list of cases, but in terms of the substance of your findings or the methods you used or anything like that?

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A. The feedback came in two points. One, it was pretty much editorial, cosmetic. It's obvious I don't know how to spell "plaintiffs" in plural. There are just a number of things like that. My fingers mistake country for county.

So, there were editorial feedback, and then occasionally there were some questions about this isn't clear to me, what does it say, that sort of thing.

Q. Did they ever suggest additional analyses?

A. Not that I can recall of, no.

Q. Okay.

So, I think I understand your answer to be that only you drafted this report --

A. That's correct.

Q. -- although you took some editorial comments from other people?

A. Right, um-hum.

Q. And in terms of the analysis, did you have anyone assist you with the analysis in identifying the sources or gathering the sources or the information that you used?

A. No, I did not.

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Q. Okay. And did you check all your own work?
A. I tried to.
Q. To the extent it was checked, it was you?
A. To the extent it was checked, it was me.
Q. Okay, let's turn to Exhibit K in your declaration.
Is it fair to characterize Exhibit K as sort of the summary statement of your net income analysis approaches? You have an alternative scenario down at the bottom, and that's why I used the plural.
A. I would characterize it as a summary of the summary of the net income analysis.
Q. Okay.
It does not relate to the net worth analysis; is that correct?
A. That is correct.
Q. Okay.
And the first thing you do on line 2 is take a correction for an error in addition for Dr. Kambhampaty's math calculations.
A. Um-hum.
Q. Do you recall that?

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A. Yes.
Q. Did you double check that?
A. I thought I did.
Q. Do you recall where it comes from?
A. I need to get Dr. Kambhampaty's report.
And your question is?
Q. Do you remember where you thought you found the error in the math?
A. It's either when you total up the column of total damages on page 1 of his Exhibit G --
Q. Um-hum.
A. -- or it's when you total up the net damages.
Q. So, you are indicating that it would be -- your assumption is that it would be in both columns if it was present or --
A. No, I can't -- I have penciled in under the far right column, titled total damages --
Q. Um-hum.
A. -- the number 12,000 -- $12,051,715.83.
Q. And do you recall if you derived that number by adding his column?
A. I presume that's -- yeah, I presume that's --

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yeah.
Q. The number on line 2 of your Exhibit K is 176, comma, 638; right?
A. Correct.
MR. KATERBERG: I think two of the digits got transposed. It's 683, not 638, right?
MS. STEURY: He's absolutely right. Thank you.
BY MS. STEURY:
Q. Is that a rounded figure when you compare it to the figures in Dr. Kambhampaty's column?
Dr. Kambhampaty's column has cents past the decimal point; right?
A. Correct.
Q. Do you see in that column a number that looks a lot like 176,683?
A. Yes, I do.
Q. Does this make you question whether or not Dr. Kambhampaty had an error in his calculations?
A. No. I suspect that that is my error because I keyed in these numbers into a spreadsheet, so I imagine it is my error and when I checked it I missed it.

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Q. Okay.
So, you took his numbers, keyed them into a spreadsheet so you could do your work?
A. Not so that I could do my work, so I could make comparisons.
Q. Comparisons.
Could that error in your spreadsheet have infected other parts of your analysis other than this one place where it shows up as an error?
A. No, it would not, because this number is in no way linked to my analysis.
Q. Okay.
While we're back here on Exhibit K, why don't we go on to item number 3 -- I'm sorry, I don't mean that, I mean item number 5, which is a bad way to refer to it, so let me restate that.
Under the column Plaintiff's analysis, in line number 5, you have taken a deduction, I'll call it, or a discount of $2,657,168.00; is that correct?
A. That's correct.
Q. And you have done that to adjust for what you called a "net present value"?

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A. That's correct.
Q. Whereas Dr. Kambhampaty's analysis had used 2002 dollars?
A. That's right. He had converted his net damages year by year to 2002 current dollars.
Q. Okay, do you understand that in damages calculations awards are made in current dollars?
MR. KATERBERG: Objection, calls for a legal conclusion.
MS. STEURY: Aside from his objection, you can answer.
THE WITNESS: Yes.
What we have done in all of the Pigford cases is this has never been included in any of the analyses that we have done or, to my knowledge, any of the awards. And my understanding, from discussion with several attorneys in the Department of Justice, is that we were not to include this.
BY MS. STEURY:
Q. Okay, so it was an instruction from the attorneys?
A. Initially, remember, I referred to those early

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meetings of the Pigford team where we talk about methodology. I wasn't present at those, present at those meetings, but my understanding was that that was one of the questions that came up. And the instruction was not to include it.
Q. Okay.
Just so I understand it, did either of the attorneys in this case, or any of the three that you might have spoken to, or anyone from the Office of General Counsel involved in this Case 00-2516, discuss this with you and tell you that it was inappropriate to include them?
A. I think the conversation that I had said we didn't include this in Pigford. And we were essentially instructed not to include it in Pigford, I presume we don't include it here, and I think the response, in essence, was that's correct.
Q. Okay, thank you.
In your calculation of the total without the conversion to the Year 2002 dollars, am I correct in understanding that the total for 1981 then -- sorry, 1982 then is in 1982 dollars, and the total for 1983 that you

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have estimated as the economic damages is in 1983 dollars?
A. That's correct.
Q. Okay.
Aside from the instructions from the lawyers, as an economist, is this the calculation you would use in calculating damages that span a period of 20 years?
A. I believe there are arguments on both sides for that; that's a disputable issue. And it gets into questions -- questions and issues related to a variety of things.
Q. Okay, do you understand that the adjustment that Dr. Kambhampaty took to reflect inflation?
A. Converting it to net present value?
Q. Um-hum.
A. Yes.
Q. Do you understand it to reflect more than inflation?
A. I really didn't go into that part of his analysis at all.
Q. Okay, do you understand it to represent interest?

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MR. KATERBERG: Objection, calls for a legal conclusion.
MS. STEURY: I disagree, but it doesn't matter.
You can go ahead and answer.
THE WITNESS: I didn't go to look and see how -- what factor he used for deflating it. So, I don't know whether it would be interest or inflation.
BY MS. STEURY:
Q. Okay, do you acknowledge there's a difference between inflation and interest?
A. Absolutely.
Q. So, as an economist, aside from the issue of whether the definition of "interest" requires a legal conclusion, as an economist you know that there's a difference?
A. Yes. Yes.
Q. If you had been injured 20 years ago, and you were going to be compensated for that injury today, would you think it was unfair to compensate you without an adjustment for inflation?
A. You're asking me my preferences, what I would

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like as an individual?
Q. Yes.
A. Oh, absolutely I would like to be, but that's separate from a legal question.
Q. I understand that.
MR. KATERBERG: Ellen, would this be a good time to take a mid-morning break?
MS. STEURY: Yes, please. This is fine with me.
(Whereupon, there was a short pause in the proceedings.)
MS. STEURY: We're back on the record.
BY MS. STEURY:
Q. To back up a little bit, Dr. Trostle, I had asked that you bring some documents that you might not have otherwise produced already.
Did you bring those today?
A. I have documents. I'm not sure what specifically you're asking about.
Q. Okay, let me back up.
Did your lawyer communicate to you that I had asked for a specific set of documents?

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A. Specific set of documents?
Q. Yes.
A. No, just documents.
Q. Notes of conversations or --
A. I have no notes of conversations.
Q. Okay, that answers my immediate question.
A. Okay.
Q. Do you believe that you have referenced everything you relied on for the report -- let me rephrase.
Do you believe you have documents with you today that are responsive to my request that came with the deposition notice?
A. Hopefully.
Q. And they are not duplicative of things that have already been introduced?
A. Some of them were introduced yesterday.
Q. Let's see the ones that weren't.
A. The ones that weren't, okay. I'm not sure how you want to handle this.
Q. Why don't we do much like we did yesterday and let me -- hand them to me I'll look at them on a break

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and we'll deal with it after that.
A. This is a copy for you, so I have --
Q. Okay.
A. -- it with me.
This is the cost of production estimates by commodity, by year, for the regions that would be applicable to this case. So, it has cost of production for corn from -- in this case I have 1980 to 2002.
Q. For which region?
A. This is the Southeast Region from the 1980s and 1995. And the Southeast or -- and the Southern Seaboard Region for the subsequent years. That was the year. The 1995-96 distinction is the year when the change was made in the regions. So, I have that for corn, for soybeans, for wheat, for barley, and for farrow-to-finish hog operations.
What I might do, before I go further, is indicate this (indicating) is a brochure put out by the Economic Research Service which shows those regions. So, if there's questions about that, that is there.
Then I have costs of production published by Virginia Tech, put out by Virginia Tech by the crop

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science extension specialist, Virginia Tech, for soybeans, full season versus double-cropped, which shows not only the cost of production but also the yields attained for each of those.
And this is for the year 1995. And I should note that this is not full costs of production because it does not include costs of land, overhead or risk management.
Then I have, produced by North Carolina extension service -- I apologize, what I just gave you was North Carolina.
Here I have the similar statistics for Virginia, published by the Virginia Cooperative Extension Service, and again it shows costs of production and yields. And once again it is limited to variable costs of production. It does not include some fixed costs such as land, so it is an incomplete economic accounting of the comparisons of producing double-crop soybeans versus full season.
I'm not sure this is relevant, but I brought it along. It's a printout from the NASS, the National Agricultural Statistics Service Web site, that shows how

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they present the data -- sorry, I might as well be showing this to you as I talk about it, I apologize -- which shows the production statistics.

You have planted acres, harvested acres, the yield, which happens to be harvested yield, and then it has production units and the value sign. And the reason why I've done this is to just document that this is yield per harvested acre.

But I did as an example -- and the numbers are off here on the side (indicating) about how you would calculate yield per planted acre. And I just had a spreadsheet that I included that I had done this, although this is Virginia, not for the national average yields, where I, in the spreadsheet, inserted the columns so it was very clear what is yield per planted acre and what is yield per harvested acre.

Q. So, you are telling me that this document, which comes from NASS, the publication itself, reports yield per harvested acre but you did -- but using that same information you calculated yield per planted acre?

A. That is correct.

Q. Okay.

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And is this for Northumberland County?

A. No, this is the national average yields. This is the number that Dr. Kambhampaty uses for corn at the beginning of his price series for corn.

Q. Okay.

A. I didn't produce all of those for Northumberland County; they are available at the same Web site.

Q. Okay.

A. I have here next a spreadsheet which has government program participation information. Specifically, it has payment rates under the old acreage reduction program, set-aside rates and deficiency payment rates. And then after the 1995 Farm Bill, when that whole program was phased out and the new production flexibility contract program was put in place, I have the payment rates for those as well. I have them for the commodities of corn, sorghum, barley, oats, wheat, rice, upland cotton and soybeans, not all of which are applicable here.

But I've produced this because, although all of this data is publicly-available data, it's very

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tedious to ferret it out. And, in fact, some of the earlier ones, probably that data probably only exists as file copies by the authors in ERS, data which has been in very heavy demand.

Then I have -- excuse me. Also added to this is information about payment limitations --

Q. Um-hum.

A. -- under the government programs. That is for an earlier year.

I also have this (indicating) which is the cover page and two pages that talk about payment limitations under the 2002 Farm Act.

The next item that I have is information that relates to my other Appendix E. At the bottom of this I have a source of Pete Adamson, FSA, and he submitted data for other years as well. And here is a printout from the spreadsheet that he sent me.

And I should indicate that on each of those I made the notation that those forms were signed by Mr. Haynie.

Q. Did he send you only this printout and no --

A. He sent --

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Q. -- cover memo?

A. -- he sent Excel file.

Q. Excel file.

A. Yes.

Q. But no cover memo?

A. There was some -- something that was -- yeah, it had a transmittal -- yeah, that's it.

(Whereupon, the Witness handed Counsel the aforementioned document.)

MS. STEURY: Thank you.

THE WITNESS: The next item that I have are some spreadsheets that I put together for comparisons. And they compare my analysis with that of Dr. Kambhampaty's, looking at differences in yields, costs of production, revenue, net returns, and looking at the difference in the prices that we used.

MS. STEURY: Thank you.

THE WITNESS: The next things that I brought were just essentially excerpts from the reports that were submitted yesterday, those (indicating). So, they were the reports on the -- sorry not that one -- characteristics in production costs of U.S. corn farms,

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your soybean farms, your wheat farms and a barley production costs and returns publication.
Q. Okay, thank you.
And those were all introduced yesterday, right?
A. I believe so.
Q. Okay.
A. I also have -- you asked.
Q. Sorry.
A. I also have a printout from the Web page of ERS which discusses farm financial classifications in which the farms' financial condition are put into one of four categories, favorable, marginal income, marginal solvency and vulnerable.
The reason why I present this to you is because I classify the Haynies' farming operation, in 1981, as being vulnerable. So, this is a definition and a source of that information.
Q. Thank you.
A. I also have another report, which is not referred to --
Q. May I interrupt?

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A. Please.
Q. I would like to go ahead and introduce this as an exhibit now because it just would be nice to have this in the same place where you have just described what you used for and it is new to me.
(Trostle Exhibit No. 2, marked for identification.)
THE WITNESS: May I ask a procedural question?
MS. STEURY: Yes.
THE WITNESS: Do you get those? Do I get those, the ones with the BATES stamp on them?
MS. STEURY: The ones with the exhibit numbers on them?
THE WITNESS: Yeah.
MR. KATERBERG: Is that your only copy?
THE WITNESS: No, it's not my only copy, but you gave me the other one and I --
MS. STEURY: He'll take that back, but I'll leave this out here where you have access to it in case you need it.
Go ahead.
THE WITNESS: I have another report, which was

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not included in Dr. Kambhampaty's report, and it's a similar report, characteristics and production costs of U.S. wheat farms done in 1989 by Dargan Glaze. It's an earlier version of the one he did use, so it presents data for earlier in the period. And I just -- I didn't use it directly in my analysis, but it is consistent with the set of data. And if you -- the reason why I indirectly use it is it describes the low, medium and high-cost farms and what areas of the country, the nation, are represented, most represented by those farms.
BY MS. STEURY:
Q. Let me ask then, did you rely on his report for that or was that duplicated in the report that was introduced yesterday?
A. Neither.
Q. Okay.
A. It was not duplicated in the report. This is an earlier version of the wheat report that was introduced yesterday --
Q. Um-hum.
A. -- and I did not use it directly in my report; it's not referenced there. I just use it as further

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evidence of the regional distribution in the United States of the farms that are represented by the low cost, medium cost, high-cost producers.
Q. Okay, thank you.
You have more?
A. I think that's it.
Q. Okay. Okay.
Let me also at this point -- Mr. Haynie, may I have that back, please, that exhibit?
MS. STEURY: I would like to introduce this as an exhibit. And I will loosely refer to it as the Adamson --
MR. KAMBHAMPATY: Spreadsheet?
MS. STEURY: Spreadsheet of farm numbers.
MR. KATERBERG: Do we have an extra copy of that?
THE WITNESS: I think I have one right here.
(Trostle Exhibit No. 3, marked for identification.)
BY MS. STEURY:
Q. Let me turn again to the farm number Exhibit E and ask a couple of follow-up questions.

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When you were testifying earlier on this, you mentioned something known as base acres.
A. Correct.
Q. I'm not real familiar with that term. Can you -- hopefully I'm not asking for a long answer, but can you explain what that means?
A. The short answer is that base acres are the acreage assigned to a farm based on historical plantings at some point in time that are the area basis for participation in the program, government program for that particular crop.
Q. Now, let me make sure I understand what this is, or the purpose of it.
Is it to get a figure that represents what is usually under cultivation on that tract of land so that this base acre won't reflect some outlier year of cultivation?
A. Not exactly. The base acres have been established from long history based on what was actually planted during a series of years. And that remains -- generally remains fixed. There are certain years when the federal farm bill legislation may provide farmers an

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opportunity to change that base acres. And there are certain program provisions that allow -- might allow minor adjustments to that.
But, in general, if you -- and I'm not familiar with the years specifically -- but in 1985, for example, they might have used the previous six or seven years of history for that farm on the acreage planted for each of the commodities. Base acres may add up to exactly the amount of cropland on a farm or it may add up to less than the total cropland or, in some cases, more than the total cropland because of double cropping during the historical time period.
Q. I see. So, the base acres reflect double cropping?
A. They may reflect double cropping.
Q. Is it possible that on Exhibit E there are farm numbers represented where the base acres have not been established?
A. That is an interesting question. I suppose if the landowner or operator had never expressed an interest in participating in a government program and had never signed up for a government program, then it would be

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possible for that farm not to have base acres.
However, that seems implausible to me because during history, going back to the 70s, there were certainly major economic benefits by participating in government programs. And so many programs required cross-compliance, so even if you didn't want to participate in the wheat program you may have had to certify wheat acres to participate in the corn program.
Q. If, in fact -- I understand that your testimony is that it's implausible that there were many farms on this list that had no base acres established, but if, in fact, hypothetically speaking, there were a number of the small farms that had not established base acres would that change your assessment of the issue here that we've identified of farming contiguous tracts of land and the efficiencies that are derived therefrom?
A. I believe it probably would. As I said earlier, if they were participating in government programs then they would have to maintain all these base acres. If they were not participating in government programs and never signed up for government programs, then I believe for almost all -- let me say something

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with a caveat -- then I think that would probably be the case.
The caveat is because of cross-compliance with some conservation programs in the past -- that might not be true -- back in the 50s there was something called the soil bank program. And although I'm not sure, my understanding is even back in those days you would have had to certify acres, even if you didn't participate in other programs, that those acres were recorded. And those may or may not have established a base even if you never participated in a program.
Q. Okay.
A. That's my understanding.
But my recollection of the farm programs in those early days, particularly when I was overseas and not in the United States, I'm not absolutely sure about.
Q. Okay.
But one way or another base acres either have been or have not been established, and that's a verifiable fact.
A. Yeah.
Q. Did you ask Mr. Adamson for that information?

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A. We did talk about base acres, but I never received -- excuse me just one moment, please -- what I got from Mr. Adamson, I believe, is planted acres, not base acres.

Q. Do you recall whether you asked him about base acres?

A. At one point early in the process I did ask about base acres. I did not -- well, and I did not follow up.

One of the reasons why I did not follow up is because it appeared that the Haynies did not participate in government programs to a very great extent, although Dr. Kambhampaty's report says that they selectively participated. And since I didn't have that information, and nobody else seemed to use it, I did not.

Q. Oh, I see.

When you say it did not appear to you that they had participated to a very great extent, do you mean by farm number or how do you mean?

A. Either in the aggregate or by farm number.

Q. Okay.

A. Selectively would imply some farms

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participated, some didn't. The --

Q. I'm a little confused. The selective participation characterization, did that not come from Dr. Kambhampaty's report?

A. Um-hum.

Q. And so, did you ask for these data and information on base acres prior to that from Mr. Adamson?

A. Yes, I did.

Q. Okay, and --

A. Well, I didn't ask them from Mr. Adamson, I asked a general question about the ASCS records as opposed to the FMHA records.

Q. Okay. And let me -- where is Mr. Adamson located?

A. I'm -- I'm not sure.

Q. Okay.

A. A phone number, but I don't remember. He is -- I'm not sure whether it's high in the Richmond state office for FSA, or he is -- he's here in Washington, D.C., or whether he's in the Northern Neck somewhere.

Q. Let's go back to my question about your assessment that the Haynies had not participated to a

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very great extent, you said, both in terms of dollars, I think, and in terms of number of farms?

A. In the aggregate and in the number of farms.

Q. In the aggregate means?

A. His Schedule F income tax return in most cases shows no income from government programs. And in the years when it does show payments, it's a rather small amount compared to what would have been possible if all of these farms had had base acres eligible for program participation and had been signed up.

Q. Okay.

A. In my report, my analysis, I show approximately one-and-a-half million dollars net benefit from participating in government programs on the assumption that the Haynies participated to the maximum extent under a two-entity arrangement.

Q. And that is a factor that calculates into their actual experience; is that correct?

A. No, that's an assumption I made because I didn't have the program participation rate. But I assumed that Farmers Home Administration, in making loans, would have maybe not required but very strongly

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encouraged as a provision for participating in the loan programs to participate in the government programs. And I just assumed that, you know, the majority of the farmers do participate in the government programs.

Q. Okay, I think we just had a terminology miscommunication, so let me introduce this -- let me first, before I introduce it, see if it works.

I have made an equation there that I think represents the equation for damages from a net income analysis approach.

A. I read the -- this (indicating) and that's understandable. I'm not quite sure what the --

Q. This was my way of using shorthand, the minuend and subtrahend, meaning with discrimination and without discrimination, I thought it might even be easier to track it.

MR. KATERBERG: Do you have an extra copy of that by chance?

MS. STEURY: No, but we can set it right in front of you.

MR. KATERBERG: Yeah, it's not a complicated exhibit.

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MS. STEURY: Actually, I do. I do.
Let me move it as an exhibit. All I'm trying to establish is that this reflects basically the net income analysis approach that you used and I just wanted to make sure we could use the shorthand and refer to subtrahend and minuend if that would be helpful.
And I'll show you how I want to use it now.
THE WITNESS: Okay.
MR. KATERBERG: Trying to show off your vocabulary, I see.
MS. STEURY: I had to look it up, I admit.
MS. MCARTHUR: I'm impressed.
MS. STEURY: I could remember subtrahend, but minuend I had to really search for.
BY MS. STEURY:
Q. What I wanted to ask you in the last question before introducing this exhibit, was whether or not the assumption you made about the Haynies' participation in the farm program, the set-aside programs, given that you had what you considered an absence of adequate or complete information about their operation participation, whether that figured into the subtrahend.

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A. Yes, it does.
Q. Okay.
A. In other words, I gave the Plaintiffs the benefit of the doubt by saying they participated by assuming that they participated in the government programs to the maximum extent possible.
Q. Right.
And the effect of that is that the economic -- the difference from that equation is slightly reduced or reduced by that amount; correct?
A. That would -- the effect of my assumption increases the minuend by $1.5 million.
Q. I thought you just told me that it was in the subtrahend that the calculation was made.
A. My assumption is in my base scenario, which assumes no racial discrimination. So, net returns from farm operation, absent discrimination, which is your definition for minuend, would include the 1 -- one-and-a-half million dollars from maximum participation in the government's program.
Q. Isn't the minuend the estimate, the hypothetical estimate of the Northumberland County

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average farmer and how he would be doing it?
A. That analysis excludes government payments, participating in government payments. That analysis, gross revenue is determined by yield times price, excluding government payments. Subtract from that gross revenue the costs of production, the full economic costs of production absent any costs of participating in government programs. That is that part of the analysis that it says the average Northumberland County farmer, excluding issues about participation in government programs, because the costs of production estimates do not include specific costs for the requirement to maintain set-aside acres.
Q. Okay, I still think we're having a miscommunication. And maybe this exhibit was not helpful, but let me try it again this way.
Will you please turn to --
MS. STEURY: Oh, I want to mark it.
(Trostle Exhibit No. 4, marked for identification.)
BY MS. STEURY:
Q. Will you please turn to page 3 of Exhibit 1,

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your declaration?
MR. KATERBERG: His exhibits are by letter.
MS. STEURY: Exhibit 1 to this deposition.
MR. KATERBERG: Thank you. Thank you.
THE WITNESS: Exhibit 1.
MR. KATERBERG: (Indicating.)
THE WITNESS: Okay.
BY MS. STEURY:
Q. Now let's turn to page 7 of your declaration.
A. (Complies.)
Q. Paragraph number 9, where you're describing your methodology under the net income analysis; correct?
A. Um-hum.
Q. The second sentence there says:
"The economic impact, referred to as 'economic damages,' is the difference between the economic conditions of the Plaintiffs assuming no discrimination (the 'without discrimination' scenario)..."
Correct?
A. Um-hum.
Q. Now, do you understand that to be the no

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discrimination, that without discrimination scenario, to be the minuend and the discrimination scenario to be the subtrahend?

A. I do.

Q. Now, where did you assume Plaintiffs participated -- and I understand it to be fully -- to the maximum possible --

A. Um-hum.

Q. -- in --

A. In the minuend.

Q. Okay. And you did not make -- what did you assume on Plaintiffs' participation in the subtrahend?

A. Similarly to Dr. Kambhampaty, essentially we assumed that to be zero, excluding consideration of mitigating income.

Q. Okay.

MS. STEURY: I'm going to take a break now.

MR. KATERBERG: Certainly.

(Whereupon, there was a discussion held off the record and a short pause in the proceedings.)

MS. STEURY: We're back on the record.

BY MS. STEURY:

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Q. Having established my confusion, could I ask you to turn to Exhibit J of your -- Appendix J of your declaration?

A. (Complies.)

Q. And I see on the last page, the last table of Appendix J is something you title other adjustments, payment limitations.

And in light of the government benefits payments discussion that we were having just before we went off the record, can you tell me what these represent?

A. Yes. Let me begin by going back and let's take an example of wheat. So, on the page before, the top has wheat. That revenue that you see there --

Q. Is that the second column in?

A. Yes, um-hum.

Q. Okay.

A. The one at the top says 54,200.

Q. Yes.

A. That includes government payments, okay? So, you add up the government payments if you would have participated in the wheat program and the barley program

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and the corn program. And after the 1995 Farm Bill, the soybean production flexibility contract. You add all of those payments up. They are included in the revenue column in the same way the costs of participating in those programs, which is the cost of maintaining set-aside land, is included in the cost estimate, which is the column to the right.

Now just bear with me a moment. So we're doing this commodity by commodity. And when you get over to -- I'm sorry, so when you go back -- when you add those up for all of those commodities you, in some years, end up with a total government payments that exceed the payment limitations. Payment limitations are not by commodity, they are by farm. So, you cannot subtract them out commodity by commodity.

This block at the bottom, the last block on the last page of Exhibit J (indicating) represents the reductions in the farm's -- not the farm's -- in the farm operations's total government payments that would have been imposed by the payment limitations.

Q. When you say by farm, do you mean in this particular instance to refer to Mr. Haynie or do you mean

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to refer to those numbers, the farm numbers?

A. I think I corrected myself when I said by farm and I said for the farming operation. This would be the government -- let me back up just a moment.

Commodity by commodity the revenue includes the assumption that the farming operation, regardless of the number of individual farms, the farming operation would have participated in government programs to the maximum extent possible.

So, for this particular case that assumes that I started out with the same planted acres that Dr. Kambhampaty used. I then back-estimated out of that to find out what the base acres would be and then I calculated the government payments commodity by commodity. I added all of those up.

In some years those exceed the payment limitations, so this is the reduction in the payment limitations for the entire farming operation that would be comparable to the acreage planted, numbers used by Dr. Kambhampaty.

Q. In the last table in Exhibit J, the revenue column does not vary from the net revenue column;

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correct?
A. That is correct.
Because? Would you like me to say because?
Q. Yes.
A. Because the costs of participation in the government program are included in the costs for each individual commodity.
As I said, the revenue initially, the government program payments are included commodity by commodity in the revenue and their costs are included commodity by commodity in the revenue because those payments and those costs are commodity-specific.
The payment limitations is for the entire farming operation or what we call an entity. So they cannot be deducted commodity by commodity, they have to be deducted from the total farming operation, which is what I've done there. But the costs, which are zero, have already been included in the commodity-by-commodity accounting.
Q. Are your costs that are already reflected in the commodity-by-commodity tables subject to the same maximum limits -- let me put it differently.

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Are the costs reflected in the commodity-by-commodity tables calculated as if the farm operator participated in more set-aside programs than he could have possibly benefited from?
A. Than he could have possibly benefited from?
Q. In other words, my question incorporates the presumption that the farmer can figure out ahead of time, he knows about the limits, and would not, in fact, participate in more set-aside programs than he could benefit from.
A. Let me answer that by saying what they do include.
They include the assumption that the farmer participates in government programs to the maximum extent possible. That's what the numbers include.
Now, as you suggest, if a farmer said I know in advance that I'm going to exceed the payment limitations, which you cannot know in advance because those payment limitations, prior to the 1995 Farm Bill, are subject to a deficiency payment which is determined after the crop is harvested and by a season average price, so you don't know in advance what that payment

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would be. It could be anywhere from zero to a fairly large number.
Q. But a savvy farmer could kind of make a pretty good estimate, couldn't he?
A. A pretty good estimate? I would say that regardless of how savvy you are, to have an accurate estimate requires you to forecast in advance so you're signing up for a government program for a crop that's not going to be harvested, in the case of wheat, for eight or nine months. You're going to be able to forecast the season average price of that crop from eight or nine months -- well, let's just say eight months, plus five, nine to 13 months in advance if you're going to be accurate.
Now, you can, say, have a naive model and say I think farm prices are going to be the same next year as they were last year. That's easy. And you say add it up and say okay, this is what my government payment will be and it exceeds my payment limitations by so much, which is what you're getting to. And then you would say I don't want to exceed that. I'm willing to take the risk that prices might be higher and I would not have exceeded

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the government benefit, so I will not sign up some of my commodities or some of my land. And the cross-compliance varied over time, so you can't -- for any one year you could go back and say what that would be, but in general you can't make that decision. But you could say I'm going to, in general, not sign up this.
In that case, if I knew in advance what the decision was going to be, that you would sign up this farm but not this farm, then you could go in and say therefore I'm not going to include the cost of compliance on this farm. And you could do that analysis.
But in the economic context somebody -- I would want somebody to give me the assumptions about the decision-making process on how you handle your decision on where you -- how much risk you are willing to take on meeting or exceeding the payment limitations.
Q. Now, did you calculate the payment limitations as 200,000 or 100,000?
A. I -- I -- I assumed two entities. Although Mr. Haynie, according to the Adamson tables, signed up for all the programs. It is conceivable that he could have had a power of attorney from his wife to sign up and

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that those individual farms, some of them were classified by FSA, ASCS in those days, as half of them as Mr. Haynie's, half of them as Mrs. Haynie's. So, I gave him the benefit of the two entities.

In addition, I set that as $50,000 when, in fact, during part of this -- oh, throughout the period when, in fact, part of this time the payment limitation was $40,000. So, I gave him, for the simplicity of doing the analysis, I just calculated it as 50,000.

Q. Looking again at the last table in Exhibit J, for the year 1992, do I understand correctly if I interpret that negative $119,698, to mean that the payment -- that the assumption is that the Haynies participated to the extent that they would have received $219,698 except that the limitation limited them to a receipt of a hundred thousand?

A. That's correct.

Q. So, in this particular instance, the Haynies would have had to participate at more than twice the level of benefit as they could possibly receive --

A. That's right.

Q. -- correct?

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Do you think an experienced farmer might not have invested the costs involved in participating in those programs where the margin is so great as reflected in 1992?

A. Okay, if you knew more than a year in advance what that payment was going to be, then you're correct. But take a look at the year-to-year variability and the amount that the government payments exceeded $100,000. That's an indication to me that it's very hard to do a very accurate forecast of what government payments are going to be and how much they would exceed the payment limitation.

Q. Now, what makes the variability in this? Is that -- is that because the payment programs change and, for example, some years corn is in and some years corn is out?

A. Those are -- let me see if I can give a brief description of how that works and you can ask additional questions.

The programs are year by year --

Q. May I -- let me ask --

A. -- commodity by commodity, year by year.

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Q. -- are they known in advance? I mean, in 1990, might you know what programs will be, what commodities will be in the programs for '91 and '92?

A. They -- in the program, the program commodities are always in the program. That doesn't necessarily mean you would sign up for them, but they are always in the program.

Let's take wheat for example. I come from Kansas where we plant hard red winter wheat in September. In advance of that I have to sign up for the program --

Q. Okay.

A. -- say whether or not I'm going to participate or not at that particular point in time. When it comes time to plant, if Congress does its job, I know what my set-aside rate will be. So, that happens before I plant.

I don't know what the payment rate will be because the payment rate is the difference between a target price and a season average price -- I'm generalizing a lot -- a season average price. And that season average price is usually, I think it's five months, you know, of the harvest. So, you don't know what the payment rate is going to be.

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You know what your base acres are going to be and you know what your program yield is going to be. And there's a formula which includes, among other things, base acres times program yield times dah, dah, dah, dah, dah, times the deficiency payment rate. That deficiency payment rate is the difference between the target price set by Congress in advance and the season -- actual season average price. So, most of this fluctuation is due to that fluctuation in season average price. That's the reason why farming is a risky business because producers make a production decision once a year rather than an automobile manufacturer makes it daily. And you have to live with the consequences of that.

So, for example, it's zero in 1995. Why is that? Well, that's because world production of wheat and corn was fairly low and worldwide production exceeded consumption. Ending stocks got to the lowest that they had been in 20 years. World prices, including U.S. prices went up a lot. They got up, the season average price, was above the target rate so, therefore, the deficiency payment is zero. So, when you're multiplying a string of things and one of the elements is zero, you

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end up with zero.
So, for him to know, for a farmer to know in advance what am I going to sign up for in terms of my trying to play the payment limitations game, you would have had to have known a year in advance that world wheat stocks were going to decline to their lowest level in nearly two decades.
Q. Is it your understanding that when a farmer signs up for those programs that the FSA office estimates or projects the payment for them for that individual farmer?
A. For that individual farmer? Under the old --
Q. At any time.
A. -- acreage reduction program?
Well, under the most recent production flexibility contract you knew what that payment was going to be. But through all of the 80s, up until '85, it's my understanding that no, they would not have made that.
In fact, one of the exercises that ERS gets involved in is trying to develop at an early stage or during the crop year what -- for what we call the President's budget baseline, trying to develop an

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estimate of what nationwide the payments are going to be. But, to my knowledge, that's never disaggregated to the state level, let alone county or producer level. Otherwise, I think -- I'm sure it was not because the government has gotten rather sensitive to making forecasts that people make decisions about that don't turn out to be the case, so they tend not to do it.
Q. In your assumptions in this area of participation in the benefit programs, did you assume that all of his acres were base acres?
A. No. All of his acres were base acres? Let me answer that -- go ahead.
Q. In other words, I think the question I'm asking is whether all of his farm land, given that it's projected, there's a projected growth in the estimates that you have used; right?
A. That Dr. Kambhampaty used.
Q. And that you also used in your analysis. It's built in there?
A. Correct.
Q. Did you assume that all of his lands would be eligible for the set-asides?

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A. Superficially, that's a true statement. But -- but all I have is planted acres. So, I had to essentially back-cast, you know, work mathematically backwards to get base acres. But yes, I assumed that they all -- all the on a one-to-one basis planted acres track back to base acres, so I'm not assuming any pasture land, any forest land.
Q. Or any unenrolled land?
A. I assumed all land was enrolled.
Q. So, if that, in fact -- never mind, because it's a hypothetical.
But, in fact, if all land wasn't enrolled then that would change your estimate?
A. That would reduce my government payments and would reduce the damage estimate, that's correct.
Q. And reduce the costs?
A. And reduce the costs, that's correct.
Q. And it might differentially reduce the costs, as we've discussed.
A. Differentially, meaning one farm would be signed up and another one wouldn't?
Q. And, therefore, that you would not incur the

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production costs that you have subtracted out of the government payment.
A. That's right. But that decision would have to be made ex ante about what the -- or what acreage would be signed up even before you knew what the payment rate was going to be. In other words, that would mean that in 1995 they would have assumed well, last year we were $85,000 -- docked $85,000 on government payments, this year we are not going to sign up for everything. And, therefore, in 1995, because they didn't sign up for everything, there would be -- you know, they would not benefit as greatly.
Q. I understand.
Is it also your understanding that sign-up for these benefit programs is sometimes after the planting has been done?
A. Generally, that's not the case. Certainly that's not the intent. There have been years when Congress has not made those decisions by planting time. And this tends to be more for winter wheat than spring-planted crops. So, there have been years when, come September, time to plant winter wheat, and the

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decision had not been made on the set-aside rate. So farmers make their own decision about whether they were going to overplant with the understanding that they are going to have to tear some up or plant less with the understanding that they won't have enough acreage to qualify for maximum participation.

Q. Um-hum.

A. But generally, and I think almost always for spring-planted crops, those acreage allotments are determined before planting time. For winter wheat there have been years when that's not been the case.

Q. And that is not reflected -- strike that.

You understand that the wheat crop that Mr. Haynie farmed was generally winter wheat?

A. That is a winter wheat growing area, yes.

Q. And, therefore, that difference did not show up in your -- in this model that you made; is that correct?

A. That's correct.

MS. STEURY: Let me assess where we are.

MR. KATERBERG: Certainly.

MS. STEURY: It's 12:30, what do you want to

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do?

(Whereupon, there was a discussion held off the record and a short pause in the proceedings.)

MS. STEURY: Back on the record.

What my strategy is going to be is to conclude a couple of lines of questioning that we've been involved in, ask a couple of things that I hope are discrete so that we can get them out of the way and then come back and get into the larger areas after we break for lunch.

BY MS. STEURY:

Q. Still on the benefits program, and Table J, if you look at that last adjustments table at the end of Exhibit J, there your calculations are zero until 1986; correct?

A. Correct.

Q. Was there something, some change of the programs that would have changed at that point the net effect of -- of your calculations? Was it easier to predict before 1985 what the payments would have been?

A. That's a good question. I don't consider myself an expert on the individual farm programs, but the 1985 farm bill did have some rather significant changes

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as I recall. So, what you're suggesting may, in fact, be the case. But I don't think I know enough about the specific provisions of the pre-85 farm bill, what changes took place, that I would know.

Q. Okay.

Do you have any sense that there might have been something in that farm bill that made it easier to predict or selectively enroll in the programs after 1985?

A. The 1985 farm bill -- the early 1980s were poor financial performers for farmers. I mean, prices were low, costs were up, interest rates squeezed the profits. So, part of the 1985 farm bill tried to correct that.

And I believe that target prices were raised in the 1995 farm bill, which would get you a bigger gap between season average price. You know, the deficiency payment price would have gone up. I believe that to be the case; I'm not sure.

Now, the question is whether that would have made that easier to predict -- can I use the phrase to pay the payment limitations game?

Q. Sure.

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A. I don't know.

Q. Okay.

A. I haven't thought that one through.

Q. And you can think of nothing else that might. Because you framed that in a particular way, would this difference --

A. Um-hum.

Q. -- have made it easier to play the payment limitations game?

A. Um-hum.

Q. Is there anything else that would have come about that would have made it easier to play that game?

A. Not -- not that I can think of. But the 1980 farm bill was a fairly substantial change from previous farm legislation, so there may well have been something, but I don't recall it.

Q. Okay, thank you. And I believe you meant to refer to a 1985 farm bill; is that correct?

A. Yes, I did. What did I say?

Q. '80.

A. Thank you.

Q. Going back to the net present value discussion

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of the dollars in the damage estimate --
MR. KATERBERG: Counsel are you now referring to Exhibit K?
MS. STEURY: I can, but I'm really referring to the calculation in the hypothetical -- the justification behind either doing or not doing that calculation.
BY MS. STEURY:
Q. Can you give me an economist's -- aside from any legal justification -- an economist's justification for not converting dollars from 1981, 1982, into present-day dollars?
A. The question is can I give you any justification?
Q. An economist's justification.
A. An economist's justification for not including them?
Q. For not making the adjustment to present dollars.
A. It depends upon the objective of an analysis. If you need to make adjustments for net present value, then you would do that. There are certain issues where I

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think you would not do that. But, in general, as an economist, one could argue that it should be included.
Q. And are they generally understood to reflect -- to address inflation?
MR. KATERBERG: Objection, form. "They" meaning adjustments?
MS. STEURY: I'm sorry, it's a bad question. I'll rephrase.
BY MS. STEURY:
Q. Is an adjustment to present-day dollars generally understood to adjust for inflation?
A. It depends on what you adjust with. I mean, if you adjust by a CPI, a cost --
Q. Let's take that as an example.
A. -- inflator, then that would be the case.
You could also adjust for -- I mean, we adjust for interest rates, we adjust for exchange rates. I mean, depends on what the issue is and what the objective of the analysis is.
Q. Okay, thank you.
This is jumping around a bit, but I'm looking for small topics.

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A. I have a chair that my feet touch the ground, so feel free to jump around.
Q. You're comfortable?
A. Yes.
Q. In your estimate you did give consideration or did you factor in bulk discounts for the large operation that Mr. Haynie is projected to have had in the hypothetical situation; correct?
A. That is correct.
Q. And you gave -- you calculated that at 5 percent?
A. I did.
Q. And that's 5 percent of variable input costs; is that right?
A. Of the part of variable input costs for which I think bulk purchasing volume discounts would be applicable.
Q. And do you state in your report exactly what that applies to?
MR. KATERBERG: (Indicating.)
THE WITNESS: I think I did.
MR. KATERBERG: I'm sorry, I was just

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referring the Witness to the paragraph just for speed efficiency.
MS. STEURY: And all I was doing was inviting you to refer, so it's okay.
MR. KATERBERG: Paragraph 47 is where I believe that is addressed.
MS. STEURY: Thank you.
THE WITNESS: Seed, fertilizer, chemicals and fuel.
MS. STEURY: Okay.
BY MS. STEURY:
Q. Where did you get the number 5 percent?
A. The number 5 percent is not based upon any extensive survey information such as the cost of production is. In fact, the costs of production do not reflect bulk discounts, volume discounts except to the extent that there are farmers included in the survey whose costs reflect that.
So, to some degree, the costs of production already include some bulk discount. But I thought, given the size, the total acreage of the farming operation, that he probably would have been able to negotiate a bulk

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discount.
How did I get the 5 percent? Given that, to my knowledge, I was not able to find any survey data to do that, so I did my own survey. I talked to several people in ERS; I talked to farmers who I know from central Kansas; I talked to two farmer co-ops, one in central Kansas and one in the eastern coast.
And you get a range of discounts for each of the commodities. So, in some cases, for example, if you can take a semi-tanker of diesel fuel delivered directly to your farm, in one case you get a discount that would be more like 8 or 9 percent in other cases. And the chemicals and the fertilizers seemed to be in the neighborhood of 3 to 4 percent. If you could -- in one case, if you could buy a shuttle of chemicals, which is a hundred gallons, take that delivered direct to your farm -- I'm sorry, I can't remember the discount of that, but that's the nature which I came up to.
And in some cases there is no volume discount. There is a discount if you prepay. If you pay within 15 days of the date that you take delivery you get a what they call a prepayment discount. But that would be

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available to anybody who did that.
But, if your discount is going to be a dollar it may make a difference in the decision whether your discount is going to be a hundred dollars. So, it's not a scientifically-based number, it's based upon information that I was able to gain from a number of sources. And, in fact, I might parenthetically say that the Department is exploring ways to get more information on such volume discounts because, particularly in the last half decade or so, this seems to be coming more prevalent.
Q. Did you consult any sources in the Northern Neck area?
A. No, I didn't have any which to consult. The closest I came was a southern states co-op.
Q. And where was that located?
A. It's in southwest Virginia.
Q. And were their estimates any higher than 5 percent?
A. In fact, they were the least responsive. They said they gave no -- just a moment please.
Q. Um-hum.

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A. That's all from yesterday. As I recall, they gave -- they were in the lower end of the range. And there's some particular commodity which they said they only gave prepayment.
Now, in addition there are discounts for prepaying next season's, but that's again not necessarily a volume discount, although it certainly means a lot more --
Q. Um-hum.
A. -- too.
Q. Would you expect there to be regional variation in volume discount depending on the number of farmers in the area who could purchase in volume?
A. I think it depends more upon the competition among sellers in the area. In one case, and this is a Kansas case where the cooperative had been the dominant force for a number of years, and now there's a small company coming in to sell chemicals and it's reduced their profit margins so they are offering less discounts.
So, my conclusion would be that it probably depends as much as, if not more, on the competition among the providers.

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Q. But your data came primarily from people removed from data, meaning your survey results. Your informal survey results came from people in the Midwest and Kansas. Do you consider that the Midwest?
A. West.
Q. West, and within the ERS.
A. That's right.
Q. And you identified this one place in southwestern Virginia --
A. Um-hum.
Q. -- right?
A. Correct.
Q. Okay.
Have you heard of discounts as large as 15 percent?
A. No, I have not.
Q. Okay.
A. I have not heard of them either as a general level or a level for any specific input.
Q. Okay.
Now, just to make sure I'm covering all bases, are you aware of a dealer discount?

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A. Dealer discount? Would you please elaborate?
Q. Dealer discount is sometimes the term used for what a very large volume individual could get because that person is buying at the same level a dealer might buy at. And I wanted to make sure your survey would have included information like that.
A. No, it did not.
Q. Okay.
So, as far as you know, a dealer discount may be greater, and if the farmer was getting a dealer discount that you would have missed that --
A. I would have missed that.
Q. -- in your survey?
A. Um-hum.
MS. STEURY: I made certain promises, and I received certain threats from the court reporter, so why don't we break for lunch. And how much time?
(Whereupon, there was a discussion held off the record and at 1:05 p.m., the deposition was suspended, to reconvene at 1:45 p.m., this same day.)

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AFTERNOON SESSION
(1:55 p.m.)
Whereupon,
RONALD G. TROSTLE,
the Witness on the stand at the time of recess, having been previously duly sworn, was further examined and testified as follows:
EXAMINATION BY COUNSEL FOR PLAINTIFFS (RESUMED)
MS. STEURY: Back on the record.
BY MS. STEURY:
Q. You understand you're still sworn, Dr. Trostle?
A. Yes, I do.
Q. At lunch did you have a discussion or did you think of anything that would make you want to change anything you've said so far this morning?
A. No, nothing.
Q. Did the soybean crop have a set-aside benefits program?
A. Prior to the 1995 farm bill, no. It was not a program crop after the 1995 farm bill. It became part of the -- eligible under the production flexibility contract

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program.
Q. Does this figure into your analysis?
A. Yes, it does.
Q. So, after 1995, in your hypothetical minuend computation you had the Haynie farm participating in the soybean --
A. Yes, I did.
Q. -- set-asides.
A. If you will look at one of the sheets I gave you this morning about -- no, the extra, the government program payments.
Q. Can you find it?
A. This is it right here (indicating).
Q. Okay.
A. You will see that soybeans (indicating) is zero from 1980 to 1995 (indicating).
Q. Um-hum.
A. All of these are zero for -- all commodities are zero after 1995, because the 1995 farm bill terminated the old acreage reduction program, which had deficiency payments and payment rates and replaced it with the production flexibility contract program.

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Q. Um-hum. Dr. Trostle?
A. Oh, okay, which once again was not included. This is a 2002 -- the 2002 farm bill, which introduced oil seeds.
Q. Which introduced what?
A. Oil seeds, soybeans and some other oil seeds.
Q. I thought now we were growing oil. I guess we do, but I thought of something else.
Is it fair to understand this as your worksheet (indicating)?
A. That's true. That's a file that was put together for the Pigford cases working with several people who are expert in the accounting of farm programs.
Q. I see.
So, this does not reflect this case in particular, this is background?
A. That's right. This would apply to any analysis of government programs.
Q. Okay, thank you.
MS. STEURY: Let's mark this as Exhibit 5.
(Trostle Exhibit No. 5, marked for identification.)

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THE WITNESS: I said any government program, but there are a number of government programs which this would not apply to, conservation programs and other things.

MS. STEURY: Okay.

BY MS. STEURY:

Q. I think I understood your testimony earlier, that you still own farmland and you have it operated as a farm?

A. I own farmland, part owner of farmland, that includes more than one Farm Service Agency farm number. That land is rented to an operator.

Q. And I believe your prior testimony was that you participated in decisions about whether to participate in set-aside programs or not?

A. I have at certain times in the past.

Q. Have you since 1980?

A. Yes, I have.

Q. And what kind of decisions were you making -- and I'm asking this in the context of our prior terminology of playing the payments benefit game. I think we called it?

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A. (Nodding head up and down, inaudible response.)

Q. Did you try to strategically maximize your -- try to participate strategically so as to maximize your payments and minimize any costs?

A. The magnitude of my farm program payments in total would not put me into consideration of having to play that game.

Q. Okay.

A. In other words, they are considerably less than the limit, payment limitation.

Q. Okay.

In your minuend component, the it's-without-discrimination computation, does that estimate factor in the ability to store grain for long periods of time at a low cost in order to sell when the rates are more favorable, for example?

A. That would reflect -- in essence, I think the answer is no. Any storage that is included in the costs of production would be the average for all farmers. And the price that is assumed is the season average price.

Q. So --

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A. The average price for the state.

Q. So, any -- strike that.

So, only to the extent that the population from which your data are derived had storage facilities at low cost in order to sell grain at a more favorable price and, in fact, did that, then it would be factored into your estimate only to that extent that this is reflected in the aggregate data that you used?

A. That's correct.

Q. Okay.

Now I want to talk to you a bit about the subtrahend, or the estimated net farm returns, net farm income with discrimination.

A. (Nodding head up and down, inaudible response.)

MR. KATERBERG: Did you mean to say estimated?

MS. STEURY: Well, in fact, it is, I believe, estimated.

BY MS. STEURY:

Q. Do you believe, Dr. Trostle -- do you agree, Dr. Trostle?

A. Estimated to the extent that there's any data

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out there for that.

Q. Or estimated to the extent that there's missing data?

A. Then it's estimated as zero.

Q. Okay. Well, that was what I was about to get to.

Okay, what is your economist's rationale for estimating years where the Haynies' tax return showed a negative for the farm operation, a negative income for the farm operation for setting those to zero?

A. The answer to that question is, first, that the income tax records for the series are incomplete. So, you'd have them for some years and not others.

Second, that the accounting for income tax purposes for some items is different from and inconsistent with the accounting in the costs of production data.

And third, I did not feel that I would be able to get sufficient information to estimate that with any degree of comfortableness, so I, by default, used the same numbers as mitigating income that Dr. Kambhampaty used.

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Q. Okay.
Would you agree that as a plaintiff's damage expert, which you are not, you're defendant's damage expert, but as a plaintiff's damage expert Dr. Kambhampaty reasonably was concerned to not overestimate damages? And that by the same token a plaintiff's damage expert necessarily needs to be concerned about not underestimating damages; is that a fair --
A. I don't know whether I can agree to that or not. My experience in the Pigford cases with respect to plaintiffs' estimates is not consistent with what you just said. That's my interpretation.
I look at numbers and think of them at face value and do the most objective analysis that I can.
Q. But you had some data that you chose to ignore in this instance, right? You had some tax returns for some years that you decided not to include or to zero out in your calculation; correct?
A. I did not include any tax return information.
Q. And you had some tax return information?
A. There was some for some years.

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Q. Is it not standard that when you have missing data you extrapolate from existing data, usually?
A. Once again, because of the difference in accounting procedures, it would -- it would be difficult to reconcile the two for some of the same reasons we talked about yesterday for depreciation.
Q. Thank you, that's helpful.
Do you agree that by zeroing out the negative income tax returns -- or I should call them a negative -- negative income for particular years that shows up on income tax returns -- do you agree by zeroing those out that the net effect of that was to increase -- I'm sorry, the net effect of that was to decrease the measure of economic damages?
A. I would agree that to the extent that I accepted some data which was presented, but left wondering why other data wasn't presented, and coming to the conclusion that this is an incomplete and perhaps inconsistent and misleading time series, and, therefore, I would not include it at all, but to the extent that that particular partial piece of the record was there and I did not, that I zeroed it out, then it would affect

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damage estimates.
Q. Okay.
Now, can you justify zeroing out the negatives and -- but, I should say -- including the disputed positives in that income stream?
MR. KATERBERG: I'm going to lodge an objection to the extent that the question calls for a legal conclusion as to the legally-appropriate measure of damages.
You could answer if you understand the question.
MS. STEURY: But wait, I don't understand the objection. And I think it's probably helpful for me to understand the objection, so --
MR. KATERBERG: The objection is courts have defined the appropriate formula for damages to be computed. I'm not aware of any court that has done it the way you're suggesting. And I think it is a legal question that --
MS. STEURY: I think that I either need to hear my question back or rephrase it or something because that wasn't what I was -- that's what threw me, is I

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didn't think I was asking anything that had a legal aspect to it.
Can you go back?
THE REPORTER: Sure.
No, why don't we skip going back. I'll rephrase the question.
BY MS. STEURY:
Q. I want to ask you the mathematical -- no, excuse me, I want to ask you the economist's justification for zeroing out the negative income shown on the tax returns, comma, but taking into account the positive but disputed income tax for some years.
MR. KATERBERG: Objection to form. You said positive income tax. Did you mean -- you meant taxable income?
MS. STEURY: Yes, thank you.
Is it unclear?
THE WITNESS: In several respects. And let me just comment. I presume that Dr. Kambhampaty's analysis is an objective analysis. I did not have information, and some of the income tax information that was presented yesterday I had not seen before. I had very limited

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income tax information. And as I said before, it is inconsistent over time, because I wondered if I was only being given those income tax returns that showed negative income, or whether the Plaintiffs didn't file income taxes in other years, or -- there were too many question marks. So, I presumed that Dr. Kambhampaty had done an objective analysis and I used his estimates.

BY MS. STEURY:

Q. Okay, two questions: Were you aware that Dr. Kambhampaty very specifically referred to his treatment of both those things as conservative?

A. I read that.

Q. And you understood that to mean not favorable to the Plaintiff in terms of the bottom-line calculations derived therefrom?

A. Dr. Kambhampaty uses the word "conservative" in a number of places in his analysis, some of which I consider to be misleading and not conservative.

Q. And is that one of those places?

A. Conservative is an adjective. Conservative is a word that is meant to convey -- I just -- I tend to disregard the word conservative unless it's couched in

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other words such that for the following reasons or that this is a bias of my analysis.

I guess I'm not clear -- I'm clear on why I would include the negatives -- not include the negatives, but include the positives. I thought I made it clear about the reasons why I didn't include any of the income tax information.

Q. I think I misunderstood your answer.

A. And I probably misunderstood your question.

Q. No, no, did you say you were clear about why you did not include the negatives but you did include the positives?

A. I included a set of information provided by Dr. Kambhampaty, which I took at face value, either having information or evidence to dispute or support that, and so that is what I used.

Q. Okay, am I to understand that most of the information you had on tax return information came out of Dr. Kambhampaty's report?

A. Most of the information I have about mitigating income comes -- all of it comes from Dr. Kambhampaty's report. That's where it's identical to

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his.

Q. And did you have the same -- excuse me.

Did you have the tax returns that showed the negative taxable income that is reported in Dr. Kambhampaty's report?

A. I remember seeing at least one income tax return that had negative farm income, negative Schedule F income.

Q. Do you remember, as you sit here today, one way or another, whether you had -- whether it appeared to you that you had, aside from the mitigating income, that you had the same tax information that Dr. Kambhampaty had?

A. I don't know because I don't know whether I had a complete set or whether I closely examined a complete set.

Q. And did you ask your attorneys for this information?

A. It was part of the information in the file that I went through initially. And what I initially saw was incomplete. And also because of the methodological issues of comparing for the same year costs of production

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estimates and estimates from income taxes, I did not -- I did not pursue that further.

Q. Okay.

Reading between the lines of your answer, in the last several answers you've given me I get the sense that you suspected that perhaps in the information recorded in Dr. Kambhampaty's report that there had been some careful selection of negative taxable income returns to report but not a full set; am I over-reading that?

Strike that question, let me rephrase.

You've made reference to your experience with plaintiffs' experts not providing conservative estimates. You've made reference to cautioning and interpreting that term. And you said something to the effect that you did not have faith in the reliability or the validity of the income tax information shown in Dr. Kambhampaty's report, that it might not be complete, that it might not be representative.

I'm trying to flesh out whether that was behind your decision to zero out negatives and include disputed positives.

A. That was part of it. There was a

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methodological distinction of having both of those that was another part of it.
Q. In every other instance in your damages estimate where you have missing information you extrapolate from the information you have, don't you?
A. No, I don't believe that is correct. For example, in the net worth analysis there's much incomplete information. And you'll see in my exhibit that I only included that which I could document. And I did not do the normal complete net worth analysis that would have shown the change of net worth over time because it was incomplete.
Q. Okay.
How about in your net income? Can you think of an instance where you did not go ahead and extrapolate from the available data where you had missing data?
A. I can't recall whether there's any case where I had to use data that I personally extrapolated.
Q. Okay.
Is there any other instance in the net income analysis where you quote, end quote, walked away from data because you didn't have faith in it?

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MR. KATERBERG: Are you characterizing his testimony as walked away from data, or that's your phrase?
MS. STEURY: That's why I said quote, end quote.
MR. KATERBERG: Okay, thank you.
MS. STEURY: Oh, I see, the record could be confusing. Yes.
THE WITNESS: I'm confused.
MR. KATERBERG: Sorry.
BY MS. STEURY:
Q. The point I'm trying to get at is there were data that you had that you decided not to incorporate into your estimation, into your estimate; correct?
A. With respect to the mitigating income.
Q. Yes. And the -- yes.
Is there any other aspect mitigating income and actual losses -- I was searching for a word -- is there any other aspect of the net income analysis estimations where you had data that you decided not to use because you didn't have faith in their reliability or validity?

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A. Not to my knowledge.
Q. Okay.
Would you agree that when calculating the minuend, the without-discrimination scenario, that the key to getting that right, quote, end quote, if you'll use that word with me, is to identify existing data that as closely as possible approximates the Plaintiff's operation?
A. I would agree to the extent that it is consistent with the broader comprehensive set of data.
Q. What do you mean by that?
A. I mean, for example, that in my base analysis I didn't want to use one component of cost production from one source and another component of cost production from another source. That I wanted to keep the comprehensiveness and the internal consistency of the data.
Q. Okay, if I understand your minuend correctly, you used county yields, regional costs of production and state prices; is that correct?
A. That is correct.
Q. Now, the way I look at this --

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A. Correction. In my base analysis, in the first step of my base analysis I did that.
Q. Is that different from the minuend?
A. Yes, it is, because I adjusted the first step in my base analysis, as my analysis shows, by making the adjustment for volume for bulk discounts.
Q. Okay.
Just looking at the units or the derivate, the sources that I just --
A. Correct.
Q. I think "units" is the right word there, county, state, regional.
A. Right.
Q. It seems to me that you have more inconsistency there with those three different units than appeared in Dr. Kambhampaty's report where he used national and state, or I should say large farm, derived from a national sample; would you agree?
A. Would I agree that I have more inconsistencies than he would?
Q. In those three -- with respect to units.
A. No, I would not necessarily agree to it if

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you're saying inconsistencies with respect to how they represent the Haynie farming operation.
Q. But that was not my question. I'll let you answer that question later.
A. All right.
Q. But do you agree that he used two units while you used three?
A. Yes, that's -- that's correct, yes.
Q. And using different units is introducing a measure of inconsistency; is that right?
A. Not necessarily. I would not think --
Q. I thought you told me that, just not too many answers ago, that it was important to keep these consistencies in terms of the different types of measurements you were using, different types of data you were using for your measurements.
A. If you're talking about the inconsistency simply at the level of geographical consistency, that may be the case. But if that geographical data masks significant changes, for example, differences in an average yield and an average cost of production, then that, in and of itself, even in one unit, one

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geographical unit, introduces inconsistencies.
Q. Let's talk about that.
You used for your yields Northumberland averages; is that correct?
A. That's correct.
Q. And for your cost of production, Southeast regional averages adjusted for the higher yields that you find in the Northumberland averages for those commodities; correct?
A. Or lower yields, whichever the case may be.
Q. Did you have an instance of a lower yield?
A. I don't know. I was responding in terms of the methodology.
Q. Okay, I feel satisfied, you don't need to look for that. I thought maybe I had missed something that you were alerting me to.
Now, the adjustment factor that you made, that was based, as I understand your report, on the variable input costs; correct?
A. That is correct.
Q. Now, if yields -- if the variation in yields were always standardized -- strike that.

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If you made a similar adjustment everywhere in the United States you would have no variation in the return; is that right?
A. Similar adjustment to what?
Q. The one that you made for the Northumberland County yields, using an adjustment factor based on a Southeast Region cost of production to adjust for, as you said, the higher yields in Northumberland County?
A. You're saying if I had a set of the same costs of production and yield data for Northumberland County, and the same thing for the national average, if I make that percentage adjustment in Northumberland County, would that be the same as the national average?
Q. I don't think that's what I said, but I may be misunderstanding you.
I'm saying, as I understand your report, you made an adjustment because the yields were higher in Northumberland County --
A. Um-hum.
Q. -- than the yields in the Southeast --
A. That's right.
Q. -- region.

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So, essentially you set the return, you made the cost per yield in Northumberland County the same ratio as the cost per yield in the Southeast Region?
A. May I rephrase that and see if I accurately -- to the extent -- let us assume for a moment that the wheat yield in Northumberland County is ten percent higher than it is for the regional data. Then I adjusted the variable costs of production up by ten percent -- I'm sorry, by seven and a half percent, three/fourths of that. Yes, by three/fourths of that.
Q. Okay. If you did this -- if you used this same mechanism all over the United States, then wouldn't you have standardized your cost per bushel?
MR. KATERBERG: Objection to the form.
Standardized?
MS. STEURY: Um-hum, I trust as an economist he understands.
MR. KATERBERG: If you understand, you may answer.
THE WITNESS: But if you take the national average yield you're no longer making an adjustment for geographical differences, so you wouldn't increase the

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national average by 75 percent because its yield is the national average, you don't have anything to adjust it to.

Q. Okay, I wasn't going there. I understand what you said.

And let me ask this: You started your answer with a "but." Can I assume that that was a "yes, but" and then an explanation?

A. Would you rephrase the original question?

Q. Yes. Yes.

That if you use the same adjustment that you used on the Northumberland County average yields, if you did that for every county over every geographical regional average, you would standardize or zero out the variation in the costs per bushel across the United States.

A. If I used one hundred percent rather than 75 percent of the adjustment, I believe that would be correct.

Q. And if you used 75 percent everywhere you would still have standardized it, not just zeroed it out; is that correct?

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MR. KATERBERG: Objection to the form. "Standardized" is ambiguous.

BY MS. STEURY:

Q. Is it ambiguous to you? You would have eliminated the variation.

A. Eliminated the variation.

Q. You would have eliminated the variation in the cost per bushel?

A. Are we talking about yield or bushel cost?

Q. Cost per bushel. Or -- point well taken -- or in the yield. I mean, it's --

A. Then we would have -- without having gone through the math on that, it seems plausible that you would end up with something that that was the national average but that does not necessarily mean that the national average is representative of anything in Northumberland County.

Q. Okay, okay, I understand your answer.

Now, when you make this adjustment that really sets a ratio between the cost of production of a bushel of grain in Northumberland County to the cost of production of a bushel of grain in the Southeast Region.

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although you say it's not a hundred-percent adjustment, it's a 75-percent adjustment; correct?

A. (Nodding head up and down, inaudible response.)

Q. What have you factored out in effect? Have you factored out the elements of soil, topology and climate that go with that region?

MR. KATERBERG: I want to lodge an objection. You referred to a 75-percent adjustment. I don't think the Witness has -- in characterizing the Witness's testimony. I don't think he testified that there was a 75-percent adjustment.

MS. STEURY: Thank you, let me clarify for the record.

BY MS. STEURY:

Q. Is it correct that you testified that you made an adjustment by dividing an enumerator -- no, it would be multiplying an enumerator representing a yield by 75 percent of a figure that represented the cost of production in the Southeast Region.

MR. KATERBERG: Did you mean to say 75 percent of the variable costs?

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MS. STEURY: Yes, thank you.

MR. KATERBERG: Thank you. I'm sorry to interject.

MS. STEURY: I understand that the adjustment is only on the variable costs, not on the fixed costs. And I don't mean to, without mentioning it, bring in anything else.

THE WITNESS: Let me do a slight mathematical manipulation and present it as something that maybe is easier to understand.

You have county yield, you have regional costs of production yield. That ratio is multiplied by the variable costs times 75 percent.

MS. STEURY: Thank you.

THE WITNESS: Point 75.

MS. STEURY: Thank you.

BY MS. STEURY:

Q. Okay, by doing that, to a layman, myself, it seems as if what you have just done is deny the effects that may be, and presumably are, incorporated in a yield that come from the climate, topology, rainfall, that sort of thing that goes with the geographical region; would

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you agree?
A. No. To the contrary, that is a way of trying to incorporate the differences. For example, why would a yield in Northumberland County be higher than a yield in the region? It could be soil; it could be climate; it could be production technology differences. How do you account for that difference? The way we have done that is to say that we think that 75 percent of the difference in yields is attributable to variable costs.
Q. You think?
A. That you get higher yields because you put on -- you use more imports, put more fertilizer, more pesticides, more cultivation practices.
Q. By inference then, can I deduce that you think that perhaps the variation in the hospitable growing conditions is worth only 25 percent of those costs of production, the part you didn't adjust for?
A. I've tried to address the variable inputs. The other -- I see what you're saying, okay.
I've addressed the variable inputs. The other part, the 25 percent, which is somewhat of an arbitrary number, is to address those things that might deal with

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the quality of land and the climate.
I apologize, I misconstrued your question and didn't answer it properly. So, the 75 percent accounts for inputs. The 25 percent accounts -- that isn't accounted for is related to other factors, which could be soil quality, rainfall, cultural practices, those sorts of things.
Q. And is it your best guess that that's why the yields are higher? Is your model a reflection that your best educated guess -- I don't mean to belittle it by saying it's a guess -- is 75 percent due to the inputs and 25 percent due to the weather and soil?
A. And soils. Weather.
Q. What else about region is captured? What other factors that affect farming operations, either in the yield or in the costs, is captured by the region?
Do you understand my question? Maybe I need to back up a little.
A. Please do.
Q. You used region as your basis for your estimates.
A. (Nodding head up and down, no audible

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response.)
Q. Geographical location, okay? And I understand that you used Northumberland County, but then you made an important, I think, adjustment to it that brought it -- that made the returns look more like the returns in the region.
What about the region makes you think that's a good basis from which to draw an estimate besides climate, soil --
A. Well, let me answer that question this way: I think it's the best consistent data that we have available. It would be nice to have surveyed costs of production for Northumberland County or the Northern Neck -- those do not exist -- that covers the full economic costs of production.
The next -- the closest you can get to that is the regional costs of production. Admittedly, the Southeast Region encompasses an area which has different climates, different soils, different land prices and different agricultural cultivation practices. However, the regional, those factors involved in the regional cost of production estimates would be more representative of

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Northumberland County than taking the same set of statistics for the national average.
For an example, take -- let's take wheat as an example. Very well the wheat yield potential in Northumberland County because of climate and yield, combined with the average cultural practices and variable input use, are different than those of the region as a whole. But the region as a whole would be closer to that than would be the national average, which, in the case of wheat, includes large-tract farming in the Great Plains where rainfall is very low compared to anywhere, virtually anywhere in the Southeast Region. Where the use of variable inputs is much lower because, associated with lower yields, where economies of scale are more apt to be achieved by large-scale machinery where you can have fields, individual fields which may be 360 acres.
So, the national average statistics which are for wheat, which are heavily weighted by the Great Plains area, reflect soil conditions, rainfall. And because of that related input seeding rates are lower, for fertilizer, application rates are lower. The difference in cultivation practices, such as the use of fallow

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ground, which is not in used in the Southeast Region or Northumberland County, or even by the low-cost and large farms in the national average. All of those things are different.

In addition, the land costs in the Great Plains would be significantly less than in the Southeast Region. And I would guess in the Northumberland County, although I don't have statistics for land prices in Northumberland County. But they should be significantly higher if they are as productive as I'm told they are.

So, the question, to answer you is, which is most reflective of a farming operation in Northumberland County of the comprehensive set of statistics that we have available. Is it regional or is it national.

Q. I beg your pardon, that wasn't my question, but you can go ahead and answer.

A. But it's part of my answer about the regional statistics that I'm trying to respond to that by showing you the range of data that is available.

Q. Um-hum.

A. So, I would argue that because of the national average statistics, particularly for low-cost producers

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used by Dr. Kambhampaty in the early period, and the large farms later in the period, both of which are very heavily representative of Great Plains wheat producers and barley producers, are much less representative of Northumberland County than is the regional statistics.

Q. Um-hum, okay.

Some follow-up questions. Even if you had Northumberland County costs of production, can you tell me why that would approximate the Haynies' farm?

Why don't I expand on that question.

You do understand that the Haynies farmed in other counties than Northumberland County; is that correct?

A. I've been told so.

Q. Did you know that at the time that you wrote your report?

A. Yes.

Q. And you assumed that was true?

A. Yes.

Q. And did you choose Northumberland County over a composite of the four counties in the Northern Neck where he farmed because of any particular reason?

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A. I was told that predominantly it was Northumberland County. I didn't have the breakout of data by county. I, you know, at one point tried to guess the ASCS records on base acres by farm, by county.

Q. And what happened to that?

A. The data that I came up with was what I gave to you this morning. And it does not designate the county.

Q. Okay.

Did you -- do you believe there are major differences between the counties in terms of yield?

A. I do not know. But I can see why there might be, or there would be differences. Whether they are as different as the difference was between Northumberland County and the regional data or the national data, I don't know.

Q. But you didn't check on that then because you thought the farming operation was largely in Northumberland County?

A. No, I didn't.

Q. Even if you had the costs of production --

A. Um-hum.

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Q. -- for Northumberland County, what about that would lead you to think that was an appropriate benchmark for estimating the Haynies' operation?

A. Right. Remember that I used a two-step process in my base analysis. The first was to use the average farmer --

Q. Um-hum.

A. -- with the data most closely representing Northumberland County and then make adjustments after that.

So, I felt that this data most closely represented Northumberland County. Then I said what adjustments should I make to represent a farming operation comparable to that which the Haynies had. And the one thing that is in my report is the volume discounts on certain variable inputs. If -- if I know -- well, let me stop there and see what additional questions you have.

Q. Well, I can see that the topography, irrigation, meaning natural irrigation, rainfall, climate is similar. But given that his operation was so dissimilar from most of the operations in the Northern

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Neck, and certainly in Northumberland County, I'm trying to isolate the factors that you believe --
A. Right.
Q. -- accrue to your estimate from using regional data, whereas they're masked by using regional data because Mr. Haynies' -- I'm sorry, as opposed to the factors that are masked or suppressed by using regional data because Mr. Haynies' operation was so different from the typical one.
A. Yes. I did say, you know, particularly after reading Dr. Kambhampaty's report, what is it that I can -- what empirical evidence is there in what ways he would have differed, and I came to the volume discount right away. I looked at the question about being a large farmer and there's no question about which the total acreage that the Haynies farmed was large, you know, was quite large. That does not necessarily translate into being a low-cost producer or having the costs of production of a large farmer.
And one of the first issues was what about these 75 farms? You know, you gain economies of scale that -- you could argue that one of the differences that

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distinguishes the Haynie operation is that he had -- it was a large farm and there, by implication, had economies of scale.
But, in fact, if you are farming many small tracts then you do not necessarily capture those economies of scale. In fact, there may be dyseconomies, because if you have large machinery to farm the large tracts then you're using large machinery, heavy investment and large machinery to go from field to field. You know --
Q. Um-hum?
A. -- set up your equipment for one field, finish that, take it up, move to the next field. You have to figure out which field do I work on next, how much did it rain here, how much did it rain there, what's the soil conditions here, which field do I harvest next, which is most mature, which is driest, dried out.
You know, there's an overhead management to managing small tracts of land. Whereas, going back to the wheat example, when we decide if a field is ready we're talking about a 300-acre field. One field, move in once, do the 300 acres, move out.

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Q. So, you consider a 300-acre field large. That's what a large farmer might use?
A. A number of 300-acre tracts would be relatively large compared to all of the 5, 10, 15, 20-acre tracts. Which means you would have to, on those particular tracts, you would have these dyseconomies of scale of moving machinery.
Now, if you have smaller-scale machinery, then you don't have as much machinery investment, your capital recovery costs would be lower. But also your productivity of the machinery, how many acres per hour, would be less and the labor productivity to operate it would be less.
Q. Now if, in fact, many of these -- just join me in the hypothetical.
A. Sure.
Q. If many of these small farms, these 10, 12, 17-acre farms were, in fact, contiguous or adjacent, or one across the road from the other, these bring with them the economies of scale that you're talking about.
A. That would lead in that direction, yes.
Q. So that would make a big difference in whether

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or not it's appropriate to consider Mr. Haynie as a large producer or use those kinds of estimates --
MR. KATERBERG: Objection.
MS. STEURY: -- a large-producer estimate.
MR. KATERBERG: Objection to form. Two questions ago there was the word many out of 75, and then you just used the word big. And I think it's appropriate to either define those terms or at least create some range because it could mean a lot of different things.
MS. STEURY: Okay, I'm totally lost. Do you remember what I used the "many" about?
MR. KATERBERG: I think you used "many" to describe the number out of 75 farms if many farms were side by side. So, "many" could mean ten, it could mean 60, it could mean 74, all but one. And I think it's appropriate, so we have a clearer record, to figure out which of those you're referring to.
And in your last question you used the word "big," a big impact or big adjustment.
MS. STEURY: Oh, that's how I used the word "big."
MR. KATERBERG: So that could refer to --

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BY MS. STEURY:
Q. Since this was a hypothetical, to the extent that these farms that are showing up as small farms on the Exhibit E in your -- yes, Exhibit E, may be contiguous, so approximate that they're virtually contiguous, like across the road from each other or something like that, to the extent that they are, in fact, that, this would commensurately impact on an -- your estimate; is that correct?
A. Let me answer that this way: Let me take your hypothetical one step further and let's say all farms that were less than 20 acres were combined so that you didn't have any farms that were less than 40 acres, all contiguous, so everything was less than 40 acres.
Q. Everything was larger than 40 acres.
A. Larger than 40 acres, thank you.
Then I would agree that you could begin on somewhat of a sliding scale to achieve some of those economies of scale of being a large farmer in the large-farmer context, conceptually large-farmer context for the Northern Neck. But that doesn't necessarily mean that you get the same costs of production. It might mean

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that the percentage drop in production or cost of production might be somehow correlated, but that doesn't mean that you have the same costs of production as the national average low-cost producer.
Q. I understand your answer, thank you.
So, you put this mark at about 40 acres?
A. That was a hypothetical, right?
Q. Yes.
A. The reason why I say that is it depends upon the size and type of equipment used, the type of cultural practices you use. Those large wheat and barley farms in the Great Plains would look upon 40 acres as a nuisance, a pain in the neck, you know? You barely get your machinery all unfolded, laid out, pulled into place, make a few rounds and you're ready to go again. So, it depends.
Q. On what you're using to farm it?
A. The scale of your equipment and the production technology.
Q. Um-hum.
A. If, for example, a number of those large-scale barley and wheat farms actually use aerial applications

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of herbicides, sometimes aerial application of seeding. If a field isn't a half mile long they don't want to be bothered.
Q. Exactly. And it will be cost -- it would be cost prohibitive or utterly ridiculous for a farmer to use aerial seeding on a 40-acre plot, correct, if it weren't adjacent to something else that he was doing?
A. By Great Plains standards, yes. I don't know about aerial applications in the Northern Neck.
MS. STEURY: Off the record.
(Whereupon, there was a discussion held off the record.)
MS. STEURY: We're ready to go back on.
BY MS. STEURY:
Q. The remaining questions that you say would be -- that you identify as not resolved by being a large producer by Northern Neck standards, that still doesn't make you look like a large producer in the wheat region of the United States. Those factors are subject to empirical estimation as well, aren't they?
A. What factors --
Q. You were talking about land costs; you were

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talking about differences in the inputs, differences in rainfall. Pretty much all of those things are -- we have data points on those; right?
A. I would think so. And, in fact, the cost of production and the use of variable inputs levels are, in some cases, referred to in the series of reports called characteristics and costs of production of the various crop farms.
Q. Okay.
MS. STEURY: I'm willing to take a break. I'd like to take a break.
(Whereupon, there was a short pause in the proceedings.)
MS. STEURY: We're back on the record, Dr. Trostle.
BY MS. STEURY:
Q. And you brought today a brochure in color, which makes it easy to understand, titled Farm Resource Regions. And you have already alluded to the fact that this has been -- this is the most recent characterization of regions that the USDA ERS has used.
Is that a fair thing to say?

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A. Yes.
Q. And we've been using the term Southeast Region without defining it. Can you tell me on this map, which I will introduce as Exhibit Number 6, can you tell me on the map what comprises the Southeast Region?
(Trostle Exhibit No. 6, marked for identification.)
THE WITNESS: This map shows the current farm resource regions, which is referred to as the Southern -- the Northern Neck falls in the Southern Seaboard. Prior to this each commodity had a regional designation, which were not consistent across commodities. So, for example, a particular -- back up.
One other thing, this does not follow state boundaries; the previous designations all followed state boundaries. So, one state might be in one region for one crop and another region for another crop. For the Northern Neck of Virginia, or for Virginia for most commodities, that fell in a region called Southeast.
Q. And is there a map there that shows that old region?
A. No, it is not. If you want to bear with me

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for a few moments and if I brought it along, you -- this is a printout directly off of the ERS Web site (indicating).
And for corn -- I'll address several issues -- for corn you see that Virginia is in no region. That signifies that corn production in Virginia, relative to the corn production in the rest of it, wasn't large enough, wasn't significant enough to be included in the surveys.
But I looked at it and I said I can either include it in the Lake States or I can include it in the Southeast Region, which includes North Carolina. And I said it seems to me to have more similarities with the Southeast than it does the Lake States. And particularly if you look at, you know, sort of do eyeball comparisons that way. So, essentially that's for corn, grain, sorghum, oats, barley.
Barley, it falls in the Northeast Region, along with Pennsylvania. So, you see the inconsistency in terms of regions. But rather than trying to define -- when the change took place they tried to define regions that were consistent across all commodities, and

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therefore, they went and tried to develop agriclimatological farm resource regions that had similar production technologies. That was not a standard for developing this (indicating). In this case it's Northeast Region for barley.
For soybean, once again Virginia doesn't show up, but it's in the Southeast Region. If you already know this --
Q. No, it's not coming as a surprise to me, but I've never seen these maps. And my next question is: It sounds like you relied on these. Can we have a copy?
A. You may have my copy. It's easy to print off.
Q. And did you rely on them for -- it sounds like they were part of your process --
A. Yeah.
Q. -- in determining --
A. Here, once again for soybeans, I included soybeans in the Southeast Region.
Q. Okay.
Now, that leads me to the next question, and may we have that and introduce it as an exhibit?
(Trostle Exhibit No. 7, marked

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for identification.)
BY MS. STEURY:
Q. The data that actually went into your estimate --
A. Um-hum.
Q. -- do they come from the Southeast Region, as shown on those maps, for the appropriate commodity?
A. Let's take corn as an example.
Q. Okay.
A. I used data for the Southeast Region. Technically, Virginia is not represented in any region, and indeed, it is not represented in the national average statistics used by Dr. Kambhampaty. Because when you look at nationwide corn production in Virginia relative to the other parts of the United States is -- I wouldn't say insignificant, but is much less significant.
Q. Right. So you're telling me they don't even collect any data about corn production from Virginia that goes in to comprise the national average?
A. You used the word "production." This is for cost of production. We have survey data on corn area yields and production in Virginia and, indeed, in

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Northumberland County.
This refers to the costs of production. So, there is no survey of costs of production in Virginia. The reason being, these surveys are expensive and Congress has said sorry, USDA, we're going to cut your budgets. And so we have, over the years, cut back. And the statisticians know how to do this in terms of sample frames and that sort of thing on the frequency of our surveys and their geographical --
Q. Dispersion?
A. Dispersion, yes.
Q. Okay, thank you.
A. I must point out that wheat gets chopped off into two pages. It's such that you can't print out individual regions, you print the whole thing out, and on my printer it chops it.
Q. Okay.
For the record then, what I need you to do is tell me for each commodity for the time frame. I assume this new map came into being at a certain point in time and it obliterated these old maps or replaced these old maps.

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A. Correct. Correct.
Q. You'll be able to talk in terms of two time frames for the 20-year period; is that correct?
A. Um-hum.
Q. Can you tell me for each commodity and for hogs the basis for your estimates?
MR. KATERBERG: And you mean estimates of cost, the cost production?
MS. STEURY: That's what I think I mean. Let me ask the Witness.
BY MS. STEURY:
Q. This does not affect the yields; is that correct?
A. This is independent of the yield estimates generated by NASS at the county level. This refers to costs and returns to generate costs of production. It will have with it a yield estimate.
Q. In order to calculate the return?
A. Yeah.
Q. Thank you.
A. So that, in fact, is the distinction between the county average yield and the regional cost of

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production.
Q. Okay.
A. For corn, Virginia is not represented. I include it in the Southeast Region, which is adjacent to Virginia, being adjacent to North Carolina, which is in the region.
For barley, it is included. Virginia is included in the Northeast Region.
Q. And when did these maps go out of date or quit being used? The time frames is what I'm asking -- focusing on.
A. The statistics related to these maps, the transition was made to the new system in the 1995-98 time frame. Not all in one year. The ARMS (sp.) survey, the costs of production surveys are not done every year but on a cycle. So the next time they come up in the cycle, '95, '96, '97, '98 is when they made the transition.
Q. So anything from '95 later in the ARMS surveys was based on the new regional map.
A. I believe that to be the case.
Q. And these other maps that you're referring to, shall we call them effective back to the beginning of the

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damages period?
A. I believe that to be the case.
Q. Is that the way you estimated them?
A. That's the way I estimated them, yes.
Soybean production, similar to corn, is not -- in Virginia is not in the survey but North Carolina is. I included it in the Southeast Region, which would be consistent with the way that the Southern Seaboard in the new system is set up.
And finally, wheat, which doesn't show up on this map, but it is in the Southeast Region. It's truncated from page to page (indicating).
And hogs are in something called the South Region (indicating)
Q. Okay, thank you.
Now, with respect to barley, for example, I want to make sure I understand exactly what's going on. Did you use the cost of production for barley from the Northeast Region?
A. I believe I did. But now I wonder if I mis -- the answer is yes, I believe I did. Yes, I did.
Q. Okay, thank you.

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So, the fact that you could not use the current geographical region that the ERS now uses is related to a data-storage issue, storage issue?

A. Data.

Q. Agregation issue?

A. Data collection and aggregation transition that was a result of a professional organization -- I can't remember the name of which -- that has been looking at this issue for more than a decade. So, it changed some of the methodology about collection as well as leading to the change in the regions.

Q. Okay. I think I was trying to ask a different question. I think.

The question I was asking was: For barley, we do have Virginia in an old region; right (indicating)?

A. Right.

Q. But now Virginia is largely in a newly delineated region, but that old data does not get transferred into the new region; correct?

A. The survey -- not quite correct.

The survey, under the old region, the last survey under the old region included Virginia in the

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Northeast. The next time the survey was done, under the new regional designation, it is included in the South.

Q. Southern Seaboard?

A. Southern Seaboard.

Q. Right.

So, you have one data series one year, another data series another year, and you have them put together.

A. I put them together.

Q. Thank you.

A. But I --

Q. I have the answer, that's okay.

I'm going to refer to the Linda Foreman article, statistical bulletin number 974 that was introduced at your deposition yesterday -- at Dr. Kambhampaty's deposition yesterday.

If you would turn to page 13?

A. (Complies.)

Q. First of all, am I correct in understanding you derived data from -- you relied on this source for some of the data in your estimate?

A. I relied on the ARMS data for the Northern -- or for the region that Virginia falls in.

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Q. Okay, the footnote on page 13 to table 6, identifies or defines Southeast, which is a column in table 6 titled Southeast.

A. Okay.

Q. As Southeast, including Eastern Uplands and Southern Seaboard.

A. Right. Okay.

Q. Did you use that Southeast or a different Southeast?

A. No, I did use this Southeast (indicating).

Q. Okay. So, on the colored map for the current regions when you used data post -- that were collected post-1995, your estimate is not only the Southern Seaboard, but an average that includes the gray area, the Eastern Uplands; is that correct?

A. No, I only included the Southern Seaboard. This table combines Southern Seaboard and Eastern Uplands; I only included Southern Seaboard.

Q. And you can do this by going to the Web site and telling it you want Southern Seaboard information.

Is that what you did?

A. You can go to the ERS Web site and select any

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region, any commodity on a variety of outputs.

Q. And you're sure you used only Southern Seaboard?

A. I'm sure I did not include Eastern Uplands -- okay, I used Southern Seaboard and Southeast U.S.

Q. Okay. Except for barley, where you also used Northeast?

A. Correct, but this is a corn report (indicating).

Q. Understood. Right. Okay.

So, today at 3:30, I understand you used what you identify with respect to these old maps to obtain your average cost of production that you started with as the base in one of your computations; right?

A. Correct.

Q. And the Southern Seaboard only after the new maps came into effect?

A. Correct.

Q. Earlier in your testimony you stated words to this effect: That the Northern Neck is, in many respects, different than the rest of the Southern Seaboard; is that fair?

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A. I didn't say that, I said it could be different.
Q. Oh, I thought you had said it was.
A. I don't know that it is or is not with respect to any other specific region within the Southern Seaboard.
MR. KATERBERG: We're talking about "different" in a particular context?
MS. STEURY: Different agriculturally.
MR. KATERBERG: Right. This is all agriculturally, but different in terms of yields, different in terms of -- I think if you framed the question more precisely you might be able to elicit a more precise answer. I mean that in the nicest possible way.
BY MS. STEURY:
Q. Do you know what the major products are for the Southeast Seaboard region?
MR. KATERBERG: Southern Seaboard?
MS. STEURY: Oh, goodness gracious, thank you.
THE WITNESS: I understood.
BY MS. STEURY:

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Q. For the Southern Seaboard.
MS. MCARTHUR: Getting late in the day.
THE WITNESS: Taken as you're asking me, for this entire Southern Seaboard (indicating) if you aggregate all of those areas you're asking me what the major products would be?
BY MS. STEURY:
Q. Yeah, let me try to make it easier.
If you were going to consider the Southern Seaboard a type --
A. Um-hum.
Q. -- what is typical of the farm or agricultural products in the Southern Seaboard?
A. Rice, cotton, wheat, soybeans, tobacco, large-scale industry hog production and aquaculture.
Q. Is it an area where corn is typically grown --
A. Yes, it is.
Q. -- or produced?
A. (Nodding head up and down, inaudible response.)
Q. You would identify that as a typical product?
A. Yes.

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Q. Would you identify -- did you say soybeans? I can't remember everything you listed.
A. Yes, I did.
Q. And I know you said wheat.
A. Yes.
Q. Did you also say barley?
A. No, I did not.
Q. Okay.
So, it's your sense that the sorts of products, agricultural products that Mr. Haynies' farm was engaged in are typical of the Southeast Region?
A. I would say they are typical of the Southeast Region, and that those products, vis-a-vis the rest of the United States, that these are the products that have a comparative advantage in these regions (indicating). But they do not necessarily have a comparative advantage with respect to the rest of the United States.
Let me clarify. Wheat increasingly is grown on land that isn't suitable for anything else. In Kansas it's grown because you don't have enough rainfall to grow corn, to grow soybeans. It's essentially corn or wheat and grain sorghum. So, it has a comparative advantage

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vis-a-vis the rest of the United States or -- I'm sorry, has a comparative advantage within that region to produce wheat. It doesn't necessarily have a comparative advantage for the rest of the United States.
Let me pursue that a little bit further. So, here wheat is grown (indicating) including the Northern Neck. In fact, yields of wheat here are higher than the yields of wheat in the Great Plains. But that doesn't necessarily mean that their costs of production are less here (indicating) than they are in the Great Plains. So, wheat may be an important commodity relative to other commodities in this area (indicating) it doesn't mean that it is an important commodity given national average statistics.
Q. These -- the typical farm products that you've just mentioned, the list that I won't try to repeat, is it your sense that those were typical throughout this damages period, or has something dramatic changed in the last couple of years?
A. No, they are typical. The profitability of different crops had changed, they change from year to year, but there's also been some small shifts over time

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as well.
Q. I'm going to ask you to turn to page 18 -- I'm sorry, paragraph 18, page 11 of your declaration.
A. (Complies).
Q. And in paragraph 18, you state that Dr. Kambhampaty used yields per harvested acre rather than the lower yield per planted acre.
A. I did.
Q. Do you believe that still today?
A. No, I do not.
Q. Okay. So that is something that you would change?
A. Given yesterday's conversation and an elaboration of his methodology, I would change item 1 under paragraph 18.
Q. Okay.
And would you also change Exhibit K where you take a ten-percent discount?
MR. KATERBERG: Which line item?
MS. STEURY: It may be factored into several of the line items under yield adjustments.
BY MS. STEURY:

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Q. And in paragraph 19 of your declaration you state -- that's where it's most clearly and summarily stated -- you state that you take a ten-percent discount for the average ratio of harvested-to-planted acres of 98 point 8 percent, which means the yield per harvested acre has been overstated by ten percent?
A. I didn't say that I took a ten-percent discount, I say that the difference between harvested yield and planted yield was ten percent.
Q. Okay, is that translated into dollars in Exhibit K?
A. No, it is not, because what I used to generate Exhibit K was my yields and Dr. Kambhampaty's yields directly.
Let me elaborate. Would you like me to elaborate?
Q. (Nodding head up and down, inaudible response.)
A. I'm not supposed to ask you questions.
Q. Well, I'm not giving any answers.
A. In my analysis, my base analysis, I used county average yields. I used county average yields to

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generate net revenue. And I used, as we have discussed before, costs of production, the variable component of which is adjusted by that yield ratio between county and region.
So, this conversation under text under 18 -- paragraph 19 does not affect my analysis. I believe that's essentially a comment about Dr. Kambhampaty's analysis.
To make the comparison here, here in Exhibit K, essentially I replace the yields that I used in my analysis with the yields that are shown in Dr. Kambhampaty's analysis under Exhibit E.
Q. So, even though you lodged the criticism, you did not take a discount for it; that's your testimony?
A. That's right. Even though I incorrectly interpreted his analysis and lodged an invalid criticism, I did not take it into account.
Q. Let's go back to the regional analysis in your selection of the region as the basis for your data as opposed to a large-farm producer or mid-cost farm producer.
Now, I don't want to re-cover old territory,

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but I don't think we finished talking about it. In addition to what we've already discussed, which I think was soil, climate, rainfall, and this concept of being a large producer and the size of a tract, tracts of land, what else is -- let's just put a period after tracts of land.
And my question is, aside from those things that we've already discussed, is there something that accrues to the estimate because of the region that is missing from some other type that might serve as the basis for the estimate?
A. My analysis does not account -- in estimating the full economic costs of production my analysis does not account for differences in land costs from one region to another.
For example, in the Great Plains, wheat-producing areas, the land costs per acre are significantly less than the land costs in the Northern Neck of Virginia.
Q. Let me ask a question. You really don't know that, do you? You know that it's significantly less than in the Southeast Region; is that correct?

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A. I don't have the statistics with me here today, but I do have them back at my office. And they are on the ERS Web site where there is -- not by county, but there is average survey data for average rental rates times series over a fairly long period of time, the average rental rates for farmland by state.

Q. By state?

A. By state.

The reason why I make the statement that I do, is I know -- I believe I know for central Kansas the average cost to buy good quality farmland and to rent good quality farmland. And the lease rate is certainly less than the $61 per acre or above shown in the Haynies' farm and home plan.

Q. In 1989?

A. I don't recall the year. I believe that's probably right.

Also, just the nature of the productivity of the land in the Great Plains states in terms of its yield potential would be significantly less than in the Northern Neck of Virginia.

And in addition to that, urbanization and

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pressure from urban sprawl and that sorts of things are way, way less than they are in Virginia.

Q. Um-hum. And you're indicating, I think, that those would drive land prices up; is that correct, the urbanization?

A. Yes.

Q. But if I understand your testimony correctly, your comparison to -- I believe you were talking about land in Kansas -- was that its yield, its potential for yield was lower per acre?

A. Yes. Indeed, the statistics show that. In fact, I would argue, and my exhibits show, that by using national average statistics Dr. Kambhampaty has significantly under estimated the damage estimate for the Haynies for barley and wheat.

My estimate for economic damages for barley and wheat is higher than Dr. Kambhampaty's. And the reason for that is the difference between regional and national average statistics, which, compared to very -- let me start all over -- because the national average statistics are highly represented by these Great Plains states, not by Virginia, the yields are much lower there.

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And Dr. Kambhampaty's analysis uses those yields, which underestimates the yields that the Haynies could achieve and, therefore, the net -- the gross revenue that the Haynies could have achieved.

So that, using national average statistics not only does not represent the Haynies' operation as well as the regional, average regional statistics are, but it produces a significant bias in the damage estimate. Using national average statistics reduces the damage estimate significantly for wheat and barley and increases the damage estimates significantly for corn and soybeans.

Q. Um-hum.

So, from what you've said you would agree with the basic principle that where farmland is either -- is or is perceived to be more productive it commands a higher price?

A. Yes.

Q. Do you know whether the Southern Seaboard or the Southeast Regions that you used for your analysis represent Mr. Haynies' farm production techniques or practices?

A. The question is do I know that they represent

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the Haynies' farming operation? There are certainly differences, and probably do not accurately -- as accurately represent the Haynies' farming operations as if you had Northern Neck costs of production. But I believe they significantly more -- I believe the Southern and Southeastern Seaboard regions are significantly more representative of the Haynies' operation than are the national average statistics, which significantly are greater represented by the Great Plains for wheat and barley, and by the Heartland for corn.

Q. Now, you mentioned costs of production. By that term do you subsume efficiencies of production?

A. No, I'm talking about the cost of production estimates as they come, which represents the cross section of farmers that was included in the survey.

Q. Okay.

MS. STEURY: Could you read back his answer two questions ago -- one question ago?

THE REPORTER: "Answer: The question is do I know that they represent the Haynies' farming operation? There are certainly differences, and probably do not

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accurately -- as accurately represent the Haynies' farming operations as if you had Northern Neck costs of production. But I believe they significantly more -- I believe the Southern and Southeastern Seaboard regions are significantly more representative of the Haynies' operation than are the national average statistics..."

MS. STEURY: Okay, I've got the part I wasn't sure I heard right.

BY MS. STEURY:

Q. Okay, it's the Northern Neck costs of production that I want to follow up on.

Would that be your ideal data, to have the Northern Neck county yields and the Northern Neck -- I'm sorry, the Northern Neck yields and the Northern Neck costs of production?

A. As an idealist economist I would love to have that. As a practical matter in the costs of surveying, I realize that that's not probably possible.

Q. But if you had that much that would be what

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you wanted as an economist?

A. I would certainly want that information, yes.

Q. Okay.

What do you think would be missing from that information that would be important?

A. For this particular case?

Q. Yes.

A. You know, the questions what would be missing for that is the volume discount for a large farmer. And to the extent that the land tracts we were talking about were contiguous, to the extent that would make using large-scale equipment more efficient. And that would also be missing.

Q. And how about other best practices? Do you understand that the farm operations in the Northern Neck, and particularly in Northumberland County, have a large number of part-time farmers, a large number of retired farmers, a large number of very small operators? And doesn't all this -- let me ask that question, do you understand that to be the case?

A. I have heard that stated about Northumberland County. I do not know to what extent that is different

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from any other county in the United States.

Personally, in the community I grew up in you could make that statement and it would apply there also. I don't have the empirical evidence to compare those statistics.

Q. Do you think that the ERS doesn't have the empirical evidence to compare those?

A. Not by county. Oh, I'm -- to compare which? Okay.

Q. Part-time farming operations, part-time -- small farms.

A. Okay. I am not an expert on the census of agricultural statistics. They may exist. I don't know what is and is not included in those statistics.

Q. Okay.

Seems to me, thinking about farm practices, that if you have a part-time farmer whose primary occupation is off the land, that you will get a very different kind of operation than you would for a full-time farmer who is intent on growth, attends, you know, the 'ag' extension classes and talks to the agents and keeps up with the best practices.

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Would you subscribe to that impression?

MR. KATERBERG: Objection, form. You're talking about on the cost side, on the yield side or in both of those?

MS. STEURY: I think that it would impact primarily on the cost, but certainly on the yield in terms of best practices includes things like inputs and, you know, the method and timing of fertilizer application, the type of it, no-till versus till, all those kinds of things which would affect both cost and yield, correct.

THE WITNESS: The way I would answer your question is that as a very broad generalization, that may be true. But I can think of a number of exceptions to that, including the head engineer for a farm implement and livestock equipment who runs a very large farm. He has a couple of very good, well-qualified dependable, reliable, experienced people to do most of the work for him. But he plays the major management role.

BY MS. STEURY:

Q. So, in the survey data he would show up as the farm operator even though --

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A. Yes, he would. The others are hired help.
Q. Um-hum. Okay.
But back to the rest of my question. Would you expect that there would be some best practice differences -- strike that.
If you had a farmer who used what I'm going to call his "best practices," and I think that's sort of an industry term, and had a large operation in a county that was populated with a large number of part-time farmers of small farms, wouldn't you expect significant differences both in yield and cost -- or we don't need to separate them out, we can say in return -- from what's the -- what the average is for that county?
A. If you're comparing one individual with best practices with the average for everybody else, yes, I would. But from the "everybody else" in most of the farming communities and regions I know about, there are other people among those that are also following the best practices. They may not be the biggest farmer, but they are. And if there's profit to be made in best practices there's always a leader in every community. But in my experience there are a bunch of other people that say

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look what he did last year, I'm going to do it this year.
Q. How would you account for the differences between the one best-practice farmer in my -- who is a large farmer in my hypothetical and the average -- and even with an average that may include several smaller farmers --
A. Right.
Q. -- with, you know, part-time operations who are following best practices? How would you account for the differences?
A. Unless you had statistics about the distribution among those and the costs of production among those, empirically it would be a little bit difficult to do that with any sense of statistical significance.
But certainly, given a look at the data, I would think that you could make some assumptions and estimates about the gap between this year, the yields, potential yields and the costs of production if you had the cost-of-production data for those who follow best practices and those that do not. And then you could assume some type of a lag-adoption pattern and track that

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over time. But that is a major research project and data-gathering project.
Q. To some extent, even though I am very clear that you've testified that using large farm or mid-cost national statistics brings with it assumptions that you don't think are valid, to some extent does the large farm and mid-cost statistics capture these best practices large-farm characteristics that may be masked in a county where the farmer is small, part-time?
A. In general, I think that's a fair assumption. But some of those large farmers are farmers who have grown over time. They may be approaching retirement. They may not be interested in making the additional investment in the latest round of new innovative machinery.
So, as a generalization, I think that's probably acceptable. But not necessarily applicable to every circumstance.
(Whereupon, there was a short pause in the proceedings.)
MS. STEURY: We're back on the record.
BY MS. STEURY:

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Q. Dr. Trostle, I'd like you to turn to page 14 of your declaration and look at paragraph 27. I want to refer to some information you report there that comes from the Virginia Cooperative Extension Service.
Are these -- are you with me?
A. Yes, I am.
Q. Are these from the test properties?
A. I think they were referred to as test plots. One moment please.
Q. Um-hum.
A. Although it does not say test plots. It may be that when I talked on the phone one of the people I talked to may have talked about test-plot data. I -- I talked to two or three different people about both the yield impacts of double cropping as well as the costs of production impacts of double cropping. And I know that in one case they referred to they said well, we have test-plot data. But this is dated January 2001, and doesn't look like data from test plots.
Q. I would like to mark this, this document as an exhibit.
Is this what you relied on for --

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A. Virginia, yes, it is.
Q. For what's in paragraph 27, as best you know?
A. For the part of paragraph 27 that refers to Virginia.
Q. Um-hum. That ends with the footnote 9?
A. Correct.
Q. Now, footnote 9 suggests that perhaps there was a different document that you had at that time. It says 2003, but the notation in the document in your hand suggests it's 2001. Not that that's definitive, I'll grant you, but....
A. Good question. I may not have Xeroxed everything that I had because this doesn't give one specific yield. So, in doing my own Xeroxing, after hours, when the photocopy machine was not being used by other people, I may not have gotten everything.
Q. Okay.
Could you follow up with --
A. I will indeed. I will indeed.
Q. Okay.
Now, do you recall the exhibit in Dr. Kambhampaty's deposition yesterday that was from the

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Virginia Cooperative Extension Service that reported soybean yield averages for the test plots?
A. I remember seeing it laying on the table, but I did not get a copy of it, nor do I know what it contained or what time period it covered.
Q. But you remember there were four or five different sites, and one of them was Warsaw?
A. Um-hum.
Q. Did you work from a document like that?
A. No, I did not.
Q. So, that was unfamiliar to you in that format?
A. It was indeed.
Q. And we don't really know whether it really contains the same data because no one has compared them directly?
A. That's right.
Q. Where did you get your information?
A. As I recall, I got it from Northumberland County Agriculture Extension Office. But I also talked about it with people at Virginia Tech. It's been some time ago; I cannot recall.
Q. And you probably don't remember an individual

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at the Northumberland County Extension Office that you spoke with?
A. Jenny -- Jenny, Jenny, Jenny, Jenny --
Q. That might get me close enough.
A. Jenny -- I don't -- no.
Q. Okay.
Your information that you report in paragraph 27 indicates that average double-cropped soybean yields were 36 point 2 bushels per acre versus 44 point 8 for full-season beans?
A. That's correct.
Q. In your estimate for the soybean bushel yields that you used for the minuend, can you tell me what numbers of bushels you used in that computation?
A. Yes, I can. I handed out a set of comparisons, and they are included here, both for full-season and double-cropped. And the 22-year average, 1981 to 2002, full-season -- I'm sorry, let me start with the county average, Northumberland County average planted yield per planted acre was 27 point 34. And the average was for double-cropped soybeans was 25 point 4. (indicating).

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Q. Thank you.
MS. STEURY: And I'm going to introduce this as an exhibit, please.
(Trostle Exhibit No. 8, marked for identification; Trostle Exhibit No. 9, marked for identification.)
BY MS. STEURY:
Q. Looking again at footnote 9 on that page, the title that you refer to as your source says Full Season Versus Double Crop Yields in Virginia, Data From the Virginia Soybean Variety Evaluation Tests; correct?
A. That's correct.
Q. Now, is it your understanding that in these tests they use best practices as they're currently understood for that region at that time?
A. I am not an expert on test trials for yields and varieties, but it is my expectation that they would probably follow many best practices, perhaps not all. The reason why I say that is because some of the test trials in Kansas that I've been associated with, they have, in slang, been burned by using what were thought to

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be best practices which turned out to be no so best after a few years of experience, disease resistant, drought resistant, well spacing.

Q. And best practices probably changes.

A. Every year.

Q. That's right, not only in the understanding of what best practices is, but in fact, because we're dealing with live organisms; right?

A. (Nodding head up and down, inaudible response.)

Q. Now, this 36 bushels for the double cropped that you report compares to 25 point 4 is the figure that you used in your estimates.

Fair discrepancy, correct? Or fair difference, substantial difference?

A. That's right. And that would be because these test trials are very carefully monitored and watched, whereas the average county yield or the average regional costs of production yield would be average of them all.

Q. Okay.

And so, would you agree that this represents or captures some of the differences between operators

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using best practices and operators who are just typical of the average?

A. I looked at it more as the difference between the two in a particular year rather than the absolute level. Since this is one year only of data rather than a time series of data, you don't know what the growing conditions were, you don't know what pests were available, what diseases were in the area for that particular year. So, I was looking more at the difference between the two as opposed to the absolute level.

Q. Now, your footnote indicates that it spans a fair number of years.

A. That's correct.

Q. Are you saying that's not what's represented in your text?

A. Well, no. Actually, it may be. When I made that statement I was thinking back about this (indicating) which I need to trace down.

Q. Okay. So, as best you recollect now, this 36 point 2 probably does represent the span of years '87 to 2003?

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A. I would think it does, because I don't know how else I would come up with that title.

Q. Okay.

So, can you think of anything other than best practices that might explain that difference between the average yield for soybeans and the test-plot yield?

A. Remember that this is a very location-specific statistic. And I apologize, would you please rephrase your question?

MS. STEURY: I can't.

Can you read it?

THE REPORTER: "Question: So, can you think of anything other than best practices that might explain that difference between the average yield for soybeans and the test-plot yield?"

THE WITNESS: Thank you.

The difference is between a test-plot yield, which is very location-specific, and the average yield, which would be Northumberland County. So, additional factors which could play a role would be differences in rainfall patterns that particular year, difference in

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soils.

BY MS. STEURY:

Q. Do you recall -- and I realize you're operating at a handicap right now because you're not sure exactly whether this represents all the data that you worked with (indicating) -- do you recall all that you reported in paragraph 27 was based on several different test plots around the state of Virginia or whether it was one?

A. I think it was -- it was presented to me as an aggregate.

Q. Okay.

If there was one test plot in the Northern Neck of Virginia, would you find that to be a highly reliable -- would you be attracted to that as a basis?

A. I would find it as a very useful piece of information. Would I necessarily think that it represented the level of the yields over a period of time for the county in general? Not necessarily.

Q. Okay.

Did you do any tests of statistical significance to determine whether there was

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statistically-significant variation within years in your -- between the double-cropped and single-cropped soybeans?

A. No, I did not.

May I clarify? You said within years? Do you mean from year to year or for the same time series or from one source of data to another source of data within the same year?

Q. The data for the same year but different varieties of soybeans, different sites.

A. No, I did not.

Q. When you were doing your report, Dr. Trostle, and reporting the test-plot results for soybeans in paragraph 27, did you happen to notice that the reports for the soybeans that you use there really fall much closer to Dr. Kambhampaty's yield estimates for his minuend than -- than yours do?

A. I notice that they were higher than mine. And the reason why I accepted that as reasonable is because they are test plots, they are not an average for all.

I also might note that occasionally I look back to the yields, planned yields reported in the farm

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and home plans. And if my recollection serves me correct, in virtually all years for all crops -- not universally true -- but in general those planned yields in the farm and home plans were significantly lower than what Dr. Kambhampaty shows as what resulted from national-average statistics.

Q. And you're speaking of the Haynies' farm and home plan specifically?

A. That is correct.

Q. Okay.

Going back to your earlier answer that you were satisfied because this was the average and that you were -- you were satisfied in using the average because it was the average instead of the test-plot information.

Am I grossly mischaracterizing your testimony?

A. I was satisfied because I want to use as consistent as possible a data series that has time series over time for the full 22 years, and something that I know about how it was collected and how it relates to the costs of production. Because most of the crop budgets that come from the experiment stations, number one, they do not have full economic costs of production in them.

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And number two, their yield data may not be consistent, over time, with the NASS data.

Q. Okay.

But the report that you have is a yield only, you weren't relying on the costs of production for the soybeans from the test plots; right?

A. I -- the Virginia Cooperative Extension Service here? I looked at both yields and costs of production, but I used them primarily for the yield data.

Q. Would the cost of production for a best-practices farmer -- never mind.

Excuse me, strike that.

Turning to Exhibit K, on line 13 you make an adjustment for approximately one-and-a-half million dollars; is that correct?

A. That is correct.

Q. And is this what you have adjusted on the basis of what you consider to be an overstatement of yield on the production -- sorry, overstatement for yield on double-cropped soybeans?

A. That's correct.

Q. And the data in paragraph 27 is what supports

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that; is that correct?

A. That's correct.

Q. Right.

And by "the data" I mean the differential between the double-cropped and single-cropped that you report.

A. That's correct. The different --

MR. KATERBERG: Woah, woah. I want to -- there appears to be another line item several down. I want to make sure the record is clear as to which line item reflects paragraph 27. I may be confused.

MS. STEURY: This time I think you are, because 27 deals with yields, not costs of production.

MR. KATERBERG: But I'm looking at 16.

MS. STEURY: Oh, touché.

THE WITNESS: May I correct my response to your question?

MS. STEURY: Yes.

THE WITNESS: Line 13 is not the adjustment for double cropping, it's -- the text in the text column says overstatement of double-cropped soybean yields, no reduction for double crop. In other words, using

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national-average statistics overstates soybean yields. Here I reduce, for that general overstatement of soybean yields, on an average basis. And then Mr. Katerberg is correct.

In line 16 I make an additional adjustment, much smaller, for the -- only the portion of the crop that was double-cropped.

MS. STEURY: Thank you for clarifying that. Mr. Katerberg, as well.

BY MS. STEURY:

Q. Okay, since it was clear I was a little confused, could you explain how you did the adjustment, what the basis of the adjustment was?

A. In line 13 I take the -- I take the difference -- well, more correctly, I have estimated costs of soybean production using the regional costs of production estimates and using county average -- sorry, county average yields, yes. So that gets you a revenue, a net revenue.

I observed that there is a distinction, or that using the national average statistics over -- results in a much higher -- scratch that -- results in a

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higher yield estimate than the regional costs of production. So, I have the net returns to soybeans from my model. I replace my yields with Dr. Kambhampaty's yields, only that, and this is the difference that results.

So that's the adjustment for using my yields instead of his yields in line 13.

Q. In line 13?

A. In line 13.

Q. I understand that.

A. In line 16, I then take -- let me back up -- and I did that for all soybeans, full season or double-cropped.

Then in line 16 I take that portion of the planted acreage that is reported to be double-cropped and I reduced the yield for the effect of double cropping.

Q. What reduction factor did you use for the effect of double cropping?

A. I believe my report, in the paragraph we were just referring to --

Q. 27 was where we were.

A. Look at the top of page 15, top line, uses a

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ten-percent reduction.

Q. So, if the statistics proved to show that the variation between double-cropped and single-cropped soybeans was statistically insignificant, would that lead you to undo the reduction for the double-cropped soybeans?

A. I -- not entirely. What I'm told about cultural practices in the Northern Neck area and nationwide is that this differential was significantly greater in the 1980s than it is currently. That the advent of no-till soybeans and roundup-ready soybeans has, in recent years, which would be the years -- included years covered by the test plots, has reduced that differential fairly significantly. But in the early part of the analysis period, in the early 80s, that that differential was significantly greater than it is today.

Q. And would the early 80s have been ended by '85?

A. Not ended, there was a transition. I mean, this is -- once again, what's best practices today may not be best practices tomorrow. So, there was new varieties of soybeans. As farmers learned how to handle,

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manage the roundup-ready soybeans and as they adopted new no-till farming equipment, which is a significant investment, this would have been a gradual trend over time, which I would think is still continuing today.

Q. Dr. Trostle, I'd like you to look at Exhibit F of your declaration, please.

A. (Complies.)

Q. I have more questions about the region.

In the column farthest to the right, which corresponds to your information about corn, you say the region most represented by the large category is the irrigated eastern plains.

What is the irrigated eastern plains?

A. What I'm referring to here is not the -- what would be considered in the new data as the Heartland, although parts of the western part of the Heartland might apply, but that area of the eastern plains, particularly the parts situated above the Ogallala water aquifer where there is a lot of irrigated corn production.

However, I might note that additional reading, and some of the information that was prepared yesterday, would indicate that the Heartland is also one of the

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major areas.
Q. I'm going to ask you to look again at Exhibit 7 to this deposition, which is the old regions, because you agree this is not a term that's in the new map; right?
A. No, it is not.
Q. And I can't find it on the old map, so I'm not sure what you're talking about.
A. It would not be here. I did not mean this to be one of these regions, I meant this to be an area of production which would roughly cover the western part of the corn belt and this area, which in this area is called the Plains States (indicating).
Q. Are you telling me then that -- so it's the one in green, the contiguous one in green?
A. Yes.
Q. Are you telling me that this right-most column I cannot rely on it in terms of one of these maps to know what region you got the data from?
A. I'm aggregating. For example, under wheat, the second line is all Great Plains I've combined to, and soybeans I've combined to. And I realize that the

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irrigated eastern plains does not respond directly to this region. I put that in there thinking about the agri-climate differences and the production techniques that were used.
Q. I know that this map splits the -- I mean this document splits the map in an inconvenient way for wheat, but when you say all Great Plains for wheat, do you mean northern, Great Plains, Plains States?
MR. KATERBERG: To --
MS. STEURY: I'm sorry, Northern Plains and Plains States as the old region and Central Plains?
MR. KATERBERG: Just to make sure the record is clear, I think the table in Exhibit F refers to two different things, Northern Great Plains and all Great Plains.
MS. STEURY: Right. And I can figure out what Northern Great Plains is.
THE WITNESS: The data that is here under the yields --
MS. STEURY: Um-hum?
THE WITNESS: -- are actually the yields for the farm size categories on a national average.

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MS. STEURY: Um-hum.
THE WITNESS: And the next two columns, which is our percentage of the largest size category --
MS. STEURY: Um-hum.
THE WITNESS: -- apply to that.
That right-hand column was my effort to succinctly describe the areas that were covered by that are represented by those largest size category of farm.
MS. STEURY: Okay.
THE WITNESS: And, as I have said, if I were doing this today, based upon some of the discussions yesterday, I would add to the corn the Heartland.
MS. STEURY: Okay.
BY MS. STEURY:
Q. In the Foreman corn publication that was made part of Dr. Kambhampaty's deposition exhibits yesterday, the Heartland is identified, as you sort of foreshadowed here, as one of the regions where -- the region where most of the corn farms, 57 percent of the corn farms are located?
A. What table are you --
Q. I'm in table 4 on page 11, the very first

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line.
A. And you're saying 57 percent of the corn farms?
Q. Yes.
A. Yes, I see that.
Q. And a majority of the corn acres, two thirds, basically.
A. That's right.
Q. And even a higher majority of the corn production in bushels.
A. Um-hum.
Q. And then if we turn to table 6 --
A. Yes.
Q. -- there in the first two lines it indicates what portion of that farmland in the Heartland is irrigated. And you see there it indicates there's a very small proportion, only five percent of the corn acreages in the Heartland is irrigated.
A. That's right.
Q. So, the Heartland now does not contain much of what -- I'm getting lost -- of what the eastern irrigated plains territory was; right?

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A. That is correct. You will remember I said the western fringe of the Heartland that might be irrigated, in fact, most of what is covered is -- in the irrigated area is now in the category of the Prairie Gateway. And there you will see a very large percentage is irrigated.

Let me also point out, going back to the table 4, going back to the table 4 that you referred to, where the Heartland is indicated to have 57 percent of the corn farms and 68 percent of the acreage. The total operated acreage there is 602 acres and the planted corn acreage is 231 acres, compared with, in the right-hand column, significantly lower figures for the average of the Southeast.

And in addition, I call your attention to the column under Prairie Gateway. And although it has a smaller percentage of farms and production, still if you will look at the size figures for total operated acreage and planted corn acreage there, they are again much larger than anything else on the page.

So, when you're talking about national average statistics for large farms a disproportionate share of those farms will come from the Prairie Gateway, and a

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very, very small proportion of those farms will come from the Southest Region. It is -- this is one of the indicators that I base my contention on that the national average statistics for large farms are not representative of a farming operation, regardless of its size, in the Northern Neck of Virginia.

Q. Let me ask you this question: If you focus on the percentage of corn production in bushels on table 4, tell me if the percentages are to be read across the page to add up to the 100 percent.

A. I -- I'm not doing the math, but I would doubt it because there are other areas here which are not represented.

Q. Is that what you are saying?

A. Yeah.

Q. Let me ask you this: If all areas were represented -- is it correct to read the percentages across the page, it's not correct to read them up and down, right? It can't be.

A. No, no. Up and down, no, that's comparing two different things.

What may be intended here -- and you asked a

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good question, because I think these do add up to a hundred -- it probably means that that's not percentage of bushels nationwide but it's the percentage of bushels from this -- these four regions.

Q. Okay, that's fine too.

All I wanted to establish was that when I read the 71 percent it means that 71 percent of the bushels, either in these four regions or in the nation, come from the Heartland, whereas only 14 percent of the bushels of corn come from the Prairie Gateway.

A. And only three percent of it comes from the Southeast.

Q. Right. Right. But in terms of corn, the Heartland sort of clobbers the Prairie Gateway; right?

A. That's right.

Q. Okay.

A. Well, in terms of the percentage of bushels produced, not necessarily in terms of the share of large farms taken from the total sample. Remember that the national average for large farms includes for corn acreages above 750 acres --

Q. Um-hum.

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A. -- so that one can assume that the percentage of corn farms from the Prairie Gateway, which reads as seven, may understate its representation in the large-farm category. In other words, because the average size of farms here are so much greater than anywhere else, that it is probably significantly more than seven percent of the farms from the Prairie Gateway that are included in the national average statistics.

Q. Okay.

And you're raising this as a possibility, you don't know one way or the other; correct?

A. No, I don't know one way or the other based on empirical evidence, but the mathematics and the percentages -- and percentages would certainly indicate that.

Q. So, this gets down to sampling, purposeful sampling decisions about what you want the data to represent from the agricultural census; right?

A. That I want to represent?

Q. No, the government or that the ERS or whoever is in charge of the agricultural census, you're telling me that these farms may be over-sampled in proportion to

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their representation.
MR. KATERBERG: I don't think he testified that.
MS. STEURY: Let me ask him.
BY MS. STEURY:
Q. Do you think you've testified that?
A. I think you're comparing apples to oranges. We have -- one, we have national statistics, everything that is sampled.
Q. And what is that? What is sampled?
A. A set of farmers from the states that are indicated, selected by an area of statistical area sample frame, they are -- I think this report provides somewhere, has something about the number of farms that were sampled and that sort of information.
Q. Let me back up. I'm assuming that the Bureau of Census does something -- I'm sorry, that the agricultural census utilizes some pretty sophisticated sampling methods and decisions behind that, much like the people who do the Nielsen ratings do, so that you get a small number, and there are assumptions made about what it is you want to represent; right?

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Do you understand what I'm saying?
A. I don't know anything about how the Nielsen -- whatever they are, are calculated. But that's -- that's -- the principle of sampling is that you don't survey the whole population, you take a subset which you hope -- hope -- statisticians would probably not be happy with that -- which you, based upon scientific principles, believe to represent the whole population.
Q. Yes. But as your costs -- as your costs are reduced --
A. That's correct. That's correct.
Q. -- for the surveys --
A. That's correct.
Q. -- you get more and more focused on who can be in your sample and what it is you want your estimates --
A. Yeah.
MR. KATERBERG: Let her finish.
BY MS. STEURY:
Q. -- derived from the sample to represent.
And I guess I'm asking, do you -- are you telling me that you believe that the large farms from the Prairie Great -- Prairie Gateway are overrepresented in

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the sample?
A. No, I'm not. In fact, I never said anything -- I don't believe I said anything that alluded to that.
You have a sample which includes the nation --
Q. Um-hum.
A. -- in this report. You break that sample down by two separate and independent categories. One is by size of farm and another using the same basic data breaks it down by geographical region.
Q. Um-hum.
A. What I am saying is when you break it down in the first way, by size of farm, you're selecting from the national sample farms that are greater than 750 acres.
Q. Okay.
A. Then independently you go and you divide up the total sample by the regions. And that's what you get in --
Q. I understand.
A. Okay.
Q. Now, let me ask you, because I thought you were saying something very different --
A. All right.

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Q. -- let me ask you, are all farms or virtually all farms of 750 acres or greater in corn production in this sample, are they included in the survey?
A. Are virtually all farms of 750 acres or greater of corn included in the survey? I would think not because, by definition, it's a sample so it doesn't include everything.
Q. Let me direct your attention to table 12 in the Foreman article on corn.
A. Okay.
Q. In the last column to the right, under 750 or more acres, the irrigated proportion is 29 percent.
A. Yes.
Q. Does that give you reason to question whether or not the Prairie Gateway farms, which table 6 shows to be 72 percent irrigated, are particularly overrepresented -- I'm sorry, you never testified they were overrepresented, but I don't know how to get away from that word -- comprise a disproportionate -- comprise a large share of the farms in that category?
A. Once again you're comparing two measures. The fact that the large farms do have 29 percent -- 29

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percent of the large farms are irrigated. Actually, I -- I don't see a similar statistic for the regional breakouts.

Q. Let me -- I think this --

A. So it's -- for me, it -- without going to the underlying database you don't know because you don't know how things are weighted and --

Q. Right, right. We're getting to a point of dimmishing returns here in this discussion, I agree.

A. Good economic principle.

Q. But let me conclude by asking you, would you agree that 29 percent irrigation does not mean that those farms are dominated by irrigated farms?

A. No, not dominated by irrigated farms.

Q. Okay, twenty-nine percent means 29 percent. That was easy. I wish I had started there.

Okay, back to Exhibit F. I just really need to understand the data. The data in this table for '96, '97 and '98 -- year of comparison, does that mean the year the data relate to?

A. Yes, that's when these -- these reports that were republished, which are not published every year.

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they are based on surveys. So, for example, in corn, that is 1996. And I believe the Linda Foreman report refers to the 1996 survey.

Q. And that's when the raw data is collected, not estimated; right?

A. Yes, that is correct.

Do you want me to elaborate a little bit further?

Q. No, I'm sorry.

A. For example, under yield category, the corn --

Q. Um-hum.

A. -- 139 --

Q. Um-hum.

A. -- and the 147, if you will go to table 10 in the Foreman report, page 21, under the column 750 or more acres, that is where those are reported. And if you will notice, the largest size farms do not necessarily have the highest yields.

Q. Um-hum. Um-hum. Okay. I think I'm back on track. Thank you.

I'll just draw your attention to soybeans. The region most represented by the large category, you

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identify as Northern Plains and the Delta. Now, I can tell from the old map what Delta is, and I can tell from the old map what Northern Plains is.

My question is: The Foreman and Livezey publication on soybean farms, page 22 -- and again, this is another document that was introduced at yesterday's deposition of Dr. Kambhampaty -- on page 22, about mid-way down the left column, it states that the producers with 750 or more acres of soybeans were more likely to be in the Southeast or Mississippi Portal.

Now, I believe the Mississippi Portal roughly approximates the Delta, although it extends a little farther into what used to be the old Southeast. But there seems to be a discrepancy between the -- there seems to be a discrepancy between this report, which I believe is what your data is based on, right, the 1997 soybean data?

A. Um-hum.

Q. And the Northern Plains designation as a region most represented by large category. It says Southeast in her --

MR. KATERBERG: Just to correct the record, I

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think he says Northern Plains and Delta.

MS. STEURY: Yes. And I thought I had already established that he said Delta, and I can tell that that's the Mississippi Portal, which is --

MR. KATERBERG: Okay, right.

MS. STEURY: Yes, it's hard to get it in all in one sentence at one time.

BY MS. STEURY:

Q. But in the Southeast, according to her footnote -- their footnote -- includes Eastern Uplands and Southern Seaboard. So, that would mean that the Southern Seaboard is in -- is the region -- one of the two regions she identifies, three all together by the new map, that contains -- that are most likely to contain large producers of soybeans.

A. That's a good observation. And to me there seems to be an inconsistency between that statement in the left column and actually the graph below it. That shows it is distribution of soybean farms by planted soybean acreage and region. Which shows in the right-hand column for farms of 750 acres or more, that the Heartland has the biggest percentage of farms

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followed by Mississippi Portal and that the Southeast comes in third. So, I was a little bit confused by that as well.

And also because on down in that sentence it says Southeast and Mississippi Portal soybean producers were more likely to double crop soybeans following winter wheat and double-cropping soybeans with wheat may reduce soybean yields due to the later soybean planting date.

But the percentages in the graph and the percentages or -- and the references in the text seem to be inconsistent.

Q. Okay, let's clear this much up.

Do you agree that even if the Heartland has the most soybean producers that the Northern Plains does not identify the Heartland anymore?

A. Yes, I would agree to that.

Q. Okay. So, if -- if the Heartland is the biggest -- has the most 750-acre farms or larger producing soybeans --

A. Um-hum.

Q. -- then this should say the Heartland, Mississippi Portal and Southeast.

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A. That would make it consistent with the graph.

Q. Okay, the publication on which you relied; right?

A. (Nodding head up and down, inaudible response.)

MS. STEURY: He said yes.

THE WITNESS: Yes.

MS. STEURY: Believe me, I'm not trying to chew up time, but I do think another break would be in order.

(Whereupon, there was a short pause in the proceedings.)

MS. STEURY: Back on the record.

BY MS. STEURY:

Q. Dr. Trostle, you use state prices in your report?

A. That's correct.

Q. And, as far as you can tell, did you and Dr. Kambhampaty use identical data?

A. Nearly identical data for crops.

If you will refer to --

Q. I remember.

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A. -- the handout of comparisons, one of those sheets, the second-from-the-last page of this (indicating) shows both the prices that I used and the prices that Dr. Kambhampaty used.

And you can see for corn they are identical all the way through. Soybeans, identical all the way through. Wheat, identical all the way through. For barley, towards the end there are some differences, but they'll probably have little effect on the overall analysis. For corn prices, and that's not price, that's a value per hundred weight of gain, we do have a different --

Q. Do you mean for hog prices?

A. Instead of a price per pound live weight, say --

MR. KATERBERG: You said corn. You meant hogs, right?

THE WITNESS: Hogs, okay. Hogs.

We do use a different price series, value series. And his averages a little more than $2 above mine, but I did not adjust for that.

BY MS. STEURY:

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Q. You did not adjust for that.

A. I believe that to be the case. Let me look at Appendix K -- Exhibit K. No, I did not.

Q. Okay.

With respect to hogs, you question in your report, paragraph 44 on page 21, if hogs production was as profitable as Dr. Kambhampaty's analysis suggests then why were nearly all the hog operations ceasing production.

And there was discussion yesterday of this topic, so today -- and I should say in yesterday's deposition of Dr. Kambhampaty -- today do you have an answer to that question?

A. I'm sorry, what paragraph are we referring to?

Q. 44.

A. And your question is?

Q. It's your question.

A. Okay. No, I do not have an answer to that question because when people see economic opportunity they tend to go after it, whether it's hogs or anything else. And if hogs were as profitable as Dr. Kambhampaty suggests in his analysis, then I don't see why people

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would have been getting out of hogs consistently over the time period.

Q. So, the fact that the type of operation that seemed to disappear was a contract feeder-to-finish operation instead of independent farrow-to-finish operation, which is what is estimated for Mr. Haynies' hypothetical operation, that doesn't make a difference to your assessment?

MR. KATERBERG: That was a very long question; I didn't understand it. If the Witness understood it, he can answer.

THE WITNESS: Well, actually I'm not sure I understood it. And I was going to evade it by answering my own question. And then I'll give you a chance to re-question me.

That question is generated by Exhibit G, which shows the number of hog operations, regardless of the type, had declined by 95 percent since 1981? I mean, that is a phenomenal change.

BY MS. STEURY:

Q. Do you know what kind of hog operations were in place?

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A. No. I do not know what this refers to. My presumption is it refers to all hog operations.

Q. I wouldn't quarrel with your presumption, but there's some empirical basis for what all hog operations are. And if they were almost uniformly feeder-to-finish -- and those are the ones that went out -- under a certain size then we would have something of an explanation.

A. Sure.

Q. Okay.

A. However, the second column, the number of head of hogs in Northumberland County has declined to the point where NASS considers them to be insignificant.

Q. Um-hum.

A. Which is a 42-percent reduction in the 1980s.

Q. Let me pose another hypothetical.

If the vast majority of the farms in hog operations in the Northumberland County were fairly small operations, and if it was the small operations that went out of business, that would provide another explanation; correct?

A. That would. And, in fact, I would go further

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and say that is very likely what happened. And so, the proportional share of this decline would be in the small -- what the industry used to call in ERS and out of ERS, the small people that got in and out, and when they saw the declining profit rates they stayed out.

Q. And is there any reason to think that if Mr. Haynie got in with 3,400 head and stayed in that it wouldn't have been profitable?

A. The costs of production in and of themselves, which would include both smaller and larger operations, indicate a gradual declining profit from hogs. Those costs, regional costs of production statistics are consistent with the changes that have occurred in the hog production industry.

So, the absolute level of 3,400 head, although I can't address that level specifically because I don't know where the break-even point on average, or in any particular year would have been, in terms of the costs per hundred weight of gain, but I would think that increasingly it would be a marginal operation that would have difficulty competing with the large industrial production facilities.

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Q. Is it reasonable to assume that the increasing costs of production that made hog farming less profitable over the period would differentially impact the smaller operator because of efficiencies, economies of scale?

A. I think that's true. But I would like to rephrase what you said. You said the increasing costs of production. It wasn't just the increasing costs of production, it's also been the declining profit margins that have caused that.

Q. Okay.

And there are still profitable large hog operations going in the United States, that is, the farrow-to-finish operations of 3,400 head or more?

A. There are still profitable farrow-to-finish operations going on that are profitable in most years, not all years. I can't testify as to what the level, whether 35 -- 3,400 is -- is above or below that break-even point, you know, where the trends -- whether it's part of the smaller group that is declining or whether it's part of the middle-size group which is holding it own so far.

Q. And is there any reason that you can suggest

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why one of those large profitable farrow-to-finish operations could not be operated profitably in the Northern Neck?

A. I believe that hog -- the profitability of hog production is less variable across geographic regions than the crop production.

When I first read Dr. Kambhampaty's preliminary report -- and he ceased production in 1990, I think it was -- I said that seems reasonable to me, given I know what's happened to the -- given what's happened to the industry. So, I was somewhat surprised to see him include it during the 1990s.

Q. In your report you discuss some reservations you have about the presumptions in Dr. Kambhampaty's report that show that Mr. Haynie, the Haynie farm growing through, I believe -- is it 1995? Growing for some period of time.

Do you know how much farmland is available in the Northern Neck?

A. No. But to me that's not particularly relevant.

Q. Why?

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A. The reason why I don't think it is particularly relevant is because you don't know the land tenure of that land. You don't know the ownership; you don't know the leasing arrangements; you don't know the family characteristics of the people who are operating that land. You don't know about how far you would have to go from the center of the Haynies' farming operation to gain this. You don't know anything about the differential quality of that land.

And finally, the reason why I have reservations is as farms get larger they have to compete with other farms who would also like to grow. Because if farming is profitable, particularly as profitable as portrayed in Dr. Kambhampaty's report, if farming is truly that profitable, with a rate of return that great, then there must be a lot of people that wanted to expand their farming operation.

And if some of those are like the Haynies, multi-generation farming operation, then they want more land for their children also. And you're going to have to compete with people like the Haynies. You're going to have to compete with other people who want to expand

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their farming operations. And given supply and demand economic theory, that means the price goes up.

Q. So, you would say that you would need to have a local expert who knows about all these things to determine whether or not this is available?

Would you agree with that?

MR. KATERBERG: Objection, mischaracterizes his testimony.

MS. STEURY: I mean --

MR. KATERBERG: You said he would say. Okay, it's late in the day, I'm sorry.

MS. STEURY: And I summed up by saying would you agree with that.

MR. KATERBERG: Okay.

THE WITNESS: I would agree that somebody from the locality that is very conversant about all those factors that I talked about, including what farm families are dominant in the communities, would have a much better judgment that I would on that.

MS. STEURY: Okay, thank you.

THE WITNESS: I'm speaking from the perspective of general economic principles of supply and

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demand about having to expand the farming operation. To go further to get land, which introduces inefficiencies, to have to bid away from other farmers, which increases the cost of production and rate of return, and which probably means, on average, you get less quality land. Unless you assume that the Haynies are already farming below-average-quality land, which their -- Dr. Kambhampaty's yield estimates suggest that he must be farming the best land in the county.

BY MS. STEURY:

Q. Could it possibly suggest that most of the land in the county is very good land?

A. It could, but a good farmer will know which land is better, which land has larger tracts, smaller tracts, is most convenient to get control of because it fits in with his farming operation. All of those are going to determine the cost of the land cost.

Q. Um-hum.

So, following up on what I think I heard in part of your answer, although it was a little indirect, were you -- would you agree that -- strike that. That's too hard.

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Can I assume that you did not talk to a local person who seemed to know about these aspects of the availability of land?

A. That is correct. As I said, I'm basing my judgment on economic principles and what I know about what has occurred in other farming communities.

Q. And when you refer to other farming communities, is this mostly in Kansas?

A. Colorado, Kansas, Iowa, Kentucky. For the most part, that's it.

Q. Your report refers to some assumptions you made about USDA lending in the minuend. It's on paragraph -- in paragraph 14 on page 9. Minuend comes first as opposed to being the big number.

A. I am on page 9.

Q. Okay, paragraph 14.

You state that in your base scenario you assume that the Farm Home Administration would have extended credit up to lending limits of a hundred thousand dollars for operating loans, which would increase after April 23rd, 1984, to $200,000.

Now, my first question is: These assumptions,

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are they built into your -- do you intend that they apply to your minuend? Am I correct in understanding that's for the minuend?

A. Yes.

Q. And is this your operationalization of a discrimination-free environment?

MR. KATERBERG: Can you repeat the question?

MS. STEURY: I'll rephrase the question.

BY MS. STEURY:

Q. Is this your operationalization of a without-discrimination scenario?

A. I believe so.

Q. Okay.

And my question then following that is this: All that you think needs to be different between a discrimination scenario and a without-discrimination scenario is the operating loans up to the maximum?

A. In my minuend there is the additional limit on farm ownership loans, which is not referred to here. There would also be the assumption -- well, because my minuend includes or refers to the average farm in a comparable farm in Northumberland County, then it would

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include any funding limits or lack of limits that those people had.

Q. So, basically your -- let me know if you agree with this characterization.

Your minuend reflects the average without discrimination -- strike that.

It reflects discrimination in the average Northumberland County yield and in the average Southeast Region cost of production to the extent there's any discrimination in those figures; right?

MR. KATERBERG: Objection to the form. Discrimination in the figures?

MS. STEURY: Reflected in the figures.

MS. STEURY: Let me --

MR. KATERBERG: You mean the average farmer is discriminated against?

MS. STEURY: Yes. Let me make this easier. And I'm not trying to pin anything on the expert, because that's how we also estimated it.

THE WITNESS: Right.

BY MS. STEURY:

Q. We don't know how much discrimination is

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embedded in those average figures. It's the best we have to work with, but that's what's there; right?

A. I would phrase it slightly different. I would say it is -- you referred specifically to costs and yields. I would say it's the impact of whatever discrimination is embedded in those average numbers that affects the yields and costs. Semantical difference, but yes, I would agree.

Q. Okay.

Even though you have affirmatively stated assumptions for USDA lending in your base scenario, i.e., your minuend, those were not in any way operationalized other than by use of the averages for the Northumberland County.

MR. KATERBERG: I'm going to object to the form, the word "operationalized."

If you understand, you can answer.

THE WITNESS: I think I understand what is implied and what is wanted.

And my response would be that in the net income analysis, as opposed to the net worth analysis, what you say is correct.

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MS. STEURY: Okay, thank you.
BY MS. STEURY:
Q. Do you understand operationalization to be the quantification of a concept in an equation?
A. I have never heard it referred to that way, but that is intuitively, intellectually --
Q. Acceptable?
A. Acceptable.
Q. So, just to finish this line of questioning, the fact that you did not affirmatively mention other aspects of USDA credit transactions -- strike that. I just withdraw the question.
At paragraph 32 of your report you state Plaintiff's analysis uses a different methodology to estimate the costs of production.
Do you do you understand that -- do you understand that Plaintiff used the same data source that you used?
A. I understand that the Plaintiff's analysis, that Dr. Kambhampaty's analysis is based on data drawn from a national sampling procedure. But when it comes to selecting which portion of that to use, number one, be

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uses a different slice of that data than I do.
And the other distinction is that he uses one or two points in time. For example, the entire time series of Dr. Kambhampaty's cost of production is based on one year, one survey. And so, the whole thing is tied to one -- one point in time. Whereas, not only do I use a different slice of the data, but I also have periodic samples from that slice to tie together over time.
Q. What -- give me a moment.
(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)
MS. STEURY: I'm ready whenever you are.
BY MS. STEURY:
Q. I think the most efficient way to handle this is for you to look at Dr. Kambhampaty's report that was made an exhibit in yesterday's deposition.
You have it handy?
A. No, I have my version, which I think is the same as --
Q. Well, I can give you one that was used in yesterday's --
A. Fine.

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Q. If you will look at the tables that are included in Appendix F, which deal with the commodities one by one, let's just go through them. We can turn to the second set of tables in that appendix which deal with costs, not yields.
And the first one has barley?
A. Yes.
Q. His table indicates that the data are based on information from 1992.
Is that how you read that?
A. Yes, it is.
Q. Do you know of any other data available for barley costs from another year?
A. No, I do not.
Q. So, your barley costs were based on the same -- I should say the data from the same year?
A. I believe that's true. They would be adjusted based on the same survey from that data. They would be adjusted somewhat over time to reflect other information about changes in technology and changes in yields. Technology of production and changes in yields.
Q. Okay.

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On the next page is corn costs. And there's two data points represented there, 1987 and 1996.
A. That's correct.
Q. Do you have corn survey data from any other year?
A. I think there is probably -- here today I do not know absolutely, but I believe there would be a corn survey from a date prior to 1987.
Q. Do you believe that's publicly available?
A. It is most likely not on our Web site. There are some of these reports, such as the Dargan Glaze wheat report that I handed out, that are essentially no longer available except from the author. So the data is there in a report but it's probably not readily available to the public.
For example, the Dargan Glaze report, I went to the author -- sorry, scratch that -- not the author, I went to the current person who is responsible for that and got his file copy. Correction, got him to make me a copy of his file copy.
Q. So, are you testifying that at the most you may have had three data points for corn production?

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A. I would think that in 22 years there would be at least three. I am not a part of the data collection survey group that does this. And I've heard discussions over time about the lengthening cycle because of budget cutbacks. I don't know if there's more than three or not.

Q. Okay, you think there's three and you don't know whether you actually used three in your analysis; is that what you testified?

A. I don't know how many I used in my analysis. I used the time series. It could be that it actually ties in to costs of production survey work that was done prior to 1981. Because for many of these commodities there is a time series that goes back to the mid-70s, based on earlier survey work.

And so, I don't know, for example in corn, whether that survey might have happened in 1982 or 1978, but I'm certain that there was at least one, I would guess two, prior to 1987.

Q. If you didn't bring that today and as part of the things you relied on, does that make you think you maybe didn't rely on it?

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A. I relied on the publicly-available costs of production that I gave to you. I did not go back for each and every commodity and determine the years of the cyclical surveys.

Q. Let me ask this question then, because maybe I'm going someplace I don't need to go.

Do you believe that your cost-of-production estimates are based on more data points than Dr. Kambhampaty's cost-of-production estimates?

A. Yes, I do.

Q. And you believe that's in the material that's been handed out either today or introduced as exhibits yesterday?

A. It's in the material. The costs of production are in my -- in the cost-of-production estimates that I handed out. That does not say what the survey years were for each and every commodity.

Q. Now, when you say handed out --

A. You asked me to provide.

Q. Yes. Do you think they are still -- do you think they've been marked as exhibits?

A. I don't know.

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MS. STEURY: Let's mark this.

(Trostle Exhibit No. 10, marked for identification.)

BY MS. STEURY:

Q. Dr. Trostle, does this Exhibit 10 indicate -- if I were to read this Exhibit 10, would it tell me which years you believed you had different data points as the basis for your estimates?

A. For corn, for example, it does not mention -- the header says corn production cash costs and returns, Southeast, 1975, 1995. This would indicate to me that there was a survey done prior to 1987. At least one.

It also indicates --

Q. Is this your worksheet or is this a printout from a Web site or --

A. Fair question.

This -- every number in here -- almost every number in here is directly from the Web site. When you go to the Web site you get one time series for the old regional categories and you get another time series from the new category.

So, for example, unpaid family labor shows up

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on one line in one category and another line in the later regional category. So, I have made those types of adjustments to line up the lines.

There are a few categories, such as Dr. Kambhampaty mentioned yesterday, such as soil condition or -- there's a manure that did not exist in the earlier time, so I answered it blank rows in the historical time period for that. So, that doesn't come directly off, that's my spreadsheet, not directly off of the Web site.

And then there are a couple of other changes such as how operational -- it is getting late, the phrase escapes me -- interest on operating inputs. It shows up at one place, gets slightly redefined and shows up another place. I've lined those rows up.

And then in the old methodology we had two categories called capital replacement and other non-land capital. In the new categories those have been roughly combined. There's some minor definitional differences that were recommended by the professional association.

Q. Okay.

A. So I made the --

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Q. I understand.
A. -- all of those kinds of adjustments.
Q. Okay.
A. But, as I was going to say, because the question was how many years of data, I see here at the bottom that 2001 estimates based on a 2001 survey. So, that would be certainly a third and potentially a fourth data point.
Q. Can you either speak specifically or estimate how many more data points you think you have for each commodity than Dr. Kambhampaty had?
A. No, not accurately. I cannot do that because, as I said earlier, I don't have the survey schedule for each of the commodities.
Q. I think earlier you testified that Dr. Kambhampaty's estimates have been based on only one data point; your report says two data points.
A. I said one data point for barley.
Q. I missed it. Okay, thank you.
We talked about land prices earlier and you mentioned that there was some data available.
Is that on a state-wide basis?

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A. The data is by state.
Q. When you calculated your alternative scenario, represented in Exhibit K, I believe, at the bottom of that page, the impact of alternative scenario number 1, did you look at state data to derive any of your estimates or your calculations?
A. No, I did not.
Q. Did you have a reason not to?
A. My base analysis uses the land costs that are in the cost of production, the regional cost-of-production estimates.
My alternative scenario is to say if you replace those with the lease rates, the land costs that were provided in the farm and home plan, what would be the impact of that. So, under neither the base analysis nor the alternative with replacing the base analysis with that 60-plus-dollar figure in the farm and home plan, there was not a need to go look at state land rental rates.
Q. This -- the information in that one farm and home plan, what basis did you have for extrapolating that to all years?

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A. I didn't extrapolate it to all years. As Dr. Kambhampaty uses a prices paid index to adjust that, I used the cost of production land cost year-to-year changes to adjust that.
Q. And you used the entire amount to adjust it or the fixed portion of the cost of production?
A. I replaced the land cost that is in the cost-of-production estimates with a land cost that was equal to that in the farm and home plan for that year. And then working both ways I used the -- I'm not explaining this very well, I feel. Let me see how I dealt with it in my report.
Q. It's at page 63. I'm sorry, paragraph 63.
MR. KATERBERG: And 62, right?
MS. STEURY: Maybe.
THE WITNESS: Let's see if I can articulate this so that we don't get into another round of mathematical issues.
The farm and home plan value for $61 an acre, I replaced the costs of production data for land costs for that year. And then I used the percentage changes in that land cost to adjust the $61 that was in

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Dr. Kambhampaty's report -- or, I'm sorry, that was in the Haynies' farm and home plan.
Q. Look at paragraph 63, please.
A. (Complies.)
Q. Your paragraph does not indicate that you made any adjustments for time; right?
A. That is correct. That is correct. Give me a moment and let's see if I can find anything in the notes.
The text on paragraph 63 is incorrect. I did adjust it.
Q. So that if the cost of production -- what did you take for the cost of production when you were determining land costs? Did you use the same thing?
MR. KATTERBERG: Objection, form.
MS. STEURY: I'll do it again.
BY MS. STEURY:
Q. Mr. Hayne cropped -- I understand that's not a verb, but I've just made it into one -- cropped four different grains. And we've seen the cost of production with respect to each commodity heretofore. But it would seem that you would treat the cost of production differently somehow to make some sort of allocation about

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cost of production if you're dealing with land as a fixed cost.

A. One moment, please.

The base analysis has land costs, distinct land costs for each crop. The farm and home plan has a rental rate for 'X' number of acres regardless of what crop was going to be planted on them.

The essence of my alternative scenario for land costs is to look at the sensitivity of the net returns if you assume a different land cost. So, just as the farm and loan plan presents that the Haynies would have gone to you, a landowner, say I will lease your land for $61 an acre, no cropping pattern implied, then I replaced the different land costs for each commodity with the fixed -- not the fixed -- with the one price for all commodities that was shown in the farm and home plan.

Q. Okay.

These land costs that figure into the cost of production for each commodity, how are they adjusted for double cropping? Are they?

A. No, they are not. In the costs-of-production estimates they are not adjusted for double cropping.

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However, in my analysis I remove the land costs for the soybean crop, which is actually a bigger reduction in the costs of production than what Dr. Kambhampaty used. So, for that particular component of my damage estimate I actually get a higher damage estimate because I removed the land costs for the follow-on, the second crop of soybeans. Whereas, Dr. Kambhampaty uses a -- a percentage reduction that's associated with the cost of production budgets.

Q. I think I understand. Thank you.

That is not clear from your report either, is it?

A. No, that would not be clear from my report. And your comment is very well-taken that the paragraph 63 is not an accurate description of the analytical content.

MS. STEURY: One moment please.

(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)

BY MS. STEURY:

Q. Dr. Trostle -- strike that.

(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)

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BY MS. STEURY:

Q. Dr. Trostle, in paragraph 62 you draw a conclusion that does not factor in to your analysis, so I'm just concerned -- I mean with your dollar estimate, okay? So I am just concerned with the language.

You say about a quarter, or a third of the way down the page that for 1989 land costs in USDA cost-of-production estimates for the Southeast Region ranged from 16 point 85 dollars for wheat to 43 point 45 dollars for corn.

And for the crop mix used in the Plaintiff's analysis, the average land cost would have been $31.13, about half the $61 rate shown in that 1989 farm and home plan.

Now, that half figure had no bearing on your calculation, right? That "half" that you refer to there (indicating)?

A. No, that's just a --

Q. Characterization?

A. Yeah.

Q. Okay.

Would it have been more appropriate to look at

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Virginia land for such a characterization, since those data were closer, those data were more proximate, reflected more proximate land?

A. One could do that. However, the problem with doing that is you're beginning to mix data from two different sources. And as I've said in the past, I try to keep a data set that is the most comprehensive time series over time that has the most internal consistency.

So, if you start taking out this cost from this one, and replacing with that cost estimate from there, then you lose that internal consistency.

Q. Okay.

Would you agree with me that the characterization that the Haynies may have paid twice for their land in the Northern Neck compared to the average cost of land in the Southeast Region, in this context doesn't necessarily mean much, I mean, I don't mean to be insulting --

A. Doesn't necessarily mean much? I -- I don't understand the question.

Q. Later in the paragraph -- oh, yes, the following sentence, not too much later in the paragraph

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you say it is quite plausible that Plaintiffs did pay a higher than average lease rate for the area in which they farmed.

If the lead-in sentence is connected or related to that follow-up conclusion, wouldn't, as the placement seems to suggest, wouldn't it have been more appropriate to use the state data if that was the best that was available to estimate land costs if you're trying to determine whether the Plaintiffs were paying higher than the regional average in the region?

A. Once again, that's adding apples and oranges. You're substituting for land costs in the consistent -- internally-consistent costs of production with data from another source.

Q. Okay.

A. One could have done, in the alternative scenario, a third scenario where you use the Virginia state data.

Q. It seems --

A. That would be closer to the estimate for Virginia, setting aside the fact that it's a different source of data from a different survey methodology.

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Setting that aside, you can argue that it would be more reflective of the Haynies' farming operation because it's state data rather than regional data.

And -- and I would like to be able to do that. Certainly it's -- it would be -- there's a spectrum here about whether you use county data, state data, regional data or national data.

Dr. Kambhampaty, for many things, uses national data, which, as I stated before, is not representative of the Haynies' farming operation. So, the closer you could get to the Northern Neck of Virginia conceptually would be preferable. But then the question is, do you have internally-consistent data.

Q. Okay.

Sticking with your internally-consistent data emphasis here --

A. Um-hum.

Q. -- and not cutting you any slack, would you agree that the sentence that follows the one that has the figures in it, the dollar figures in it, should really read: It is really quite plausible that the Plaintiffs did pay a higher than average lease rate for the area in

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which they farmed, which was the Southeast Region?

A. In my alternative scenario I compared the Southeast Region. One could get closer to the Haynies' farming operation by using the state of Virginia data, so one could append to that sentence either what you just said or than in the state of Virginia, or any other source of data that you would want to compare it with.

What may have motivated this being framed the way it is is information from -- I believe it was the Haynies' deposition -- that suggested that he was paying higher than -- higher lease rates than other farmers in the area. And that was one reason why he could expand his farming operation so rapidly.

Q. Okay, thank you.

MS. STEURY: I'm going to turn to the net worth analysis.

MS. MCARTHUR: Counsel, if I may ask, I only got into this case recently. Are we subject to, or did we opt out of the new seven-hour presumptive limit for depositions?

MS. STEURY: No, we're within the seven-hour presumptive limit. I don't believe I've hit my running

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time. That doesn't include lunch.

MR. KATERBERG: I have not been keeping time, but I think we're getting to a point where we begin to approach that.

MS. STEURY: I do not disagree with you and I am trying to wrap it up.

MS. STEURY: Okay, the good news is I don't think the net worth analysis will take as long as the net income approach.

MR. KATERBERG: Okay, thank you.

MS. STEURY: Small comfort, right?

BY MS. STEURY:

Q. Dr. Trostle, I understand that Exhibit H is the quantification of your net worth analysis; is that correct?

A. It is my attempt to quantify the net worth analysis given the many gaps in data that is available.

Q. Okay.

And this is the only exhibit among your exhibits that addresses the net worth analysis; is that correct?

A. I believe so. Except -- yes, I believe so.

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Q. I'm going to characterize what I call the punch line of this analysis and ask if you agree with it or think it's fair.

This analysis shows that the average Northumberland County farmer, given all the parameters of the estimates that you used in the minuend of the net income approach analysis, could not have earned or worked their way out of the debt that the Haynies had when the damages period started.

A. Let me go back and try to dissect the individual phrases that you use.

The net worth analysis includes the income stream -- well, would relate to the income stream generated from the net income analysis.

The net income stream does refer to the average farmer comparable to the Haynies' farming operation. What the average farm cost of production data does not do is represent the Haynies' debt, indebtedness situation.

What I would have liked to have been able to do, and what we normally do in a net worth analysis or a balance sheet analysis, is start out in Year One with a

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beginning net worth, add to that the income stream from the net worth or from the net income analysis, and then make the adjustments for debt servicing, family living expenses and see if at the end of the year your net worth increased or decreased.

The only thing there that refers to the average farmer in Northumberland County is the farm income stream, which I further adjusted for the bulk discount rate.

What this says is that in summary form, punch-line form, is that in 1981, according to the farm and home plan, that shows a debt/asset ratio, when rounded off, rounds to a hundred percent.

And I believe on this table it shows that the debt servicing cost was 451,000. That means that during the year after, or that was covered by the farm income plan, that the income from the net income approach would have been able -- would have needed to be large enough to cover the $451,000, plus an adjustment for family living expenses. It was not

And come -- in fact, the farm and home plan recognizes that, and although I do not have the farm and

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home plan in front of me, as I recall it indicates a proposal by the Haynies to borrow even more money to, one, cover family living expenses, to two, pay off the debt servicing cost, and three, to go into further debt for -- I can't remember whether it was capital improvements or operating costs or something like that.

That indication in that farm and home plan is if his income didn't surpass this 451,000 at the end of the period he would have a debt-to-asset ratio of greater than a hundred percent and would be insolvent.

We do not have the -- I don't have the data for 1982, but the data in the 1983 farm and home plan shows that, indeed, he did have a debt-to-asset ratio in addition to a hundred percent. That means he's insolvent.

The only way somebody that has a debt/asset ratio of more than a hundred percent can sustain their business is to find somebody to loan them even more money, to get further in debt.

Did I answer each phrase?

MR. KATERBERG: You're not supposed to ask her questions.

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BY MS. STEURY:

Q. Did you wonder how Mr. Haynie continued farming into the late 80s, at least into 1989, given his debt and your projected income stream for his farm operation?

A. Yes, I did. I wonder in several respects. And as I sit here today, I even have additional information that makes me wonder.

One is, I wonder because during this period of time during the farm financial crisis that people that were most vulnerable to exit from farming, either through involuntary sales of assets or bankruptcy, were those that were highly indebted. In fact, one of the pieces I passed out about vulnerability uses a sort of threshold level of a debt-to-asset ratio of 40 percent, nowhere near a hundred percent.

Now, granted, that vulnerability measure classification is not just debt-to-asset ratio but also includes the -- a projection of income generation, but nevertheless, that is the most vulnerable category. And certainly at a debt-to-asset ratio of a hundred percent I would think that that would be very -- well, and in the

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following year, or two years later, 113 percent -- leads me to ask the question of how did the Haynie operation sustain business since they were definitionally insolvent.

I am led to the conclusion that either they had to find additional sources of financing or they had to get off-farm income to supplement and essentially subsidize the farming operation. So, that led me to wonder how they stayed in business.

As I see the Schedule F tax returns, which show for the most part negative numbers for the year that I see, I would wonder how sustained negative income numbers would, you know, attract somebody to loan them more money. But, as you see here (indicating) by 1985, they had debt of 1 point 9 million dollars, and by the 90s, they had debt of nearly $3 million.

Q. Would another explanation for why they were able to stay in business longer than you might have thought they could have would be that the estimated net farming income was greater than you estimated here?

A. Oh, you know, that would be one possibility.

Do the income tax returns show that?

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Q. I don't answer the questions here.

MR. KATERBERG: Just this once, please.

THE WITNESS: Then let me rephrase that.

I could find no evidence in the income tax returns to support that presumption.

MS. STEURY: I understand.

BY MS. STEURY:

Q. Is it your testimony that you considered Mr. Haynie in the, quote, vulnerable category in 1981?

A. It is.

Q. Okay, and still in the vulnerable category in 1982?

A. Presumably so.

Q. Certainly in the vulnerable category in 1983?

A. Certainly in the vulnerable category.

Q. Okay.

MS. STEURY: Excuse me a moment.

(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)

BY MS. STEURY:

Q. Did you, in your analysis, factor in crop insurance?

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A. Not explicitly.

Q. Is it included in the cost production?

A. To the extent that the cost production for the average regional cost of production included that, to the extent that the average farmer had crop insurance, it does.

Q. If the Haynie operation habitually had more crop insurance or better crop insurance than what the average farmer had, that would be another source of variation?

A. On both the costs and the revenue side, that's correct.

Q. Revenue, right, not exactly yield.

A. No, I'm not --

Q. Both sides of the equation, I agree. Okay.

MS. STEURY: All right, we're getting toward the end.

BY MS. STEURY:

Q. Have you ever testified in a court -- strike that.

Did you testify earlier today that you have never testified in a court?

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A. What I said was I had testified at arbitration hearings under the Pigford Track-B process, but I had never testified in a court.

Q. Okay. And is that either as a fact witness or an expert witness?

A. Witness --

MR. KATERBERG: Do you understand? I'm not sure he understands the distinction. If you understand, you can answer.

THE WITNESS: I have not testified in any way in a court before.

MS. STEURY: That solves it.

BY MS. STEURY:

Q. In any of the Pigford cases that are listed in your part B of your résumé, or listed as part of your disclosures, I'll say it's part B of your report, has any court ever criticized your report in writing?

A. Any court as opposed to an arbitrator?

Q. I mean to include an arbitrator.

A. Let me answer that in this manner: There are a number of the Pigford cases for which arbitration has already been done, for which I have not gotten the

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arbitrator's final report. So, I do not know.
In the cases where the arbitrator has rendered a decision and a report, there was -- I believe -- well, there was a report --
MR. KATERBERG: I want to caution the Witness to avoid disclosing information that would enable one to link matters discussed in a report with a particular individual claimant as that material is under the Privacy Act. We are awaiting the order from the Court.
THE WITNESS: Thank you.
So, my answer nevertheless stands, because the criticism had to do with assumptions. And in this case the arbitrator essentially said I completely agree -- strike that -- I agree with the methodology data sources used by the Economic Research Service, by myself, but I want to incorporate this part, this one part of assumption from the claimant. Would you, after the hearing, Mr. Trostle, go back and make that change in your farm model and your analysis. Which I did do.
BY MS. STEURY:
Q. When you say you have not received a report, is that because a decision has not been made or you just

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were not provided one?
MR. KATERBERG: If you know.
THE WITNESS: I don't know.
As the leader of this team I periodically have gone to the Department of Justice and gotten the log that they have of the cases and the status. And in some cases they have gone to the arbitrator and updated their database. But I have not done that for quite some time because the pace of the Track-B hearings, at least our participation in those cases, has slowed down and so nobody is asking me for them.
Q. What is a Plow Award?
A. P-l-o-u-g-h.
Q. Oh, interesting. In the Web site it's spelled P-l-o-w. I guess it's the same word and it's got variable spellings.
A. The plaque says P-l-o-u-g-h.
Q. That's an eastern plow, no doubt.
A. The answer to your question is I've never been clear what distinguishes a Plough Award from other U.S. departmental awards.
Q. So, it has a title but you don't know what it

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signifies?
A. That's right.
Q. Does it have a monetary value to it?
A. No, it does not.
Q. It carries no money.
A. No money.
Q. What does it do for you?
A. The departmental awards are a pat on a back for contributing to the mission, the Department's mission, I guess.
Q. It's a non-economic sign of appreciation.
A. I guess.
Q. Dargan Glaze's name has come up a couple of times today. Where does he fit into the bureaucracy? Is he part of ERS?
A. Not currently.
Q. Where is he now?
A. I have never met Dargan Glaze. My understanding is he's in USDA's office of civil rights or some such place.
Q. Do you know, and as far as you know, has he been there for a number of years?

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A. He left ERS a number of years ago. I'm not clear what his career path has been.
Q. And is it fair to say that you have not reviewed any expert damages reports authored by him?
A. Never.
Q. Do you know Arlene Leland (sp.)?
A. I have talked to Arlene Leland on the phone a couple of times, but I don't recall having met her.
Q. She apparently received a Plough Award same time you did.
Were you aware of that?
A. No, I was not.
Q. And so, you have no reason to believe that your awards are related, or do you?
A. No, I don't.
Q. Do you know what your award was for?
A. The Plough Award?
Q. Yes.
A. The Plough Award was for a team effort. I can't remember what the citation reads. I'm not much of one for the history of awards; I think about the future.
The citation was for -- you know how the

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flowery phrasing goes -- for exceptional teamwork in assessing and analyzing economic damages under Pigford Track-B. I don't know specifically what it says, it's in a box somewhere.

You know what, maybe it says --

Q. Do you have it in your hip pocket after all?

A. No, I don't.

Q. No, I don't think so.

A. Maybe it's in my curriculum vitae.

Q. No, we did not find it there.

Do you believe, Dr. Trostle, that if the Pigford team's damages reports had been more disadvantageous to the Department than they, in fact, were, that you would have received the award?

A. Would you please ask that question again?

Q. Um-hum. Um-hum.

Do you believe that you would have received the award for the Pigford teamwork, the Plough Award -- I'll rephrase it -- irrespective of where the damage reports came out?

A. Yes, I do. Because I think there are -- there's almost nobody in the Department that has ever

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read one of those damage reports that knows the outcomes of individual cases or the cumulative.

And it's my understanding that the committee that selects those is composed from a few people from the Department, but more people from outside the Department.

Q. Outside of USDA?

A. Outside of USDA. That is my understanding.

Q. Are you aware, one way or another, whether the USDA Office of General Counsel has a policy of no settlements in discrimination cases that are Pigford or Pigford-like cases?

MR. KATERBERG: Objection to the form.

Pigford-like.

MS. STEURY: I want to say in cases like this one.

THE WITNESS: I will make a blanket statement. I know nothing about the policies of the Office of General Counsel. I have never talked to anybody in the Office of General Counsel about their policies and what they perceive is satisfactory or unsatisfactory outcomes. Our agency's objective has been to do an objective economic analysis, to write up and submit the reports.

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MS. STEURY: Okay.

BY MS. STEURY:

Q. Other than what we identified today in this deposition about things that you might have changed, you would change in your report certain things such as the computation error, other things that are clearly on the record, and I don't trust myself even to remember them or restate them.

Is there anything about your report that you would like to add or change or subtract?

A. Not based on the information that I have available to me now.

Q. Do you expect to have any more information available in the next month or two?

A. I do not know what the process is for these. In the Pigford Track-B occasionally an arbitrator would give directions for post-hearing analysis based upon either information that was gathered at the time of the hearing or on a submission that there was additional evidence that might be considered.

I don't know what the process is here, so I have no expectations of that.

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Q. Do you have any outstanding information requests right now that you're waiting for information to come back?

A. I don't think so. I had called a few people about volume discounts that I never got a response to. But at this stage of the game I doubt I would get a response, so I'm -- not any that I would have a very high probability of getting additional information.

MS. STEURY: Okay, if you'll give my a moment, I think I'll check to make sure I'm done.

(Whereupon, there was a short pause in the proceedings.)

MS. STEURY: Back on the record.

BY MS. STEURY:

Q. Do you pronounce your name Troe-sel (ph.)?

A. My side of the family, which moved west from Pennsylvania in the early 1800s, pronounces it Troe-sel. That side of the family that stayed there pronounces it Tross-el (ph.) I don't care.

MS. STEURY: Dr. Trostle, I'm done with my questions. Thank you very much. I just was going to apologize if I had mispronounced your name throughout the

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entire deposition.
THE WITNESS: No apology needed.
MS. MCARTHUR: Off the record.
(Whereupon, there was a discussion held off the record and a short pause in the proceedings.)
EXAMINATION ON BEHALF OF DEFENDANTS
BY MR. KATERBERG:
Q. Good afternoon, Dr. Trostle. During the questioning by counsel for Plaintiffs, I believe you were asked a question about whether your testimony today and the questions you were asked today have caused you to desire to change anything in your report other than what has already been addressed.
Do you remember that?
A. Yes, I do.
Q. Aside from the questioning today in the course of preparing -- strike that.
In the course of preparing for this deposition and reviewing your report and studying your report, did you notice any typographical errors that you would want to correct on this point -- at this point?
A. Yes, I think -- well, there are a couple that

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I've noticed in reviewing. Appendix K, second line from the bottom, line 44, it says adjust the Plaintiff's higher land lease rate $65 per acre. That should be $61 per acre.
Q. And you're referring to line 44 of Exhibit K to your report. And this is under the heading of alternative scenario 1?
A. Yes, um-hum. Yes, it is.
Q. Okay.
And did the computation use the $65 figure or did it use the correct $61 figure?
A. It used the $61 figure. It used the $61 figure.
Q. Okay, thank you.
Is there anything else that you can think of at this point?
A. Well, a couple of things have been brought up, such as that block at the bottom of Exhibit J, that talks about other adjustments. I think I could probably put a header in there that would be more descriptive of what's there and help the reader understand that.
Somewhere in here one of the -- yes, I noted

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here in Exhibit G, the right-hand column under number of head of hogs in Northumberland County, across from the first line, 1981 is 2,500. And, in fact, I think that across from that should be 1,800. So, that whole column of figures should be moved up one year.
Apparently, when I copied in from the Web site, which has time series for this column that goes back further (indicating) I didn't copy over the correct set of numbers. But the numbers from 1,800 on down to 1,500 are correct. And that doesn't change the story. But that column should be moved up by one.
Q. So, essentially the data that's shown from 1981 should disappear, and the data that's shown for '82 should go into the '81 row, '83 data should go into the '82 row, and shift everything up one row. With the effect in the end being that the number of head of hogs in Northumberland County ceased to be significant even one year earlier than is literally portrayed in Exhibit G?
A. Yes, that's correct.
Q. Okay.
Is there anything else in the nature of a

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typographical correction that you had noticed when reviewing your report in preparation for today's deposition?
A. I -- page 12, halfway down the page, the sentence that starts with a 90 point 8 percent harvested-to-planted ratio means, that harvested acres should be planted acre. Yield per planted acre has been overestimated by ten percent. I believe that's the way that that should read.
I think that is all that I've noticed to date.
Q. Okay.
And my question excluded things that have already been discussed on the record today, of course.
A. Correct. Correct.
Q. Now, Dr. Trostle, you've been an economist for over 30 years; is that right?
A. Correct.
Q. And during your work as an economist have you had occasions to engage in projects that, like this one, involved gathering data, analyzing data in an effort to generate a conclusion or an estimate of some measure?
A. Being either economic damages or some other

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economic analysis process of the same nature?
Q. Not necessarily limiting it to economic damages. I'm talking about the process from beginning to end of figuring out what data sources to use, gathering data, analyzing the data and generating bottom-line conclusions.
A. Yes.
Q. Would you say you've done that a number of times.
A. Yes, many times.
Q. And through that experience have you learned to -- strike that.
Through that experience have you become acquainted with the process of selecting particular data sources to use that feed the data in an analysis?
A. I think that's generally true. But when one deals with the new topic there's always a process of learning the data and beginning to be able to understand what's important and what's not important and what's reasonable and what's not.
Q. Okay.
A. But I've gone through that learning process on

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a number of different, varying different type of issues.
Q. Okay.
And there's been a considerable amount of questioning and testimony today about the various data sources that you used and that Dr. Kambhampaty used in your respective analyses of economic damages.
And I want to break away from the data sources in this case and just ask you generally. In your experience as a economist doing analyses in general, do you find that it's typical that you find a data source that is one hundred percent perfect in every respect?
A. I don't think I've found one yet that was a hundred percent perfect in every respect.
Q. So, data sources that you used for analyses for various purposes often would tend to have some limitations or in some cases gaps or might fall short of what you would want in a perfect world to do an ideal analysis?
A. Yes.
Q. And in this, in your analysis in this case, were the data sources that you used for costs of production and yields, were they less than perfect?

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A. Yes. By their nature they are a sample, which represents only a part of the population. And there tend to be anywhere from reporting errors to estimation errors to missing data.
Q. And there were alternative data sources that you could have used in constructing your model, is that right?
A. Yes, that's correct.
Q. But did you make a judgment that the data sources that you did use were superior to alternative data sources that you could have used but did not?
A. Let me answer this that way: Yes, I made a judgment to that effect. The team of economists who originally worked on Pigford Track-B made a judgment like that. And as I alluded to earlier on, one case that I dealt with, a Pigford Track-B case that I dealt with and a couple of others that other team members dealt with, the arbitrator's judgment was that that was the appropriate sources of data to use.
Q. Okay.
And has anything in the deposition of Dr. Kambhampaty yesterday or in your deposition today

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caused you to change the judgment that you formed at the time you ran your analysis, that the data sources you did actually use are the best possible data sources for estimating farm income of a farmer in the Northern Neck comparable to Mr. Haynie?
A. Yes, I believe so.
Q. Okay, my question was did anything cause you to change your --
A. Oh, I'm sorry.
No, I think not. I -- I believe I would stand by the analysis that I've presented.
Q. Okay.
Earlier today you testified about an assumption you made in your analysis that related to a bulk purchasing discount.
Do you recall that?
A. Yes, I do.
Q. And do you recall that the particular adjustment was a five-percent discount?
A. Yes, I recall that.
Q. And you testified about how you established the five percent?

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A. That's correct.
Q. Okay.
Stepping away for a minute from this particular case, in your training and experience as an economist would you consider it ordinary or out of the ordinary for you to talk to your colleagues in ERS, talk to people in the field and engaging similar types of research to determine an appropriate assumption to build into your model?
MS. STEURY: Objection. What do you mean by "similar types of research"? You mean talk to other people?
MR. KATERBERG: Yeah.
MS. STEURY: Okay.
THE WITNESS: Let me answer the question this way: As an economist seeking to do objective work the best quality work possible, I would look for information from as many sources as practicable. So that I have sources of data to compare and contrast in order to make a judgment about which was most accurate and most reliable and most applicable. So, that would include information from any place, be it colleagues in ERS who

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have particular expertise, more expertise in some area than I do, or other government or the private sector.
If it dealt with farming organizations, farming issues, I should look for farmers, private sector agribusinesses, just as in the past when it's dealt with trade policy issues or food security issues, I would go to international organizations or wherever I can find sources of data that help me do the best quality analysis possible.
BY MR. KATERBERG:
Q. Okay, so while the particular type of analysis that you did in this case might be unique to this matter, your research methods in terms of gathering information are consistent with what you find to be normal in the field as an economist?
A. It's part of the normal process as an economist.
Q. Okay.
Now, there's been considerable amount of testimony today and questioning concerning the concept of contiguousness of tracts of land.
Do you recall that?

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A. I think I do.
Q. And if you could refer in your report to Exhibit E, please?
A. (Complies). Okay, I have that.
Q. Okay.
Now, do you understand Exhibit E to represent the various farm numbers and acreages that existed in Mr. Haynies' actual farm operations in 1985?
A. That was the way they were presented to me. Yes, that's what I understand.
Q. Okay.
I'm going to try to avoid the use of the term minuend, so I'm call it the without-discrimination scenario.
Am I correct in assuming that the without-discrimination scenario assumes a growing number of acres over a series of years that is greater than the number of acres the Haynies actually farmed in real life?
A. I believe that's correct.
Q. Okay, so --
A. May I clarify?
Q. Certainly.

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A. The data presented is for planted acres. It doesn't say -- and there is data for double-cropped soybeans. So, you could work out a total, but that's planted acres. It says nothing about the amount of land that the Haynie operation would have had to lease to plant that number of acres.
Q. Okay. And I appreciate that clarification.
And to try to make an additional clarification, if I could ask you to please refer to Exhibit F of Dr. Kambhampaty's declaration?
A. (Complies). Okay.
Q. Okay.
And do you believe, based on the information you've seen, that the acreages reported in Dr. Kambhampaty's Exhibit F accurately reflect the planned acres shown in the farm and home plans for the various years?
A. There are two pages to Appendix F. And on page 1, I understand that this information came from farm and home plans.
Q. And you have no reason to doubt the information on page 1 of Dr. Kambhampaty's Exhibit F?

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A. I have no reason to either doubt or not doubt them. I accept them as presented as an objective analysis by Dr. Kambhampaty.

Q. Okay.

So, if I could ask you to clarify the following point: The farm and home plan for March 6, 1985, appears to show the total acreage of 2,775.

A. That's correct.

Q. And Exhibit E to your report shows a total acreage of 5,118.

And this may be what your clarification a moment ago was getting at, but do you have any possible explanation for the difference in those figures?

A. No, I don't. I found the whole question of acreage data related to this case to be very puzzling. There are -- this consistency and some others that just don't hold internal consistency, at least for me.

Q. Is it possible that the difference may be due to counting double-cropped acres in different ways?

A. It could because Exhibit E -- well, it probably should not, because Exhibit E says -- implies to me soybeans planted for the year.

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Let me retract that.

The column marked soybeans doesn't indicate whether they were double-cropped or full-season soybeans. So, to the extent that they are double-cropped then the total acreage would be more than the actual number of acres farmed. But in Kambhampaty's Schedule F, he does distinguish between double-cropped and early-cropped soybeans. So -- and the information I have on the double-cropped soybeans, the quantity of double-cropped soybeans, would not completely make up the difference.

Q. Okay.

Well, Dr. Kambhampaty's analysis of damages assumes a growth in acreage following 1985; is that correct?

A. That is correct.

Q. Okay.

And do you -- do you use the same projected growth of acreage in your report?

A. I did.

Q. Now, does that mean that you vouch for that projected acreage or you believe it to be an accurate projection of what the Haynies' farm would have

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experienced in terms of growth of acreage without discrimination?

A. I just accepted that number and it facilitated a side-by-side comparison. But, as I say in my report, I have reservations about the growth rates, particularly in the context of being able to grow that rapidly and maintain the same cost per acre for land, the same quality of land and the same distance from the center of the farming operation which would affect efficiency of the operation, entire farming operation.

And I think also I make reference in the report about the increased management that would be required to manage even more tracts of land and more relationships with more landowners.

Q. Okay.

So, going back to contiguousness for a moment, do you have any expectation, regardless of the extent to which the tracts that were actually farmed by Mr. Haynie were contiguous in 1985, if the farm in the without-discrimination scenario had continued to acquire acreage, do you have any expectations whether it's conceivable that the additional acreage would have

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continued to be in the form of contiguous as opposed to scattered plots of land?

A. No, I have no expectations per se, although from an economic theory standpoint if I have a tract of farm here (indicating) and there's a landowner that has a farm beside me and he knows that if I get his piece of land I can farm this all contiguously he'll know that that's an economic benefit to me which merits a higher lease rate.

And when land goes up for sale or lease, if the buyer or the person leasing the ground is the one to get that parcel of land there is a price premium to be paid for that.

Q. Okay.

Now, assume with me for a moment that the acreages reflected in your Exhibit E, that many of those tracts are contiguous.

Is it the contiguousness of the land that's actually shown on Exhibit E that is relevant, or is it the contiguousness of the hypothetical additional land that would have been acquired in the without-discrimination scenario that's relevant?

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A. I'm not sure I quite understand the question.
Q. Let me try to reframe it.
The without-discrimination scenario assumes that Mr. Haynie would have grown his farm to a scale beyond that that actually existed in the early 1980s; correct?
A. Correct.
Q. So, is it the contiguousness of the actual farm operations as they existed in the early 1980s that is relevant, or is it the likely contiguousness of the farm operations at the larger scale that's assumed in the without-discrimination scenario that is relevant?
A. I would think they would both be relevant, but for different reasons. If, in fact, the farms shown on Exhibit E are, in large part, contiguous, then there would be some economics of scale for what is shown in 1985.
As the land continues to grow, whether or not you get that additional land that is contiguous, would also be relevant.
Q. Dr. Trostle, you were asked some questions today earlier about adjustment to variable costs that you

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adjusted by the ratio of county to regional yields. And specifically I'll refer you to page 9 of 30. It's within paragraph 14, but paragraph 14 actually begins one page before that.
A. Paragraph 14?
Q. Correct, paragraph 14. And it's actually the third bullet in 14.
A. Okay.
Q. And I just have a very simple question for you on this.
Was this particular adjustment an adjustment that only raised costs for all crops?
A. Just a moment please. The reason why I'm going back to information is because this came up before and I did not answer it definitively.
It would have raised the costs for corn; it would have very slightly reduced the costs for soybeans, full-season soybeans. It would have increased the costs for wheat and it would have increased the costs for barley.
Q. Let me refer you back to the bullet on page -- page 9, because I want to get this clear.

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A. Okay, I have page 9.
Q. I want to make sure we are looking at the right adjustment because this -- this says something a little bit different. It's the second-to-last sentence, beginning with "conversely."
A. That's right. This just refers to wheat and barley and not to corn.
Q. Does the sentence beginning with conversely, the word "conversely" refresh your recollection about the impact on the costs for corn?
A. That would appear to be an error for corn. In my summary sheet about the comparisons that suggests that actually the county average yields were higher than the regional costs of production yields average for the period. So, it would have increased corn costs of production.
Q. And the other -- the other crops, wheat, barley and soybeans?
A. Those would appear to be correctly stated here.
MS. STEURY: May we go off the record for a minute?

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(Whereupon, there was a discussion held off the record.)
BY MR. KATERBERG:
Q. Dr. Trostle, if you can look back and forth between the paragraph where we're referring to on page 9, and the data source that you were looking at, can you rephrase the last three sentences of the paragraph to what you believe to be the case, looking directly at the data source?
A. The data that I have, that I brought with me is a summary table, it's not directly from the model.
But if that is correct of what's in the model, then that sentence should read since the Northumberland County average yields for corn, comma, wheat and barley were higher, than the regional COP yields, dah, dah, dah, dah, dah, this increased the estimated variable costs of production for those crops.
And then the next sentence would read: Conversely, since the county average -- just take out the reference to corn, that sentence for corn entirely, and end with the county and regional yields for soybeans were almost identical.

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So, let me summarize. The change would be the insertion of corn into the first sentence as I read it.

Q. Thank you.

And because I'm not sure if it was absolutely clear on the record before, could you take a moment to explain what the underlying rationale was behind making this adjustment?

A. The basic principle is that one region's average yield can be different from another region's average yield because of the inputs used and because of natural conditions such as weather and quality of soils.

Since I did not have research to support the correlation between the quality of soils and land costs, I allocated that total 75 percent of that difference to the use of variable inputs.

Q. Is it that if yields are higher then the farmer would have to purchase more inputs to result in those yields? Is that sort of a common-sense way of boiling it down?

A. It would mean that the farmer applied more seed per acre, had a higher seeding rate, applied more fertilizer per acre to boost yields, applied more

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pesticides and herbicides to control weeds and diseases in order to achieve a higher yield.

Q. And those things that you just referred to though would be components of what you call variable costs; is that right?

A. That is correct.

Q. Okay.

Now, there was testimony earlier about whether the experience of the quote, average, unquote, farmer reflected in statistics would represent the Haynies' farming operation as accurately as possible. And counsel referred to what are known as best practices to suggest that it would not represent the Haynies' farm operation as accurately as possible.

Have you seen evidence of any other factors that would cause you to believe that the Haynies' farming operations would have higher costs than the average farmer as reflected in the statistics that you used?

A. I think it's only a question of -- it gets back to the -- well, I've already mentioned the bulk discount for purchasing the inputs.

The other question gets back to the degree to

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which all of these small tracts are contiguous and would enable the Haynies' operation to gain economies of scale in machinery.

But the other thing that might play a role would be the yields that the Haynies actually achieved.

Q. Dr. Trostle, I want to make sure. I think you're answering a question different than the one that I asked.

I'm asking -- what I'm saying, there was testimony earlier about factors that may -- that might have allegedly caused the Haynies' farming operation to experience lower costs --

A. Um-hum.

Q. -- than the average farmer, quote, end quote, represented in the statistics.

What I'm asking is if you are aware of any factors, supported by evidence you've seen, that would go in the other direction. Namely, that they would indicate that the Haynies' farming operation would tend to experience costs greater than those of the average farmer represented in the statistics.

A. Thank you. I think I better understand the

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question.

The question of if the land was not contiguous then having many tracts which have a median size of ten acres would lead to inefficiencies in both the use of machinery and labor to operate the machinery. And I would think also increase overhead costs for managing the relationships with many landlords and with dealing with the ASCS and FSA on all of the program participation and all that documentation required by USDA.

Q. Is debt service one line item of the costs that are compiled or tabulated in the costs of production statistics?

A. Not one line item. It ends up being included in land costs, operating -- I'm sorry, capital recovery and operating capital.

Q. Okay.

And the quote, end quote, average farmer represented in these statistics would have an average debt/asset ratio and an average level of debt-servicing obligations; is that correct?

A. Yes. That's what is assumed in the cost production statistics.

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Q. And have you seen evidence to indicate whether the debt service obligations of the Haynies' farming operations bore a relationship to the quote, end quote, average farmer depicted in the statistics?

A. No, I think they portray a very different picture with a much higher debt-to-asset ratio. And in the farm and home plans, a very high debt servicing costs.

Q. And in your analysis a damages you used the statistics for the average farmer with certain adjustments to make that more comparable to the Haynies' farming operations; correct?

A. That's correct.

Q. And did those adjustments include anything to reflect debt servicing costs that would be out of proportion to the average farmer statistics?

A. No, it did not. So, not in the net income analysis, so, that would be something that would increase the costs of the Haynie farming operation. I attempted to do that in the net worth analysis, but I did not make those adjustments in the net income analysis.

Q. If you had made some sort of adjustment to

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reflect that would that cause the bottom-line figure for estimated farm income in the without-discrimination scenario to go up or to go down?

A. It would cause it to go up -- sorry, it would cause the damage estimate to go down. It would cause the net income from the farming operation to go down.

Q. So, is it fair to characterize your approach as conservative in this respect?

A. As I indicated earlier, I'm not sure about the "conservative". I think this would understate the damage estimate. If you equate that to conservative, then yes.

Q. Okay.

Now, last item. You testified late in the afternoon about what you call your alternative scenario.

A. That's correct.

Q. And I'm not sure. I want to back up for a second, and without talking about the specifics of what was done and what analysis was performed in the alternative scenario, if you could explain in general what the concept is behind doing a base scenario and then doing an alternative scenario?

A. We use -- a base scenario is what we believe

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that most accurately depicts reality, if you will. And then we use that as a basis for running alternatives to that baseline, if you will. But you want a baseline or a base scenario that you have confidence represents the reality of what you're trying to analyze as best as possible.

Q. Did you intend for the number that was generated by the -- in the alternative scenario number 1 to be a number that would be -- that would have mathematical exactitude as to the economic damages that you were estimating?

A. To the extent that it takes a number, one number and one year and uses an index to adjust that, then that's not what I like to think of as optimal mathematical exactitude. You do have one point to tie in, but there may have been any number of things that caused that to change over the period.

So, as I said earlier in my testimony, I used that alternative scenario to just test the sensitivity of the damage estimate to different -- a different basis for land costs.

Q. Okay.

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So, is it fair to say that even if it doesn't produce the level of mathematical exactitude that would be ideal, it allows you to draw certain conclusions about the sensitivity of the model to a change in assumptions and the order of magnitude that changing assumptions would have on the damages estimate?

A. Yes. That was the intent of running the alternative scenario.

Q. Okay.

MR. KATERBERG: Thank you, I have no further questions.

MS. STEURY: I have a couple of follow-ups.

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MS. STEURY:

Q. To follow up on the land cost questions that Mr. Katerberg just posed to you, the number that you picked out of the 1989 farm and home plan that you used in your analysis $61 an acre you have no reason to think that that's representative of what Mr. Haynie paid; is that correct?

A. If you believe in the validity of what is in the farm and home plans, as submitted and signed

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presumably, then for that magnitude of acreage, there was reported it was either $61 for some acres and something that was higher than that maybe even 70 dollars for other acreage. I presume that what is in the farm and home plan is accurate. And therefore I took it as a valid representation of his land costs.

Q. I don't mean to question whether the farm and home plan contains valid information, I'm only trying to establish that, as you say in your report, the 61 acres was for -- per acre, $61 per acre was for 760 acres of farmland as you say in paragraph 62 of your report?

A. Yes, it says $61 per acre to lease about 760 acres of farmland, and $70 per acre to lease another 52 acres.

MS. STEURY: One moment please.

(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)

BY MS. STEURY:

Q. And we had a prior discussion about the extrapolation of that number to other years; correct?

A. We did.

Q. That you indexed it, and I understand that

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process.

But, in fact, your analysis does, if I'm not mistaken -- correct me, please, if I'm wrong -- is assume that Mr. Haynie paid $61 for virtually all of the land he farmed, or some indexed amount of that figure for all of the land he farmed over the entire damages period; is that right?

A. That's correct. I used the data that was presented in the farm and home plan. To the extent that that is incomplete information, not provided, then I did not include that.

Q. And did you find no other land price in other farm and home plans?

A. No, I did not encounter it.

Q. Okay.

And that's what I meant in my original question about you don't know whether that's representative.

A. That's correct, I do not know whether it's representative.

Q. And am I correct in understanding that you applied that $61 to all farmland, regardless of whether

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it was owned or actually rented?

A. That's correct. I'm sorry -- that's correct. It's referred to as a lease rate in the farm and home plan. I applied it, substituted that series for the land costs from the cost of production, which is a combination in the population survey of owned land and leased and sharecropped land.

Q. Do you know the percentages?

A. The percentages of?

Q. That go into the denominator I believe that you were using, or the average?

A. No, they would be different percentages for each commodity in each region.

Q. Too complex for further discussion at this hour.

In farming, do you have a sense, one way or another, whether if a farmer works exceptionally hard and exceptionally long hours this can make a difference in the yield, the amount he can manage or the cost of production?

A. As in most professions there's a difference between how hard you work and how successful you are. I

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think in general people who work hard and have a real interest and devote their time to study probably do better than people who don't.

But just as I know economists who work ten hours a day but accomplish little, I also know farmers who work hard but either don't get very good yields, don't make good decisions on production practices or are unfortunate enough to have decided to sell their products at the wrong time.

Q. But you agree with the principle that it can make a difference, and often does make a difference?

A. I would hope that that's correct.

Q. Doctor, Mr. Katerberg asked you about the variable input adjustment to the cost of production estimate that you made. And you responded that you thought you justified your adjustment loosely characterized as higher yields requiring higher inputs.

A. Given all other things being equal.

Q. Okay.

Is there a possibility that all other things aren't equal in the situation we're faced with in this case, and that being land in the Northern Neck versus

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land in the rest of the Southeast, Southern Seaboard and that it is, in fact, the climate, the rain, temperature, the growing season, the rainfall, the natural irrigation, the topology and the soil conditions themselves that can produce higher yields?

A. I would think that would play a real significant role. And that's why, as I stated before, I would like to have county cost of production statistics. But I used the next best thing, which was regional cost of production statistics rather than the national average cost of production statistics, which would even be further removed from the climate and the soils and the other factors that you list for the Northern Neck.

MS. STEURY: Give me a moment, please.

(Whereupon, there was a discussion held off the record between Ms. Steury and Dr. Kambhampaty.)

MS. STEURY: I'm ready.

Would you read back his last answer?

THE REPORTER: "Answer: I would think that would play a real significant role. And that's why, as I stated before, I would like to have county cost of

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production statistics. But I used the next best thing, which was regional cost of production statistics rather than the national average cost of production statistics, which would even be further removed from the climate and the soils and the other factors that you list for the Northern Neck."

MS. STEURY: Thank you.

BY MS. STEURY:

Q. If it were the land in the Northern Neck that produced the higher yields rather than increased inputs, it would make sense then to adjust your cost of production by the land costs as opposed to the variable input costs; is that right?

A. That's right. You would like to have the data, the research on the relationships for both of those to be able to adjust them. But we at ERS, or at least the couple of people that I've talked to, have not found such research that relates -- correlates land costs to productivity levels.

Q. Okay.

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If you had -- sticking with my hypothetical -- if you had accounted for higher land costs in your cost of production, then you would have come to a different conclusion in paragraph 62, would you not, in your alternative scenario?

A. A different conclusion? Without reading paragraph 62 I think I would have come to different numbers and levels -- let me read 62.

What conclusion?

Q. I'm focusing primarily on about half of the rate, the two sentences we focused on for 1989, and then the following sentence.

A. I would have come up with different levels and a different percentage or something other than about half --

Q. Okay.

A. -- presumably.

MS. STEURY: Thank you, Dr. Trostle. I believe I'm finished.

MR. KATERBERG: Read and sign.

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CERTIFICATE OF DEPONENT

I hereby certify that I have read the foregoing pages of my deposition testimony in this proceeding, and with the exception of changes and/or corrections, if any, find them to be a true and correct transcription thereof.

_____

Deponent

_____

Date

NOTARY PUBLIC

Subscribed and sworn to before me this _____ day of _____, 2004.

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CERTIFICATE OF REPORTER
DISTRICT OF COLUMBIA

I, Curtis R. Cloward, the reporter before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was sworn by me; that the testimony of said witness was taken by me in machine shorthand and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition is taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of this action.

Curtis R. Cloward, CSR
Notary Public in and
for the District of Columbia

My commission expires: September 30, 2007.

APPENDIX 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, Defendant.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, *et al.*, Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2516 (PLF / DAR)

PLAINTIFFS' REPLY IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AS TO LIABILITY AND DAMAGES IN CIVIL ACTION 00-2516

INTRODUCTION

The Haynies are entitled to judgment on liability and damages in this case. While Defendants have gone to great lengths to attempt to identify "disputes," the simple truth is that there are no "***genuine*** issues of ***material*** fact,"[1] and Plaintiffs have met the standards required for summary judgment.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON LIABILITY

There is no dispute that Defendants told the Haynies that their farm was not eligible for USDA loans because their farm was too large to be a family farm. There is no dispute that this statement did not comport with regulations defining family farm eligibility. There is no dispute that this statement caused the Haynies to not apply for additional loans. Defendants have offered no justification for the statement, and there is no evidence to dispute that USDA program staff explained this false statement as racially motivated.

Defendants do not dispute that the Haynies had not reached the maximum loan amounts allowed by law, and that there is no adequate explanation for the unlawful statements to the contrary. They do not dispute that servicing of their loans was inadequate despite the mandate of the federal regulations. Defendants do not even dispute that the district director who had responsibility for annual review of the Haynie account told Mr. Haynie, "Boy, the best thing you could do is file bankruptcy."[2]

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[1] Fed. R. Civ. P. 56(c) & (e); *Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48 (1986) ("the mere [presence] of ***some*** alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no ***genuine*** issue of ***material*** fact"); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986) (Fed. R. Civ. P. 56 mandates entry of summary judgment against party who fails to establish a genuine issue of material fact).

[2] Defs' Memorandum in of Points and Authorities in Support of Motion for Summary Judgment in Civil Action 00-2516 (Defs' Mem.) at 20; Exhibit 3 to Plaintiffs' Memorandum in Support of Motion for

It is undisputed that after Plaintiffs complained of discrimination to Defendants' Office of Civil Rights ("OCR"), Defendants singled out Plaintiffs and a few of their associates to deny them—secretly, without notice—access to informal grievance resolution processes prescribed by federal regulations after local program staff expressed dissatisfaction with the settlement of Plaintiffs' son's race discrimination complaint. Again, Defendants have failed to provide evidence to refute the inference of race-based retaliation inherent in this incident.

The record evidence establishes that the culture of racism in the Northern Neck influenced and shaped the USDA's racially-motivated conduct that ultimately injured the Plaintiffs over a period of more than 20 years.[3] Despite Defendants' best efforts to recharacterize Plaintiffs' claims to suit their purposes, there is absolutely nothing "vicarious" about the injury the USDA inflicted on the Haynies.[4] The "issues of fact" the USDA attempts to raise simply do not refute the record evidence or rise to the level of a ***genuine*** issue of ***material*** fact. Defendants have offered ***no*** legitimate and *bona fide* explanations for the conduct supporting Plaintiffs' Motion for Summary Judgment.

A. Legal Standards For Proving ECOA Violations

Courts have viewed Title VII law as instructive to ECOA decisions, and with one exception,[5] ECOA has been interpreted by appellate courts to embrace fully the body of Title VII

Summary Judgment as to Liability and Damages in Civil Action 00-2516 (Pls' Mem.), Exhibit 3 to Pls' Mem., Philip Haynie Aff. ¶ 6 (ROI at OCR-00345).

[3] The USDA's own OCR found as much, in multiple instances. *See* Exhibit 3 to Pls' Mem.; Exhibit 14 to Pls' Mem., an unsigned Final Agency Decision for Complaint No. 970423-1450 (OCR-00727-39). *See also* Exhibit 15 to Pls' Mem., Gray Dep. at 64:2-8; 63:17 – 64:1 (Ms. Gray determined that a finding of discrimination was warranted), 59:16-20 (Ms. Gray personally reviewed the Haynie ROI and file); *id.* at 65:3-12, 62:1-5 (". . . it was a. . . very detailed investigatory file with that report, . . . and the activities that had been described certainly warranted some kind of relief.").

[4] Defs' Opp'n at 7.

[5] The Seventh Circuit is alone in holding that Title VII law is inapplicable to ECOA claims. *See Latimore v. Citibank FSB*, 151 F.3d 712, 713-15 (7th Cir. 1998).

law: "The language [of ECOA] is closely related to that of Title VII of the Equal Employment Opportunity Act, and was intended to be interpreted similarly."[6] Plaintiffs have adhered to that standard. In a Title VII case, a race discrimination plaintiff may use ***all*** available relevant evidence and is not forced to employ the *McDonnell-Douglas* framework.[7] Here, considering ***all*** available relevant evidence supports a finding that Plaintiffs have fully supported their discrimination claims.

B. <u>The Haynie Farm Was Not Too Large To Be A "Family Farm"</u>

There is no dispute that the Haynies were told they were no longer eligible for USDA loans because their farm was too big to qualify as a "family farm."[8] There is also no dispute that this deterred them from applying for additional loans.[9] Defendants argue that the statement about ineligibility was made for a non-ECOA-prohibited reason: Manley Chadwick's "honest doubt" about the Haynies' family farm eligibility.[10] Defendants offer no support for this

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[6] *Bhandari v. First Nat'l Bank of Commerce*, 808 F.2d 1082, 1100 (5th Cir. 1987) (alienage discrimination analysis). In fact, this Court has recognized that ECOA's language is similar to Title VII, and employed a Title VII analysis in its decision. *Haynie v. Veneman*, 272 F. Supp. 2d 10, 16 (D.D.C. 2003) (continuing violation analysis).

[7] *Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1289 (D.C. Cir. 1998) (citation omitted, emphasis added). *See also, e.g., Jameson v. Arrow Co.*, 75 F.3d 1528, 1531 (11th Cir. 1996) (citations omitted) ("This court generally has eschewed an overly strict formulation of the elements of a *prima facie* case, particularly in age discrimination cases. At the summary judgment stage, our inquiry is whether an ordinary person could reasonably infer discrimination if the facts presented remained unrebutted."). *See also* Plaintiffs' Opposition to Defendants' Motion for Summary Judgment in Civil Action 00-2516 at 5-7 (Pls' Opp'n). As Defendants observe, Plaintiffs have also employed the Title VII concept that race need only be a motivating factor for the USDA's action, not necessarily a "but-for" cause. This is also consonant with Title VII law. This therefore does not represent "selective mixing and matching of concepts from Title VII," but rather adherence to Title VII. *See* Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment in No. 00-2516 at 9 (Defs' Opp'n).

[8] *See* Defendants' Statement of Disputed Material Facts in Opposition to Plaintiffs' Motion for Summary Judgment in Civil Action No. 00-2516 ("Defs' Stmt. of Disputed Facts") at ¶ 33 (not disputing the substance of the statement).

[9] *See* Defs' Stmt. of Disputed Facts at ¶ 38 (disputing deterrence only to the extent it was on an ECOA-prohibited basis); Exhibit 5 to Pls' Mem., Philip Haynie Dep. at 49:16-17.

[10] Defs' Opp'n at 13.

characterization, and fail utterly to explain how this "mistake" based on "honest doubt"—made by an experienced county supervisor who never made this "mistake" with respect to any other farmer in his long USDA career—could have survived review at the district, state and national levels,[11] and then, ***in addition***, be reinforced with yet another "mistake" by this same experienced employee regarding the maximum loan amounts. This is simply not credible.

First, it is ***simply not true*** that the Haynies' farm was too large to qualify; there is no physical size requirement in the regulation defining "family farm."[12] Second, USDA staff, including the district director at the time, knew that it was not typical practice for anyone to be denied access to USDA loans on the basis of farm size alone.[13] And in fact, there is no evidence that any other farmer has ever been denied access to loans on that basis, despite Defendants' best efforts to produce evidence to the contrary.[14] Third, the statement was not expressed as an honest doubt (or a probability), but as a fact: "There was no question in my mind that Mr. Haynie no longer qualified as a family farm."[15] Finally, at the same time Mr. Chadwick told Mr. Haynie that his farm was no longer eligible as a family farm, he explained it as related to the fact that the white farming community was upset by the expansion of the Haynie operation.[16]

Defendants interpose a *post hoc* fabrication, arguing that Mr. Chadwick's statement to

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[11] *See* Pls' Opp'n at nn.35, 44-45 and related text.

[12] *See* Exhibit 18 to Pls' Mem., FmHA Instruction 1941-A § 1941.4(d) (Family farm) (11/20/78).

[13] Slusser Aff. ¶ 5 (ROI at OCR-00391); Luckritz Aff. ¶ 6 (ROI at OCR-00400); Exhibit 13 to Pls' Mem., Temme Dep. at 196:8-14.

[14] Defendants argue that "John Smith" is a comparable white farmer received the same treatment. However, Farmer Smith was told that "because of the size of your operation, you will not be able to obtain any loan from FmHA in the future, ***other than an EM annual production loan***." *See* Exhibit 46 to Defs' Mem. at W001987. This does not provide a satisfying comparison for several reasons, as described in Pls' Opp'n at 33-34, including: (1) the Haynies were told that ***no*** loans would be available to them due to their farm size, unlike Farmer Smith; and (2) Farmer Smith's treatment was not necessarily legitimate at all, and in fact, he eventually brought suit against the USDA.

[15] Chadwick Aff. ¶ 6 (ROI at OCR-00387).

[16] Philip Haynie Aff. ¶¶ 4, 6 (ROI at OCR-00343-44).

Mr. Haynie was not premised on the Haynie farm's acreage, but on its use of outside labor.[17] This is belied by Mr. Chadwick's own prior statement: "I believe this [family farm qualification] would have been less than 1500 acres (under rotation) or about 600 acres in total. There was no question in my mind that Mr. Haynie no longer qualified as a family farm."[18] Mr. Chadwick's very first mention of labor requirements is a vague statement in his 2004 declaration that does not attribute his 1982 decision to labor considerations.[19]

To support their *post hoc* fabrication, Defendants ignore the plain language of the governing regulation, and instead rely on a 1961 Senate Report,[20] which does not have the effect of law, and which relates to a regulation that had been changed several times in the 20 years between the Senate Report and Defendants' conduct in this case.[21] The governing regulation at the time of Defendants' illegitimate determination expressly *did* permit the use of a "reasonable amount of full-time hired labor" and "seasonal labor during peakload periods," and required only that the "borrower and family members" contribute a "substantial amount" of the farm's labor requirements.[22] The evidence establishes that the Haynie family members did contribute a substantial amount of the farm's labor requirements,[23] did use a reasonable amount of full-time hired labor, and did use seasonal labor during peakload periods. Defendants have made no showing to the contrary.

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[17] Defs' Opp'n at 15.

[18] Chadwick Aff. ¶ 6 (ROI at OCR-00387).

[19] ". . . [T]he size of Mr. Haynie's operation reached the point where it had become either the largest or among the two or three largest in the entire area. ***I also knew*** that Mr. Haynie required substantial help to operate on such a wide scale." Chadwick Decl. ¶ 12 (emphasis added).

[20] Defs' Mem. at 24 (emphasis removed); Defs' Statement ¶ 22.

[21] *See* Pls' Opp'n at 16-18.

[22] Exhibit 31 to Pls' Opp'n, 7 C.F.R. § 1941.4(d) (1982).

[23] *See* Pls' Opp'n at 18-21. Notably, Defendants have not made any attempt at showing that the amount of labor employed by the Haynie farm was unreasonable. *See, e.g.*, Defs' Stmt. of Disputed Facts ¶ 36.

Mr. Chadwick's statements to Mr. Haynie about family farm status violated the ECOA, which prohibits ***any*** statement that would deter prospective loan applicants on the basis of race.[24] Mr. Chadwick himself identified the racially discriminatory context for the illegitimate decision. In 1982, and later, Mr. Chadwick recognized and acknowledged the obvious racial tension in the community that was directed at the Plaintiffs.[25] At the same time Mr. Chadwick told Mr. Haynie, falsely, that he was no longer eligible for loans to family farms, Mr. Chadwick also told Mr. Haynie that the farm operation had become too big and successful for a black farmer and that white farmers were resentful,[26] that the white farmers were threatened by his growth and success and would no longer tolerate it,[27] and that the political pressure was such that the Haynies would no longer be able to receive additional loans.[28] Mr. Chadwick does not deny saying these things to Mr. Haynie at the time. He testified in 2004 only that he ***now*** does ***"not recall"*** having told Mr. Haynie that Mr. Haynie "had gotten too big and successful for a black farmer and that white farmers did not like it."[29] In addition to the ample record evidence, an inference of pretext is supported by the fact that the USDA has not offered any legitimate

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[24] Exhibit 31 to Pls' Opp'n, 7 C.F.R. § 1910.3 (1982). Defendants' efforts to recharacterize the statement as a prediction, Defs' Opp'n at 12-14, are pointless and not supported by the record. It is undisputed that Mr. Chadwick knew the Haynies had been deterred. Defs' Stmt. of Disputed Facts ¶ 39. In 1998, Mr. Chadwick testified that Mr. Haynie "did not apply ***because he knew*** that he had exceeded the FmHA specified loan limits already and eligibility requirements." Chadwick Aff. ¶ 8 (ROI at OCR-00388). Mr. Haynie "***knew***" this falsity only because Mr. Chadwick told him. *See also* Pls' Opp'n at n.106 and related text.

[25] "There is no doubt in my mind that there was racial discrimination within the community. Many people in the community were assuming that Mr. Haynie was getting constant funding form FmHA to maintain his large operation. This was obviously not true but the perception was there." Chadwick Aff. ¶ 11(ROI at OCR-000389).

[26] Philip Haynie Aff. ¶ 4 (ROI at OCR-00343); Exhibit 5 to Pls' Mem., Philip Haynie Dep. at 45:12-24.

[27] Philip Haynie Aff. ¶ 6 (ROI at OCR-00344); Exhibit 5 to Pls' Mem., Philip Haynie Dep. at 45:12-24.

[28] *Id.*

[29] Chadwick Decl. ¶ 18; Mr. Chadwick acknowledged that his recollection is incomplete and lacking in details, he provides at least one example of his inaccurate recall. *See id.* ¶¶ 6, 8.

explanation for Mr. Chadwick's false statement and has obviously engaged in *post hoc* fabrication to contrive an explanation.[30]

C. Plaintiffs Had Not Reached The Maximum Loan Amounts

Plaintiffs have established the fact that, with the sole exception of the Farm Ownership loan, they never reached the maximum loan amounts permitted by USDA regulations.[31] Ms. Grant has acknowledged as much[32] and Defendants do not dispute that any statements to the contrary are ***not true***.[33]

Defendants have not explained why Defendants offered such an obviously false explanation for their conduct toward Plaintiffs, a fact giving rise to an inference of pretext:

> Evidence indicating that an employer misjudged . . . [the relevant criteria] is, of course, relevant to the question whether its stated reason is a pretext masking discrimination; if the [defendant] made an error too obvious to be unintentional, perhaps it had an unlawful motive for doing so.[34]

In their Opposition, Defendants argue that Ms. Grant and Mr. Chadwick have unclear memories,

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[30] *See, e.g., Fischbach v. District of Columbia Dep't of Corrections*, 86 F.3d 1180, 1183 (D.C. Cir. 1996) (evidence that defendant is plainly wrong under regulations, and absent evidence that departure from regulations is the norm, may be indicative of pretext); *see also* Pls' Opp'n at n.79 and related text.

[31] Pls' Mem. at nn.43-45 and related text.

[32] "Q: There's some missing explanation here. The $34,000 doesn't explain everything? A: Yes." Exhibit 32 to Pls' Opp'n, Grant Dep. at 200:13-15.

[33] Defs' Stmt. of Disputed Fact ¶ 36 (Defendants list the Haynies' debt amounts, noting that the only limit reached was that on farm operating loans, not any other loan type).

[34] *Fischbach*, 86 F.3d at 1183 (citation omitted). Defendants imprudently rely on *Fischbach* for the proposition that following a procedure other than that prescribed by regulation "lends no support at all" to the inference that the stated reason is pretext. Defs' Opp'n at 13 n.14 (citation omitted). What the court in *Fischbach* ***really*** said does not support Defendants' position at all: "[T]he procedure that the Department followed is reasonable and was, according to undisputed testimony, its usual procedure. That is, ***departure from the prescribed procedure had become the norm***." *Fischbach*, 86 F.3d at 1183. Defendants have provided ***no evidence whatsoever*** that failure to follow the regulations regarding maximum loan limits was the norm at the USDA.

and cannot ***now*** provide any reason for their unsupportable prior statements.[35] However, in 1998, Mr. Chadwick did not doubt his memory on that point: "***There is no question in my mind*** that Mr. Haynie understood that he could no longer obtain further assistance because he had reached the maximum loan amounts."[36] Gail Grant's 1998 statement is similarly unequivocal: "Mr. Haynie had reached the specified limitations for FO and OL."[37] In the face of this record, Defendants' attempt to hide behind current hazy memories must fail.

Defendants argue that Plaintiffs were not injured by a denial of access to EE loans because those loans they were not generally available after 1981 "except for the brief period from December 22, 1983 to September 30, 1984."[38] Defendants are too eager to dismiss this potential aid. Even taking Defendants' assertion at face-value, this period of available EE loans closely followed the Haynies' second fire and Judith Haynie's leave from teaching for medical reasons. The Haynies were in dire need of EE loan assistance during this period, and their changed circumstances would have supported the extension of credit. But the Haynies had already been turned away and deterred.

Defendants try to minimize the effect of the denial of loans, and particularly the Operating Loans (OLs), by quantifying the difference between the loan limits and the amount the Haynies had borrowed. Defendants' calculation masks the real effect. Typically, annual OLs

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[35] Trying to undermine their own earlier investigation, Defendants assert that witnesses were "pop-quizzed" as to the basis of their prior actions. Defs' Opp'n at 16-18. Yet the record indicates the process allowed review of the relevant documents. *See* Grant Aff. ¶ 4 (ROI at OCR-00381) (discusses review of the Haynie files during interview); Ramsey Aff. ¶ 8 (ROI at OCR-396) (notes that he has not had time to review the file in detail, but will). In any case, this was Defendants' investigation and they cannot now complain of it.

[36] Chadwick Aff. ¶ 5 (ROI at OCR-00387) (emphasis added). While Mr. Chadwick's very recollection is less clear, Chadwick Decl. ¶ 13, he does not suggest that his 1998 statements are unreliable; in fact, he relies on that affidavit in refreshing his current recollection. *See id.* ¶¶ 6, 12-13.

[37] Grant Aff, ¶ 4 (ROI at OCR-00381).

[38] Defs' Opp'n at 13 n.14 (citation omitted).

were for a one-year term. The expectation of both borrower and lender was that the loan would be used to purchase inputs for planting (seed, fertilizer, herbicides, insecticides), and then repaid from the proceeds of the harvest.[39] In other words, the annual Operating Loans were not a one-time proposition, they were an annual, or even seasonal, opportunity. Thus, the effect of the illegal denial was not a mere $66,000. Rather, considering just the OLs, and assuming repayment in full after harvest, the USDA's illegal denial amounted to $66,000 for ***each year*** of 1982 and 1983, and $166,000 for ***every year*** thereafter. Thus, ***the USDA really denied the Haynies the temporary use of more than $3,286,000 in credit in OLs alone*** over the period from 1982 – 2002, not just $66,000 or $166,000.[40] And, if the Haynies had repaid their OL equipment loan in 1987 per the terms of the agreement, the available credit line would have been even greater. This—***the denial of a revolving line of credit at $166,000 or more for more than two decades***—is what the USDA denied the Haynies.

Annual OLs for one-year terms were not the only type of OL available. There were other types of OLs, for equipment, which typically carried terms of seven or eight years. In fact, the ***sole*** OL that the Haynies had, closed in August 1980, was for an eight year term for the "purchase of equipment for new construction," related to rebuilding the hog barns after the first fire.[41]

In short, what Defendants did to the Haynies is this: they extended them long-term credit

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[39] *See* Grant Dep. at 21:14-20, appended as Exhibit 40 ("Sometimes you may not have enough security because if a person had an operating loan and it was for one year and he is supposed to pay it back in a year and didn't pay it back in a year, a new procedure came out where you could stretch that loan payment out five years, seven years, depending on the security that was used. Of course, that made their payments lower.").

[40] $66,000 for each of the years 1982 and 1983, and $166,000 for each of the subsequent 19 years through 2002 equals $3,154,000. To the extent that the Haynies double-cropped and therefore had multiple planting and harvesting seasons in a year, their temporary use of credit could easily have reached a figure well above $3.3 million.

[41] See Chadwick's notes, ROI at OCR-00474.

to get into the farming business in a really big way, to expand, and then—as soon as they were encumbered up to their proverbial eyeballs—the USDA cut them off and refused to give them a penny of credit to put crops in the ground. This is not the first time this Court has seen conduct of this sort by the Defendants.[42] Tellingly, Gail Grant knew very well that the lack of access to annual operating loans was responsible for the Haynies' economic crisis:

> I never told Mr. Haynie [that he did not qualify for additional loans because he was not longer considered a family farm]. The primary issue dealt with him exceeding the authorized maximum limits, ***especially for the OL which is what he really needed***.[43]

Unfortunately, Ms. Grant had accepted Mr. Chadwick's representations that the Haynies were not eligible for any more loans, and did not realize until November 13, 2003, when confronted with the facts during her deposition in this case, that the numbers simply did not add up to the representations that had been made.[44]

D. <u>Plaintiffs Were Denied Adequate Loan Servicing</u>

The USDA's discriminatory actions against the Haynies also extended to inadequate loan servicing, in violation of the federal regulations.[45] The Haynies' loans were rescheduled only

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[42] "Mr. James Beverly of Nottaway County, Virginia was a successful small farmer before going to the FmHA. To build on his success, in 1981 he began working with his FmHA office to develop a farm plan to expand and modernize his swine herd operations. The plan called for loans to purchase breeding stock and equipment as well as farrowing houses that were necessary for the breeding operations. FmHA approved his loans to buy breeding stock and equipment and he was told that the loan for farrowing houses would be approved. After he already had bought the livestock and the equipment, his application for a loan to build the farrowing houses was denied. The livestock and equipment were useless to him without the farrowing houses. Mr. Beverly ended up having to sell his property to settle his debt to the FmHA." *Pigford v. Glickman*, 185 F.R.D. 82, 87

[43] Grant Aff. ¶ 7 (ROI at OCR-00381).

[44] "Q: There's some missing explanation here. The $34,000 doesn't explain everything? A: Yes." Exhibit 32 to Pls' Opp'n, Grant Dep. at 200:13-15.

[45] ". . . Borrowers' accounts must be managed with an ***overall objective of keeping the farmer in business and at the same time, minimizing loan costs and losses***. The tools are rescheduling and/or reamortization, ***lower interest rates***, deferments, and write-down of debt." *See* Exhibit 18 to Pls' Mem.,

twice. In March 1985, when the loans were most recently serviced, interest rates were high. Yet, as interest rates fell in subsequent years,[46] the USDA took no further action to adjust the rates. There is no dispute that loan servicing at the county level was inadequate, as acknowledged previously by Mr. Slusser, the district director during the relevant period.[47] That supervisor, however, was specifically charged with an annual review of the Haynies' account.[48] Mr. Slusser's failure of duty, in light of his knowledge of the local office's short-comings, and in the face of the mandate of the regulations, remains completely unexplained, giving rise to an inference of racially discriminatory conduct, especially in light of his demeaning and discriminatory remark to Mr. Haynie: "Boy, the best thing you could do is file bankruptcy."[49]

Defendants hope to excuse their failure to adequately service Plaintiffs' loans by pointing out that Plaintiffs considered liquidating. However, even if that provided an excuse, it applies

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FmHA Instruction 1951-S § 1951.902 (Servicing and Collections Policy) (10/14/88) Special PN (emphasis added); *see also, e.g.*, Exhibit 12 to Pls' Mem., 7 C.F.R. § 1951.2 (1985); 7 C.F.R. § 1951.02(a) (1988)

[46] *See* Sue Hine and Dawn Thilmany, Agriculture Financial Report, Colorado State University, October 1998, No. 2, at 2. Defendants do not dispute that interest rates have fallen significantly since the 1980s. Defs' Stmt. of Disputed Facts ¶ 78.

[47] "I am not sure as to the reasons why the county office may have not considered some of these options sooner. I do know that not many if any deferments, . . . were made to borrowers in this office at the time, minority or non-minority. . . . Yes, the office had numerous servicing problems with both white and black." Slusser Aff. ¶ 11 (ROI at OCR-00392).

[48] *See* Letter from Godsey to Shuman, 11/30/83, ¶ 2 (ROI at OCR-00585); *see also* Defs' Stmt. of Disputed Facts ¶ 79, 94. Defendants' argument that the district director's review was limited to the narrow determination of whether the Haynie file was adequately documented is disingenuous. The inadequacy of servicing on the Haynie account, and the violation of the regulation that it represents, should have been obvious to anyone reviewing the file, particularly a supervisory employee.

[49] Philip Haynie Aff. ¶ 6 (ROI at OCR-00345). Defendants argue that this statement falls outside the actionable time period. Plaintiffs have demonstrated that Defendants' conclusion is inconsistent with the better record evidence. A close reading of the record indicates that Mr. Slusser did not visit the Haynie farm until January 20, 1982, a visit he recalled years later as having occurred "immediately" after the fire. *See* Godsey Letter to Shuman, 11/31/83 (ROI at OCR-00584), in response to Shuman's conclusion that the district director had not been involved in the Haynie account at all; Shuman letter to Godsey, 10/28/83 (ROI at OCR-00582); Slusser Aff. ¶ 9 (ROI at OCR-00391). In any case, even if the district director's ***statement*** fell outside the actionable period, his ***conduct***, which is consistent with and explained by the statement, falls within the actionable period.

only to the period from June 1986 through October 1987,[50] and provides no explanation for the nearly two decades of inadequate loan servicing on either side of that 15-month period.

The OCR Investigator, Daniel Temme, examined the loan servicing treatment afforded the Haynies in light of that afforded others. He documented differences in his report,[51] which are further detailed in one of the versions of the OCR's draft Final Agency Decision ("FAD").[52] Both the recent testimony of Vernon Orell[53] and Mr. Temme[54] support the conclusion that the Haynie account was treated with neglect in the mediation process compared to accounts of white borrowers. While Defendants criticize Mr. Temme's methods and conclusions,[55] they have done nothing to explain away the differences Mr. Temme found and interpreted as race-based differences.

E. Defendants Wrongfully Excluded Plaintiffs From The OCR Process

"ECOA provides an adequate remedy for . . . ***claims related to credit discrimination,*** such as failure to investigate complaints of discrimination in the credit transaction process."[56] It

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[50] *See* Defs' Stmt. of Disputed Fact ¶ 79.

[51] *See* ROI at 12 (OCR-00334 (redacted per Court Order).

[52] *See* Draft FAD, Ex. Gray-2 to Gray Dep., appended as Exhibit 41.

[53] Orrell Decl. ¶ 13; *see also* Pls' Opp'n at nn.98-101 and related text.

[54] Temme Dep. at 200:14 – 216:10 (relaying his impression of Mr. Orrell's "it wasn't [my] responsibility," "it's not my fault" approach to mediation and contrasting it with his own more active approach to achieve a successful result and explaining why he thinks the USDA's conduct suggests pretext in this instance), appended as Exhibit 42.

[55] This Court should reject Defendants' attempt to diminish the value of the OCR investigation conducted by Daniel Temme. Defs' Opp'n at 22-23. Investigator Temme testified that he had to negotiate for more time and one extra week was all he was given, despite his sense that the case merited more extensive attention. Exhibit 42, Temme Dep. at 52:15 – 56. Defendants should now be estopped from disparaging their own Investigator's Report and conclusions on the basis of circumstances wholly of the Defendants' making. Furthermore, Defendants had more than three years after this lawsuit was initiated and before fact discovery closed to investigate the facts of this case as they see fit.

[56] *Wise v. Glickman*, 257 F. Supp. 2d 123, 127 (D.D.C. 2003) (emphasis added). *See also* this Court's opinion in *Haynie v. Veneman*, 272 F. Supp. 2d at 18 (stating that ECOA's "phrase 'any aspect of a credit transaction' would be meaningless if read as suggested by [D]efendant [to exclude administrative

is indisputable that Plaintiffs' 1997 administrative complaints to the OCR complained of race discrimination in credit transactions.[57] Thus, the Haynies' exclusion—of which they had no notice—from the normal, statutorily-guaranteed settlement process on the basis of race and retaliation for settlement of a race discrimination complaint is actionable under ECOA.

The undisputed record establishes that the Haynies were barred from settling their case in the OCR informal settlement process. It also establishes that, based on the OCR's investigation of the Haynies' complaints, Rosalind Gray intended to attempt to settle the Haynies' case,[58] because she believed it was very strong.[59] There is also no dispute that Rosalind Gray understood "very clear[ly]" that her orders were to postpone settlement indefinitely, until the conclusion of the OCR investigation, which the OIG led her to believe remained open.[60]

Defendants ignore several facts in straining to defend their illegitimate conduct in this instance. Rosalind Gray was told in a memorandum dated October 30, 1998, that she was not to take action without the OIG's blessing:

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processing issues related to a complaint of an ECOA violation lodged with the OCR]."); 15 U.S.C. § 1691(a)(1) (2000).

[57] Letter from Philip Haynie to Perlie Reed, 4/23/97 (ROI at OCR-00340); Letter from Judith Haynie to Perlie Reed, 5/20/97 (ROI at OCR-00341).

[58] Exhibit 15 to Pls' Mem., Gray Dep. at 62:19-63:9. Defendants argue that settlement was barred by lack of documentation. Defs' Opp'n at 28. Rosalind Gray's testimony does not support their conclusion. Rather, she stated that she was willing to determine his eligibility based on his past eligibility. *See* Exhibit 15 to Pls' Mem., Gray Dep. 144-145. Furthermore, the ROI itself contains evidence that the Haynies' were still eligible without further review at the time they were cut off from Farmer Program benefits. *See* ROI at OCR-00621, FmHA Instruction § 1910.4(g)(2).

[59] *Id.* at 65:3-12.

[60] *Id.* at 73:16 – 81:2 (testifying that despite the promise of the OIG Memo, she was never provided with a copy of the report dated 8/11/99; that she initiated inquiries to the OIG regarding conclusion of the investigation into the spring of 1999 and was repeatedly told she could not proceed; that her memory is very clear that the oral communication was different than the written directive in the OIG Memo and that the communication was ratified by Greg Frazier, the Secretary's Chief of Staff; that the prohibition imposed restricted her authority to proceed to settlement, not just to obtain clearance before having a settlement check cut, and that this prohibition was unique to the Plaintiffs and their associates identified in the OIG Memo; and that there were a number of IG investigations of black farmers triggered after they received compensation as part of the *Pigford* case settlement process); *see also id.* at 137:13-18.

> All inquiries concerning these investigations should be referred to our office. In addition, if you believe administrative action should be taken, please coordinate with our office in order not to jeopardize any legal action.[61]

Although the directive was captioned with a reference to an investigation initiated in July 1997, it was delivered ***directly after*** Mr. Taylor's October 7, 1998, letter to Congressman Bateman and his simultaneous hot-line complaint.[62] Defendants ignore the fact that Ms. Gray testified (*i*) that Congressman Bateman actively interfered in the OCR process, questioning her directly about matters raised in Mr. Taylor's complaint, and (*ii*) that the October 30, 1998, OIG directive and the pressure from Congressman Bateman on the basis of Taylor's complaint were inseparable.[63]

Defendants argue that Plaintiffs dismissed this claim and assert prejudice; their argument is not only without merit, it is disingenuous.[64] In January 2002, Defendants attempted to persuade this Court to dismiss at least the APA claims in this action, arguing that "[h]ere [P]laintiffs have asserted an ECOA claim and therefore may not simultaneously pursue an APA

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[61] Exhibit 15 to Pls' Mem., Letter from OIG to Gray, 10/30/98, Ex. Gray-5 to Gray Dep.

[62] *See* Defs' Stmt. of Disputed Facts ¶ 105; Exhibit 15 to Pls' Mem., Letter from OIG to Bateman, 2/2/99, Ex. Gray-4 to Gray Dep. (referring to Letter from Robert Taylor to Congressman Bateman dated 10/7/98).

[63] Exhibit 41, Gray Dep. at 81:19 – 83:14.

[64] Defs' Opp'n at 24. Defendants' cited authority does not support their position, in any case. In *Flickinger v. Harold C. Brown & Co.*, 947 F.2d 595 (2d Cir. 1991), the court ***permitted*** the plaintiff to pursue a theory that was not raised in the complaint, indicating that a court has flexibility, even beyond what is in the complaint, to address a plaintiff's injury. The *Flickinger* court stated that "'particular legal theories of counsel yield to the court's duty to grant the relief to which the prevailing party is entitled, whether demanded or not.'" *Id.* at 600 (quoting *Gins v. Mauser Plumbing Supply Co.*, 148 F.2d 974, 976 (2d Cir. 1945)).

Defendants' additional argument, Defs' Opp'n at 26, that allowing proof of retaliation is effectively an amendment of Plaintiffs' complaint is also meritless. According to Defendants' authority, *Wallin v. Minnesota Department of Corrections*, 153 F.3d 681, 688 (8th Cir. 1998) *cert. denied*, 526 U.S. 1004 (1999), retaliation may be considered as part of the affirmative discrimination case when it "grew out of" the underlying discrimination, as it did here.

claim ***based on the same facts***."[65] Clearly, Defendants knew then that the facts about the OCR process Plaintiffs alleged constituted an ECOA claim; it was the ***necessary predicate*** of their argument. Plaintiffs never gave any indication whatsoever that they were not proceeding on these facts under the remaining ECOA claim: they sought both oral and written discovery on this subject and never once signaled concurrence with Defendants' wishful, but baseless, view.[66] Rather, it is clear from the record that Plaintiffs long intended to pursue this claim and Defendants long intended to argue that they considered it to be dismissed.

II. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON DAMAGES

A. Legal Requirements For Proving Damages

Proving damages requires that Plaintiffs demonstrate by a preponderance of the evidence that Defendants' illegal and discriminatory conduct proximately caused the Plaintiffs' injuries.

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[65] Defs' Mem. in Support of Motion to Dismiss C.A. 00-2516, 1/24/02, at 17 (erroneously entered as Dkt # 25 in C.A. 00-2493) (relying on and submitting *Love v. Veneman*, No. 00-2502, Mem. Op., December 13, 2001, as Exhibit 1 thereto).

[66] Defendants' claims regarding prejudice in discovery should not be credited. The notion that more careful examination of OIG files might have produced a justification for the USDA's decision to ***secretly deprive*** Plaintiffs of their right to have their ***race discrimination grievance*** addressed on the merits as guaranteed by law is preposterous on its face. *See* Defs' Opp'n at 26. Defendants do not, because they cannot, even suggest what might justify such ***secret denial*** of regular process. Plaintiffs had already been interviewed in the matter; so even the law-enforcement privilege would not provide an explanation. Furthermore, under cover of letter dated September 4, 2002, in response to discovery demands of July 29, 2002, requesting "any and all USDA IG files of any investigation of my clients or involving my clients, Defendants produced what they asserted was a "***more than complete response***" to Plaintiffs' discovery demands concerning relevant OIG documents, and they presumably have had ample time to examine those documents. *See* correspondence between counsel for Plaintiffs and counsel for Defendants regarding discovery requests and responses, appended as Exhibit 43. Plaintiffs' intent to proceed on the claim is on the record and did not elicit any surprise at the time. *See* Philip Haynie Dep. at 198:2 – 202:9, appended as Exhibit 44, and Exhibit 36 to Pls' Opp'n.

Finally, the very example that Defendants proffer to this Court is a prime example of their tactics in the absence of any legitimate defense. Defendants present a declaration of William Hall, that implies without stating that Mr. Haynie acted in a manner to cheat the bankruptcy estate. Mr. Hall has provided a subsequent declaration to clarify any misunderstanding arising from that declaration, as he has no such knowledge. It is filed with the Court this day.

Plaintiffs have already established as much, but will repeat with emphasis here.[67]

In about 1982, in violation of several regulations, the USDA illegally and for racially discriminatory reasons, cut the Plaintiffs off from reasonable credit, after having saddled them with a large debt and encumbered all their assets.[68] After having extended them enough credit to purchase land and renovate a house, to purchase equipment and hogs, and to rebuild a hog barn that had been burned, the USDA refused to extend credit to allow the Haynies to put crops in the ground on reasonable terms. Given the USDA's position, Plaintiffs had no choice but either (*i*) to go out of business and lose their land, or (*ii*) to continue operating to try to recover some of their newly acquired fixed costs—the equipment and purchased and leased land—with constrained credit available only at interest rates as high as 24 percent.[69] The Haynies chose to forge ahead.

All farmers face choices, and many face hard choices. For the Haynies, the hard choices were forced on them by illegal decisions of the USDA in concert with and capitulation to a hostile white community. The USDA's conduct, in turn, had natural and foreseeable consequences. It forced Plaintiffs into one hard choice after another that affected the viability of their farm operation, such as whether to maximize inputs to increase yields, whether to invest in restoring their farrow-to-finish hog operation that would have produced higher returns in the long run, and whether to increase cropland to increase yield to reduce the per unit cost of production. In short, the denial of credit at reasonable rates not only cost them to that extent, but ***also*** deprived them of the ***returns*** they would have realized from extension of additional credit at reasonable rates, and the growth of their enterprise that would have followed.

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[67] Pls' Mem. at 7-27; *contra* Defs' Opp'n at 31.

[68] *See supra notes* 8-44 and related text.

[69] Haynie Decl. ¶ 38; Exhibit 8 to Pls' Mem., Grant Dep. at 30:12-14.

The USDA's illegal conduct injured them to the extent their yields were depressed because they could not fertilize or spray or plant at the rate they might have; it injured them to the extent they did not expand their operations as they could have otherwise; it injured them to the extent that were unable to meet their short-term debt obligations as they otherwise could have, and over time, it injured them to the extent that their failure to meet short-term obligations affected their ability to meet long-term obligations.

In addition to Defendants' racially-discriminatory denial of credit over the damages period, Defendants failed to provide adequate and timely loan servicing to Plaintiffs, exacerbating the original injury inflicted. And, when Plaintiffs filed administrative complaints of race discrimination in 1997, Defendants wrongly denied them a decision on the merits as prescribed by law.[70] Defendants' conduct, illegal and racially discriminatory at the same time, clearly proximately caused economic injury to the Plaintiffs in violation of the ECOA.

Upon a showing of liability and injury, the ECOA entitles Plaintiffs to recover actual damages,[71] by establishing a reasonable estimate of the damages incurred.[72]

> . . . [I]t will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that [damages] cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise. . . . [T]he risk of the uncertainty should be thrown upon the wrongdoer instead of upon

[70] The evidence establishes that Plaintiffs filed an administrative complaint for race discrimination in about 1983. Exhibit 44, Philip Haynie Dep. at 106-109. That complaint was never addressed, either, despite the governing law. Of course, ***that*** instance of Defendants' racially discriminatory and wrongful conduct is not at issue in this action; it has been addressed by Congress' special legislation allowing ***this*** action to proceed.

[71] 15 U.S.C. § 1691e(a) (2000).

[72] *Hill v. Republic of Iraq*, 328 F.3d 680, 684 (D.C. Cir. 2003) ("the plaintiff need only provide 'some reasonable basis on which to estimate damages.'") (quoting *Wood v. Day*, 859 F.2d 1490, 1493 (D.C. Cir. 1988).

the injured party.[73]

Plaintiffs have offered a reasonable estimate of the damages proximately caused by Defendants' discriminatory conduct.[74] To defeat Plaintiffs' motion for judgment as to damages, Defendant must interpose a "***genuine*** issue of ***material*** fact"[75] demonstrating that Plaintiffs' estimate does ***not*** have a reasonable basis.[76] Here, Defendants have not made such a showing. Thus, Plaintiffs are entitled to summary judgment as to the amount of damages.

The parties agree that the key to estimating a valid amount of damages is to approximate ***as closely as possible*** the victim's farming operation and use the following equation:

> . . . [W]e assume that a farmer with a ***comparable type of farming operation***, operating without discrimination, what their income would have been. Then ***to the extent that their income was less than that, we attribute that to the alleged discrimination***.[77]

Defendants' argument regarding proportionality, especially as related to causation, is misplaced.[78] The notion that a plaintiff must establish proportionality between the "quantum of

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[73] *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555 (1931) (discussing lost profits as damages in an anti-trust case), *cited in Hill v. Republic of Iraq*, 328 F.3d 680, 684 (D.C. Cir. 2003); *see also Samaritan Inns v. District of Columbia*, 114 F.3d 1227, 1235 (D.C. Cir. 1997) (discussing lost and delayed contributions in a Fair Housing Act case and concluding that the amount of damages may be established by a reasonable estimate).

[74] *See generally*, Exhibit 20 to Pls' Mem., Kambhampaty Report; Pls' Mem. at nn.202-16 and related text; and *infra* at note 87 and related text.

[75] *Liberty Lobby*, 477 U.S. at 248.

[76] The court must evaluate the evidence presented in the papers submitted on motion for summary judgment through the "prism of the substantive evidentiary burden" the party would have to meet to prevail at trial. *Id.* at 254. Defendants do not cite relevant authority to the contrary: *Samaritan Inns v. District of Columbia,* 114 F.3d at 1235 (citing *Story Parchment*); *Anderson v. United Finance Co.*, 666 F.2d 1274, 1277 (9th Cir. 1982) (noting that damages were not an issue before the court, but pointing out on remand that punitive damages were available under ECOA even if compensatory damages could not be proved); *Travellers Int'l v. TWA*, 41 F.3d 1570 (2d Cir. 1994) (interpreting New York law on proving damages in breach of contract case).

[77] Exhibit 21 to Pls' Mem., Trostle Dep. at 30:5-19 (emphases added), 128:3-10 (key is to identify existing data that approximates as closely as possible the operation Plaintiffs would have had but for the discrimination); *see also* Pls' Mem. at 23-24.

[78] *See generally* Defs' Opp'n at 29 – 36.

discrimination" and the estimated damages simply has no foundation in law.[79] Despite the egregiousness of Defendants' conduct in this case, the proper estimate of compensatory damages turns on the ***plaintiff's injury*** that flows naturally from the defendant's conduct, not on the quality, character, or "quantum" of the defendant's conduct.[80]

In matters where compensatory damages are to be awarded, the law requires the wrongdoer to take his victim as he finds him.

> It is a well-settled principle of tort law that when a defendant's wrongful act causes injury, he is fully liable for the resulting damage even though the injured plaintiff had a preexisting condition that made the consequences of the wrongful act more severe than they would have been for a normal victim. The defendant takes the plaintiff as he finds him. . . . A plaintiff's recovery for damages caused by a defendant's wrongful act may ***not*** be proportionately reduced because of a preexisting weakness or susceptibility to injury . . . .[81]

Thus, if Plaintiffs were economically vulnerable in 1981, as Defendants' expert has testified,[82]

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[79] *Id.* at 31. Proportionality is related only to punishment and punitive damages, yet the government has held itself immune from the possibility of punitive damages under ECOA. 15 U.S.C. § 1691e(b) (2000). Therefore, proportionality is not properly before this Court at all.

[80] Compensatory damages for a lost right arm, for example, would be the same whether the loss was caused by negligence or mayhem. At the same time, the lost right arm would result in a very different compensatory damages award for a right-handed professional tennis player compared to a left-handed trial lawyer.

[81] *Maurer v. United States*, 668 F.2d 98, 99-100 (2d Cir. 1981) (and noting two exceptions to this general rule, both of which impose a burden of production and persuasion on the defendant) (emphasis added). *See also United States v. Feola*, 420 U.S. 671, 685 (1975) (applying the principle that a defendant takes his victim as he finds him to a federal statute prohibiting assaults on federal law enforcement officials and stating that "The situation is not one where legitimate conduct becomes unlawful solely because of the identity of the individual or agency affected. In a case of this kind, the offender takes his victim as he finds him."); *Restatement (Second) of Torts* § 461 (2002) (noting that the concept has been applied in bankruptcy case where willful violation of stay by creditor exacerbated debtor's preexisting medical condition).

[82] Trostle Dep. at 66:10-18, 259:8-15; Exhibit 22 to Pls' Mem., Exhibit Trostle-2 (USDA's definition of "vulnerable" category of "farm financial classifications," noting that "some of these farmers may be forced to rely on debt restructuring/forgiveness to continue operating."). The Haynies were not alone in this category of "vulnerable" farm operators. More than 38 percent of "large family farms" had debt to asset rations between 40 and 100 percent as of January 1, 1985. Donn Reimund, Nora Brooks, Paul

Defendants are liable for the damages incurred by this vulnerable victim, and cannot now complain of it, even if another victim might not have been injured to the same degree by the same conduct.

This is not only the correct statement of the law, but also particularly just in this case. Defendants were fully complicit in making the Plaintiffs more vulnerable by approving large loans and placing a blanket lien on all Plaintiffs' assets, and they were fully aware of the Plaintiffs' economic posture when they cut them off from assistance. Plaintiffs had relied on the Defendants' promise—published in various federal regulations—that they would provide adequate loan servicing and do everything reasonable under the law and regulations to keep Plaintiffs farming.[83] Defendants not only failed to fulfill their promise, guaranteed by law, but turned on the Haynies in capitulation to racially-motivated community resistance to the apparent economic progress and acquisition of land by this black farmer. Well-established principles of law and equity require that Defendants be held liable accordingly.

The law is clear: where the plaintiff has established liability, the plaintiff may prove damages by means of a ***reasonable estimate***.[84] Despite their efforts, Defendants cannot refute Plaintiffs' reasonable estimate of damages by complaining that the result is not capable of absolute proof, or that Plaintiffs have not engaged in hypotheticals of what their damages would

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Velde, "The U.S. Farm Sector in the Mid-1980's," at 10, Table 14, USDA, ERS, AER 548 (1986), appended as Exhibit 45.

[83] *See, e.g.*, Exhibit 12 to Pls' Mem., 7 C.F.R. § 1951.2 (1985); 7 C.F.R. § 1951.02(a) (1988).

[84] *See supra* notes 72-76; *Acree v. Republic of Iraq*, 271 F. Supp. 2d 179, 217 (D.D.C. 2003) ("'the plaintiff need only provide some reasonable basis on which to estimate damages'") (quoting *Hill*, 328 F.3d at 684); *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 272 (D.D.C. 2003) ("For the court to award damages for past economic losses, plaintiffs need only "reasonably prove" the amount of damages they request . . . .") (citation omitted).

have been ***if*** Defendants had acted slightly differently,[85] or that they would just rather not address the issue of damages right now.[86]

B. Plaintiffs' Estimate Is Reasonable And Defendants Have Not Shown Otherwise

Using the damages equation that is undisputed, Plaintiffs have provided this Court with an estimate of damages that has a reasonable basis. In fact, Plaintiffs' damages estimate is not only reasonable, in numerous ways it is a ***conservative*** estimate of the economic damages inflicted on Plaintiffs by the illegal conduct and omissions of the Defendants.[87] And, it does not even begin to take into account the substantial non-economic injury Plaintiffs suffered, such as mental anguish, humiliation, embarrassment, and the injury to credit reputation.[88] Rather, to produce an estimate of damages that is beyond reasonable dispute, Plaintiffs elected to estimate only economic damages capable of proof by Defendants' own published data.

The Plaintiffs base their estimate of damages on surveys conducted by and for the USDA: the National Agricultural Statistics Service ("NASS") and the periodic Agricultural Resource Management Study ("ARMS") and its predecessor, the Farm Cost and Return Surveys, as reported by the USDA's Economic Research Service ("ERS"). Defendants rely on ***exactly the***

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[85] Defendants appear to ask this Court to impose a new regime in the law of damages, and require Plaintiffs to speculate as to what they ***would have experienced if*** the Defendants had acted a little bit differently in this way or that way. Defs' Opp'n at 31. Neither law nor reason imposes such burden on Plaintiffs. The reasonable estimation of compensatory damages does not entail an exercise in hypotheticals about the Defendants' conduct; the Defendants' conduct is the ***certainty*** in the equation, as are the real-life consequences for the Plaintiffs that followed naturally and proximately from the Defendants' discriminatory conduct.

[86] Defendants' reservation of their "right to present a fuller presentation at a more appropriate stage of the case," must be denied. Defs' Opp'n at 30. Defendants have no such right and should not be allowed to rewrite not only the briefing schedule in this case but also the Federal Rules of Civil Procedure.

[87] *See* Pls' Mem. at 54-59.

[88] *See* Exhibit 25 to Pls' Mem., Determination, *In re Will Sylvester Warren*, USDA Docket No. 1194, HUD ALJ No. 00-19-NA, December 17, 2002, at 30-43 (awarding substantial damages for emotional distress, damage to credit reputation/ability to attend to emergencies, damage to reputation for honesty, and damage to professional reputation).

same data sources.[89] Plaintiffs' estimate approximates—as closely as possible, given the available data—the Haynie farm that was planned and under development when the USDA began discriminating against Plaintiffs. The projected farm acreage and mix of products is well-grounded in the reality of the Haynie farm operation in the several years after the original discrimination occurred in 1982. In the case of each commodity, Plaintiffs estimated the Haynie farm's profits ***more modestly*** than could have been reasonably defended, a fact that is not subject to genuine dispute.[90]

Defendants' primary criticism of Plaintiffs' damages estimate is the selection of the "comparable type of farming operation."[91] In fact, Plaintiffs' estimate is derived from farms of a "comparable type" to the Haynie farm, *i.e.*, from the yield and cost of production data for farmers who farmed (a) the commodities the Haynies farmed (b) in the volume the Haynies farmed, who are more likely to (c) use advanced production techniques like the Haynies did, (d) be full-time operators, like Mr. Haynie was, and (e) to have a related college degree, like Mr. Haynie did.[92] Against this, Defendants argue that the correct "comparable type of farming operation" is represented by the average farmer in the southeast region[93] of the United States

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[89] Defense counsel is either mistaken or attempting to mislead the Court by stating and/or suggesting that Plaintiffs relied on "inferior data sources." *See* Defs' Opp'n at 44. Both experts relied on the ***exactly the same data sources***. Trostle Report, Exhibit C; Kambhampaty Report, Exhibit B. This was clearly established in Dr. Trostle's deposition. The experts relied on different ***slices*** of the same data sources. Trostle Dep. at 160:12-18, 163:21-22, 212:4-9.

[90] *See* Pls' Mem. at 54-59.

[91] Trostle Dep. at 30:15-16.

[92] *See* Pls' Mem. at n.205 and related text; *see also infra* notes 102, 105-09 (explaining that production practices correlate with sales class and size of farm operation, as well as education and primary occupation of farm operator).

[93] This region is variously defined for different crops at different times for two reasons. One, the USDA changed its reporting units because of its own dissatisfaction with regions as representing anything meaningfully related to farm production, and two, because for some of the commodities estimated, their production is sufficiently rare in the region that certain states in the region are not even included in the calculation of the averages for the "region."

who happens to grow at least ***one acre*** of corn, or soybeans, or wheat or barley for sale.[94] Clearly, Defendants' choice is not really aimed at identifying a "comparable type of farming operation," but instead—for the obvious purpose of arriving at a low-ball estimate—at treating Plaintiffs as if they had the average southeastern farm operation, which they did not.[95] Essentially, Defendants would have the Court believe that the more reasonable choice for a "comparable type of farming operation" is ***farm location***—without regard to specialization, farm sales, size of farm, operator characteristics, and production practices, a patently ludicrous position.[96]

When Defendants argue that Plaintiffs' "national" average[97] "masks . . . variation,"[98] and offer their regional average as superior, they are dead wrong and perversely so. What Plaintiffs' estimate does is ***un***mask the confounding and irrelevant variation that is masked, *i.e.*, hidden, in Defendants' ***average*** of ***all*** southeast farms—small and large, part-time and otherwise—that happened to plant at least one acre of corn, soybeans, barley or wheat.

Because the very calculation of an average masks variation,[99] whether an average is

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[94] *See, respectively,* Foreman at 24; Foreman & Livezey at 29; Ali & Brooks at 61; Ali *et al.* at 48-49.

[95] Considering size alone, the ***return per acre***, *i.e.*, net income, is much greater on larger farms than on smaller farms. Thus, if Defendants wanted to produce a depressed estimate of Plaintiffs' profit absent discrimination, they would base the damages estimate on small farms—as they have here. *See* Pls' Opp'n at nn.36-37 and related text (average net returns on a small family farm with 327 acres—which is larger than the average for the southeast region—is $24 per acre, while on the average large family farm with 1807 acres, it is $74 per acre, and on the very large family farm with 3727 acres, it is $122 per acre).

[96] Pls' Mem. at 27-47.

[97] Defs' Opp'n at 37.

[98] *Id.* at 38.

[99] Regional averages, like U.S. averages, mask important variation. Averages are ***designed*** to mask variation: they are measures (descriptions) of central tendency that ignore dispersion (variation). To the extent that the things measured are more varied, the average of those things will mask more variation. For example: the average weight of all persons (children, women, men) in the southeast region masks more variation than the average weight of all adult males over 6 feet tall across the United States. ***"U.S. farms are diverse, and variation within the industry is hidden by U.S. averages."*** Exhibit 20 to Pls'

appropriate depends on the goal and the importance of the underlying variation it masks. Take the example of corn farmers. A full ***half*** of all southeast corn farmers farm only part-time (unlike the Haynie operation),[100] and the average southeast corn farm has 66 acres of corn (very unlike the Haynie operation).[101]

> Small family farms [which account for 4/5 of all corn farmers] differ from larger family farms [like the Haynies] in ***many characteristics other*** than size of the farm operation or the corn enterprise. Part-time operators are less likely to use conservation or no-till systems than operators of larger farms. . . . Labor hours per acre for both field operations and overhead are greater on small farms.[102]

As "***[m]ost farms are small*** . . . because very little production is necessary to be classified as a farm by the USDA,"[103] any average that does not select or control for size when comparing to an unusually large producer cannot be defended as a "comparable type of farming operation."

In the nation, ***fewer than four percent*** of corn farms planted over 750 acres of corn, like the Haynies did.[104] Thus, Plaintiffs' "national average" for large corn farms is hardly an average of national farms. It is an average of ***four percent*** of all the nation's corn farmers. Accordingly, it masks only whatever variation exists among that four percent of farms. These farms tend to have higher yields and lower production costs than small family farms, and significantly lower average production costs per bushel than part-time family farmers.[105] These farms also happen to have other features in common with the Haynies' operation: a full-time operator that is

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Mem., at Ex. Kambhampaty-3, Structural and Financial Characteristics of U.S. Farms, 1993: 18th Annual Family Farm Report to Congress, AIB-728, 1997, Abstract. The same is true for regional averages.

[100] Foreman at 14.

[101] *Id.* at 10.

[102] Foreman at 14 (emphasis added).

[103] Structural and Financial Characteristics of U.S. Farms, 1993 at 1.

[104] *Id.* at 19; Kambhampaty Report at Exhibit F.

[105] Foreman at 14.

college-educated, use of different production practices,[106] including certain precision agriculture techniques,[107] and a higher debt-to-asset ratio than smaller corn farmers.[108]

Clearly, unlike Plaintiffs' estimate, Defendants' estimate is based on farms that for the most part are ***not*** comparable to the Plaintiffs' operation. In fact, other than the fact that each of the farms produces at least one acre of corn, and each exist somewhere in a variously defined region that does not offer the best approximation of either the agriclimatological or production features of the Haynie farm, it is not at all clear just what Defendants' southeast corn farmers do have in common with the Haynie operation. Of course, the southeast regional average is a useful statistic for producing a low estimate of damages in race discrimination cases.

Defendants are unable to identify ***what*** of relevance is masked by Plaintiffs' use of the average derived from "comparable type farming operations." Contrary to Defendants' criticism, Plaintiffs' estimate captures and reflects—not masks—the relevant farm-industry characteristics, such as production practices, as they tend to accrue to size and sales class of farm.[109]

In criticizing Plaintiffs' choice of "comparable type of farming operation," Defendants argue—ignoring plain facts—that Plaintiffs' choice discounts important agriclimatological

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[106] *Id.*

[107] *Id.* at 22, Table 11; *id.* at 23, Table 12.

[108] Foreman at 20; *id.* at 23, Table 12. Thus, Defendants are wrong when they say Plaintiffs' estimate incorporates the "average" debt load. Rather, Plaintiffs' estimate assumes the debt load that is reflected in the comparable farms. For larger farms, the debt load tends to be larger, and Plaintiffs' estimate reflects this.

[109] *See, e.g.,* Foreman at 14 ("Small family farms differ from larger family farms in many characteristics other than size of the farm operation or the corn enterprise. Part-time operators are less likely to use conservation or no-till systems than operators of larger farms. . . . Seeding rates on small farms are less than those on larger farms. Labor hours per acre for both filed operations and overhead are greater on small farms. Smaller machines and lower horsepower tractors contributed to more labor hours expended per acre on small farms, and operators of small farms have less acreage over which to allocate their overhead hours. Operators of small farms are generally older and less well educated than their counterparts on larger farms.").

features that vary by region.[110] First, Defendants ignore the USDA's Farm Cluster Map ("Map"), which demonstrates that whatever "agriclimatological factors" are conducive to corn and soybean production prevail in the Northern Neck as well as the "corn belt."[111] Not surprisingly, the weather data accord with the evidence reflected in the Map: thirty year totals for temperature and precipitation show more similarity between the Northern Neck and parts of the corn belt than parts of the southeast region that Defendants prefer.[112]

Defendants also criticize Plaintiffs' choice of "comparable type of farming operation" by arguing—again without facts—that farms in other parts of the nation are qualitatively different from the Haynie farm due to differences in size of the tracts under cultivation. Defendants have not substantiated their premise, and grossly mischaracterize Plaintiffs' operation. First, Defendants rely solely on Dr. Trostle's undocumented statements in his report, with vague and unsubstantiated references to unspecified areas of the country where the plots are larger.[113] Second, at the time Dr. Trostle made his comparative statement, he was mistaken about the size

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[110] Defs' Opp'n at 37.

[111] *See* Exhibit 26 to Pls' Mem., Map, at 5 (color-coded map depicting dominant agriculture by area, with the color red representing the corn-soybean-hog cluster of farms). The Map, developed and published by USDA's ERS, depicts the Northern Neck as bright red, like the mid-western "corn belt" and a few other spots around the country. The Haynie farm was a corn-soybeans-hog farm. The map provides indisputable evidence that the agriculture in the Northern Neck ***is not*** comparable to the agriculture in the rest of the southeast section of the United States and ***is*** comparable to the agriculture in the corn belt. This map, best viewed in color, can be viewed in color on screen; alternatively, a color copy is available upon request from Plaintiffs' counsel.

[112] *See* Table of Thirty-Year Average Precipitation and Temperatures (1971-2000) For Selected Areas In Northern Neck, Corn Belt, and Southeast Region, appended as Exhibit 46.

[113] Defs' Opp'n at 38 (citing Dr. Trostle's Report at ¶¶ 32, 33, 35, 36). If Dr. Trostle's references are to large tracts of land where wheat and barley are grown, the criticism is without force, as Dr. Trostle also testified that the Plaintiffs significantly underestimated the yields for barley and wheat. Trostle Report ¶¶ 21-22. In deposition, Trostle Dep. at 213:8-16, Dr. Trostle conceded his assertion that the averages for large corn farms used by Dr. Kambhampaty "overwhelmingly reflected irrigated corn production in the Eastern Great Plains" was ***incorrect*** and not supported by the data sources on which he relied. Trostle Report ¶ 37. And, as has been demonstrated herein, Dr. Trostle is simply ill-informed about the typical size of the fields in the corn and soybean producing region of the country. *See* Declaration of F. Howard Halderman ("Halderman Decl.") ¶¶ 7-10, 12, filed herewith.

of tract that the Haynie operation farmed.[114] Third, ***the facts***: in 1985, the Haynie farm worked more than 2200[115] acres in just 11 large tracts, each at least 100 acres[116]—far larger than the 40 acres Dr. Trostle conceded would bring the efficiencies of large farming.[117] Contrary to Defendants' arguments, the fact is that the Haynie operation farmed tracts of land as large as those typically found in the "corn belt" where the vast majority of the corn and soybeans are produced, much of it by farmers, like the Haynies, who produce 750 or more acres of the crop.[118] In addition to these large tracts, the Haynie farm operation worked several other proximate and contiguous tracts of land ranging from about 20 to 80 acres,[119] which is also typical of "corn belt" farmers.[120] Farming smaller tracts of land, in any case, does not negatively affect yield.[121] At the most, it would marginally affect labor as a part of the cost of production, *i.e.*, the farmers' time, to the extent that travel between fields is required. This is exactly the type of "cost" that can be compensated for by a farmer willing to work longer hours,[122] a point Defendants' expert

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[114] *See* Exhibit 22 to Pls' Mem., Exhibit E to Trostle Report (Exhibit Trostle-1); Second Supplemental Declaration of Philip J. Haynie, II ("2d Supp. Philip Haynie Decl.") ¶ 1 and Exhibit A; Link Decl. ¶ 4.

[115] This refers to land acres, not to crop acres; *i.e.*, double-cropping is not reflected in this number.

[116] The 1985 large acre tracts and their landlords: 552 (Kreynus), 400 (Wellford [Wilna Farm]), 197 (Goodman), 165 (Thorndike), 161 (Henne [Chesapeake Farm]), 155 (Thorndike), 153 (Cowart et al.) 115 (Haynie), 101 (Goodman), 100 (Harcum), 100 (Hall); *see* Exhibit 21 to Pls' Mem., Trostle Dep. at 151:10 – 153:8 (recommending as a good source of data on cost of production the sources on which Plaintiffs in fact relied).

[117] Trostle Dep. at 150:1 – 153:9; *but see* Hutcheson Decl. ¶¶ 5, 6 (estimating, based on his experience with farms in the Northern Neck, that the efficiencies of large farming for farm equipment of an appropriate size accrue to tracts that can be worked, for all practical purposes, as ***20 acres*** or more, not 40 acres or more); Halderman Decl. ¶ 13.

[118] Halderman Decl. ¶¶ 7 – 12. Defendants' own data do not support their undocumented assertion: in 1997, the average farm size in the combined "corn belt" states of Illinois, Indiana, and Iowa, was 325 acres; at the same time in the Northern Neck, the average farm was 303 acres. *See* www.nass.usda.gov:81/ipedb/.

[119] *See* 2d Supp. Philip Haynie Decl. ¶ 1 and Exhibit A.

[120] Halderman Decl. ¶¶ 8-10.

[121] *Id.* ¶ 13.

[122] *Id.*

conceded.[123]

Intent on blaming the victim, Defendants continue to argue, without adequate factual basis, that the Haynie operation's cost of production was excessive because they paid rent for crop land that the yields could not support. Plaintiffs have already pointed out that Defendants have cherry-picked the tax returns to discuss, base their conclusions on flawed logic and inadequate and misleading facts.[124] In any case, Defendants simply have not shown that Plaintiffs' estimate is unreasonable for this reason.

Defendants hope to walk away from any damages related to the Haynies' hog operation because the first fire occurred before the actionable period. But, the Defendants' ***conduct*** in cutting the Haynies' off from any future credit occurred well within the actionable period. By early 1981, Defendants had refused to make a loan to the Haynies and Jacksons to enable them to fully restore their operation. In April 1981, the USDA, with approval of a district director other than Mr. Slusser,[125] additional loans were made to the Haynies. By the summer 1982, when the Haynies would have been back in the farrow-to-finish business but for the decision of the USDA to refuse them credit for that purpose, Mr. Chadwick had wrongly informed them that they were

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[123] Trostle Dep. at 300:16 – 301:12.

[124] *See* Pls' Stmt. of Dispute as to Defendants' Stmt. of Undisputed "Material Facts" at nn.26 – 35 and related text (Defendants present unrepresentative data and draw insupportable conclusions from the tax returns); Trostle Dep. at 117:14-17; 118:3-6 (noting that accounting for tax returns is different than accounting for cost of production data); Haynie Decl. ¶ 30 (George Self, a white farmer, apparently made a higher bid on the Lewisetta (owned by Mr. Kreynus) parcel of land than the Haynies rented at a price above the average for crop land at that time); Pls' Stmt. of Undisputed Facts at n.97 and related text (Goodman leased his land to the Haynies for the same amount as he had the prior white tenants); Pls' Mem. at nn.187 – 192 and related text. *See also* Lease for Chesapeake Farm (Henne), filed as Exhibit 1 to the Declaration of Philip Haynie (showing that in the early 1990s, the Haynie farm rented the 163 acre tract for $50 per acre). The Chesapeake Farm, owned by Maud Henne, was ASCS 1985 Farm No. 416, and appears as Farm # 9931 on the Mertz Maps. 2d Supp. Philip Haynie Decl. ¶ 4.

[125] Until Mr. Slusser submitted his declaration on January 27, 2004, the record was devoid of any but indirect evidence of his tenure as district director in the Warsaw FmHA office. The record establishes his lack of involvement in the Haynie case until early 1982. *See supra note* 43 and related text and sources.

no longer eligible for credit assistance from the USDA. Certainly, from 1982 forward, there can be no dispute that the USDA's illegitimate position stood between the Haynies and their resuming their farrow-to-finish operation.

The Haynies had planned on having a large farrow-to-finish operation and were well on their way when the USDA refused—and then maintained that refusal in subsequent years—to extend the credit necessary for them to rebuild after the first fire. Hog production can be a profitable business, but again Defendants and Plaintiffs differ in their estimates of the profit the Haynies would realize. As with the differences in the crop estimates, the selection of the "comparable type of operation" explains the difference. The Defendants again chose region as the most important criterion for the hog estimate, and based their calculations on the ***average*** southeastern farmer who had at least one hog.[126] In contrast, Plaintiffs based their estimate on the hog operations that really do approximate the Haynies' large farrow-to-finish operation. Defendants' choice of "comparable type" defies any meaningful explanation. In fact, a recent ERS publication notes that the hog industry has been relatively mobile in recent years, with hog producers relocating to other regions where the ***political*** environment (e.g., clean water regulations, urban encroachment) is more hospitable.[127] Defendants are unable to state why the southeast region has anything at all to do with a hog operation. It is, of course, obvious that using the average farmer from any region as the "comparable type" will produce a lower estimate for damages in any case where the farm operation exceeds the average.

In a footnote, Defendants pose specific challenges to a couple of Plaintiffs' estimates for

[126] William D. McBride and Nigel Key, Economic and Structural Relationships in U.S. Hog Production, USDA, ERS, AER No. 818 (2003) at 44.

[127] *Id.* at Abstract.

certain years.[128] Defendants wonder how the Haynie farm might have been able to realize a net return of $494,606 for 1992 when the averages in the local area were about $15,000 or less. Defendants make our point for us. The Haynie operation has nothing to do with average. The average is a totally inappropriate comparator. The Haynie farm in 1992, had it been allowed to develop without the USDA's discriminatory denial of credit, would have had 4775 acres of crop land under cultivation, producing 6000 acres of harvested crops. The average farm in the Northern Neck in 1992 was about 314 acres and close to half of the farms were part-time operations.[129] The Haynie farm was not average, either in 1982 or later, even after the USDA discriminated against them. In fact, it appears the very fact that the Haynie farm was ***not*** average and was not viewed as average in the community caused the backlash to prospect of economic progress of a black farm family and prompted the USDA's discriminatory conduct.

Defendants also question Dr. Kambhampaty's estimate of net profit for 1997. They point out, correctly, that according to an ERS publication on corn farmers relied on by both experts, the average 750+ acre corn producer in 1996 earned $215,559 for the entire farm enterprise.[130] Defendants wonder how the Haynies could have achieved a net return of $1,170,526 for that same year. The answer, below, is relatively easy to ascertain.

The farm producing 750+ acres of corn portrayed in the ERS data earned $215,559, by harvesting 1054 acres of corn and operating another 1201 acres in some other fashion, not

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[128] Defs' Opp'n at 36 n.34.

[129] *See* www.nass.usda.gov:81/ipedb/ for Virginia Counties (average acreage of farm by county); 1997 Census of Agriculture—County Data, Table 11, at 319-44 (characteristics of operators). And it is not relevant that the Northern Neck had about the same proportion of part time farmers as the rest of the nation, either. *See* Defs' Opp'n at 39. n36. Anyway you cut it, the Haynie operation was not part-time. Thus, it would have been entirely inappropriate to base the Plaintiffs' damages estimate on the national average, which is full of part-time farmers, as Defendants have noted. Plaintiffs' estimate does not do that. Plaintiffs' estimate did not employ "national averages" as that term would be commonly understood, and Plaintiffs' damages estimate avoids the inclusion of part-time farm operations.

[130] Defs' Opp'n at 36 n.34 (referencing without citing Foreman at 23, Table 12).

identified.[131] The 750+ acre corn producer had a net return of $163.22 per acre for his corn acreage,[132] or (doing the math) $122,415 from corn. That means (doing the math) the other 1201 acres under production (in whatever commodity) netted $77.55 per acre returns for that 750+ corn producer.

In contrast, the Haynies had 3032 acres of corn under production[133] (not 1054), and would have netted $494,883 from the corn production alone, using the same per acre net returns as the farm in the example above. In addition, the Haynies had another 3722 (not 1201) acres under production because they had a large volume of acreage and double-cropped much of their land. Specifically, the Haynies had 2343 acres planted in soybeans and could have expected to realize $309,393 from them.[134] Thus, in corn and soybeans alone, the Haynie farm returns would have amounted to $804,276. ***Plus,*** the Haynies had another 717 acres planted in winter barley and another 662 acres planted in winter wheat that same year, ***and*** a large farrow-to-finish hog operation. Defendants fail in their attempt to show that the Plaintiffs' estimate is unreasonable by simply ignoring the characteristics of the Haynie farm and reverting to the mean to find "comparables." The fact is that the Haynie farm was not just a large corn producer ***or*** a large soybean producer; rather, it was a large corn producer ***and*** a large soybean producer ***and*** a large hog producer, ***and*** it produced significant amounts of wheat and barley as well.[135]

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[131] Foreman at 23, Table 12, & 21, Table 10.

[132] Foreman at 21, Table 10.

[133] *See* Kambhampaty Report at Exhibit F, "Projected Growth."

[134] *See* Defs' Opp'n at 36 n.34 (referencing Foreman & Livezey at 26); Foreman & Livezey at 24, Table 10 (reporting that in 1997, the return per acre of soybean for producers of 750+ acres of soybeans was $132.05 per acre).

[135] Both Defendants' expert and Plaintiffs' expert used Virginia state prices to estimate their damages. To the extent that average Virginia state price for corn in 1996 differed from the national average used in the Foreman publication to estimate returns per acre, Plaintiffs' estimate corn estimate is cannot be directly calculated from the information in the Foreman publication.

III. EQUITY REQUIRES THAT PLAINTIFFS' ACTUAL DAMAGES BE PAID IN TODAY'S DOLLARS

Defendants, having injured Plaintiffs twenty-some years ago and continuing the injury ever since, hope to injure Plaintiffs again, this time by paying them "actual damages" at a discount. In this case, this Court should exercise its equitable powers to prevent that injustice to Plaintiffs. These very Defendants acted in a manner to delay justice for victims of race discrimination for decades. Congress took special note of that fact and waived the normal statute of limitations—by 17 years in this case—to allow Plaintiffs such as these to seek redress for their injuries. Then, in this particular case, Defendants created additional delay by secretly denying access to a grievance process Plaintiffs thought was available to them. To allow Defendants to compensate Plaintiffs in dollars that are as much as 20 years old under these circumstances would be a travesty of justice. Equity requires that Plaintiffs be awarded the "actual damages" provided for by the ECOA, which presumes a complaint within two years of the injury.

Plaintiffs are mindful that the issue of pre-judgment interest, ***not*** an adjustment for inflation, was briefed and decided in this case. Defendants have pointed out that the controlling authority on pre-judgment interest equates pre-judgment interest with inflation, a conclusion that is not consistent with current economic thought[136] and the testimony of both the economic experts in this case.[137]

Here, whatever reasons there may be in the regular case to disallow an adjustment for

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[136] It is a common and standard understanding among economists and those in the financial and commercial world that interest is "consideration in the form of money for the use of money," and inflation is "an increase in the general price level resulting form increases in total spending relative to the supply of goods on the market." See American Bankers' Ass'n, Banking Terminology (1981) at 133, 138; *see also* W.W. Cooper and Yuji Ijiri (eds.), Kohler's Dictionary for Accountants, 6th ed. (1983) at 262, 271 (same).

[137] Kambhampaty Report at Exhibit G; Trostle Dep. at 55:18 – 57:2 (acknowledging that aside from the legal question, there is "absolutely" a difference between inflation and interest), 102:9 – 103:19 (acknowledging that the adjustment used in Plaintiffs' model adjusts for inflation only, not interest).

inflation in actual damages awards where the sovereign is Defendant, they do not apply here. The Defendants have not acted as sovereign here; they have violated the sovereign's laws with respect to these Plaintiffs repeatedly and with an incorrigibility that is stunning. To allow Defendants to benefit from their wrong-doing in depriving Plaintiffs of accessible process for a redress of their grievances would constitute a grave injustice.

In any case, Defendants have not moved for summary judgment on damages, and the Court should not grant Defendants any part of a judgment on damages on this record.

CONCLUSION

The undisputed material facts establish that the USDA discriminated against the Plaintiffs on the basis of race in violation of ECOA, thereby causing them injury. Plaintiffs have provided this Court with a reasonable basis for their estimate of economic damages and Defendants have not established that Plaintiffs' damages estimate is unreasonable. Therefore, summary judgment should be granted in favor of the Plaintiffs, for compensatory damages in the amount of $12,173,311.11 for damages through 2002, additional damages based on like calculations for periods thereafter through judgment, and reasonable attorneys fees and costs, and other relief as this Court finds just and proper.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, Defendant.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, *et al.*, Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2516 (PLF / DAR)

ORDER

Upon consideration of the motions, statement, memoranda of points and authorities, declarations, and other evidence relating thereto submitted by the parties in the above-captioned Civil Action 00-2516, and in consideration of the governing law, Plaintiffs' motion for summary judgment as to liability and damages, as well as reasonable attorneys fees and costs of the action is hereby

GRANTED in its entirety.

Plaintiffs should submit a revised and updated statement of damages within 30 days, as well as verified statement of attorneys fees and costs.

SO ORDERED this _____ of _____, 200__,

_____
Paul L. Friedman
United States District Judge

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, *et al.*, Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2516 (PLF / DAR)

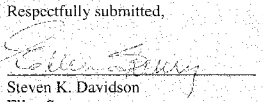
PLAINTIFFS' CORRECTED MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY AND DAMAGES IN CIVIL ACTION 00-2516

Plaintiffs in Civil Action No. 00-2516, Philip Johnson Haynie, II ("Mr. Haynie," "Philip Haynie" or "Philip") and Judith S. Haynie ("Judith Haynie" or "Judith") (together, "the Haynies" or "Plaintiffs"), through counsel, hereby submit this Motion for Summary Judgment as to Liability and Damages in Civil Action 00-2516, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

As demonstrated in the accompanying Statement of Undisputed Material Facts Establishing Summary Judgment as to Liability and Damages and Memorandum of Points and

Authorities in Support of Plaintiffs' Motion, the facts of this case, in their full context, establish that the USDA discriminated against the Plaintiffs on the basis of race in its decisions to deter Plaintiffs from obtaining loans, its failure to provide timely and adequate loan servicing, and its efforts to interfere with the Plaintiffs' administrative complaint process. Such actions constitute multiple violations of the Equal Credit Opportunity Act ("ECOA") and have caused injury to the Plaintiffs, for which they are due compensatory economic damages in the amount of $12,173,311.11, and reasonable attorneys fees and costs. Plaintiffs therefore request that this Court grant summary judgment as to liability and damages in their favor and against Defendants.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, *et al.*, Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2516 (PLF / DAR)

PLAINTIFFS' CORRECTED STATEMENT OF UNDISPUTED MATERIAL FACTS ESTABLISHING SUMMARY JUDGMENT AS TO LIABILITY AND DAMAGES IN CIVIL ACTION 00-2516

Plaintiffs in Civil Action No. 00-2516, Philip Johnson Haynie, II ("Mr. Haynie," "Philip Haynie" or "Philip") and Judith S. Haynie ("Judith Haynie" or "Judith") (together, "the Haynies" or "Plaintiffs"), through counsel, hereby file this Statement of Undisputed Material Facts Establishing Summary Judgment as to Liability and Damages in Civil Action 00-2516.

I. HISTORICAL BACKGROUND

The Northern Neck of Virginia[1] is a relatively insular four-county rural region where agriculture has long been an important sustaining industry. In 1982, the Northern Neck had a population of 40,950 residents, one-third African-American.[2] There were 682 farms in the region, with 40% of them run by farm operators whose principal occupation was something other than farming.[3] The average farm size for the region was less than 275 acres, and only four percent of the farms in the area were larger than 1000 acres. Of all farms, only eleven percent were operated by black farmers. Sixty-three percent of all farms, but less than five percent of the black-operated farms had annual sales of more than $10,000.[4] In short, the typical African-American farmer in the Northern Neck operated a small farm with sales less than $10,000. With respect to size of operation and volume of sales, Plaintiffs' farm was not typical of the farms in the region.

In 1982, Plaintiffs were farming about 1100 acres in the four-county Northern Neck, including a farm of 60 acres that had been in Philip Haynie's family for four generations.[5] That 60-acre farm in Northumberland County had been purchased on September 14, 1867 by

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[1] *See* Map of Northern Neck, appended as Exhibit 1. The Northern Neck is the name given to the peninsula that is defined by the Potomac River on the north, the Rappahannock River on the south, and the Chesapeake Bay on the east, and comprised of the four counties of Lancaster, Northumberland, Richmond and Westmoreland.

[2] *See* Exhibit 2. The entire population was classified as "rural" in the 1980 Census of Population. *See* USDA Office of Civil Rights Report of Investigation relating to Plaintiffs' administrative complaints ("ROI"), ROI at OCR-00696-719, appended as Exhibit 3.

[3] *Id.*

[4] *Id.*

[5] *See* excerpts from the FSA files produced in discovery in this litigation, and specifically, Farm & Home Plan dated 2/24/81, FSC-03204-07, appended as Exhibit 4.

Plaintiff's great-grandfather, Robert Haynie, a slave formerly owned by the Sydnors of Hill Valley Plantation in Northumberland County, after he, his wife and five children were all freed from slavery pursuant to the Thirteenth Amendment.[6] This was the first farm in the county purchased by a former slave.[7] Robert Haynie sustained his family on that farm and bequeathed it to his youngest son, Harvey Johnson Haynie, who in turn, raised his family on that farm, and bequeathed it to his son, Philip Johnson Haynie, I.[8] His son, Philip Johnson Haynie, II, Plaintiff in this action, had the same plan as his forefathers – to be a successful Northern Neck farmer – only bigger and better.[9] But the local community did not approve of such plans from a black man. Responding to that disapproval, the local USDA offices violated the law prohibiting race-based discrimination in credit transactions, sealing the doom of Plaintiffs' plans.

II. PERSONAL BACKGROUND

Born April 10, 1954, the son of a farmer and college-educated school teacher who earned a master's degree from the University of Virginia, Philip grew up helping his father and grandfather farm the 60 acres his great-grandfather had purchased in 1867.[10] Philip loved farming and never desired any other occupation.[11] From grade school[12] through college, he

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[6] *See* Carolyn H. Jett, The Reverend Robert Haynie and His Descendants, 1989, unpublished manuscript, 7-8.

[7] *Id.* at 8.

[8] Declaration of Philip J. Haynie, II ("Philip Haynie Decl.") ¶ 2.

[9] *Id.* ¶ 6.

[10] *Id.* ¶¶ 2, 4.

[11] *Id.* ¶¶ 3, 6; Deposition of Philip J. Haynie, II ("Philip Haynie Dep."), appended as Exhibit 5, at 16:13-16 ("I'm a fourth generation farmer and I have been involved in farming as long as I can remember, all of my life, with my grandfather and father."); 17:12-14 ("So my involvement in farming has been a life long – it's been my life long dream and desire to own a farm and to be a farmer.").

farmed whenever he could, after school, on weekends and in the summers.[13] During his last two years in college, he lived in Heathsville, commuting nearly 100 miles each way three days a week to attend classes, so he could spend the rest of his time at home farming.[14]

In 1975, Philip married Judith Scott from Suffolk, Virginia.[15] Judith, already graduated with a degree in microbiology, took a job teaching high school biology in the Northumberland County School District while finishing her master's degree in biology.[16] In 1976, Philip graduated *cum laude* from Virginia State University with a B.S. in animal science and set out to develop his own family farm, determined to be successful.[17]

III. ACCESS TO USDA'S FARMER PROGRAMS CREDIT (1977 – 1981)

Philip Haynie had a farrow-to-finish hog operation and was farming a few hundred acres of soybeans, barley and corn when a drought hit the Northern Neck in 1977.[18] The local FmHA County Supervisor, Manley Chadwick, told Mr. Haynie about the low interest Emergency Loans

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[12] Philip attended segregated schools through the 8th grade. Then, in 1968, when Philip was entering 9th grade, the public schools in the county were integrated. Philip Haynie Decl. ¶ 4.

[13] *Id.* ¶ 3; Philip Haynie Dep. at 16:12 - 17:14; Deposition of Anthony Falls ("Falls Dep."), appended as Exhibit 6, at 91-92; Deposition of Judith Haynie ("Judith Haynie Dep."), appended as Exhibit 7, at 16:20-21.

[14] Judith Haynie Dep. at 9:19-20; 14:23-25; 15:6-8; Philip Haynie Dep. at 16:24 – 17:5 ("After going to college, during that whole time I was involved with the farming. Four years of college, I never spent a weekend on campus. I came home every weekend to work on the farm. At one point in time, I, the last two years, my junior and senior year in college, I set all my classes up on Monday, Wednesday and Friday, which allowed me Tuesdays and Thursdays to stay at home and work on the farm.").

[15] Judith Haynie Dep. at 11:11; 12:13-15.

[16] *Id.* at 7:5-8; 9:19-20; 12:5-12; 14:21-15:2.

[17] Philip Haynie Decl. ¶ 5.

[18] *Id.* ¶ 7; The 1978 Farm & Home Plan shows plans to farm 655 acres of land the following season, 1978. *See* Farm & Home Plan, 10/28/77, ROI at OCR-00462.

("EM" loans) available to farmers through the USDA.[19] The Haynies applied for and, in early 1978, received three such EM loans.[20]

The next year, intending to expand their farming operation, along with a cousin, Townsend Jackson and his wife, the Haynies obtained three new loans from the USDA. One was a 40-year $200,000 Farm Ownership ("FO") loan at a rate of 8.5%, for the purchase of a 180-acre farm in Reedville, Virginia, in Northumberland County.[21] The property had two dwellings on it, neither of which was inhabitable without major repairs, so the Haynies and Jacksons obtained an Economic Emergency ("EE") loan[22] to repair and renovate the small tenant house on the farm.[23] They also obtained a second EE loan to support the grain and hog operations.[24] The following year, 1980, the Jacksons and the Haynies co-signed for three more

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[19] Affidavit of Philip J. Haynie, II ("Philip Haynie Aff.") ¶ 4 (ROI at OCR-00342).

[20] *See* Exhibit 4, FSC-00245 – 46 ($78,480 for 7 years at 3% interest); FSC-00212 – 14 ($23,000 for 20 years at 8%); FSC-00271 – 72 ($80,000 for 7 years at 8%). EM loans are authorized by the 1972 amendments to the Consolidated Farm and Rural Development Act of 1961 and are available only to farmers who have suffered losses caused by natural disasters in a county has been declared a disaster area either by the President or the Secretary of Agriculture. *See* 7 U.S.C. § 1961.

[21] *See* Exhibit 4, FSC-00029 – 31.

[22] EE loans are authorized under Emergency Agricultural Credit Adjustment Act of 1978 (codified at 7 U.S.C. § 1921 *et seq.*) and were intended to provide credit to farmers who needed it in order to maintain a viable operation but were not able to obtain sufficient credit elsewhere due to economic stresses. *See* Pub. L. No. 95-334, Title II, § 202(B)&(C), 92 Stat. 420, 429 (1978).

[23] *See* Exhibit 4, FSC-00218 – 20 ($43,250 for 40 years at 8.5% interest, for real estate improvement), and FSC-00224 – 26; *see also* ROI at OCR-00473.

[24] *See* Exhibit 4, FSC-00029 – 31 ($89,100 for 7 years at 8.5% interest to finance hog and grain operations; *see also* ROI at OCR-00473.

USDA loans[25] to soften the blow of economic losses due to a fire that destroyed their farrow-to-finish hog operation and buildings, and to continue the grain farming operation.

From the beginning, the Haynie farm reflected good farm management skills and expertise. For example, with four grain crops and hogs, the farm was diversified to some extent, affording protection against unpredictable prices or a disease affecting a single crop's yield. The Haynie farm also rotated crops to enhance crop yields.[26] Most of the land was double-cropped as well, providing an increased return on land costs.[27]

To maximize returns on marginal lands, the Haynies selectively participated in set-aside programs provided by the USDA.[28] Further, Mr. Haynie worked to farm large-acre tracts of land, reducing the costs of moving and setting up equipment.[29] He had informal cooperative agreements with other farmers whereby they helped each other when additional labor produced efficiencies.[30]

The Haynies maximized efficiencies in other respects as well. They owned trucks used for transporting bulk purchases of feed, seed, and other inputs, and for transporting crops and livestock to non-local markets to benefit from higher prices, reducing expenses and maximizing

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[25] *See* Exhibit 4, FSC-00285 – 87 (an EM loan of $82,000 for 1 year at 10.5%); FSC-00230 – 32 (an EE loan of $70,000 for 20 years at 10%); and FSC-00020 – 22 (an operating loan ("OL") of $34,000 for 7 years at 10.5%).

[26] Philip Haynie Decl. ¶¶ 8-9.

[27] *Id.* ¶ 9.

[28] *Id.* ¶ 10; Letter from Roie Godsey, Virginia State Director, to Charles Shuman, National Administrator, 11/30/83 (ROI at OCR-00584) ("good management practice of participating in the PIK program and insuring all of his crops").

[29] Philip Haynie Decl. ¶ 14; Declaration of John Hutcheson ¶¶ 4-6.

[30] Philip Haynie Decl. ¶ 26.

flexibility.[31] Empty returning trucks were used to haul other products, such as sludge waste.[32] In the off-season, the trucks provided a source of off-farm revenue by hauling other products, such as fish products and nursery stock on a contract basis.[33] The Haynies also owned a grain storage facility which allowed more efficient use of harvesters and hauling equipment and also allowed for the storage of grain for sale at higher prices in later months.[34] Further, the Haynies were able to purchase inputs at dealer discounts, realizing a savings of 25-30% for fertilizer, around 15% or better for chemicals (herbicides and pesticides), and 10-15% savings on seed corn.[35] The Haynie farm also purchased diesel fuel by the 7500 gallon tank load at a discount.[36]

By availing himself of the expertise of the county extension agents and other continuing education opportunities, Mr. Haynie stayed current in and employed best practices for fertilizer application, soil preparation and precision farming techniques.[37] He became qualified to apply fertilizers and maintained his own fertilizer application equipment, avoiding the costs of hiring others to accomplish these tasks. Between the dealer/bulk discounts and applying the products

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[31] Philip Haynie Decl. ¶¶ 18-19.

[32] Deposition of Gail Grant ("Grant Dep."), appended as Exhibit 8, at 48:8-17 ("That was pretty good money apparently, with him hauling the sewage from either Northern Virginia, New York or somewhere. I asked him, Didn't it cost a lot of money? He said he would haul something one way and bring something back the other way. Apparently it was a profit."); *id.* at 110:4-12 ("The sludge thing to me was a good thing. A lot of people didn't like it, but it really helped cut down on nitrogen that they had to buy, which was expensive.").

[33] Philip Haynie Decl. ¶ 21.

[34] *Id.* ¶¶ 22-23; Grant Dep. at 47:13-14; 48:2-4 ("To get a better price for his grain, he would haul grain to Norfolk to sell it.").

[35] Declaration of Jackie Barrack ¶¶ 4-7; Philip Haynie Decl. ¶ 19; Philip Haynie Dep. at 58:3-9.

[36] Philip Haynie Decl. ¶ 20.

[37] Philip Haynie Decl. ¶¶24-25.

himself, Mr. Haynie estimates that he saved upwards of 30% on fertilizer costs.[38] The overall Haynie farm plan was evident: use best practices and internalize as much of the cost of production as possible, and spread the costs over a large number of acres.

Some USDA staff recognized early that Philip Haynie was a promising farmer, well-positioned for success. One USDA staffer employed in the Northern Neck between 1981 and 1983 testified that Mr. Haynie was regarded locally as extremely hard working, very bright, a smart farm manager, and pleasant and friendly.[39] The FmHA state director, citing Mr. Haynie's "good management practices," noted that he was "making progress far beyond that of the average farmer in the state of Virginia, considering economic conditions."[40] The assistant county supervisor testified that Mr. Haynie often worked from sun-up to sunset, used good practices to be a successful farmer, tried to improve efficiences, had a college degree and could appreciate relatively sophisticated business concepts such as forward contracts.[41] And, an employee in the Warsaw office in 1992 knew of Mr. Haynie's reputation as an exceedingly hard

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[38] *Id.* ¶ 25.

[39] *See* Deposition of Carlton Lewis ("Lewis Dep."), appended as Exhibit 9, at 46:20 – 48:15. Mr. Lewis, an African-American, was born and raised in Horsehead, Virginia, a very small town in Northumberland County in the Northern Neck five miles south of Heathsville. He knew Philip Haynie since Philip was a child. Lewis has family and friends in the Northern Neck, was and is personally familiar with the culture and style of race discrimination in that area, and generally knew the talk circulating in the black community's grapevine in the 1980s and later. He is a 30+ year employee of the USDA. From 1981 – 1983, he worked in the USDA's district office that served the Northern Neck. Since then, he has worked for the USDA in Washington, D.C. and is currently part of the civil rights staff in Rural Development. *Id.* at 13:13 – 18:7, 30:1 – 37:20; 53:8-14, 84:14-20.

[40] Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00584).

[41] *See* Gail Grant Dep. at 69:22-23 ("... in the field actually from sun up to sunset."); 110:1 – 111:5 (noting that Philip Haynie was always trying to improve his efficiencies and probably could understand forward contracts); 112:10 ("Philip had a college degree himself.").

worker: "I heard he was a hard worker, always on the tractor. You know, late at night, headlights always on, he would even be found asleep in the tractor."[42]

The early decisions made by the USDA were consistent with these positive appraisals of Mr. Haynie's skills, stamina, dedication and promise. By the summer of 1981, the USDA had loaned the young Haynies more than $1 million, some of it at fairly high interest rates, as reflected the times.[43] But 1981 was a pivotal year for the Haynies. The Jacksons decided to leave the region and the farming operation they had ventured into with the Haynies.[44] The Haynies assumed sole responsibility for the USDA loans they had co-signed with the Jacksons.[45] In April 1981, the Haynies closed on three more EM loans from the FmHA,[46] approved after review by USDA District Director Barry Wright, a black man.[47] But sometime before the end of 1981, John Slusser, a white man, had become District Director for the Northern Neck,[48] and the USDA never again made any Farmer Programs loans to the Haynies.

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[42] Deposition of David Luckritz ("Luckritz Dep."), appended as Exhibit 10, at 31:5-7.

[43] The aggregate amount of the original loans was $1,228,910. In 1980, the USDA loaned the Haynies (with the Jacksons) $186,000 at rates of 10% or higher, and in 1981, another $343,000 at 13%.

[44] Philip Haynie Decl. ¶ 7.

[45] *See* Letter from National Administrator Shuman to State Director Godsey 10/28/83, ¶ 5 (ROI at OCR-00582) (the assumption was effective April 16, 1982); Judith Haynie Dep. at 23, 102-03.

[46] *See* Exhibit 4, FSC-00253 – 55 (an EM loan for $107,600 for 7 years at 5% interest); FSC-00273 – 75 (an EM loan for $213,000 for 7 years at 13%); and FSC-00279 – 81 (an EM loan for $130,000 for 1 year at 13%).

[47] *See* Letter from Godsey to Shuman, 11/30/83, ¶ 8 (ROI at OCR-00584 - 85). The FMHA District Director is the County Supervisor's immediate superior.

[48] *See id.*; *see also* Exhibit 4, Letter to Philip Haynie, 12/30/81, FSC-02722.

While the black farming community was proud of the Haynies' operation,[49] some in the local white farming community had a negative reaction to the Haynies' apparent economic plan and progress.[50] As one sympathetic white person observer told Philip Haynie: he was viewed as a cow who had gotten outside the fence—if he was allowed out, then others would want out.[51]

IV. USDA DENIES ACCESS TO CREDIT IN RESPONSE TO RACIAL ANIMUS EXPRESSED BY THE COMMUNITY

The sentiment expressed by that sympathetic observer – that the community was reacting negatively to the success of a black man – was reflected in the Haynies' experience. Not long after the Haynies purchased the Reedville farm in 1979, Mr. Haynie received an anonymous telephone call warning, "Nigger get out. You don't belong on that farm."[52] In February 1980, an unexplained night-time fire destroyed the Haynies' farrow-to-finish hog operation and building, which many suspect, in hindsight, was intentionally set by those giving vent to racial animus.[53] The loans from the USDA were insufficient to fully compensate for the loss and allow the Haynies to recover, so they had to scale back their farrow-to-finish operation to a feeder pig operation.[54] In the winter of 1981-82, Mr. Haynie was awarded the right to farm a choice tract of

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[49] *See* Lewis Dep. at 32:11-19 ("he was a large farmer. I mean, [black farmers were] very proud of him being a large farmer, period.").

[50] *See also* Section B, immediately below.

[51] Philip Haynie Decl. ¶ 43.

[52] Philip Haynie Aff. ¶ 4 (ROI at OCR-00343).

[53] ROI at 3 (OCR-00325); Affidavit of Gail Grant ("Grant Aff.") ¶ 13 (ROI at OCR-00382); Grant Dep. at 84:5-11; Philip Haynie Aff. ¶ 4 (ROI at OCR-00343); Judith Haynie Dep. at 107:21-25; Affidavit of Manley Chadwick ("Chadwick Aff.") ¶ 4 (ROI at OCR-00387).

[54] Philip Haynie Decl. ¶ 27.

land that had previously been farmed exclusively by white producers.[55] Rumors followed that Mr. Haynie had paid an exorbitant price to wrench the land from white producers,[56] but in fact, Mr. Haynie had not even made the highest bid for the land.[57] Then, one night in the late spring of 1982, someone shot up the Haynies' tractor as it sat overnight in that field.[58] The Haynies did not consider this random event of vandalism,[59] but rather an act of intimidation.[60]

It was obvious to both USDA staff and to the Haynies that many in the local white farming community were upset by the Haynies' efforts to develop a successful and competitive farm. Persons familiar with the situation, both then and now, understood these attacks to be race-based:

> We do not believe that the allegations made by unidentified people in the area have any validity at all. Our investigation did not reveal that the borrower is doing anything illegal. It appears that the allegations made are discriminative, both racially and age-wise. Mr. Haynie's success in renting quality farmland due to good management practices have led many of his competitors to look for reasons to criticize him.[61]

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[55] *Id.* ¶ 30.

[56] *See* Record of Telephone Call, 8/17/82 (ROI at OCR-00455).

[57] The highest bid had presumably been placed by George Self, the white farmer who initially won the bid for the land. Philip Haynie Decl. ¶30.

[58] Declaration of Judith Haynie ("Judith Haynie Decl.") ¶ 3; Philip Haynie Decl. ¶ 30.

[59] Judith Haynie Decl. ¶ 3; Philip Haynie Decl. ¶ 30.

[60] To date, the Haynies know of only one other such attack on a farmer's equipment. In late October 2003, just days after former USDA personnel from the local office had been noticed or subpoenaed for deposition in connection with this case, the tractor belonging to their son, Philip J. Haynie, III ("P.J. Haynie") was damaged by vandals using a paintball gun. The windshield was broken and the equipment splattered with paint. Philip Haynie Decl. ¶ 45; Judith Haynie Decl. ¶ 8.

[61] Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00585).

> Mr. Haynie was a very large and successful minority producer in the Northern Neck of Virginia. Because of this there was an uproar from the white farmers. I believe the white farmers simply could not understand how a black farmer could reach this level of success.[62]

♦

> . . . [I]t's an old statement, but [as a minority in the Northern Neck] you knew what you could and could not do. And Ricky [the Plaintiff, Mr. Haynie] had stepped beyond those bounds of doing what we used to do. We farmed, I farmed myself, or with my father, my uncle; we were a small farmer. And Ricky was farming a large amount of land so he was not the normal minority farmer in that area. So, yes, he was a target . . . .[63]

> Q: In your impression would resentment, because Haynie was becoming a big farmer, have been exacerbated by the fact that he was black?"
>
> A [Lewis]: Yes.[64]

One anonymous caller told a landlord renting to Philip Haynie that if a farmer is black, then he isn't a good farmer.[65] Gail Grant, the assistant county supervisor from 1982 through 1987, and later the county supervisor, also testified to the restricted role blacks were allowed and that Mr. Haynie was attacked because he exceeded those boundaries:

> Q: Did you ever have any sense that the community sentiment toward Mr. Haynie, the portion that was hostile, was in anyway related to race, partly related to race? Let me suggest or ask you whether it had anything to do with the fact that Mr. Haynie was a black farmer who wanted to grow into a big black farmer and be very ambitions [sic] and successful?
>
> A: I think so.

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[62] Affidavit of Ava Marshall ¶ 5 (ROI at OCR-00374).

[63] Lewis Dep. at 92:5-11.

[64] *Id.* at 56:13-15.

[65] Deposition of Walter Goodman ("Goodman Dep."), appended as Exhibit 11, at 21:10 -- 22:3.

* * * *

> Q: Would you say that in that community there were boundaries for black farmers and Mr. Haynie was pushing up against those boundaries and created some resentment?
>
> A: Yes.[66]

Mr. Chadwick, the local county supervisor, understood the white community's hostility to the Haynies to be both race-based and unfounded. As he later stated under oath:

> There is no doubt in my mind that there was racial discrimination within the community. Many people in the community were assuming that Mr. Haynie was getting constant funding from FmHA to maintain his large operation. This was obviously not true but the perception was there. Also, many black land owners in the area also preferred to rent their land to a black farmer like Mr. Haynie. So when the leases with the white farmers came up they would switch to Mr. Haynie. These factors increased tensions in the [Northern] Neck.[67]

Ms. Grant concurred with this assessment:

> Many white farmers were upset at Haynie because they thought he was constantly borrowing money from FmHA so he could lease additional property. This was not true but caused ill feelings.[68]
>
> There were actually farmers out there that thought that Philip Haynie came in the office and we just gave him truckloads of money.[69]

Privately confiding to Mr. Haynie that he was feeling community pressure,[70] in August 1982, Mr. Chadwick reported to the FmHA state office that "Haynie has been told that his

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[66] Grant Dep. at 155:9-23.

[67] Chadwick Aff. ¶ 11 (ROI at OCR-00388).

[68] Grant Aff. ¶ 13 (ROI at OCR-00382).

[69] Grant Dep. at 83:6-8.

[70] Haynie Dep. at 45:12-46:5; Haynie Aff. ¶ 4 (ROI at OCR-00343).

operation is too big and that he probably will not be eligible for any more loans from this agency."[71] Mr. Chadwick also later stated that the Haynies had reached the maximum allowable loan limit for a borrower under the Farmer Programs, and recalling the situation, Mr. Chadwick testified in response to specific questions on the subject:

> Q: The record indicates that Mr. Haynie was told that he had gotten to [sic] large and was probably no longer eligible for additional FmHA loans. Do you recall who made this statement or what it means?
>
> A [Chadwick]: I do not recall who made this specific statement, but Mr. Haynie did reach the maximum loan amounts authorized under the regulations and thus was no longer eligible for further assistance. My approval authority had long been exceeded and latter [sic] loans had to all be sent to the district office and state office for approval. There is no question in my mind that Mr. Haynie understood that he could no longer obtain further assistance because he had reached the maximum loan amounts.
>
> Q: Do you recall if Mr. Haynie was ever told that he was no longer eligible for additional assistance because he had gotten to [sic] large and no longer qualified as a family farm?
>
> A [Chadwick]: Mr. Haynie had reached the maximum loan amounts specified under the regulations and was no longer

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[71] *See* Record of Telephone Call, 8/17/82 (ROI at OCR-00455) ("County Supervisor Manley L. Chadwick, Warsaw, advises that this is one of the borrowers with loans in excess of $1,000,000. He has one $200,000 participation FO; one OL, EMs and EEs. He is delinquent. County Supervisor has worked out arrangements for curing delinquency, but borrower has not met the arrangements. Haynie has been told that his operation is too big and that he probably will not be eligible for any more loans from this agency. The people in the community are talking about Haynie, and the County Supervisor says he should be watched. Talk in the community – not verified: Haynie is paying more to rent land than is customary – about double – therefore, land owners rent to him and the other farmers can't get land to rent. It is also rumored that he is hauling marijuana, and the County Supervisor says this was heard from a responsible citizen. We have a lien on the truck he is hauling it in. The above information was telephoned to the National Office on 8/18/82."). A "responsible citizen" in this context would mean a white citizen. *See* Lewis Dep. at 81:10 – 89:9 (testifying that this rumor had not circulated in the black community, that anyone who knew either Philip Haynie or the local black community would have regarded this allegation as not credible, that Mr. Chadwick knew both Philip Haynie and the black community, and that the phrase "responsible citizen" used in this context meant a white person). *See also* Letter from George T. Moore to Congressman Paul Trible, 9/9/82 (ROI at OCR-00456) (referencing a "complaint" made by a white farmer's wife from Lottsburg, Virginia, about the USDA's dealings with Philip Haynie and prompting a response defending the USDA).

> considered a family farm. It was my understanding that an operator no longer qualified as a family farm when their operation exceeded what the average farm was doing in the community. I believe this would be less than 1500 acres (under rotation) or about 600 acres in total. There was no question in my mind that Mr. Haynie no longer qualified as a family farm.
>
> Q: Did the county committee determine this definition for a family farm?
>
> A [Chadwick]: The county committee never formally made this determination but it was my understanding that this did not qualify as a family farm.[72]

These assessments—both with respect to eligibility as a family farm and the loan limits—are demonstrably incorrect. Yet Mr. Chadwick was an experienced county supervisor with a good working knowledge of the regulations,[73] and there is little doubt that Mr. Chadwick knew the details of the Haynies' account.

Manley Chadwick's statements had the effect of deterring the Haynies from applying for more loans.[74] In fact, Mr. Chadwick admitted that he ***knew*** that by this mechanism he had dissuaded Mr. Haynie from applying for such loans: "***There is no question in my mind that Mr. Haynie understood that he could no longer obtain further assistance . . . .***"[75] Chadwick's

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[72] Chadwick Aff. ¶¶ 5 - 7 (ROI at OCR-00387). Mr. Chadwick was not correct in identifying the size of the average farm operation in the area at the time the Haynies were told they were too big to be a family farm. According to the 1982 Census of Agriculture, the average farm in the Northern Neck in 1982 was about 275 acres, less than half the size Mr. Chadwick identifies in his latter-day attempt to justify denying the Haynies access to government benefits available only to the family farm. *See* Exhibit 2.

[73] *See* Grant Dep. at 138:8-140:3; Lewis Dep. at 57:13-16, 69:6-16; Affidavit of John Slusser ("Slusser Aff.) ¶ 13 (ROI at OCR-00392).

[74] Philip Haynie Dep. at 49:8-50:22; Judith Haynie Aff. ¶ 6 (ROI at OCR-00359); Philip Haynie Aff. ¶ 6 (ROI at OCR-00344-45).

[75] Chadwick Aff. ¶ 5 (ROI at OCR-00387) (emphasis added).

determinations regarding the Haynies' farm size and loan amount limits defined the USDA's position with respect to the Haynies for years.[76]

Without access to USDA credit, Mr. Haynie was forced to seek commercial credit. However, the USDA had imposed a blanket lien on all of the Haynies' real estate, assets and crops,[77] making commercial credit difficult to obtain and often available only at exorbitant rates, a fact well-known to the USDA.[78] This Hobson's choice, forced on them by the USDA's illegitimate position, only exacerbated the Haynies' precarious financial situation.[79]

In addition, because of the blanket lien on all the Haynies' assets, each time Mr. Haynie sold a harvested crop, for example, the check for the proceeds from that sale would be made out to both the FmHA and Mr. Haynie, requiring Mr. Haynie to obtain an authorized USDA signature during office hours.[80] On many occasions, days and even as much as a week passed before Mr. Haynie could obtain the needed signature to cash the check.[81] This interfered with his ability to purchase the inputs he needed to properly manage his crops or plant the next crop.[82] For example, once he was so delayed that he was unable to spray his planted soybeans in time, and they had to be replanted, reducing their growing season and affecting his yield, not to

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[76] Grant Dep. at 151:1-152:15; 146:22-148:8.

[77] Philip Haynie Dep at 65:7 – 66:19.

[78] Grant Dep. at 30:12-14 (". . . a lot of those places, they charge 28 percent, which I don't understand how they thought the farmers could pay it back at 28 percent . . .").

[79] Deposition of Ronald G. Trostle ("Trostle Dep.") at 66:10-18 & Ex. Trostle-2.

[80] Philip Haynie Dep. at 61:9-14; Philip Haynie Decl. ¶ 36.

[81] Philip Haynie Dep. at 61:16 – 67:17.

[82] *Id.* at 60:18 – 61:1, 62:4-10; Philip Haynie Decl. ¶ 36.

mention his cost of planting one crop twice.[83] Depending on weather conditions and the time of year, this delay sometimes had a critical adverse effect on Mr. Haynie's ability to get the planting done at the optimal time to produce the best yields possible.[84]

The Haynies continued to raise their young family and develop the farming operation.[85] Judith Haynie continued to teach high school science.[86] A student, Greg Harris, son of a white farmer, audaciously challenged her in school, asking how the Haynies had managed to get so much money from the USDA.[87] Then, in January 1983, for the ***second*** time in three years, a never-explained fire burned the Haynies' hog barn and the 950 feeder hogs it housed to the ground. For the ***second*** time, the Haynies lost their livestock, their livestock building, and much of their expected income for the year. Further, the fire caused extensive damage to the equipment shed and the costly farm equipment housed within. Many in the community, then and now, strongly suspect that this barn-burning was racially motivated.[88]

After the second fire, the Haynies were unable to completely rebuild their feeder hog operation.[89] In addition to this major set-back, the Haynies' financial position took another turn for the worse when, on doctor's advice to prevent a possible miscarriage, Judith Haynie had to leave her position as a school teacher in April 1983. With Judith Haynie out of work, the family,

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[83] Philip Haynie Dep. at 60:18 –61:1.

[84] *Id.* at 60:18 – 62:10; Philip Haynie Decl. ¶ 36.

[85] Judith Haynie Dep. at 12:18-13:6.

[86] *Id.* at 6:15-21.

[87] *Id.* at 51:22-23; Judith Haynie Decl. ¶ 4.

[88] Philip Haynie Decl. ¶ 33, Judith Haynie Dep. at 107:21-25, Chadwick Aff. ¶ 4 (ROI at OCR-00387); Grant Dep. at 84:5-7; Grant Aff. ¶ 13 (ROI at OCR-00382); ROI at 3-4 (OCR-00325-26).

[89] Philip Haynie Decl. ¶ 34.

with three very young children and a fourth on the way, was now entirely dependent on the farm for income, at a time when non-USDA credit for farmers was exceedingly tight. Both the loss of Judith's teacher's income and benefits coverage and the growing family,[90] as well as the unfavorable credit situation for farmers nationally,[91] were justifications for extending credit or granting other relief to the Haynies through debt servicing, but the USDA elected to do neither.

The race-based harassment directed at the Haynies continued, and the USDA persisted in its illegitimate denial of access to credit. In late summer and fall 1983, Mr. Haynie was again the target of unfounded discrediting allegations, this time including a request for an investigation by the Office of the Inspector General ("OIG") for conversion.[92] The motive behind the attacks appears to have been that once again, a white landowner who had been renting farmland to white producers decided instead to rent to Mr. Haynie.[93] As before, the white farming community reacted strongly to the turnover of white-farmed land to black-farmed land. The landowner, Walter Goodman, received several anonymous telephone calls warning him against renting the

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[90] *See* 7 C.F.R. § 1941.12(a)(4) (1982), appended as Exhibit 12.

[91] Exhibit 12, 7 C.F.R. § 1945.104 (1982) (an "economic emergency" is "a condition resulting from (i) a general tightening of agricultural credit, or (ii) an unfavorable relationship between production costs and prices received for agricultural commodities, which has resulted in widespread need among farmers for temporary credit.").

[92] *See* Letter from Shuman to Godsey, 10/28/83 (ROI at OCR-00581 – 582) (referencing possible conversion and OI investigation). *See also* Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team, Washington, D.C., February 1997 Report ("CRAT Report") at 8 ("Farmers also told the CRAT that USDA's Office of Inspector General is being used by management to investigate and bring unsubstantiated charges against them. 'I've got stories' of OIG investigations and retaliation against farmers, a farm advocate said.").

[93] *See* Letter from Walter Goodman to Congressman Herbert Bateman, 10/21/83 (ROI at OCR-00511). The Conley Brothers were white farmers in the area, who wanted to continue farming the Goodman property, but Mr. Goodman declined because they had been disrespectful of the property and it had fallen into disrepair in some respects, in Mr. Goodman's estimation. Goodman Dep. at 14:11 - 18:20.

land to Mr. Haynie.[94] He was also approached by strangers on the street who made racially prejudiced statements to the effect that renting land to a black man was a big mistake, that if the farmer is black then he must be incompetent, and that Mr. Goodman's property would be damaged and he would regret his decision if he rented to a black farmer.[95] Once again, there were unsubstantiated but virulent rumors that Mr. Haynie paid exorbitant land rent to unseat the white producers.[96] Although immaterial, the truth is that Mr. Haynie paid no more for the land he rented from Mr. Goodman than the former tenants, the Conley Brothers, had paid.[97]

The allegations of conversion, which provided a pretext for the request for OIG attention, proved baseless: Mr. Haynie had employed the innocuous and commonplace practice of selling a small amount of grain in a child's name to interest that child in the enterprise of farming.[98] The State Director, responding to the allegations directed at the Haynies, stated:

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[94] *See* Goodman Dep. at 21:10 – 23:13.

[95] *See id.* at 21:10 – 23:13.

[96] *See* Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00585) ("Mr. Haynie's success in renting quality farmland due to good management practices have led many of his competitors to look for reasons to criticize him.").

These rumors, though immaterial in the first place and admittedly unsubstantiated in the second place, are viewed by some USDA personnel as relevant truths, even today, as if it provides an alternative explanation to hostility fueled by race discrimination. *See* Luckritz Dep. at 31:5 – 38:20, 54:2 – 58:18. It appears that the land rent rumors are a well-nurtured pretext for race-based discrimination. Carlton Lewis, familiar with the community and a USDA employee, testified that such allegations were commonplace criticisms of expanding farmers and not credible: ("They said that of anyone who was trying to move forward."). Lewis Dep. at 49:1-2; *see also generally id.* at 47:21 – 50:5. The same goes for the completely unsupported "belief" that Mr. Haynie pocketed insurance proceeds rightfully belonging to the FmHA, *see* Luckritz Dep. at 38:21 – 41:4, a belief refuted by the FmHA records themselves, *see* ROI at OCR-00474.

[97] *See* Goodman Dep. at 33:20 – 34:9; *id.* at 36:20 – 37:22 (testifying that any allegations that Mr. Haynie was paying about double the then-market rate of about $45 for good cropland, i.e. $90/acre for land rent was "crazy," not credible on its face, and anyone in the farming business would have questioned the accuracy of the statement).

[98] Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00584). It is worth noting that whoever made these allegations would (a) have had access to confidential USDA information about the Haynies'

> We do not believe that the allegations made by unidentified people in the area have any validity at all. Our investigation did not reveal that borrower is doing anything illegal. It appears that the allegations made are discriminative, both racially and age-wise. Mr. Haynie's success in renting quality farmland due to good management practices have led many of this competitors to look for reasons to criticize him.[99]

However, the state director's letter did not refute or correct or even, apparently, examine the position adopted by the local office and repeated by the national office: that "the borrower has been told that his operation exceeds a family size and further financial assistance from FmHA would not be available."[100]

In or around 1983 or 1984, Ernest Lee ("Ting-al-ling") Rogers, a white producer operating a large family farm in the Northern Neck, made complaints to the national office that Mr. Haynie was misusing USDA funds.[101] At a meeting in Washington regarding the allegations, Mr. Rogers openly stated that the basis for his complaints against Mr. Haynie was that Mr. Haynie was black.[102]

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account, and (b) would have known or should have known that the practice of selling a little grain in your child's name was in fact commonplace in the local farm community and not tantamount to conversion. *See also* note 92, above, discussing the practice of USDA staff misusing the OIG to make personal unsubstantiated attacks on farmers.

[99] Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00585).

[100] Letter from Shuman to Godsey, 10/28/83 (ROI at OCR-00582).

[101] Affidavit of Carlton Lewis ("Lewis Aff.") ¶ 11 (ROI at OCR-00371); Lewis Dep. at 78:2-12 ("He [Mr. Haynie] was a large farmer . . . . And this was Mr. Roger's feeling, you know, he's a black farmer, he's getting a lot of loans and it's got to be because he's black.").

[102] Lewis Dep. at 74:19 – 79:2; Lewis Aff. ¶ 11 (ROI at OCR-00371).

In March 1985, three letters bearing the signatures of 74 local white farmers and their wives were sent to Congressman Herbert Bateman.[103] The letters included the following statements:

> We hear that two farmers, namely Philip Haynie and Gatewood Roane[104] are in debt to the F.H.A. for over $1,500,000 each and are still receiving financial assistance.
>
> We also understand that Philip Haynie is receiving weekly checks from the government to cover 80 percent of his labor cost.
>
> He [Philip Haynie] has doubled the rent paid by other farmers to get their rented land. He is paying as high as $120 per acre for some land.
>
> How can we compete with this? Farmers in the Northern Neck are losing their rented land to these two farmers who are paying outrageous land rent.
>
> We the undersigned citizens [of Richmond County] hate to see our tax dollars used against us.
>
> Hope you will give this your immediate attention.[105]

One of the persons signing two of the letters, Indianola Balderson, signed in his capacity as USDA County Committeeman from Richmond County.[106]

Once again, the Congressman asked the USDA to respond. Once again, the Virginia state director explained that the allegations were unfounded:

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[103] *See* Letters to Congressman Bateman, 3/22/85 (ROI at OCR-00501 – 507).

[104] Gatewood Roane was a very successful, large African-American farmer in Westmoreland County. In about the 1985-1987 time frame, he was at his largest, farming about 2500 – 2600 acres. Apparently, this was enough to provoke unsubstantiated accusations about him. In fact, Gatewood Roane never ever took a loan from the USDA Farmer Programs in his entire career as a farmer. *See* Declaration of Gregory Mitchell Carey. *See also* Lewis Dep. at 61:4 – 61:16 (recalling, but not by name, that there was one large and successful black farmer in Westmoreland County).

[105] *See* Letters to Congressman Bateman, 3/22/85 (ROI at OCR-00501 – 507).

[106] *See id.* (ROI at OCR-00502, 00507).

> The case of Phillip [sic] Haynie . . . has been reviewed on several levels including that of the National Office in Washington, D.C. At no time was there evidence of any "misuse of public funds or wrong-doing". [sic] FmHA has no record of a farm borrower named Gatewood Roane [a successful black farmer in Westmoreland County] in the Warsaw County Office.[107]

Still, the USDA persisted in and maintained its insupportable determinations that effectively denied the Haynies access to credit and adequate loan servicing.

The last time the Haynie loans were rescheduled was March 1985. Interest rates at this mid-point in the decade were still very high, although they fell markedly over the next few years.[108] Despite what was supposed to be an annual review of this case by the district director,[109] as the interest rates fell in the second half of the 1980s, apparently neither District Director John Slusser, nor anyone else at USDA, determined that the Haynies were eligible for more favorable interest rates.

Around this same time period in 1985, Judith Haynie, no longer employed outside the home, began receiving harassing telephone calls at all hours of the day and night.[110] The caller was usually silent. Feeling threatened by these calls, the Haynies associated them with the family's move into the larger farmhouse on the Reedville farm,[111] which Mr. Haynie had largely

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[107] *See* Letter from State Director to Congressman Bateman, 5/30/85 (ROI at OCR-00508).

[108] "As is the case in all credit markets, average interest rates [for farm loans] have decreased significantly between 1986 and 1997 . . . ." Sue Hine and Dawn Thilmany, Agriculture Financial Report, Colorado State University, October 1998, No. 2., at 2; *see also* Agricultural Income and Finance: Situation and Outlook Report, ERS, USDA, AIS-64, Feb. 1997, at 51, 52.

[109] *See* Letter from Godsey to Shuman, 11/30/83, ¶ 2 (ROI at OCR-00585) ("The District Director will make annual delinquency reviews when applicable. The [Haynie] account is not delinquent at this point, but is expected to become delinquent on 1/1/84. Also, the District Director will review this case annually and submit his findings to our Farmer Program Division.").

[110] *See* Judith Haynie Dep. at 39:18-25.

[111] *See* Judith Haynie Decl. ¶ 6; Philip Haynie Decl. ¶ 39.

remodeled himself at night, producing what one USDA appraiser later called a "beautiful home."[112] Once when Judith Haynie went to the local bank, Bill Slaughter, a white adult citizen approached her in the lobby and asked her why she had "all those loans" from the USDA.[113] Knowing that her personal business was being discussed in the community made Judith uneasy.[114] These incidents, together with the two barn burnings, the tractor vandalism, and the obvious withdrawal of support by the FmHA county supervisor,[115] Judith Haynie grew increasingly frightened for her own and her family's safety.[116] She was particularly frightened for her young son, P.J. (an eight-year-old in the summer of 1985), an eager young farmer himself, to be working alone in the fields.[117]

The strain of their financial precariousness and the danger she felt for herself and her family wore on Judith Haynie. Knowing that her husband was a target in the community, and knowing also that her husband would not leave his land, Judith reasoned that the only way to cease being a target for the hostile white community was to leave her husband:

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[112] *See* Grant Dep. at 59:2, 60:4-5; Judith Haynie Decl. ¶ 6; Philip Haynie Decl. ¶ 39.

[113] *See* Judith Haynie Dep. at 111:4-18.

[114] *See* Judith Haynie Dep. at 48:1-2 ("Everyone -- how did all of these people know my confidential business? That was a concern that I had.").

[115] *Id.* at 29:10 – 34:11 (explaining that in the beginning, prior to 1982, Mr. Chadwick had helpful, business-like, and made sure the paperwork was completed, but then his demeanor noticeably changed and later, probably after about 1984, he treated Judith Haynie as if she had done something wrong, as if he didn't have time to be bothered, and he likened her to a child with toys).

[116] *Id.* at 44:24 – 46:5.

[117] *Id.* at 45:5-8, 18, 50:11-12 ("I was always uncomfortable about leaving my son alone in the fields at night. I would make him come home, do his homework. . . . [W]e always made sure someone was with him. . . . Philip or Richard [Payne, a family friend and fellow farmer][stayed with P.J. at night]. P.J. wasn't allowed to be by himself at night.").

> I didn't know why people were after Philip and after me. The phone calls, the threats, the other things that were going on . . . . The stress from all that, I had just had enough . . . . If we weren't together, then would they leave me alone? Would the phone calls stop? The unsafe conditions I felt, would that stop?[118]

In the summer of 1986, pregnant with their youngest child, Judith felt she could not go on living as a target, and she and Philip agreed to separate.[119]

Both Philip and Judith attribute the break-up of their marriage to the emotional and economic stresses imposed on them by the USDA's discrimination in capitulation to and concert with the expression of racial hatred by some members of the local white community.[120] In 1990, when her youngest child was three years old, Judith returned to full-time teaching.[121] Philip and Judith's divorce was finalized in early 1991.[122]

In their divorce agreement, Philip agreed to assume Judith's liability on the FmHA loans, a provision the USDA is not required to, and has not seen fit to, honor.[123] As she had on different occasions since their agreement to separate in 1986, she made inquiries to the local FmHA office, in an attempt to learn how she could reduce her debt burden or relinquish it to

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[118] *Id.* at 47:21-23, 48:10-14.

[119] *Id.* at 46:19 – 48:19.

[120] Philip Haynie Aff. ¶ 5 (ROI at OCR-00344); Philip Haynie Decl. ¶ 40; Judith Haynie Decl. ¶ 7; Judith Haynie Dep. at 43:19 - 44:13 (explaining that the lack of funds and Philip working all the time, her trying to work with the USDA – "doing the paperwork" and then being compared to a child by Mr. Chadwick were very stressful to her and contributed to her marriage dissolving); *Id.* at 29:11-23.

[121] *Id.* at 8:7-8.

[122] In December 1993, Philip married Belinda Gail Durham Haynie, the plaintiff in the consolidated case, Civil Action No. 00-2493.

[123] Judith Haynie Decl. ¶ 7.

Philip, as the two of them had agreed, but her inquiries netted no helpful response.[124] Despite Judith Haynie's inquiries, despite the supposed annual reviews by District Director Slusser, and despite falling interest rates and new tools for debt servicing available to the FmHA in the latter half of the 1980s, the FmHA failed to service the loans through additional rescheduling debt, write-down, or reduction in interest rates. Judith remains today a full-time employee of the Northumberland County School District and indebted for the FmHA loans in an amount, with interest, now exceeding $3 million.[125]

In 1987, Mr. Haynie wanted to sell the remodeled farmhouse to pay off some debts and sought a partial release from the USDA for that purpose.[126] The assistant county supervisor, Ms. Grant, prepared the appraisal for the FmHA, and forwarded the paperwork to the district director for processing.[127] District Director Slusser failed to process the time-sensitive application in a timely manner. Then as well as now, some who are aware of the delay suspect that Mr. Slusser acted with intent and with race-based motives to frustrate Mr. Haynie's goals.[128] As Ms. Grant noted, Mr. Slusser's delay of Mr. Haynie's application made a lasting impression.[129]

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[124] Judith Haynie Dep. at 37:17 – 38:20.

[125] *Id.* at 38:1-20; 5:24-6:14.

[126] Philip Haynie Dep. at 64:13 – 65:4; Grant Dep. at 59:23 – 60:7.

[127] *Id.* at 60:10 – 61:1, 61:22 – 62:22.

[128] *Id.* at 59:23 – 62:22, 156:5-15; 165:9 – 169:2; 188:18 – 189:4; Grant Aff. ¶ 15 (ROI at OCR-00382); Philip Haynie Aff. ¶ 12 (ROI at OCR-00346). Slusser's behavior comports with "bottoming," practiced by certain USDA employees with regard to Northern Neck minority farmer applications – "when a farmer would turn in his paper, if he was a minority, got put at the bottom of the pile so this was processed last and not necessarily on time." Carrier Dep. at 55:14-17; *see also id.* at 26:8-27:2; 54:22-56:12.

[129] Grant Dep. at 84:18 -19 ("This must have really bugged me because I see I have this in here too [referring to her affidavit given in 1998 to OCR Investigator Daniel Temme], about the partial release."); *see also generally id.* at 84:20 – 85:12.

Mr. Slusser later testified that as district director he did not have much direct involvement with the Haynie account.[130] In fact, however, in the Haynies' case, certain credit authorizations would have required action at the district director level and higher.[131] Furthermore, District Director Slusser was obligated to conduct annual reviews of the Haynies' account.[132] And, early on, Mr. Slusser had refused to extend credit when directly approached by Mr. Haynie.[133] After his farrow-to-finish operation was destroyed in the first fire, Mr. Haynie had turned to the district director for help:

> With this, I went to the District Office in Tappahannock and talked to Mr. John Slusser, the DD [District Director] and Carlton Lewis. Mr. Slusser simply told me "Boy, the best thing you could do is file bankruptcy." Mr. Lewis told me that the Agency could help me but as long as Slusser was running the office he [Slusser] would not provide me with appropriate benefits. Mr. Slusser is a racist.[134]

Ms. Grant, subordinate to Mr. Slusser for many years, testified that Mr. Slusser may have treated Mr. Haynie adversely based on race.[135]

In the late 1980s and early 1990s when Mr. Haynie asked for loan servicing, he was, according to USDA's OCR Investigator Daniel Temme, treated less favorably than other white borrowers serviced by the office:

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[130] Slusser Aff. ¶ 15 (ROI at OCR-00392) ("Q: What was your involvement in the Haynie account? A [Slusser]: Most of the work was done at the county level in the Warsaw Office. I only got involved with the account when the line of authority was beyond that specified in the procedure for the county supervisor. In many cases the processing approval had to be approved by the State office.").

[131] Chadwick Aff. ¶ 5 (ROI at OCR-00387).

[132] Letter from Godsey to Shuman, 11/30/83 (ROI at OCR-00585).

[133] Philip Haynie Dep. at 75:8 - 78:13.

[134] Philip Haynie Aff. ¶ 6 (ROI at OCR-00345).

[135] Grant Dep. at 155:24 - 156:23.

> . . . [F]or both the [Farmer A] and [Farmer B] accounts [white farmers delinquent on their USDA loans who had requested a meeting of creditors, as had the Haynies], the loan processing was more timely than the Haynie account. This was especially true with the [Farmer B] account which in many respects was similar to the Haynie account.[136]
>
> We noted that the running record shows the borrower [Farmer A] was afforded extensive assistance during the process.[137]

Mr. Haynie continued farming into the early 1990s in his individual capacity, but the injury from the denial of credit and loan servicing that had been inflicted years earlier only compounded with interest that he was unable to pay.

V. RETALIATION FOR COMPLAINTS AND SETTLEMENTS

In 1995, Philip Haynie became the vice-president of the National Black Farmers Association, an organization critical of USDA policies and treatment of minority farmers.[138] Mr. Haynie's role as vice-president was very visible.[139] For several years after 1995, Mr. Haynie helped mobilize minority farmers to file complaints and/or file lawsuits to hold the USDA accountable.[140] He has engaged in public demonstrations and is the owner of the mule named Struggles that is often seen at protests and demonstrations criticizing the USDA.[141]

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[136] ROI at 12 (OCR-00334) (redacted pursuant to Court Order).

[137] *Id.*

[138] Philip Haynie Decl. ¶ 42.

[139] *Id.*

[140] *Id.*

[141] *Id.*

In early 1996, the USDA gave notice of a foreclosure sale on Mr. Haynie's farmhouse and land, to be held in late February 1996.[142] Philip Haynie, but not Judith, filed bankruptcy, and was discharged, without challenge, from bankruptcy in August 1996, relieving him of his personal obligations for the debt.[143] Judith Haynie did not seek bankruptcy protection and the USDA has never released her from her obligations on the loans made in 1978 through 1981.[144]

In February 1997, under the leadership of then-Secretary Dan Glickman, the USDA issued the Report of the Civil Rights Action Team ("CRAT"), which contained:

> findings [that] lead to the conclusion that too many managers—from the lowest to the highest levels, both career civil servants and political appointees—are not committed to and are not being held accountable for their actions on civil rights.
>
> * * * *
>
> The CRAT was told over and over, by farmers and employees, that managers at USDA operate in a system that does not hold them accountable when they break the law.[145]
>
> Many minority and limited resource farmers believe that USDA has participated in a conspiracy to take their land. They cite as proof the severe decline in farm ownership by minorities, especially African-American farmers, in the last 70 years. Much of the land had been owned for generations, in some cases acquired by these farm families after slavery was abolished in the 1860s.[146]
>
> Customers across the nation, but ***most particularly in the Southeast***, echoed a common theme at the recent listening sessions. They pointed to discrimination in the USDA programs by Farm Service Agency (FSA), formerly Agricultural

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[142] *See* ROI at OCR-00570.

[143] *See* Notice of Discharge, ROI at OCR-00575.

[144] Judith Haynie Decl. ¶ 7.

[145] CRAT Report at 6.

[146] *Id.* at 14.

> Stabilization and Conservation Service (ASCS) and Farmers Home Administration (FmHA) county offices as the primary reason for their loss of land and farm income.[147]

As a result of the CRAT's investigation and findings, Congress enacted a statute of limitations waiver so that farmers and other participants or would-be participants in USDA programs could file complaints of race or other discrimination that had been discouraged, ignored, or denied without basis in the years since 1981.

In April and May 1997, Philip Haynie and Judith Haynie each filed a complaint of race discrimination with the USDA's OCR.[148] During two weeks in March of 1998, Judith and Philip's complaints were consolidated and investigated by a team of three, headed by USDA OCR Investigator Temme, who filed the ROI in June 1998.[149] The case was treated as a regular administrative complaint, but also determined to qualify as a Section 741 complaint, the term applied to those complaints falling within the purview of the special waiver of limitations statute.[150]

In the early fall of 1998, a draft Final Agency Decision ("FAD") was submitted to Rosalind Gray, then-Director of OCR, recommending a finding of discrimination.[151] After

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[147] *Id.* at 15 (emphasis added).

[148] ROI at OCR-00340 & 00341.

[149] *See* Deposition of Daniel Temme ("Temme Dep."), appended as Exhibit 13, at 7-8.

[150] Judith and Philip's complaints were combined and identified with a single case number, 970423-1450, in the regular administrative complaint process, and each carried a "Docket Number," 1182 for Philip and 1181 for Judith, in the special waived Statute of Limitations process. The regular process produces an FAD; the SOL process produces an Administrative Review Recommendation. For the Haynies, the documents produced indicate that in both processes, a finding of discrimination was recommended. *See* Exhibit 14, OCR-00063; OCR-00909.

[151] *See* Exhibit 14, unsigned Final Agency Decision for Complaint No. 970423-1450, OCR-00727-39. While there were multiple versions of this document, this is a produced copy of one that had been released to Mr. Haynie by Ms. Gray, when she told him of her determination. Ms. Gray testified

personally reviewing the facts and overseeing revisions to the draft FAD, Ms. Gray determined that a finding of discrimination was warranted.[152] She later testified that the Haynie case was one of the stronger cases of discrimination that she had reviewed while in office.[153] She advised Mr. Haynie of her determination, and proposed to proceed to settlement discussions.[154]

Ms. Gray's plan to settle the dispute informally was defeated by special orders issued by the OIG that Ms. Gray understood to prohibit her from settling the complaint with the Haynies.[155] The OIG's singular action,[156] taken with full knowledge of the Office of General Counsel ("OGC") and the Secretary, was the department's response to a complaint about the Haynies reported to the USDA "hot-line" from Robert Taylor, the district director from the Northern Neck who had replaced John Slusser, and to subsequent intervention by Congressman Bateman, who had received a similar complaint from Mr. Taylor.[157]

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that the other versions varied only as to detail. Deposition of Rosalind Gray ("Gray Dep."), appended as Exhibit 15, at 64:2-8.

[152] *See* Gray Dep. at 63:17 – 64:1 (Ms. Gray determined that a finding of discrimination was warranted), 59:16-20 (Ms. Gray personally reviewed the Haynie ROI and file).

[153] *See id.* at 65:3-12, 62:1-5 (". . . it was a. . . very detailed investigatory file with that report, . . . and the activities that had been described certainly warranted some kind of relief.").

[154] *Id.* at 62:19 – 63:9.

[155] *Id.* at 64:16-18 (testifying that she understood the OIG's communication to mean "[t]hat I was not to proceed to settlement on any of five or six cases from the Northern Neck Virginia, one of which is this case."), 75:19 – 77:5 (testifying that the direct prohibition on settlement was delivered orally by the male OIG staff person who visited her office, not the female who signed the Memo); OIG Memo to Gray, 10/30/98; Gray Dep. at Exhibit Gray-5.

[156] Make no mistake about it: the OIG communications to Ms. Gray did not announce a policy and to Ms. Gray's knowledge no such action was taken with respect to any other complaint in the OCR during her tenure. Gray Dep. at 78:8-11 (". . . I am certain that it only included the individuals on this list. Because otherwise we were able to proceed to settlement and we did.").

[157] *See* Letter from USDA Inspector General Roger Viadero to Congressman Bateman, 2/2/99, Gray Dep. at Exhibit Gray-4.

Apparently, Mr. Taylor's complaint[158] to Congressman Bateman was dated October 7, 1998, just a few days after Ms. Gray settled a discrimination complaint filed with the OCR by the Haynies' son, P.J.[159] In addition to a monetary settlement, Gray recommended that "appropriate disciplinary action be taken" against Mr. Taylor's friend and USDA colleague, County Executive Director Johnny Price, for his conduct toward P.J. Haynie and his father, Philip.[160] Mr. Price's offending behavior included, among other things, having a hand gun in his office (a violation of federal law) and revealing it to P.J. and Philip Haynie, in a manner perceived to constitute a threat.[161]

The practice and problem of USDA staff misusing the OIG to retaliate against farmers for complaints or to effect personal attacks on farmers was known to the USDA and its OGC. This abusive practice had been noted in the listening sessions and was documented in the CRAT Report of February 1997:

> Farmers also told the CRAT that USDA's Office of Inspector General is being used by management to investigate and bring unsubstantiated charges against them. "I've got stories" of

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[158] The government has declined to produce the complaint in response to Plaintiffs' discovery requests.

[159] *See* Letter from IG Viadero to Bateman, 2/2/99, Gray Dep. at Ex. Gray-4 (noting that Robert Taylor's complaint was made October 7, 1998.). The settlement with P.J. Haynie was signed September 18, 1998. *See* Exhibit 16. Settlement Agreement between USDA and Philip J. Haynie, III.

[160] Gray Dep. at 103:20 – 105:22; Luckritz Dep. at 82:21 – 83:18, 85:20 – 87:13 (testifying that Robert Weston, Robert Taylor and Johnny Price are "tight" in the way of friends and colleagues).

[161] ROI at OCR-00339; P.J. Haynie Aff. at 5-6 (ROI at OCR-00420); Price Aff. at 12-13 (ROI at OCR-00443-44). While Mr. Price claimed to have the gun in his office to clean it, *see* ROI at OCR-00444, his claim is not only implausible but belied by testimony given in this case by Patricia Carrier, an employee in an adjacent office who had been advised by W.H. Shirley, Ms. Carrier's immediate supervisor and someone friendly with Mr. Price, that Mr. price had brought a gun to work because of "the Haynie situation." Ms. Carrier testified that she understood the information passed on by Mr. Shirley to be a friendly warning about a volatile situation. Carrier Dep. at 30:1 – 31-7; 49:21-22 ("I was told that he had a gun and that it was related to the Haynie situation.").

OIG investigations and retaliation against farmers, a farm advocate said.[162]

Despite foreknowledge of the problems of such abuse of power, apparently there was no check in place to prevent continuation of this practice.

Rosalind Gray understood Mr. Taylor's complaint to allege, among other things, that Ms. Gray had or was due to receive a kickback from P.J. Haynie for his settlement.[163] A grand jury was convened. Ms. Gray was interviewed but never called to testify.[164] Philip Haynie and several of his relatives, as well as local persons who conducted business with Philip and/or P.J., or knew details of their farming operations, were called to testify. The Haynies and some of their relatives incurred substantial legal expenses in the process.[165] No indictments were returned or charges filed. Nonetheless, Ms. Gray understood the OIG's position to be very clear: she was not permitted to make any settlement with the Haynies or several of their associates or relatives until the OIG investigation was "completed."[166]

Months went by, yet Ms. Gray's inquiries to the OIG indicated that the investigation was not closed.[167] Unable to provide the Haynies the informal resolutions available to all others in either the regular administrative complaint process or the special SOL process,[168] Ms. Gray

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[162] CRAT Report at 8.

[163] *See* Gray Dep. at 164:1-11.

[164] *See id.* at 115-16.

[165] Philip Haynie Decl. ¶ 44.

[166] Gray Dep. at 64:16-18, 74:12 – 75:2.

[167] *See id.* at 73:1-5, 137:13-18, 146:11-17.

[168] 7 C.F.R. Subtitle A, Pt. 15d.4 (2003) ("The ***Director of the Office of Civil Rights will make final determinations as to the merits of the complaints*** under this part and as to the corrective actions required to resolve program complainants [sic]."") (emphasis added); 7 U.S.C.A. § 2279(b)(1) ("The

informed the Haynies that their case was not suitable for informal resolution and they could proceed to a hearing before an Administrative Law Judge or file a lawsuit in district court.[169] The Haynies filed this action shortly thereafter.

Respectfully submitted,

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complainant may, in lieu of filing a civil action, seek a determination on the ***merits*** of the eligible complaint, by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act.") (emphasis added).

[169] *See* Gray Dep. at 146-48; Exhibit 14, Letter from R. Gray to the Haynies, 7/21/00, OCR-000060.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.* Defendants.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, *et al.*, Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, *et al.*, Defendants.	Civil Action No. 00-2516 (PLF / DAR)

PLAINTIFFS' CORRECTED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY AND DAMAGES IN CIVIL ACTION 00-2516

Plaintiffs in Civil Action No. 00-2516, Philip Johnson Haynie, II ("Mr. Haynie," "Philip Haynie" or "Philip") and Judith S. Haynie ("Judith Haynie" or "Judith") (together, "the Haynies" or "Plaintiffs"), through counsel, hereby file this Memorandum in Support of their Motion for Summary Judgment as to Liability and Damages.

Defendant Secretary Veneman presides over the United States Department of Agriculture ("USDA"), which, by design, is decentralized, with local decisions made by local people reflecting local culture. In the case of the Plaintiffs, African-Americans operating a family farm

in the Northern Neck of Virginia, the entrenched and pervasive local culture of race discrimination was reflected in the decisions of the local Farmers Home Administration ("FmHA"), and maintained and ratified at all supervisory levels. The undisputed record establishes that by 1982, the USDA had discriminated against the Plaintiffs on the basis of race, and continued to do so, causing them injury in violation of the Equal Credit Opportunity Act ("ECOA"), for which damages are due.

I. BRIEF OVERVIEW OF THE FACTS[1]

In the late 1970's, Judith and Philip Haynie, recent college graduates and newly married, embarked in earnest upon their farming operation in the Northern Neck of Virginia. They planned to use their education and experience to improve on the plans of their ancestors before them, intending to become a large, efficient, successful, African-American-owned enterprise.

Initially, the USDA's decisions to loan funds to the Haynies were consistent with the promise reflected by the Haynies' farm. Between 1977 and 1981, the USDA made loans to the Haynies in excess of $1 million. But 1981-82 was a pivotal period for the Haynies. It was then that the USDA acted to cut them off, condemning their finances and their farm to a slow and painful demise, in response to the negative, race-based pressure from the local white community.

By 1982, the Haynies had been experiencing racial harassment at the hands of the community for some time. The harassment ranged in gravity from disturbing prank phone calls and baseless neighborhood rumors to extremely dangerous and destructive acts, such as gunshot fire at farm equipment and a fire that may have been intentionally set. The anonymous hostility did not stop there. The local reaction was felt by and reflected in the USDA's transactions with

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[1] This summary is provided merely for reference. For a complete analysis of the undisputed material facts in this case with supporting citations, please see the Statement of Undisputed Material Facts Establishing Summary Judgment as to Liability and Damages, *supra*.

the Haynies, and by 1982, with the Haynies heavily indebted to the USDA and all their assets under a USDA blanket lien, the USDA denied the Haynies further access to critical financing.

Sometime, probably in 1981, and certainly before August 1982, the USDA, through its county supervisor in the local FmHA office in Warsaw, Virginia, told Philip Haynie that his sole-proprietor farm operation was too big to be considered a family farm, and that it was no longer eligible for, and he should not apply for, any more USDA loans. Later, the same county office took the position that the Haynies had reached the maximum amount of loans allowed under USDA regulations and could not obtain more. Both of these determinations were made by an experienced county supervisor with a good working knowledge of the regulations in general and the details of the Haynies' account in particular. Yet both of these determinations were flatly wrong. They did, however, have the intended effect of deterring the Haynies from applying for any more USDA loans.

The incorrect determinations regarding the Haynies' farm size and loan amount limits defined the USDA's position with respect to the Haynies from 1981 onward. In the ensuing years, the USDA perpetuated these wrong determinations at its highest levels, and never took action to remedy their obvious deterrent effects. The USDA also failed to take appropriate action under the regulations to provide adequate or timely loan servicing for those loans which the Haynies had obtained prior to 1982. In addition, through certain of its employees, the USDA affirmatively acted in other ways to further discriminate against the Plaintiffs both before and after they formally complained of race-based discrimination, culminating in efforts by the USDA to deny the Haynies access to normally-available settlement procedures that OCR investigators had deemed appropriate in light of the discrimination the Haynies had experienced.

Wrongfully deprived of their opportunity to informally settle their complaints of race discrimination with the OCR, the Haynies filed this action under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.* (2000) and 7 U.S.C.A. § 2279 (1999 & Supp. 2003) to seek redress for the damages imposed by the USDA's discriminatory actions.

II. APPLICABLE LEGAL STANDARDS

A. Standards Governing Motions for Summary Judgment

Summary judgment must be granted when it is apparent from the entire record, viewed in a light most favorable to the non-moving party, that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[2] For a court to decline to grant summary judgment, sufficient evidence must exist favoring the non-moving party which would allow a reasonable fact-finder to return a verdict for that party.[3] If undisputed material facts establish a violation of a law, then summary judgment for the plaintiffs is warranted.[4]

"To determine which facts are 'material,' a court must look to the substantive law on which each claim rests."[5] A 'genuine issue' is one whose resolution could establish an element of a claim or defense and, therefore, affect the outcome of the action.[6] A claim of discrimination under ECOA requires an analysis of the evidence in its full context.[7] In this case, when the

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[2] Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-34 (1986); *Perkins v. Dist. of Columbia*, 769 F. Supp. 11, 13 (D.D.C. 1991).

[3] *See Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986).

[4] *Fund for Animals v. Williams*, 246 F. Supp. 2d 27 (D.D.C. 2003); *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

[5] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248.

[6] *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248; *Fund for Animals v. Williams*, 246 F. Supp. 2d at 33.

[7] *Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1290 (D.C. Cir. 1998).

circumstances are analyzed in their full and complete context, it is clear as a matter of law that the USDA violated ECOA many times over the twenty-plus years spanned by this case. The Haynies are therefore entitled to summary judgment in their favor.

B. Standards Governing Violations of ECOA

The Equal Credit Opportunity Act ("ECOA") prohibits "any creditor" from discriminating against "any applicant" "on the basis of race . . . ."[8] ECOA's purpose is to prevent discrimination against those applying for credit. Its antidiscrimination provisions are broadly construed.[9] ECOA's history shows that it was meant to reach credit decisions made on bases such as race, "which are irrelevant to creditworthiness."[10] To state a claim under ECOA, a plaintiff must prove: (1) that he or she qualifies as an "applicant;" (2) that the defendant qualifies as a "creditor;" (3) that the alleged occurrences constitute a "credit transaction;" and (4) that the defendant's conduct was discriminatory in nature.[11]

In this circuit, the prevailing view as to proof of discrimination is pragmatic: "Events have causes" and "the court must consider all the evidence in its full context."[12] The full context of this case clearly demonstrates that the USDA violated the ECOA's implementing regulations.

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[8] 15 U.S.C. § 1691(a).

[9] *See Bayard v. Behlmann Automotive Services, Inc.*, 292 F. Supp. 2d 1181, 2003 WL 22808294, at * 2 (E.D. Mo. Nov. 7, 2003).

[10] *Miller v. Am. Express Co.*, 688 F.2d 1235, 1238 (9th Cir. 1982) (citing S. Rep. No. 94-589, 3 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403, 405-06.

[11] *Brooks v. O'Connor Chevralet, Inc.*, 2003 WL 22427795 (N.D. Ill. Oct. 23, 2003).

[12] *Aka v. Washington Hosp. Ctr.*, 156 F.3d at 1290, 1292.

Violation of a regulation created to carry out the purposes of ECOA is discrimination within the meaning of the act.[13]

Proving a violation of ECOA does not require a showing that race was the sole motivator for the decision; it is sufficient that race was one of multiple factors resulting in the adverse action.[14] When there is more than one motivating factor, the prohibited factor must be "substantial," *i.e.*, one that made a difference in the defendant's decision to take the adverse action.[15]

III. APPLICATION OF LAW TO FACT: THE USDA VIOLATED THE ECOA BY DISCRIMINATING AGAINST THE HAYNIES BECAUSE OF THEIR RACE

A. The USDA Is a "Creditor" That Engaged In a Credit Transaction" With the Haynies

A "creditor" is "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit. . . ."[16] The USDA, through the FmHA and its successor, the Farm Services Administration, ("FSA") was authorized to make many types of loans to those in the farming industry, including farm ownership loans for the purpose of obtaining, enlarging, or improving farm property, operating

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[13] *Anderson v. United Finance Co.*, 666 F.2d 1274, 1277 (9th Cir. 1982); *Miller v. Am. Express Co.*, 688 F.2d 1235.

[14] *See, e.g., Cooley v. Sterling Bank*, 280 F. Supp. 2d 1331, 1338 (M.D. Ala. 2003) (majority of courts analyze ECOA claims in the same manner as Title VII claims); 42 U.S.C. § 2000e-2(m) (2000) (a violation of Title VII (employment) is established "when the complaining party demonstrates that race . . . was a motivating factor for the [action], even though other factors also motivated the . . . [action]."); *Costa v. Desert Palace, Inc.*, 299 F.3d 838 (9th Cir. 2002) (discussing the 1991 clarifying amendment to the Civil Rights Act of 1965, Title VII), *aff'd*, 123 S. Ct. 2148 (2003); *Venters v. City of Delphi*, 123 F.3d 956, 973 n.7 (7th Cir. 1997); *Foster v. Andersen*, No. 96 C 5961, 1997 WL 802106 (N.D. Ill. Dec. 29, 1997).

[15] *See Thomas v. Nat'l Football League Players Ass'n*, 131 F.3d 148, 202 (1997), *vacated in part*, 1998 U.S. App LEXIS 3634 (D.C. Cir. Feb. 25, 1998); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 276 (1989) (O'Conor, J., concurring); *id.* at 259 (White, J., concurring).

[16] 15 U.S.C. § 1691a(e) (2000).

loans which provide assistance necessary for farmers to conduct successful operations, and emergency disaster loans to cover losses so that a farmer can resume operations after an officially-declared disaster.[17] Further, in the 1980's the FmHA was authorized to make economic emergency loans due to the tight credit conditions of the era.[18] Under this authority, the USDA made several loans to the Haynies between 1978 and 1981, an amount totaling over $1 million.[19] The USDA is indisputably a "creditor."

ECOA states that its term "credit transaction" includes "***every aspect*** of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures)."[20] A "credit transaction" includes not only the extension of credit itself, but also terms of credit, along with various other matters.[21] The ECOA is violated each and every time a creditor "discriminate[s] against an applicant on a prohibited basis regarding ***any aspect*** of a credit transaction."[22]

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[17] *See Green v. Veneman*, 159 F. Supp. 2d 360, 363 n.2 (S.D. Miss. 2001) *aff'd in part*, 46 Fed. Appx. 731 (Fed. Cir. 2002).

[18] *See* Exhibit 12, 7 C.F.R. § 1945.104 (1982).

[19] *See* notes 20-25 in Statement of Undisputed Material Facts, and related text.

[20] 12 C.F.R. § 202.2(m) (2003) (emphasis added).

[21] *Matthews v. New Century Mortgage Corp.*, 185 F. Supp. 2d 874, 887 (S.D. Ohio 2002).

[22] 12 C.F.R. § 202.4, *cited in Roseman v. Premier Financial Svcs.*, No. Civ A 96-4669, 1997 WL 570919, *2 (E.D. Pa. Sept. 3, 1997) (emphasis added).

B. The Haynies Are Applicants

An "applicant" is "any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit."[23] The Haynies applied for both credit and loan servicing from the USDA at various times from 1977 through the early 1990s. Further, ECOA's protection of "applicants" is broad: it is not limited to those applicants who were rejected,[24] but encompasses situations in which applications have not been filed because they have been discouraged.[25]

The Haynies never submitted a written loan application after being told in 1981 that their application efforts would be fruitless. Nonetheless, the USDA's efforts to deter them qualify as discrimination towards the Haynies under ECOA.[26] As the Fifth Circuit has recognized in analogous circumstances:

> The [plaintiffs], [the USDA] contends, never filled out a complete loan application, hence they could never have qualified for the FMHA program . . . But how does the government know this? And who can fault the [plaintiffs] if they were cowed, following their rejection based solely on skin color, into forgetting some of the procedural details as they groveled before the FMHA in order to make their record for later administrative proceedings or a lawsuit?[27]

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[23] 15 U.S.C. § 1691a(b) (2000).

[24] *Wilson v. Toussie*, 260 F. Supp. 2d 530, 540 (E.D.N.Y. 2003).

[25] *See Hargraves v. Capital City Mortgage Corp.*, 140 F. Supp. 2d 7, 23 (D.D.C. 2000).

[26] "I never told him not to apply or refused to take an application. Mr. Haynie did not apply because he new [*sic*] he had exceeded the FmHA specified loan limits already and eligibility requirements." Chadwick Aff. ¶ 8 (ROI at OCR-00388), appended as Exhibit 3.

[27] *Moore v. U.S. Dep't of Agriculture*, 993 F.2d 1222, 1223 (5th Cir. 1993).

The law does not demand that the Haynies go through the humiliating motions of submitting an application, solely to receive the inevitable denial that they had already been promised.[28] Thus, they are "applicants" for purposes of ECOA.

C. The USDA Illegally Deterred the Haynies From Applying For Credit In Violation Of ECOA's Implementing Regulations

Philip and Judith Haynie are African-American individuals who were qualified to apply for credit and loan servicing from the USDA. For example, the Haynies were entitled to receive farm operating (FO) and economic emergency (EE) loans for their family farm in 1982 and subsequent years: they had received such loans in previous years,[29] USDA cited no change in circumstances justifying a denial, and they had not reached the loan limits allowed by the regulations.[30] Yet they were discouraged from applying for additional USDA loans for reasons that are baseless, wrong, have never been adequately justified, and are racially discriminatory under the law.

ECOA's implementing regulations expressly provide that "[a] creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an

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[28] *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) ("If an employer should announce his policy of discrimination by a sign reading 'Whites Only' on the hiring office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.").

[29] *See generally* Gray Dep., appended as Exhibit 15, at 144-45 (investigation of eligibility involves examination of prior program participation and analysis of any relevant subsequent changes).

[30] *See* Exhibit 18, FmHA Instruction 1941-A § 1941.17 (Loan limitations) (11/20/78, rev. 4/23/84) Special PN; FmHA Instruction 1941-A § 1941.17 (Loan limitations) (4/23/84) rev. 5/24/85 Special PN.

application."[31] It was therefore a violation of ECOA when the USDA informed the Haynies for racially motivated reasons that they "would no longer be able to obtain any additional loans from the Agency."[32]

1. The Haynies' Farm Was Improperly Disqualified As a "Family Farm"

The Haynies were told that they should not apply for any more USDA loans because they no longer met the definition of "family farm." This determination was false and incorrectly determined. In fact, the "family farm" issue was a pretext, providing the USDA with a reason, albeit a wrong one, for deterring the Haynies from applying for credit.

County Supervisor Chadwick informed the Haynies sometime before August 1982, that they did not fit the USDA's definition of a "family farm" because their operation had grown too large.[33] The Haynies got the message: they would no longer be granted USDA credit. Mr. Chadwick's conclusion was false. The Haynies did in fact meet the USDA's definition of a "family farm." Under the USDA's FmHA Instructions, a "family farm" is a farm which:

> (a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.
>
> (b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

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[31] 12 C.F.R. § 202.5(a) (2003); *Owens v. Magee Fin. Serv. of Bogalusa, Inc.*, 476 F. Supp. 758, 768 (E.D. La. 1979) ("[Defendant] would [have] violated [plaintiff's] rights and evaluated her application on a prohibited basis by making an oral statement to an applicant that would discourage . . . making or pursuing an application").

[32] Philip Haynie Aff. ¶ 4 (ROI at OCR-00343).

[33] Chadwick Aff. ¶ 6 (ROI at OCR-00387) ("Mr. Haynie . . . was no longer considered a family farm. . . . There was no question in my mind that Mr. Haynie no longer qualified as a family farm."). Judith Haynie Aff. ¶ 6 (ROI at OCR-00356) ("Manly Chadwick told us that we had gotten to [sic] big and no longer qualified as a family farm.").

(i) Pay necessary family and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii)Pay debts.

(c) Is managed by:

(i) The borrower, when a loan is made to an individual.

* * * *

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(i) The borrower and family members for a loan made to an individual.

* * * *

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.[34]

Clearly, family farm is not limited in size to a farm of less than a certain number of acres, or less than a certain size. The USDA's position that the Haynie farm was "too big" is simply insupportable.

USDA managers acknowledge that the size of a borrower's operation is not a deciding factor in determining qualification as a "family farm."[35] One Farmer Program loan specialist testified that it would have been rare for a loan application to be denied for that reason.[36] Yet the improper "family farm" determination was not only made and approved at the local FmHA office, it was reported to the USDA at both the state and national levels, and never corrected or

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[34] *See* Exhibit 18, FmHA Instruction 1941-A § 1941.4(d) (Family farm) (11/20/78).

[35] Slusser Aff. ¶ 5 (ROI at OCR-00391); Luckritz Aff. ¶ 6 (ROI at OCR-00400). Because the USDA loan program was specifically set up to encourage and benefit large producers, it would be extremely unusual for it to deny loans solely on that basis. Temme Dep., appended as Exhibit 13, at 196:8-14.

[36] Luckritz Aff. ¶ 7 (ROI at OCR-00400).

addressed.[37] The OCR Investigator's review of all million-plus-dollar accounts in the Commonwealth of Virginia revealed that no other large borrower was disqualified as too big to be a "family farm."[38] Based on his review of the evidence, OCR Investigator Temme found that it was not appropriate to have used the "family farm" determination as a basis for excluding the Haynies, and it appeared to him to be an attempt to justify the Agency's discriminatory conduct.[39]

Further, even if it had been true that the Haynies' farm did not qualify as "family farm" for some legitimate reason, such ineligibility was a determination to be made exclusively by the County Committee.[40] No proper determination was ever made in the Haynie case:

> In our review of the HAYNIE loan file, we found no record the County Committee had ever made a determination as to whether HAYNIE no longer qualified as a family farm, nor could we find any documentation that showed who or what criteria Agency personnel used in making this determination.[41]

The improper and unjustifiable determination constitutes a violation of ECOA.

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[37] *See* Record of Telephone Call, 8/17/82 (ROI at OCR-00455) (FmHA staff in the USDA state office in Richmond recorded a statement on Aug. 17, 1982 by Manley Chadwick that "Haynie has been told that his operation is too big and that he probably will not be eligible for any more loans from this agency" and reported it to the National Office the next day); *see also* Memo from Shuman to Godsey, 10/18/83 (ROI at OCR-00582) (USDA National FmHA Administrator Shuman states that "the borrower has been told that his operation exceeds a family size and further financial assistance from FmHA would not be available.").

[38] ROI at OCR-00330.

[39] Temme Dep. at 105:5-24.

[40] *See* Exhibit 18, FmHA Instruction 1910-A § 1910.4 (g) (5/24/90) Special PN; Affidavit of Robert Ramsey ("Ramsey Aff.") ¶ 14 (ROI at OCR-00397); Luckritz Aff. ¶ 8 (ROI at OCR-00400); Lewis Aff. ¶ 12 (ROI at OCR-00371); Slusser Aff. ¶ 7 (ROI at OCR-00391).

[41] ROI at OCR-00329; *see also* Chadwick Aff. ¶ 7 (ROI at OCR-00387); Slusser Aff. ¶ 7 (ROI at OCR-00391).

2. The USDA's *Post Hoc* Explanation that the Haynies Had Reached the Maximum Loan Limit is False and Provides No Justification

USDA officials also attempted to justify, *post hoc*, their discouragement of the Haynies by stating that the Haynies were ineligible for additional credit because they had reached maximum loan limits.[42] In particular, Ms. Grant, the assistant county supervisor and later County Supervisor, maintained the position that Haynies had reached the $200,000 OL limit.[43] This reason was not relayed to the Haynies initially.[44] Yet USDA officials later identified loan limits as another basis for denying the Haynies access to additional credit.[45] This, too, is a pretext.

By the end of April 1981, the Haynies had obtained the following USDA Farmer Program Loans: one FO loan for $200,000; one OL for $34,000; four EE loans for a total of $202,350; and six EM loans for a total of $714,080. At the time Mr. Chadwick told Mr. Haynie that he had reached the maximum loan limits, and for the period between January 7, 1981 and April 23, 1984, a borrower was allowed to borrow up to $100,000 in OL loans; $200,000 in FO loans; $1 million in a combination of EE and EM loans (there were no limits on either EM or EE categories per se, only the combination), but this limit could be exceeded with approval from the national office; and $650,000 in a combination of FO, OL and EE loans.[46] In April 1984 the

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[42] Chadwick Aff. ¶ 5 (ROI at OCR-00387).

[43] *See* Grant Aff. ¶ 5 (ROI at OCR-00381).

[44] Philip Haynie Aff. ¶ 6 (ROI at OCR-00344-45); Judith Haynie Aff. ¶ 6 (ROI at OCR-00359).

[45] "Mr. Haynie did reach the maximum loan amounts authorized under the regulations and thus was no longer eligible for further assistance. . . . There is no question in my mind that Mr. Haynie understood that he could no longer obtain further assistance because he had reached the maximum loan amounts." Chadwick Aff. ¶ 5 (ROI at OCR-00387).

[46] *See* Exhibit 18, FmHA Instruction 1941-A § 1941.17 (Loan limitations) (11/20/78, rev. 4/23/84) Special PN.

maximum limit for OL loan was increased to $200,000, and the other category and combination limits remained unchanged until May 24, 1985.[47]

Simple math reveals that the Haynies had not reached any maximum loan limit except the $200,000 FO loan limit.[48] The reality is that the Haynies' only OL at that time was the 1980 loan of $34,000,[49] far below the $100,000 limit. They should have been eligible for further OLs, even if the $100,000 limit applied to them,[50] and eligible for even more OLs when the limit was increased to $200,000 in April 1984.[51]

Furthermore, even if the Haynies had been ineligible for OLs, there was no limit at that time on certain other types of loans that could potentially have been available to them.[52] For example, the Haynies could have received $83,570 more in EE loans before hitting any maximum. And, at that time, eligibility for EM loans did not even require qualification as a

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[47] *See id.*, FmHA Instruction 1941-A § 1941.17 (Loan limitations) (4/23/84 rev. 5/24/85) Special PN.

[48] The Haynies EE and EM loans aggregated to a total of $916,430, well under the combined limit of $1 million. Their FO, OL and EE loans aggregated to a total of $436,350, well under the combined $650,000 limit. The Haynies' OL loan was $66,000 under the OL limit.

[49] Temme Dep. at 87:11-17.

[50] Slusser Aff. ¶ 6 (ROI at OCR-00391); Luckritz Aff. ¶ 11 (ROI at OCR-00401); *see also* Temme Dep. at 88-89, 97.

[51] *See* Exhibit 18, FmHA Instruction 1901-A, Exhibit C (Loan approval authority limitations) (4/23/84 rev. 5/24/85) Special PN.

[52] Grant Aff. ¶ 4 (ROI at OCR-00381) (no limit on Emergency Loans at the time); *see also* Exhibit 18, FmHA Instruction 1941-A § 1941.17 (Loan limitations) (11/20/78, rev. 4/23/84) Special PN (no limits per se on EE or EM loan categories, and the $1 million limit on combined EE and EM loans could be exceeded with approval from the national office).

"family farm,"[53] making the USDA's original justification for deterring the Haynies from applying ring even more hollow.

The USDA's improper determination that the Haynies reached their maximum loan limits was, or should have been, reviewed time and again over the years, and in particular, each year by the district director.[54] Yet the wrongful determinations were never remedied. These efforts to discourage the Haynies from applying for USDA loans therefore can hardly be viewed as anything but intentional acts of exclusion, and therefore qualify as a violation of ECOA.

D. The Haynies Were Denied Proper Loan Servicing in Violation of ECOA

The ECOA protects applicants in "***every aspect*** of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit,"[55] including the terms of that credit.[56] USDA regulations guarantee that "[w]hen borrowers have acted in good faith and have exercised due diligence in an effort to pay their indebtedness but cannot pay on schedule because of circumstances beyond their control, servicing will be consistent with the best interests of the borrower and the Government."[57]

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[53] Ramsey Aff. ¶ 18 (ROI at OCR-00397) (no "family farm" requirement for Emergency Loans at the time).

[54] *See* Letter from Godsey to Shuman, 11/30/83, ¶ 2 (ROI at OCR-00585) ("[T]he District Director will review this case annually and submit his findings to our Farmer Program Division.").

[55] 12 C.F.R. § 202.2(m) (2003) (emphasis added).

[56] *See Matthews v. New Century Mortgage Corp.*, 185 F. Supp. 2d 874, 887 (S.D. Ohio 2002).

[57] Exhibit 12, 7 C.F.R. § 1951.2 (1985). After 1988, the USDA's policy explained further that "[the programs should] keep the farmer on the farm and provide the best net recovery to the government." *Id.*, 7 C.F.R. §1951.02(a) (1988).

The Haynies' USDA loans were collecting interest at comparatively high rates that reflected national inflation of the early 1980s.[58] Yet as interest rates fell in the latter half of the 1980s,[59] the USDA failed to provide relief to the Haynies by rescheduling their loans at lower rates, despite what was supposed to be an annual review by District Director Slusser.[60] Mr. Haynie was also frustrated in his efforts to timely pay off some debts by seeking a partial release of collateral from the USDA,[61] when District Director Slusser delayed the time-sensitive application for many months.[62] The Haynies are not the only ones who suspect that Slusser acted intentionally to interfere with the Haynies' economic prospects.[63]

Further, because the Haynies were denied USDA credit after 1981, they were forced to seek commercial credit to keep their farm afloat. However, because the USDA had a blanket lien on all of the Haynies' real estate, assets and crops, they often had no choice but to pay excessive rates for commercial credit.[64] The USDA, well aware that the Haynies (and others) sometimes paid as much as 28% interest on credit to purchase things such as seed and fertilizer,[65] did nothing to prevent or minimize the damage.

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[58] *See supra*, Statement of Undisputed Material Facts, n. 20 – 25 and related text.

[59] *See id.* at n. 108 and related text.

[60] *See* Letter from Godsey to Shuman, 11/30/83, ¶ 2 (ROI at OCR-00585).

[61] Grant Dep. at 59:23 – 62:22, 156:5-15, 165:9 – 169:2, 188:18 – 189:4; Grant Aff. ¶ 15 (ROI at OCR-00382); Philip Haynie Dep., appended as Exhibit 5, at 60:4-13; Philip Haynie Aff. ¶ 12 (ROI at OCR-00346).

[62] Grant Dep., appended as Exhibit 8, at 61:22 – 62:22.

[63] Grant Dep. at 59:23 – 62:22, 156:5-15; 165:9 – 169:2, 188:18 – 189:4; Grant Aff. ¶ 15 (ROI at OCR-00382); Philip Haynie Aff. ¶ 12 (ROI at OCR-00346).

[64] Philip Haynie Decl. ¶ 38.

[65] Grant Dep. at 30:12-14 (". . . a lot of those places, they charge 28 percent, which I don't understand how they thought the farmers could pay it back at 28 percent . . .").

This failure to provide debt servicing to the Haynies violated USDA regulations at that time, which specifically instructed that lower interest rates be a tool used in the ongoing process to reach the ultimate goal of keeping farmers in business and on the farm:

> Servicing is a continuing process, not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives: (1) to help the farmers manage credit so they can return to private sector credit sources, and (2) to minimize costs to the Government of providing this opportunity to farmers in financial difficulty. Borrowers' accounts must be managed with an ***overall objective of keeping the farmer in business and at the same time, minimizing loan costs and losses***. The tools are rescheduling and/or reamortization, ***lower interest rates***, deferments, and write-down of debt.[66]

Instead, and in violation of the regulations, the USDA has to this day allowed the Haynies' loans to continue to collect interest at rates in excess of 12%.[67] The failure of the Agency to provide adequate debt servicing, despite its mandate, effectively perpetuated and compounded (daily, one might say) the original adverse discriminatory decisions based on the family farm and maximum loan pretexts. This, too, is therefore a violation of ECOA.

E. The Haynies Were Denied Access to ECOA's Procedural Relief When They Were Attempting to Seek Relief Against the USDA

ECOA prohibits discrimination with respect to "any aspect of a credit transaction."[68] This language encompasses all of "those acts surrounding an application for credit that materially affect the applicant's ability to obtain the desired credit."[69] Such acts must logically

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[66] *See* Exhibit 18, FmHA Instruction 1951-S § 1951.902 (Servicing and Collections Policy) (10/14/88) Special PN (emphasis added).

[67] As previously observed, four of the Haynies' emergency loans have been accumulating interest for 19 years at the 12.5% rate at which they were initially granted.

[68] 15 U.S.C. § 1691(a)(1) (2000).

[69] Order, July 23, 2003, *Haynie v. Veneman*, Civil Action No. 00-2493.

include racially-motivated exclusion from procedures normally available as avenues of relief from adverse credit actions. As such, the USDA's decision to bar the Haynies from the informal dispute resolution process that was available to all other Section 741 complainants constitutes yet another instance of discrimination.

Then-OCR Director Rosalind Gray had intended to informally settle the Haynies' dispute with the USDA under applicable federal regulations.[70] In fact, she believed that the Haynies had a clear-cut case of discrimination.[71] Yet Ms. Gray was barred from doing so because the OIG prohibited her from settling with the Haynies until its investigation of them concluded—an end which, as far as she could see, would never come.[72] This action, condoned by the OGC and the Secretary, was the result of interference by District Director Robert Taylor, colleague and friend of Johnny Price, who along with Robert Weston had a history of open antipathy toward the Haynies.[73] Taylor acted intentionally, motivated by racial animus, to retaliate for the USDA's settlement with P.J. Haynie. The OIG, with full knowledge of the OGC, acted to give effect to Mr. Taylor's interference with the process the Haynies were entitled to under the implementing federal regulations.[74]

Ms. Gray's deposition testimony establishes her belief that the Haynies' rights were further violated in this process:

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[70] Gray Dep., appended as Exhibit 15, at 62:19 – 63:9; 7 U.S.C.A. § 2279.

[71] Gray Dep. at 65:3-12.

[72] *Id.* at 137:13-18; 146:11-17.

[73] Rosalind Gray understood Taylor's complaint to allege, among other things, that Ms. Gray had or was due to receive a kickback from P.J. for his settlement. *See id.* at 164:1-11. This complaint was completely baseless. *See also* Luckritz Dep. at 79:14 - 81:14.

[74] 7 C.F.R. Subtitle A. Pt. 15d.4 (entitling the complainant to a determination on the merits by the Director of the Office of Civil Rights); 7 U.S.C.A. § 2279(b)(1).

> Q: In your estimation, given all the circumstances, do you believe that Philip Haynie's right to have his complaint evaluated and resolved on its merit was violated?
>
> A [Gray]: Yes.
>
> Q: Did you believe that at the time?
>
> A [Gray]: Yes.[75]

F. Race Was A Motivating Factor For The USDA's Discriminatory Actions

Race was a substantial motivating factor guiding the USDA's actions against the Haynies, in violation of ECOA.[76] Local white farmers in the Northern Neck—even the very farmers who took part in USDA decision-making—often harbored and acted with racially discriminatory motives.[77] Time and again, the USDA made decisions adverse to the Haynies in concert with and capitulation to the racial animus from the white farming community, in violation of the Haynies' rights. Like the CRAT report found with particular respect to the Southeast in general,[78] Director Gray observed that the award of loans and loan servicing by the USDA in the Northern Neck reflected an overall illegal preference for white farmers and an aversion to black ones:

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[75] Gray Dep. at 152:14-20.

[76] *See* 15 U.S.C. §§ 1691 *et seq.*; *see also, e.g., Cooley v. Sterling Bank*, 280 F. Supp. 2d 1331, 1338 (M.D. Ala. 2003) (majority of courts analyze ECOA claims in the same manner as Title VII claims); 42 U.S.C. § 2000e-2(m) (a violation of Title VII (employment) is established "when the complaining party demonstrates that race . . . was a motivating factor for the [action], even though other factors also motivated the . . . [action]."); *Costa v. Desert Palace, Inc.*, 299 F.3d 838 (9th Cir. 2002); *Venters v. City of Delphi*, 123 F.3d 9 at 973 n.7; *Foster v. Andersen*, No. 96 C 5961, 1997 WL 802106; *Thomas v. Nat'l Football League Players Ass'n*, 131 F.3d at 202; *Price Waterhouse v. Hopkins*, 490 U.S. at 276 (O'Conor, J., concurring); *id.* at 259 (White, J., concurring).

[77] *See* Letters to Congressman Bateman, 3/22/85 (ROI at OCR-00501-507) (including name of Indianola Balderson, County Committeeman).

[78] CRAT Report at 15.

> [T]here were a number of complaints; a lot of activity that was questionable. I think, considering the number of black farmers in the area and the number of complaints and their inability to get service at various times, that it [racism] certainly was severe for that area and that number of farmers. . . . ***there were definitely problems of excluding the African-American farmers in that particular service area in participating in the programs provided by USDA***.[79]

Testifying specifically about the situation in the Northern Neck, Ms. Gray reported that:[80]

> [T]he County Committee was composed of farmers from that area who had received – mostly who had received USDA loans in the past. And it's true they did have elections, and not all the people heard about the elections, and frequently these people returned themselves to serve as County Committees, and they got to decide for years and direct the federal programs in that area. And in one case specifically, I remember where the agent would – the agent told a white farmer not to lease his land to – that he had been leasing for years – to black farmers in that area because they weren't going to approve the loan, and you certainly could get an operating loan by leasing the land. . . . Or so and so was going to buy this black farmer's land so don't give him a loan. It was just horrible the stuff that was going on and the way there was a concerted effort in the community to acquire the black farmer's land.[81]

Only race-based discrimination explains the USDA's actions. Mr. Chadwick cited the ***size of the Haynies' farm*** when he first told the Haynies they were ineligible for any additional credit, and he repeated it to the state office. He did not in the first instance cite the loan limits; that came later. He did not ever, even in hindsight during the 1998 investigation, cite the lack of collateral; he did not ever cite lack of creditworthiness. Mr. Chadwick and even some of his superiors cited the ***size of the Haynies' farm.*** Later, he, his superiors and his successors cited the maximum loan limits. Both "justifications" are demonstrably false pretexts.

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[79] Gray Dep. at 118:16 - 119:10 (emphasis added).

[80] *Id.* at 95:18-20.

[81] *Id.* at 94:18-95:18.

It was the size of the Haynie farm and the concomitant prospect of their economic advancement that had upset the local white farming community. It was the Haynie farm's growth that the white farming community tried to block, and it was the economic progress of an African-American farm family that the USDA acted to destroy. The USDA, having already granted the Haynies enough credit to create a huge debt burden and placed liens on all their assets, then capitulated to and acted in concert with the local white farming community's racial animus toward the Haynies. The USDA's conduct effectively consigned the Haynies to economic death, despite the Agency's dual mandates to keep farmers farming if at all possible, and to keep its decisions free of racial bias.

After reviewing the facts related to the Haynies' complaint gathered by the OCR investigator, at least one adjudicator and then the Director of the OCR concluded that the Haynies' rights under the ECOA had been violated by the USDA's racially discriminatory decisions:

> Oh, I think it was intentional. And, you know, if you understand the way these county committees operate too, there's no way it could be unwitting."[82]

G. Responsible Disinterested Persons in the USDA's OCR Found the Evidence of Illegal Discrimination Convincing

OCR Investigator Temme was convinced by this evidence that the USDA had discriminated against the Haynies.[83] OCR Investigator Temme concluded from his review of the record that the Haynies were treated less favorably than white borrowers whose loans were

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[82] *Id.* at 94:6-11.

[83] ROI at 12 (OCR-00334) (redacted pursuant to Court Order).

serviced by the same FmHA office.[84] He also stated that the USDA's conduct "deviated from the policies of the department"[85] without any adequate rationale.[86]

At least one, and quite possibly more than one, OCR adjudicator was also persuaded and drafted an FAD recommending discrimination.[87] OCR Director Rosalind Gray was also persuaded; after reviewing the file and FAD in its draft forms, she determined that a finding of discrimination was warranted and considered the Haynie case to be one of the stronger cases of discrimination that her office processed under her tenure.[88]

IV. THE HAYNIES ARE DUE COMPENSATORY DAMAGES IN EXCESS OF TWELVE MILLION DOLLARS

Assuming Defendants are liable, damages are due. Plaintiffs and Defendants agree on the key fundamentals of estimating damages in this case. The damage estimate produced by the Defendants differs greatly from the estimate produced by the Plaintiffs, however.[89] The difference is due to Defendants' failure to construct a defensible model of Plaintiffs' damages.

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[84] *See id.*

[85] Temme Dep., appended as Exhibit 13, at 106:13-14.

[86] *Id.* at 107:18-22 (. . . [I]t's their responsibility to provide investigator or an official an adequate business response why they deviated from their procedure, they were not able to do that.").

[87] *See* OCR-00063 (David Lacy drafted FAD recommending finding of discrimination); Gray Dep. at 51:10 – 52:9 (Shawn Vance possibly drafted the first FAD recommending a finding of discrimination).

[88] *See* Gray Dep. at 65:3-12; 62:1-5 (". . . it was a. . . very detailed investigatory file with that report, . . . and the activities that had been described certainly warranted some kind of relief.").

[89] *See* Defendants' Expert Report with Exhibits ("Trostle Report"), Exhibit Trostle-1 to the Deposition of Ronald G. Trostle ("Trostle Dep."), deposition exhibits appended as Exhibit 22; Plaintiffs' Expert Report with Exhibits ("Kambhampaty Report"), Exhibit Kambhampaty-1 to the Deposition of S. Murthy Kambhampaty ("Kambhampaty Dep."), deposition exhibits appended as Exhibit 20. Both Parties captioned their expert reports as a declaration and intended them to be treated as sworn testimony, but both failed to execute the declaration in the form required by 28 U.S.C. § 1476. For ease and clarity, those declarations are referred to herein as expert reports.

As explained below, Defendants' model ignores or misconstrues key information about Plaintiffs' operations and rests on insupportable assumptions. In fact, Defendants' conclusion that the damages estimate is a negative $296,607 may be interpreted to mean that Plaintiffs actually benefitted from the adverse race discrimination.[90] This Court should reject Defendants' damages estimate as methodologically flawed, wrong on the facts, and implausible on its face.

A. The Methods and Other Points of Agreement Between the Parties

The Parties agree on eight basic fundamentals of the damages estimate, as follows:

(1) The Parties agree that the "net income analysis" is the proper method to address the question of economic damages in a case such as this one.[91] The damages equation assumes liability, and that the correct form for that equation is:[92]

Estimated net farm income **absent** discrimination; (a/k/a the ***minuend***)	–	Actual net farm income, **given** discrimination; (a/k/a the ***subtrahend***)	=	Economic damages, a/k/a the ***difference***

The difference between the minuend and the subtrahend is the estimate of damages.

> The way the methodology is developed is that we assume that a farmer with a comparable type of farming operation, operating without discrimination, what their income would have been. Then to the extent that their income was less than that, we attribute that to the alleged discrimination.[93]

Further, the Parties agree on the method of calculating the minuend across crops and hogs.

(2) The Parties agree that the key to estimating the minuend in the net income analysis equation is to identify existing data that approximate as closely as possible the operation

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[90] Trostle Report at 4, ¶ 4(1).

[91] Trostle Dep. at 30:14-19, appended as Exhibit 21.

[92] *Id.* at 30:5-19.

[93] *Id.* at 30:14-19.

Plaintiffs would have had if their operation had not been affected by discrimination.[94] As evidenced by their respective models, the minuend must be a composite estimate based on commodity-specific estimates.[95]

(3) Both Parties ***assume*** that the underlying aggregated data is free of discrimination, without attempting to control for discrimination in any other fashion.[96] Experts for both Parties acknowledge that the "discrimination-free" minuend misses the goal of actually being discrimination-free to the extent it reflects "the impact of whatever discrimination is embedded in those average numbers that affects the yields and costs."[97]

(4) The Parties agree that the key to estimating the subtrahend is to reflect as accurately as possible the actual experiences of the Plaintiff.[98]

(5) The Parties agree that consistency in the source of data and unit of measurement is desirable to avoid inadvertently introducing unidentified and unintended variation between sources.[99]

(6) Experts for both Parties agree that there is no economic justification for calculating the economic damages in anything other than present value dollars.[100] The Defendants' "deduction" of $2,657,168 for present value dollars was driven by instructions from

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[94] *See id.* at 128:3-10; Kambhampaty Dep. at 117:1, appended as Exhibit 19.

[95] *See* Trostle Report at Exhibit J; Kambhampaty Report at Exhibit F.

[96] Trostle Dep. at 232: 5 – 233:22.

[97] *Id.* at 233:5-8; Kambhampaty Report ¶ 13.

[98] Trostle Dep. at 116:11 - 128:1; Kambhampaty Report ¶ 13.

[99] Trostle Dep. at 33:5, 128:12-17, 249:4-8.

[100] *Id.* at 101:22 – 103:15; Kambhampaty Report ¶ 18.

the lawyers, without economic justification.[101] Defendants' expert acknowledged that there is a well-recognized difference between inflation and interest and that there is no economic justification for denying the value of damages adjusted for inflation by the Consumer Price Index, as Plaintiffs' model did.[102]

(7) The Parties agree that the Defendants' expert report, not the Plaintiffs' report, contained an error in its mathematical calculation.[103]

(8) Both Parties' expert calculations used yields measured per planted acre, and Plaintiffs did not, as Dr. Trostle had erroneously concluded, use yields per harvested acre.[104]

Although Defendants agree with Plaintiffs on the fundamental methods underlying the damages estimate, their model is fatally flawed because of the manner in which they operationalize (or fail to operationalize) the methods. Defendants adopt insupportable assumptions about Plaintiffs' projected operations and ignore existing data that more closely approximate Plaintiffs' operation. And, while they emphasize the importance of using a data base with internal consistency, Defendants use ***anything but*** a consistent set of data.

B. Identifying the Right Farm Type for the Minuend

The key to estimating the discrimination-free net farm income in the damages equation is to identify the existing data, *i.e.*, the composite farm type, that approximates as closely as

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[101] Trostle Dep. at 53:17 – 58:4.

[102] *Id.* at 57:10-17, 101:22 – 103:15.

[103] Trostle Dep. at 50:5 – 52:22.

[104] *Id.* at 170:2 – 172:17.

possible the operation Plaintiffs would have had if their operation had not been affected by discrimination.[105] On this there is no dispute.

Defendants' estimate of net farm income in the minuend is based on the ***average yields for all farms in Northumberland County*** producing the crops the Haynies produced (hogs are treated separately), the average ***Virginia state prices*** for those commodities, and the ***average costs of production (COP) for all farms in the various regions for*** producing those commodities.[106] In other words, the farm type Defendants selected as that most closely approximating the Plaintiffs' discrimination-free projected farm, is defined by a single concept: geography.

In using geography-based averages, Defendants ignore virtually[107] all other available farm variables—such as farm organization, production technology including best practices, size, volume of sales, age, education and primary occupation of farm operator, and others—that correlate with either (a) yield and/or (b) cost of production and, therefore, (c) net farm income.[108] These telling variables are masked in the average.[109] By doing so, Defendants effectively adopt

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[105] *Id.* at 128:3-10.

[106] Trostle Report ¶¶ 16, 58. Both Parties used state prices; it is the best reliable data available.

[107] Defendants ostensibly operationalize two farm-related variables — number of acres and bulk discount — but neither of these is operationalized to fairly model the Plaintiffs' projected farm, points elaborated below.

[108] *See, e.g.,* America's Diverse Family Farms, USDA, ERS, AIB No. 769, 2001, appended as Exhibit 23; Robert Hoppe, Robert Green, David Banker, Judith Kalbacher, and Susan Bentley, Structural and Financial Characteristics of U.S. Farms, 1993: 18th Annual Family Farm Report to Congress, USDA, ERS, AIB No. 728, appended as Exhibit Kambhampaty-3 to Kambhampaty Dep.; Linda Foreman, Characteristics and Production Costs of U.S. Corn Farms, USDA, Statistical Bulletin No. 974, 2001, appended as Exhibit Kambhampaty-6 to Kambhampaty Dep.

the premise that all farms and all farmers—whether retired, part-time, small family farms or large family farms with high sales—within a particular locale[110] are identical in terms of net farm income per acre. Stated differently, Defendants take the position that the "best estimate of economic damages"[111] of any farmer's discrimination-free net farm income is derived from the ***average per acre net farm income for all farms, undifferentiated.***

Obviously, it violates the premise of the damages equation to use the average of all undifferentiated farms as the basis for an estimate where, as here, additional record evidence establishes that the farm operation to be estimated is not best approximated by the average of all available existing information. Hypothetically, at least, Dr. Trostle agrees:

> Q: If you had a farmer who used what I'm going to call his "best practices," and I think that's sort of an industry term, and had a large operation in a county that was populated with a large number of part-time farmers of small farms, wouldn't you expect significant differences both in yield and cost -- or we don't need to separate them out, we can say in return -- from what's the -- what the average is for that county?
>
> A [Trostle]: If you're comparing one individual with best practices with the average for everybody else, yes, I would.[112]
>
> * * * *
>
> Q: . . . [E]ven though . . . you have testified that using large farm or mid-cost national statistics brings with it assumptions that you don't think are valid, to some extent does the large farm and mid-cost statistics capture these best practices large-farm characteristics

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[109] An average, a measure of central tendency, describes sameness, or the "alike-ness" aspect of a set of data points. It ignores the dispersion, variance, or "different-ness" of that same set of data. And perhaps more importantly, it masks interaction effects of different variables, such as the association between college education, full-time occupation as a farmer, and volume of annual sales.

[110] The term "locale" here is used to refer to whatever place or area is being used by Defendants as the reference point. The term "region" is avoided, because Defendants used that specifically in relation to their COP estimates.

[111] Trostle Dep. at 32:13 – 33:6.

[112] *Id.* at 182:6-16.

> that may be masked in a county where the farmer is small, part-time?
>
> A [Trostle]: In general, I think that's a fair assumption.[113]

Under the circumstances, given the available data and the task at hand, Defendants made an indefensible choice of data. Consequently, Defendants' model must be rejected in total in favor of Plaintiffs' model.

First, the Defendants' geographical type does not closely approximate the Haynie farm's characteristics. The Haynie farm is simply not the average Northumberland County farm or the average southeast region farm with respect to size of operation. Even at the beginning of the damages period, the Haynie farm was at least 10 times the size of the average farm in Northumberland County and the average farm in the southeast regions.[114] Furthermore, the Haynie farm is not typical of the farm enterprise that dominates and defines the southeast regions. Locale simply does not capture the essence of the projected Haynie operation.

Second, as it is employed in this analysis, the geography variable doesn't define much at all. It is given various definitions, which introduce inconsistency in the underlying data. It is defined one way for yields and another way for cost of production. It is defined differently for each and every commodity. It is not defined consistently over the damages period. In addition, it is defined over-broadly. It encompasses portions or all of as many as 10 states on the Atlantic

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[113] *Id.* at 184:3-10.

[114] Forty percent of the farm operators in the Northern Neck in 1982 were principally occupied by something other than farming; the average farm size for the Northern Neck was less than 275 acres, and only four percent of the farms in the area were larger than 1000 acres. This made the Haynie farm a stand-out. It was even more of a stand-out because of the race of the operator: of all farms in the Northern Neck, only 11% were operated by black farmers and less than 4% had percent of the black-operated farms had annual sales of more than $10,000. *See supra*, Statement of Undisputed Material Facts, notes 3-4 and related text. Recent data indicate that the average size of a farm in the seven states with the majority of their land mass contained within the Southern Seaboard Farm Resource Region is less than 250 acres and in Virginia is 200 acres. *See infra*, note 164.

and Gulf coasts,[115] as well as, in some circumstances, Pennsylvania, Kentucky, Tennessee and Arkansas. Further, it is defined in such a way that it does not necessarily include the location of Plaintiffs' farm or even the state in which Plaintiffs' farm is located. Clearly, this variable is not consistent in its meaning; *i.e.*, its meaning is confounded and difficult to interpret.

On its face, choosing the average of all farmers in the Plaintiffs' locale as the prototype for the estimate of discrimination-free net farm income is cynically perverse and would cheat the Plaintiffs of their due. Plaintiffs' farm was not average, and was not perceived as average. When it was only about twice as large as the average farm, back in 1977 when the Haynies were starting out, there was no trouble. Then, when the Haynie operation became noticeably larger than the average, and clearly positioned for additional growth, there was lots of trouble. ***Size,*** with its clear promise of success and the concomitant pride of the local black community in their native son, triggered the expression of the race-based hostility: this African-American farm enterprise was getting too big. ***Size*** is what the USDA initially identified as the reason for denying additional loans to the Plaintiffs. Incredibly, now, more than 20 years later, Defendants want to restrict Plaintiffs to the economic experience of the average size farmer for the locale. This is clearly ***not*** what Plaintiffs would have had but for discrimination.

Defendants' use of geography-based averages as their prototype for Plaintiffs' projected farm was driven by decisions made more than three years ago by the *Pigford* Track B Team in the USDA's Economic Research Service ("ERS") group discussions of how to prepare expert reports in those cases.[116] In estimating damages in the Haynie case, Dr. Trostle appears to have

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[115] These include Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas.

[116] Trostle Dep. at 18:22 – 23:21.

treated the methodology created, largely without his participation, for the Pigford Track B cases as a readily available convenience, rather than a carefully reasoned basis for estimating damages. The ERS had used geography-based analyses for the *Pigford* Track B cases, and it was presumed the Haynie case would also rely on geography-based data.[117] It is remarkable that a geography-based approach is currently disfavored by ERS analysts for the task of explaining (or, alternatively, estimating) net farm income except when it comes to paying damages in discrimination cases.[118] Whatever the explanation in other cases, such an approach is certainly not appropriate for this *Pigford* opt-out case involving a large and sophisticated farming operation that is not average by any measure.

1. "Regional" Costs of Production

Defendants state that they use regional cost of production ("COP") data in estimating the minuend of their damages equation.[119] Actually, Defendants rely on various regions, not just one, for their COP estimates, although their report does not disclose this fact. One of the regions Defendants rely on is the Southern Seaboard, a large land mass first identified in 1995 in the

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[117] *Id*, at 22:3-19.

[118] A review of other damage estimates made in the Pigford Track B cases identified in Dr. Trostle's disclosure statement reveals that geography-defined averages is the ***only*** method Dr. Trostle has used to operationalize the net income analysis in discrimination cases. *See* Exhibit 24, Certain Pigford Track B Case Damages Reports (redacted per Court Order). Apparently, Dr. Trostle has not seen a black farmer plaintiff in a discrimination case that he thinks warrants anything other than an estimate based on an average. This fact, along with his deposition testimony regarding Pigford Track B Team group discussions suggest that the geography-based average may have been the only method used in all *Pigford*-related farmer discrimination cases. Indeed, this may well be the USDA's blanket approach to obtaining the minimum damages estimate in race discrimination cases; USDA Economist Dargan Glaze did the same thing in the *Warren* case before Administrative Law Judge Constance O'Bryant. Judge O'Bryant found the methods and results unreliable and implausible and did not credit them. *See* Determination, *In re Will Sylvester Warren*, USDA Docket No. 1194, HUDALJ No. 00-19-NA, December 17, 2002, at 26, appended as Exhibit 25.

[119] Trostle Report ¶ 30.

USDA's ERS Farm Resource Region map.[120] These new regions resulted from an effort to "develop agriclimatological farm resource regions that had similar production technologies."[121] Long dissatisfied with its old geography-based Farm Production Regions because they mask important diversity in farm operations, the ERS explained the advantages of the new ones:

> Since the early 1900s, USDA analysts have sought to identify patterns in U.S. farming that might ***further the understanding of differences in financial performance of farms and the economic well-being of farm households***. The [new] Farm Resource Regions are derived from four sources: a cluster analysis of U.S. farm characteristics (Sommer and Hines), the old Farm Production Regions, USDA's Land Resource Regions, and NASS Crop Reporting Districts. ***County clusters, based on commodities produced, have shown that a few commodities tend to dominate farm production in specific geographic areas that cut across State boundaries. The climate, soil, water, and topography in localized geographic areas tend to constrain the types of crops and livestock that will thrive there. The old Farm Production Regions, in following State boundaries, necessarily group unlike areas together because a single State often encompasses different soils and topography***.[122]

Cluster analysis employs the logic and language of typologies. Its goal is to sort a set of data into types (clusters), by maximizing the between-type differences and minimizing the within-type similarities, thus identifying types that are internally homogenous and externally distinct.[123] The ERS county cluster analysis produced a set of 12 diverse farm enterprise types,

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[120] Trostle Dep. at Exhibit Trostle-6.

[121] Trostle Dep at 156:2-3.

[122] *See* Farm Resource Regions, Trostle Dep. at Exhibit Trostle-6 (emphasis added; 1900 is not a typographical error).

[123] *See* Diversity in U.S. Agriculture: A New Delineation by Farming Characteristics, USDA, ERS, AER No. 646, 1991, at 2-3, appended as Exhibit 26.

based on 27 variables at the county level from the 1987 Census of Agriculture: 19 farm enterprise variables, 5 resource variables, and 3 farm-non-farm interaction variables.[124]

The first, strongest, and most cohesive and independent cluster to emerge in the analysis, cluster 1, was the corn-soybean-hogs cluster:[125]

> Sales of corn, soybeans, and hogs make up 64 percent of total farm sales in cluster 1 compared with 22 percent for the United States (app. table 4). The counties in cluster 1 also account for almost 75 percent of U.S. sales of the three commodities. A vast majority of the cluster 1 counties are in the Corn Belt.[126]

The Northern Neck of Virginia falls in cluster 1.[127] (Cluster 1 is depicted in red on the county cluster map.) This is clear evidence that, with respect to the 27 variables included in the cluster analysis—which does not include geographic variables because they are reflected in the constraints those natural resource variables place on the enterprises that thrive in the localized geographic area—***the farms in the Northern Neck are more like the farms in the Corn Belt than they are like the farms in the Southern Seaboard.*** In fact, there are only a handful of very small pockets of cluster 1 counties in the entire Southern Seaboard, indicating that corn, soybeans, and hog production are not typical in the Southern Seaboard, contrary to Defendants' expert testimony.[128]

A look at the COP for corn and soybeans, the two crops that define cluster 1, demonstrates that the average southeast farm is not a valid prototype for a cluster 1 farm. In

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[124] *See id.* at 2 & App. Table 1.

[125] *Id.* at 3 & App. Table 1.

[126] *Id.* at 3.

[127] *Id.* at 5, Map: "Twelve Multicounty clusters show patterns of agricultural diversity."

[128] Trostle Dep. at 167:8 – 168:17.

1996, corn-growers in the southeast region planted an average of 66 acres of corn, resulting in higher costs of production than in other regions in part because the cost of equipment is spread out over fewer acres.[129] The Haynie operation would have planted ***45 times*** that amount corn[130] resulting in a far different per acre COP estimate for corn due to the capital recovery on equipment alone. Capital recovery is the return on investment in equipment and machinery that results from having a large number of acres under cultivation.[131] ERS analysts report a $15.13 per acre cost differential between southeast corn producers and corn producers with more than 750 planted acres.[132] Treating the large Haynie farm as such rather than restricting it to the average for southeast producers of soybeans in 1996 would make ***a difference of $45,874 in net corn revenue for that year alone,***[133] all else being equal, more than double the Defendants' estimate of net corn revenue for that year.[134] Further, ERS analysts report a differential of $12.48 between these two groups that is directly attributable to the favorable capital recovery on the value of machinery and equipment alone.[135] This would make a difference of ***$37,839 in net***

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[129] Foreman, Characteristics and Production Costs of U.S. Corn ("Foreman"), at 10, appended as Exhibit Kambhampaty-6 to Kambhampaty Dep.

[130] Kambhampaty Report at Exhibit F, relating to projected cropland under cultivation. Defendants accept the Plaintiffs' projections of growth and adopt them for their own estimate, although with reservations. Trostle Report ¶ 29. Dr. Trostle admitted that his reservations were not well-informed and that only someone familiar with the rent situation in that particular area could make a judgment as to whether such growth was realistic. Trostle Dep. at 227:1 - 228:19.

[131] Foreman at 4.

[132] *Id.* at Tables 4 & 10.

[133] *Id.* The corn calculations used to derive the numbers presented are as follows:

[($242.81 SE COP) - ($227.68 COP for > 750 acres)] x (3032 Haynie corn acres) = $45,874.16.

[134] Trostle Report at Exhibit J, relating to corn.

[135] Foreman at Tables 4 & 10. The calculation is as follows:

return on just corn equipment and machinery for just ***one year, attributable solely to the capital recovery costs***.

Soybeans present a similar situation. ERS analysts report that in 1997, southeast soybean producers planted an average of 158 acres and a COP of $147.52 per acre.[136] The Haynie farm would have planted 2343 acres, about ***15 times*** as much soybean.[137] If the Haynie farm were treated as a producer of 750 or more acres of soybeans, with a COP of $135.94,[138] the difference in the net soybean revenue for 1997 would have been $27,132, of which $3,889 is attributable to capital recovery costs alone.

As these two examples demonstrate, the Defendants' scheme of multiplying the Southern Seaboard's average farm COP—which does not reflect any variance in the statistical information—by the number of acres in the Plaintiffs' farm, does not begin to provide a fair approximation of the Plaintiffs' farm operation. It systematically underestimates a COP for a farm with a large number of acres under cultivation by ignoring just this one aspect of variance in the data: size. If the variance in the statistical information with respect to aspects of the Haynie operation were taken into account, such as the fact that the Haynies obtained fertilizer at discount prices, regularly planted corn after soybeans, and that the operator was under 65, college educated, and engage in farming as a full-time occupation, then the Haynie farm is arguably a "low-cost producer." In that case, all else being equal, there would be savings of

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[($70.37 SE capital recovery) – ($57.89 capital recovery for > 750 acres)] x (3032 Haynie corn acres) = $37,839 attributable to capital recovery for corn COP for one year alone.

[136] Linda Foreman & Janet Livezey, Characteristics and Production Costs of U.S. Soybean Farms, USDA, ERS, Statistical Bulletin No. 974-4, 2002 ("Foreman & Livezey"), at Table 4, appended as Exhibit Kambhampaty-7 to Kambhampaty Dep.

[137] Kambhampaty Report at Exhibit F.

[138] Foreman & Livezey at Table 10.

$180,161 corn COP for one year alone, of which capital recovery on the value of machinery and equipment alone accounts for $67,643.[139] Masking the variance in the statistical information by considering only the average statistics works against making a meaningful fit between the available existing data and the Plaintiffs' projected farm operation. Doing so also happens to grossly underestimate the economic damages for any farm operation that is not merely an "average" farm operation.

While the Defendants insist on a geography-based averages approach, they do not consistently use data for a single region for all enterprises over the time period. In fact, only data collected in 1995 or later—the last third of the Plaintiffs' damages period—represent averages from the Southern Seaboard region. For two-thirds of the damages period, Defendants base their estimates on data points from the older, disfavored Farm Production Regions, which follow state boundaries, and do not even take into account either agriclimatological factors, let alone important farm characteristics that explain farm net income.[140] Furthermore, Virginia data was not even necessarily included in the data on which Defendants relied to construct their estimates. As Defendants' expert testified:

> And for corn . . . you see that ***Virginia is in no region***. That signifies that corn production in Virginia, relative to the corn production in the rest of it [the United States] wasn't large enough, wasn't significant enough to be included in the surveys.
>
> But I looked at it and said I can either include it in the Lake States or I can include it in the Southeast Region, which includes North Carolina. And I said it seems to me to have more

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[139] Foreman at 4, Tables 1 & 4.

[140] Trostle Dep. at 156:10-15, 155:21 – 156:4 (". . . they tried to define regions that were consistent across all commodities, and therefore, they went and tried to develop agriclimatological farm resource regions that had similar production technologies. ***That was not a standard for developing this*** [indicating the old Farm Production Regions]."). (emphasis added).

> similarities with the southeast than it does the Lake States. And particularly if you look at, you know, sort of do eyeball comparisons.
>
> * * * *
>
> For corn, ***Virginia is not represented***. I include it in the Southeast Region, which is adjacent to Virginia, being adjacent to North Carolina, which is in the region.
>
> For barley, it is included. Virginia is included in the ***Northeast*** Region.
>
> * * * *
>
> ***Soybean production, similar to corn, is not – in Virginia is not in the survey*** but North Carolina is. I included it in the Southeast Region, which would be consistent with the way the Southern Seaboard in the new system is set up.
>
> And finally, wheat, which doesn't show up on this map, but it is in the Southeast Region.[141] It's truncated from page to page (indicating). And hogs are in something call the South Region (indicating).[142]

In other words, while Defendants selected geography-based data over other available data, they do not even rely on data that necessarily includes the place, either the county or the state, where Plaintiffs' farm is located. It is clear that Defendants have not maintained the meaning and integrity of the defining characteristic of their prototype for Plaintiffs' farm. Defendants' choice of data, in light of the information available, defies legitimate explanation.

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[141] In fact, this statement is incorrect. Virginia was not one included in the survey conducted for estimating wheat costs of production, and therefore no Virginia farms are included in the Southeast Region for wheat. Like corn and soybeans, data from Virginia wheat farmers does not figure into the Southeast Region estimates that Defendants relied on. The Southeast wheat region was comprised of Arkansas, Georgia and North Carolina. *See* Exhibit 27 (legible map of Wheat Production Regions).

[142] Trostle Dep. at 155:4 – 161:14 (referring to maps) & Exhibit Trostle-7 (emphasis added). These features of Defendants' analysis are not disclosed in the expert report.

Furthermore, Defendants' choice of COP data does ***not*** reflect consistency as a priority, as they claim. Defendants emphasize the importance of consistency of data and attempt to justify the selection of geography-based data on that concern:

> . . . I didn't want to use one component of cost production from one source and another component of cost production from another source. That I wanted to keep the comprehensiveness and the internal consistency of the data.[143]

Yet, as demonstrated above, this is exactly what Defendants do; they changed data bases with each commodity, and across time for each commodity.[144] There simply is no consistent category of data that informs the COP estimates in Defendants' analysis.

Defendants further destroy any meaning whatsoever in the vari-regional COP estimates, when they ***inflate*** the COP prototype estimate.[145] Defendants are aware that certain crop yields produced by farmers in Northumberland County historically have been significantly higher than in the vari-regions from which they derived their COP estimates.[146] This difference should have been viewed as reason to treat the Northern Neck as dissimilar from the region. Indeed, the ERS analysis of corn production costs expressly notes that the southeast's hotter climate and uncertain rainfall results in lower corn yields; similarly, soybeans in the southeast have lower expected yields than elsewhere.[147] The more temperate climate of the Northern Neck, with its more even

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[143] Trostle Dep. at 128:13-17.

[144] *Id.* at 162:6-9 ("Q: So you have one data series one year [for each commodity] and another data series another year, and you have put them together. A: I put them together.").

[145] Trostle Report at 9.

[146] *Id.* at 9, ¶ 14.

[147] Foreman at 10; Foreman & Livezey at 13.

precipitation and available groundwater, could with good reason be expected to produce better yields than the average for the southeast.

Instead, the Defendants "adjust" for this advantage of higher yields by essentially wiping it out. As COP increases, the damages decrease, all else being equal. Thus, Defendants' "adjustment" to the vari-regional COP effectively drags the net farm income estimate back down toward the average return for the regional farmer in whatever region was used to define the COP for that crop and that time period, either before or after 1995. The "adjustment" is accomplished by multiplying the ratio of Northumberland County yield to the lower vari-regional yield by 75% of the variable costs of production[148] for the vari-regions.[149]

For example, if the corn yield in 1989 in Northumberland County was 33% higher than the corn in the southeast corn region, then in the Haynie estimate, the regional COP for corn was adjusted upward by 25% of the variable costs of all farmers producing corn in Kentucky, North Carolina, and South Carolina. Or, in the case of wheat, the higher yield differential for the average Northumberland County farmer who grew wheat was discounted for the years 1995 – 2002 by 75% of the average variable costs of production for all farmers who grew wheat in the Southern Seaboard, and for the years 1982 – 1994 by 75% of the average variable costs of production of all farmers who grew wheat in Arkansas, Georgia and North Carolina. As

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[148] The variable costs of production include things such as seed, fertilizer, chemicals, custom operations, fuel and electricity, repairs, hired labor and more. Trostle Report at 9.

[149] Apparently, this is the standard *Pigford* Track B case method whenever yields anywhere are higher than the regional average. As can be seen from the damages reports submitted, downward adjustments to high yields were taken virtually any time there was a high yield, without written explanation fordoing so. Further, it is interesting to note that the adjustment factor varied across cases, from about 75% of variable costs to over 100%.

Defendants' expert explained, wheat is grown where you cannot grow anything else.[150] So, although in the Northern Neck, where the soil is fertile, precipitation is fairly even throughout the year, the climate moderate and the growing season long, and farmers grow winter wheat because it double-crops nicely with a summer soybean crop, the Defendants have denied to the Plaintiff most of the benefit of the favorable climate and land with this "adjustment."

Defendants offer no adequate or convincing justification for this downward "adjustment" for higher crop yields. In the absence of any evidence that, for example, the soil in Northumberland County requires more fertilizer and chemical application, the justification for the adjustment is elusive and certainly not stated in Defendants' expert report. In fact, Defendants' own ERS has noted that in the case of soybeans, the COP for the Southeast is about the same as for other regions, but that the yields in the southeast are significantly lower.* Further, test plot studies from Virginia Cooperative Extension Service demonstrate that the soybean yields in the Eastern Virginia, including the Northern Neck, on properly-managed farms, are considerably higher than average.[151] Thus data cited by the expert for the Defendants is inconsistent with applying Northumberland County average yields for the large, well-managed farm in the Northern Neck such as the farm Plaintiffs would have operated absent discrimination.

On the one hand, Defendants simply deny to the Plaintiffs most the benefit of the Northern Neck's prevailing favorable agriclimatological conditions on yields—the long temperate growing season, steady precipitation, flat topography and abundant ground water.

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[150] Trostle Dep. at 168:18-19 ("Let me clarify. Wheat increasingly is grown on land that isn't suitable for anything else.").

* Foreman & Livezey at 13.

[151] Trostle Dep. at 185:1 - 186:6; Trostle Report ¶ 27 (reporting soybean yields of 36.2 bushels for acre for double-cropped soybeans and 44.8 bushels per acre for full-season beans).

Yet, if there is ***any*** legitimate justification whatsoever for the inclusion of the Northern Neck farm in the various southeast regions, it has to be the climate and soil. It is remarkable that Defendants quickly abandon this perspective when it is convenient. So much for the integrity and consistency of the data: it can be inflated as convenient, to cease to represent the regional averages obtained. But, in doing so, Defendants have revealed that geographical location—the defining variable of Defendants' farm prototype—really has no legitimate meaning in their analysis.

2. Defendants' Choice of Data Maximizes Rather than Minimizes the Effects of Discrimination in the "Discrimination-Free" Minuend

Defendants employed the average COP in the southeast vari-regions for the calculation of the minuend—the "without discrimination" component of the equation.[152] Defendants' choice of data maximizes the ***presence*** of discrimination in the underlying data, not the absence of it. First, the Southeast has a highly disproportionate share of minority-operated farms, providing a disproportionately greater opportunity for race discrimination to operate and be reflected in the statistical averages.[153] Further, as noted above, the USDA's CRAT reported that the complaints of discrimination at the county level that interfered with minority farmers' ability to be successful producers were most prevalent in the Southeast region of the country.[154] Thus, the only reasonable assumption is that effect of discrimination based on race would be greater in data derived from the Southeast farmers than anywhere else in the nation, *i.e.*, than any other data the Defendants could have possibly chosen for their COP estimate.

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[152] Trostle Dep. at 155:4 – 161:14 (referring to maps) & Exhibit Trostle-7.

[153] *See* Map, Distribution of Minority Operated Farms, 1982, CRAT Report at 19, appended as Exhibit 28.

[154] *See* CRAT Report at 15.

In addition, Defendants elected to use Northumberland County averages as their benchmark for average yields. The testimony on record in this case by former USDA OCR Director Gray established that the local office serving Northumberland County for much of the damages period is the ***single local office that produced more discrimination complaints from its customers than any other local office in the country:***

> . . . that office in Virginia at one point had more complaints than any other individual office. Which is not to say that the state of Arkansas didn't have the largest number of complaints. But that particular office in Virginia had the largest number of complaints than any other office.[155]

Thus, wittingly or not, Defendants have built in as much discrimination in their discrimination-free component as was possible, given their selection of data defined by location.

3. Bulk Discounts

Defendants concede that the size of the projected Haynie farm operation would enable them to purchase seed, chemicals, fertilizer, and fuel at bulk discount rates.[156] Defendants' expert assigned a savings of 5% of those variable costs. Dr. Trostle acknowledged that he had was not personally knowledgeable about bulk discounts and had not located any survey results on the subject.[157] He further acknowledged that he had not heard of and did not research dealer discounts.[158] In the absence of information or knowledge, Dr. Trostle had telephone conversations with a few contacts in central Kansas and one contact in Southwest Virginia on the

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[155] Gray Dep. at 92:1-6, 90:15 – 93:3. Data from Arkansas were included in the COP estimates for wheat for at least two-thirds of the Plaintiffs' damages period.

[156] Trostle Dep. at 145:4-18.

[157] *Id.* at 110:1-14.

[158] *Id.* at 106:2 – 107:17.

subject.[159] As such, this 5% figure simply does not meet the standards of expert testimony under Fed. R. Evid. 702.[160] It is not based on any reliable study and it is not the expert's own opinion based on his knowledge or experience. It should not be credited.

In fact, the Haynie farm enjoyed far more significant discounts in his farming operation than an average 5%. With its trucks for hauling and its storage facilities, the farm made bulk purchases of chemicals, fertilizer, fuel and seed.[161] In the period around 1985, the discounts the farm realized ranged about 10-15% for seed corn, 15-18% for chemicals, and 25 - 30% for fertilizer.[162] The discount on diesel fuel, which was purchased in 7500 gallon lots and stored in a 10,000 gallon tank, ranged depending on the market; this discount was, in Plaintiffs' experience, never less than 10 cents per gallon and, on occasion, spiked to a 30-cent-a-gallon discount.[163]

4. Defendants Refuse to Treat Plaintiffs' Projected Farm as a Large Farm

Aside from the bulk discounts (which are underestimated by a large margin), Defendants take account of the Plaintiffs' large farm only one other way: by multiplying the number of acres of the projected Haynie farm by the per acre results for estimated net farm income—which were based on the ***average for all farms*** for Northumberland County and the ***average for all***

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[159] *Id.* at 106:2 - 108:4.

[160] Fed. R. Evid. 702 reads as follows: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

[161] Philip Haynie Decl. ¶ 19.

[162] *Id*; J. Barrack Decl. ¶¶ 4-6.

[163] Philip Haynie Decl. ¶ 20.

farms for the various southeastern regions. This is apparently an attempt to create the appearance of treating the Haynie farm as the large farm it is without actually doing so.

Effectively, Defendants treat the Haynie operation, which was projected to grow from just under 3000 acres in 1984 to more than 5000 acres in 1995, as if it were really 12 to 20 or more 250-acre[164] farming operations, ***each with its own cost of production, including equipment, facilities and overhead***. In fact, of course, the projected Haynie farm is (and the actual one was) a single large family farm consisting of 3000 to 5000+ acres of owned and rented cropland. The difference in the models is huge, and Defendants have failed to appropriately model the Haynie farm.

Not only the Defendants' own ERS, but anyone knowledgeable about farming, knows that (as with most enterprises) production technology, economies of scale, capital recovery (discussed above) and certain other efficiencies are important correlates of the size of operation, and that on a per acre basis, the COP for large farms is significantly lower than for smaller farms for many reasons. These factors are understood to be the difference between an enterprise that fails and one that not only survives, but thrives.[165]

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[164] This 250-acre figure is a generous estimate of the average size of farm in the 7 states that are primarily contained within the Southern Seaboard Region. According to the most recent data (1997; average farm size is growing, generally, not shrinking over time), the average size of a farm in the states that have a majority of their land mass in the Southern Seaboard Farm Resource Region is less than 250 acres: only Georgia has an average farm larger than 250 acres. The average farm size in Virginia is 200 acres. *See* State Fact Sheet from USDA/ERS at http://www.ers.udsa.gov/StateFacts for each of the states with a majority of their land mass falling within the Southern Seaboard Farm Resource Region: Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Alabama.

[165] Reimund, Brooks, & Velde, The U.S. Farm Sector in the Mid-1980s, USDA, ERS, AER No. 548, 1986, at 14, appended as Exhibit 29 ("Early adopters of new technological innovations benefited through lower production costs and higher output compared with farmers using older technologies. . . . Farmers still producing under the old technology are faced with several options: adopt the new technology to operate at a profit; reduce their farming activities to a part-time basis and find off-farm employment to supplement their incomes; continue operating at a loss; or leave farming altogether.").

Defendants' election to deny these economies and efficiencies to the Haynies' operation not only flies in the face of record evidence, it defies common sense and is inconsistent with Defendants' own published position on the subject.[166] Defendants have offered no rationale whatsoever for denying the significantly lower costs of production that accrue to operators with a large number of acres under production. Defendants' expert acknowledges that if the assumptions Defendants made to deny the Haynies the economies and efficiencies that accrue with a large farm were shown to be incorrect, the damages estimate would be invalid.[167] Defendants' assumptions are indeed incorrect and their damages estimate is invalid.

Rather than credit Plaintiffs with what is clear from the record evidence such as the early adoption of innovative production technology, internalization of costs, maximization of capital recovery, and use of best practices, Defendants look for reasons to deny them. To maintain their posture on this point, and buttress their treatment of the Haynie large farm as really a small farm with lots of acres, Defendants assume that the Haynie operation would have been farming small plots of dispersed land for the entire damages period.[168] This assumption denies the likelihood (really, the near inevitability) that as Plaintiffs expanded operations, they would acquire land adjacent or proximate to land they were already farming, thus further enhancing their efficiencies

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[166] *See supra note* 108.

[167] Trostle Dep. at 35:6 – 37:8.

[168] Trostle Report at ¶ 26 (depicting Plaintiffs' operation as ". . . large acreage divided up into many small tracts each requiring special attention in order to achieve even average yields."). Given that the point of comparison, Northumberland County yields and variable southeast regions, was based on far smaller farms than the Haynies' and Dr. Trostle offers absolutely no evidence regarding ***size of field farmed***, this comment is completely unsupported and over-reaching. *See also* Trostle Dep. at 35:9 – 45:17 ("farms" defined); 69:21 – 76:10 (base acres defined & evidence that not all the farms had base acres)

over time. Certainly, there can be no doubt that Plaintiffs did, and would have continued to act to, maximize that phenomenon to the extent possible.

Defendants try to support their assumption with a list of "farms" that Mr. Haynie operated in 1985.[169] Defendants assert that this Acreage Report justifies their assumption that Mr. Haynie farmed numerous small and scattered plots of land.[170] Defendants are wrong. As Defendants' expert testified, if the "farms" were contiguous and if Mr. Haynie farmed them as contiguous tracts, then Defendants' damages estimate would be invalid.[171]

Defendants' conclusion that Mr. Haynie farmed numerous small and scattered tracts of land is unsupported by the facts and does not meet the requirements of Rule 702 for expert testimony. First, "small" and "scattered" are both relative terms and Defendants do not establish the size of field or proximity of field for any comparison group, either for the average farm or for any "large tract" subgroup. Second, as Dr. Trostle testified, a "farm" listed on the Acreage Report does not necessarily identify a single tract of land disperse from other farms on his list.[172]

Third, Dr. Trostle's assumption is a testable hypothesis, but Defendants declined to test it. The very Acreage Reports that served as the basis of Dr. Trostle's Exhibit E are maintained ***stapled to maps*** that show the location of each "farm" that Mr. Haynie farmed, and are capable of establishing whether the Haynies in fact farmed discrete and disperse plots or whether they farmed larger, contiguous or virtually contiguous tracts.[173] Either Defendants chose not to verify

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[169] *See* Acreage Report, Trostle Report at Exhibit E.

[170] *See* Trostle Report at ¶ 6; Trostle Dep. at 35:9 - 37:8.

[171] *Id.* at 35:6 – 37:8.

[172] *Id.* at 44:9 - 45:13.

[173] Pete Adamson, a USDA employee in the Richmond FSA office, is identified as the person who compiled the data for Dr. Trostle's Exhibit E, and transmitted the materials under cover of a memo

their assumption or not to report what they discovered, if they did verify their assumption. Mr. Haynie disputes the expert's conclusion as to farming very small, discrete, and dispersed tracts of land.[174] Given the prevailing working conditions of the Haynie farm operation, the net farm income should reflect the efficiences and economies of large-scale farming.[175]

Dr. Trostle also attempts to establish that the Haynies' farming operation was further fragmented by the government set-aside requirements, which are imposed on a per "farm" basis.[176] Dr. Trostle assumed that all the farms listed on the Acreage Report had established base acres and were subject to a set-aside requirement.[177] This, too is subject to verification, but no verification was offered. Further, many of the smaller farms on the Acreage Report were planted in soybeans only, which has never had a set-aside requirement.[178]

Dr. Trostle's premise regarding the impact of set-aside requirements on a farmer's working pattern is wrong in any case. He testified that "[b]ecause you have to have set-aside acreage for each [farm], . . . you couldn't just farm a bunch of ten-acre -- contiguous ten-acre plots as one,"[179] and that there is no mechanism for accumulating the set-asides to make farming

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that speaks for itself. *See* Trostle Dep. Exhibit Trostle-3. Mr. Adamson is known to his colleagues in the FSA office as a person with antipathy toward Mr. Haynie and being responsible for spreading unsubstantiated adverse information about him. *See* Luckritz Dep. at 39:14 - 41:2.

[174] Philip Haynie Decl. ¶¶ 12-17.

[175] Hutcheson Decl. ¶ 4-6.

[176] Trostle Dep. at 38:4 ("The set-aside is per farm.").

[177] *Id.* at 95:8 - 96:9.

[178] *Id.* at 111:18 - 113:6.

[179] *Id.* at 36:11-17.

more efficient.[180] Acknowledging there was a mechanism to aggregate or combine farms, he testified he understood that "That's usually not done; they remain separate farming operations."[181] Dr. Trostle is simply ill-informed on the subject. It is a very simple matter to have several farms combined into one farm—whether the land is contiguous or not—to enable the operator to set aside one segment of the combined "farm" for exactly the reason Dr. Trostle identifies: to avoid small, awkward, tedious set-asides on every small plot that had a farm number assigned at one point in time. Any farmer would, and certainly Mr. Haynie has in the past, when faced with destroying his farming pattern and efficiency due to interruptive set-aside portions simply request that contiguous or proximate, or even disperse farms be "combined" to avoid interfering with a sound plan of farming the best land in the most efficient manner.[182]

Defendants' expert has conceded that production efficiencies can be enhanced by long hours and hard work.[183] Even if the lay-out of Haynie operation requires marginally more travel time and cost, this is more than compensated by Mr. Haynies' long working hours and the other efficiencies that he has demonstrated as an astute farm manager, which are not factored into Plaintiffs' model. In short, the Haynie farm is a large farm and is due to be credited with the economies of scale and efficiencies that accrue to a large farm operation.

C. Computing the Subtrahend

With respect to the subtrahend (*i.e.*, the "with discrimination" net farm income estimate), the Defendants adopted the Plaintiffs' calculations *in toto*. Doing so maximized the "mitigating

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[180] *Id.* at 37:18 - 38:4.

[181] *Id.* at 39:15 - 40:5.

[182] Philip Haynie Decl. ¶ 17.

[183] Trostle Dep. at 300:16 - 301:3.

income" and reduced the damages estimate. This was both economically advantageous to Defendants and methodologically questionable.

Wherever there was any doubt, the Plaintiffs maximized the Haynies' "actual" net farm income in their model so as to ***purposefully avoid inflating the economic damages*** on that account. In other words, Plaintiffs made such determinations purposefully to produce a ***conservative*** estimate of damages. Opportunistically, the Defendants followed suit: they maximized the subtrahend, and their economic damage estimate is commensurately underestimated.[184]

D. Hogs in Northumberland County

Plaintiffs project they would have continued with their farrow-to-finish operation as planned, had the USDA not denied them sufficient funds to re-establish their operation after it was burned to the ground in the first fire in 1980. Defendants' estimate of Plaintiffs' hog operation is based on multiple errors.

Defendants base their hog cost of production estimates on "regional cost of production estimates from USDA."[185] While his report does not indicate, Dr. Trostle testified that the regional grouping he used for his cost of producing hogs estimate is an area denominated "South" and includes Alabama, Arkansas, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Texas, and Virginia.[186]

In his deposition, Dr. Trostle acknowledged certain errors in Table displayed at Exhibit G What he did not correct, however, is his erroneous conclusion that there are no hogs in

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[184] *See generally id.* at 116:11 – 128:1.

[185] Trostle Report at 20, ¶ 41.

[186] *See* Trostle Dep. at 161:13-14.

Northumberland County and were none after 1990 (after the correction is made to Table G). This is not accurate. As the website he cites as authority for his report notes, for Virginia, beginning in 1991, the data were reported by district only.[187] A visual inspection of the county shows that there are still hog operations in Northumberland County, and Virginia's District 60, which includes the Northern Neck counties, reports several thousand head of hog. While it is true that hog production in Virginia generally seems to be on the decline, in both number operations and number of head in the state, this does not compel Dr. Trostle's conclusion that hogs are a losing economic proposition for those still in the business. The national data simply do not support that conclusion.

Finally, the same website Dr. Trostle cites as the source of his hog information states that data for farrow-to-finish operations are not available for the state of Virginia, as those data are prepared via state funding and some states have no program for preparing such data. In short, Defendants' information on hogs ignores the Plaintiffs' projected farrow operation and substitutes information on other hogs instead, and erroneously concludes that hogs disappeared from Northumberland County by 1991, when he has no basis for such an assertion.

E. Alternative Net Income Analysis Scenario #1: Assuming High Land Rents

All land is not created equal, and astute farmers all over the country have figured that out. Farmers everywhere are willing to pay more for better quality land on the premise that they will break even on the difference or even make a profit. A recent study demonstrated that the corn farmers in Indiana are very perceptive at differentiating between top, average and poor quality

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[187] *See* http://www.nass.usda.gov:81/ipedbcnty/hlpcohogs.htm, at note 3 ("District data only – OK beginning 1993; TX beginning 1987; and VA beginning 1991.").

corn land in that state, and the price of land very closely tracks the yields.[188] The value of corn cropland ranged from $18.59 to $19.07 per bushel, and the best deal for the farmer is the most expensive land, *i.e.*, they make a ***greater*** profit than they would on poorer quality land, even after paying the higher land prices. Further, across the state, cash rent for corn cropland ranged from a low of $71 per acre paid for poor quality land to a high of $158 per acre paid for top quality land —a differential of more than 100%. The ***average*** cash rent paid for top quality land was 60% higher than the average paid for poor quality land.

In deposition, Dr. Trostle acknowledged that the land in the Northern Neck has a reputation for being comparatively high quality land.[189] There and elsewhere Dr. Trostle has acknowledged the general proposition that higher crop yields may result from better quality land.[190] Yet, he states in the context of this case that it is "quite plausible that Plaintiffs did pay a higher than average lease rate for the area in which they farmed," and then—based on a comparison to an unspecified southeast region[191]—suggests that more than $3 million dollars in losses can be attributed to the Haynies paying too much in land rent.

This wildly, even irresponsibly, speculative and unsupported testimony does not meet the standards imposed by Rule 702. First, Dr. Trostle does not come even close to establishing the rents that Plaintiffs paid. Rather, he has two known rents for one year: $61/acre and $70/acre in

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[188] *See* Craig L. Dobbins and Kim A. Cook, Indiana Farmland Values and Cash Rents Continue to Increase, Purdue Agricultural Economics Report, Aug. 2003, at 1, 5 (available on-line at www.agecon.purdue.edu/extension/pubs/paer/August2003/landvalues.asp).

[189] Trostle Dep. at 142:7-10.

[190] *Id.* at 176:13-17; Exhibit 24 at RGT-0041 ("Obtaining higher yields can be the result of paying more to buy or lease higher quality land . . . ."). Despite the sentence construction, what Dr. Trostle surely means is that higher yields can result from higher quality land.

[191] Trostle Report at ¶ 62.

1989.[192] Second, Dr. Trostle does not establish what the going rate in the local area was, let alone the local area rents for corn and wheat cropland.

Third, Dr. Trostle does not even identify the basis of his comparison figures. If "southeast region," means the old Farm Production Regions in use in 1989, then the data for wheat cropland in his comparison is based on rents in Arkansas, Georgia, and North Carolina, and the data for corn cropland is based on rents in Kentucky, North Carolina and South Carolina. Especially in light of the great variation in the price paid for corn cropland within the single state of Indiana, these far-flung comparisons are truly meaningless, even without considering Dr. Trostle's remark that wheat is increasingly grown on land that is not suitable for anything else.[193] On the Haynie farm, wheat was regularly double-cropped with soybeans. Clearly, without more, the averages for wheat and corn cropland from the "southeast" that Dr. Trostle offers by way of comparison cannot be presumed to be relevant to the land rents in the Northern Neck.

The hypothesis suggested by the Defendants—that the Haynies paid more in land rent than was customary at the time in the Northern Neck is a testable hypothesis, but Defendants' expert has not even begun to address it. This "expert" conjecture falls woefully short of the requirements of Rule 702, and should not be credited as an expert opinion.

F. Defendants' Net Worth Analysis

Defendants' net worth analysis is fatally flawed in both its methods and its operationalization. Defendants assert that the net worth analysis constitutes a model of economic damages due to discrimination: "The objective is to estimate the economic impact of the alleged

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[192] *Id.*

[193] Trostle Dep. at 168:18-19.

discrimination."[194] Yet, their explanation of the net worth analysis contradicts this assertion.[195] Defendants argue that "any discriminatory acts after 1981 would not merit any economic damages because bankruptcy or involuntary sales of farm assets would be the [eventual] final result anyway."[196] Elsewhere, Dr. Trostle has more straightforwardly acknowledged that the net worth analysis is not an analysis that assumes liability. Rather, as he presented it:

> The **first** question that needs to be determined is could this operation have been economically viable? [sic] **If** that question is answered in the affirmative, then the **second** question for determining economic damages is what net worth could the operation have generated over the period of the alleged discrimination.[197]

Clearly then, this question does not address the issue of economic damages due to race discrimination. Rather, it side-steps it and denies liability: "If the farm business was not economically viable before discrimination occurred, then the business would have been financially unsustainable before discrimination occurred and no economic damages would be justified."[198]

This is a misconstruction of the question posed under the law, which is: assuming discrimination, what economic damages are attributable to it. It is beside the point that a business enterprise might have ultimately failed anyway (or a person would have died anyway). The suggestion that there can be no compensable damage done to a failing business is dead

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[194] Trostle Report at ¶ 9, 4.

[195] *Id.* at 4, ¶ 4(2).

[196] *Id.*

[197] Exhibit 24 at RGT-0039 (emphasis added).

[198] Trostle Report at ¶ 11.

wrong and contrary to the law and theory of damages. Legally, this is not only a fallacious proposition; it is a preposterous one with very dangerous implications.[199]

Although he claims to have assumed liability in his damages estimate,[200] it is clear that he does so only in the net income analysis, where there, he got the question right:

> Q: So, did you understand, as part of your task, that you were to assume liability and therefore, that's what triggers a damages report?
>
> A: That is the standard methodology that we use in both the Pigford – in these types of cases.
>
> Q: So, it's fair for me to assume that you believe your damages report assumes liability and answers the subsequent damages question?
>
> A. The way the methodology is developed is that we assume a farmer with a comparable type of farming operation, operating without discrimination, what their income would have been. What their income was less than that, we attribute to the alleged discrimination.[201]

Clearly, Dr. Trostle did not address that question in his net worth analysis.

Further, Defendants' net worth analysis is fatally flawed to the extent the Defendants' minuend—the estimate of discrimination-free net farm income—in the net income analysis is fatally flawed. As demonstrated in this brief, the minuend is fatally flawed and grossly

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[199] Using this logic, an assailant could, with impunity and assurance of no liability and damages, attack a cancer patient that has a terminal diagnosis. Clearly, this is not a notion the law embraces. The reason is explained by Franklin M. Fisher and R. Craig Romaine in their article entitled "Janis Joplin's Yearbook and the Theory of Damages," published in the Journal of Accounting, Auditing & Finance, Vol. 5, Nos. 1/2, Winter/Spring 1990, appended as Exhibit 30. As the law is intended to shape human behavior, damages must be assessed from a contemporaneous vantage point, not with the advantage of hindsight.

[200] Trostle Dep. at 30:5-19.

[201] *Id.*

underestimates the Plaintiffs' probable net farm income in a discrimination-free setting. To the extent that the Defendants' minuend is grossly underestimated, Defendants' conclusion regarding the net worth analysis is commensurately invalid, even if it addressed the right legal question, which it does not.

G. Plaintiffs' Damages Model

1. The Plaintiffs' Type

The Plaintiffs' model takes into account some of the factors that the Defendants' model ignores. At the same time, Plaintiffs' model does not attempt to take into account ***all*** factors that are likely to produce a positive net farm income, because Plaintiffs want to constrain their model and their estimate to one that is clearly conservative and well-justified so that there can be no reasonable dispute about it.

The Plaintiffs' model takes account of the Haynie farm's size, using a size-based selection criterion consistent with a farm typology produced by the USDA's ERS.[202] Farms vary widely in size and other characteristics, ranging from very small retirement and residential farms to establishments with sales in the millions. The farm typology is the primary classification system used by ERS for analyzing the distribution of farm costs and returns, and in explaining differences in farm costs and returns. Region is an alternate method of classification. The ERS farm typology categorizes farms into fairly homogeneous groups for policy development and evaluation purposes. The farm typology is based on the occupation of operators and the sales class of farms.[203] Although the Haynie farm could arguably be

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[202] Exhibit 23, America's Diverse Family Farms: Assorted Sizes, Types, and Situations, USDA ERS, AIB No. 769.

[203] *Id.* at 2.

categorized with respect to either of the higher family farm sales classes, Dr. Kambhampaty elected a more conservative category for the Haynie estimate to avoid choosing an elite category with ***both*** high yields and high acreage.

Plaintiffs' farm characteristics, particularly operator occupation, are more similar to the average for large farms than for southeast regions farms, based on published data from the Agricultural Resource Management Survey (ARMS).[204] The following table contrasts Plaintiffs' similarities with the farm categories underlying Plaintiffs' discrimination-free estimate with those underlying Defendants' discrimination-free estimate.

Comparison of Certain Farm Operator Characteristics[205]

	Plaintiffs - Mr. Haynie	Benchmark Group in Kambhampaty Report			Southeast Region		
		Corn	Soybeans	Wheat	Corn	Soybeans	Wheat
Farming as major occupation	Yes	98	95	90	50	68	70
Under 50 years of age	Yes	50	60	43	41	41	60
Completed college	Yes	30	21	23	12	16	26

[204] In its summary reports comparing costs and returns across various farm groupings, ERS combines the "Southern Seaboard" and "Eastern Uplands" into a "Southeast Region." The fact that ERS is not consistent in publishing and discussing data, despite recognizing that there are considerable inconsistencies in soil and climate characteristics within regions, is another indication that data for ERS-defined regions do not provide agriclimatologically or even agronomically homogenous data groupings or types, and that averages from ERS-defined regions do not represent expected returns for a homogenous group of farms.

[205] Source: Characteristics and Production Costs. USDA ERS Electronic Statistical Bulletin No. SB974, http://www.ers.usda.gov/publications/sb974/.

As the table indicates, whereas Mr. Haynie engaged in farming as his primary occupation during the relevant period (even after he discontinued his own farming operation), only 50 percent of corn farmers and 70 percent of soybean and wheat farmers state farming as their primary occupation. Mr. Haynie graduated college with a degree in animal science, but only 12 percent of corn farmers and 16 and 26 percent respectively of soybean and wheat farmers in the Southeast completed college. The numbers are substantially higher for corn and soybean farmers with more than 750 acres for each of those crops, and are similar for wheat farms in the benchmark group (400-799 acres), although the percentage of farmers that graduated college is less than 30% for the benchmark groups as well. Thus, the data likely understate the benefits of a college education with regard to farm costs and returns. With respect to farm operator's age, data for farms in the benchmark group are similarly distributed, showing 40 to 60% of farmers are age 50 or younger. Throughout the damages period, Mr. Haynie was less than 50 years old. Furthermore, Northumberland County has a high proportion of part-time farmers and farmers over 55 years of age.[206] Thus, the Northumberland County yields do not reflect the yields of a full-time farmer engaging in best practices to maximize returns.

Thus, other Haynie farm characteristics conform to those that associate with the acreage-based benchmark category of farms Dr. Kambhampaty chose for discrimination-free estimate, according to the ERS publications. In short, the Haynie farm appears to fit the commodity-specific categories used to construct Plaintiffs' estimate of discrimination-free returns.

2. Plaintiffs' Damages Estimate is Conservative

The Plaintiffs' calculation of damages is conservative in many respects. First, Dr. Kambhampaty's report identifies several factors that would cause his estimate of damages to

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[206] Kambhampaty Dep. at 194:1-11.

Plaintiffs to be higher than the estimated $12 million figure, but which he does ***not*** take into account.[207] Second, production practices on the Haynie farm are consistent with the practices on "low-cost farms" as defined by ERS. Third, Dr. Kambhampaty's analysis relies on estimates from groups defined by acreage class, which had higher costs than "low cost" farms. Only for parts of the damages period, where the data were not reported by acreage class, the analysis employs data based on "mid-cost" farms, rather than "low cost" farms. In each aspect, Dr. Kambhampaty's analysis provides a ***reliable lower bound*** on damages.

The annual data for soybean variety tests do not support the inference that double-cropped and full-season yields in Virginia are significantly different.[208] Furthermore, the yields used by Dr. Kambhampaty are consistent with double-crop yields, and thus ***understate*** damages to Plaintiffs to the extent that full-season soybean yields are higher than double-cropped yields. Although average yields for corn and soybeans in the Northern Neck counties including Northumberland County are considerably lower than average yields for farms with greater than 750 acres of corn and soybeans, these differences are most likely explained by differences in operator characteristics and production practices rather than poor soil and climate in Northumberland County.

Data cited by Defendants' expert, Dr. Trostle, shows that yields used by Dr. Kambhmapaty were consistent with tests conducted by Virginia Cooperative Extension Service: Defendants cite average yields of 36.2 and 44.8 respectively for double-cropped and full-season soybeans, and Dr. Kambhampaty used an average yield of 38.9 for that same period.[209] Thus,

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[207] Kambhampaty Report ¶¶ 9, 10.

[208] Kamphampaty Dep. at 215:1 - 217:7.

[209] Trostle Report ¶ 27.

the data for soybean yields in Eastern Virginia bear out Dr. Kambhampaty's analysis that low soybean and corn yields in Northumberland County are attributable to the prevalence of part-time farmers in Northumberland County (for over 50% of farms, the operator's primary occupation was not farming) whose production practices likely depressed yields relative to those for large farms, and to yields that would be expected for the Haynie's farm operations absent discrimination.[210]

For wheat and barley estimates, Dr. Kambhampaty used the yields for farms reported in the size class, or cost-group, that he used to derive his benchmark for "but-for earnings." As Defendants point out, this resulted in estimates of yields that were lower than the even the Northumberland County average for wheat and barley. This resulted in artificially low estimates of net earnings from barley and soybeans absent discrimination, to the extent of showing negative earnings in most years.[211]

Dr. Kambhampaty's report does not reflect returns from selling forward marketing contracts on crops rather than selling at cash prices, despite information that this was a means by which the Haynie farm improved its returns.[212] Dr. Kambhampaty's decision was based on the lack of available data on marketing contracts.[213] A recent NASS publication analyzed the benefits of selling marketing contracts for soybeans, corn and wheat, rather than selling crops at cash prices for the single year 2001.[214] Comparing average contract prices for "All Other

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[210] Kambhampaty Dep. at 194:1-11.

[211] Kambhampaty Report, Exhibit G. Tables showing returns for Barley and Wheat.

[212] Philip Haynie Decl. ¶ 46.

[213] Kambhampaty Dep. at 33:15-25.

[214] "Corn, Soybeans, and Wheat Sold Through Marketing Contracts" Agricultural Statistics Board NASS, USDA, February 2003" ("Marketing contracts refer to verbal or written agreements between the

Regions" to market year average price ("MYA") as used by Dr. Kambhampaty gives the following: (a) the 2001 weighted average contract price for corn was $2.30 per bushel, compared to the MYA of $2.14; (b) the 2001 weighted average price for contracted soybeans was $4.75 per bushel, compared to the MYA of $4.30; (c) the 2001 weighted average contract price for wheat was $2.88, compared to the MYA of $2.29 per bushel. The only costs NASS identifies are the differences in delivery distances for contracted crops versus crops sold in the "spot market." However both mean and median reported delivery distances for corn and soybeans are virtually identical for "All Other Regions," and for wheat the median delivery distances are the same although the mean delivery distance is larger for contracted corn: 24 miles versus 13 miles. Thus, to the extent that contract prices substantially improve over cash prices, without adding significant additional costs, damage calculations for the Plaintiffs based on the returns relative to cash prices understate returns.

In addition, the Kambhampaty report notes that the estimated damages to Plaintiffs do not include revenue from government payments,[215] which Dr. Trostle estimates to be $1.5 million over the damages period, without adjusting for inflation.[216] The Plaintiffs' model again represents an underestimate in this respect.

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farmer (contractee) and the buyer (contractor)–generally a processing and/or marketing company–that set a price (or pricing mechanism) and determine an outlet for a specified quantity of a commodity. Most management decisions remain with the farmer, who retains ownership during the production cycle. The farmer assumes all risks of production, but shares price risk with the contractor."). http://usda.mannlib.cornell.edu/reports/nassr/field/pgs-bb/special-reports/armsan03.pdf.

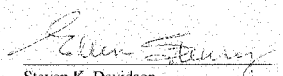
[215] Kambhampaty Report ¶ 31.

[216] Trostle Report, Exhibit K at line 30.

V. CONCLUSION

The undisputed material facts establish that the USDA discriminated against the Plaintiffs on the basis of race in its decisions to deny Plaintiffs access to loans and its failure to provide timely and adequate loan servicing, as well as in the administrative complaint process. Such violations of the law have caused injury to the Plaintiffs, for which they are due compensatory economic damages in excess of twelve million dollars. For the foregoing reasons, Plaintiffs seek summary judgment as to liability against the USDA and an award of economic damages to Plaintiffs in the amount of $12,173,311.11, and reasonable attorneys fees and costs.

Respectfully submitted,



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APPENDIX 5

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE

In Re:

WILL SYLVESTER WARREN,

Complainant

USDA Docket No. 1194
HUDALJ No. 00-19-NA
December 17, 2002

Complainant,
Pro se
Assisted by John Warren

Ronald Walkow, Esq.
For the Government

Before: Constance T. O'Bryant
Administrative Law Judge

DETERMINATION

This case arises out of complaints dated January 10, 1992, May 14, 1995, and January 28,1997, filed with the United States Department of Agriculture ("USDA")[1] by Will Sylvester Warren ("Complainant") alleging that an agency within USDA, the Farmers Home Administration ("FmHA") and its successor agency, the Farm Service Agency ("FSA"), (hereinafter referred to as FSA), discriminated against him based on race ("Black") in violation of the Equal Credit Opportunity Act ("ECOA"). 15 U.S.C. 1691 *et seq*. Mr. Warren alleges that the USDA discriminated against him based on his race by denying his loan and/or loan servicing applications and then retaliating against him for filing a discrimination complaint. The USDA's Office of Civil Rights ("OCR") determined that Mr. Warren's complaints were eligible for consideration under the provisions of Section 741 of the Agriculture, Rural Development, Food and Drug

[1]The term "USDA" shall include the U. S. Department of Agriculture and all of its agencies, instrumentalities, agents, officers, and employees, including, but not limited to, the state and county committees and their staffs which administer USDA credit programs.

Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277 ("Section 741"). On August 16, 2001, Mr. Warren requested a hearing before an administrative law judge. OCR then forwarded the administrative record to this office, with its Position Statement on the merits of the matter, for review pursuant to Section 741.

The trial of the case was delayed after the parties requested the assistance of a settlement judge. The USDA stipulated to liability on the complaints and sought the assistance of a settlement judge in resolving the remedy issue. When settlement was not reached, the case was again put on the trial calendar and came on for hearing on December 04, 2001, in Virginia Beach, Virginia. Because the USDA "stipulated" to liability for racial discrimination in the case, the trial was limited to the issue of damages and other appropriate remedy. At trial, the USDA stipulated that Mr. Warren was entitled to an award of actual damages for injuries he suffered as a result of discrimination at least since 1985. Following the trial, the parties submitted post-trial briefs, the last being received on May 4, 2002. The case is now ready for decision.

BACKGROUND

Mr. Warren alleged in his several complaints that FSA discriminated against him based on his race, as follows: 1) since the early 1980's - by failing to keep an accurate account of his indebtedness to FSA, including the inclusion of incorrect loans on his account; 2) since 1985 - in the denial of his application for Farm Operating loan, Primary and Preservation Loan Servicing, and disaster benefits; and 3) since 1992 - by retaliating against him for filing a series of successful appeals and for filing a race discrimination complaint. The act of retaliation, he alleged, was the making of a finding that he had acted with "lack of good faith" in his dealings with FSA, a finding which barred him further participation in FSA's loan programs.

Mr. Warren alleges that FSA consistently employed a pattern and practice of discrimination against him based on his race - that FSA county supervisors and/or the county committee members involved in his case consistently used his illiteracy and lack of understanding of the complicated FSA and USDA regulations to impede and harm him and that as a result he has suffered severe economic and emotional harm. In his 1992 complaint he wrote:

> I believe I am the victim of an insidious scheme of racial discrimination, designed to cause or to permit African-American farmers in this rural, peanut-rich, southeastern Virginia county, to lose their land to the sons

> and grandsons of wealthy white farmers and businessmen in this area. The scheme, I believe, involves the cooperation, wittingly or unwittingly, of at least one Farmers Home Administration ("FHA") official, viz., Mr. Ronald E. Norton, FHA's Southampton County Supervisor. RR,Ex1a.[2]

Mr. Warren filed two other complaints, one in 1995 and another in 1997, in which he repeated the same allegations. However, in these complaints he added the allegation that Mr. Norton had retaliated against him for filing the 1992 discrimination complaint.

In 1997, OCR contracted with a law firm to conduct an investigation of Mr. Warren's complaints. An extensive investigation was done. On the basis of the investigator's report and recommendation, OCR concluded that there was merit to Mr. Warren's complaints, at least since 1988. It found insufficient evidence to establish discrimination prior to that date. At trial, the USDA "stipulated" to liability for acts of discrimination since 1985. Based on the USDA's stipulation of discrimination, the testimony of the witnesses at the hearing, and the documentary evidence of record, I make the following findings of fact. These findings are based on the preponderance of the evidence.

FINDINGS OF FACT

1. Mr. Will Sylvester Warren is a 77-year old, African-American male farmer who has resided in Southampton County, Virginia for his entire life. He was born and raised on a 104-acre farm that he purchased from his father in or about 1951. His father had been a "share farmer" on the land before he purchased it in the 1940's. Mr. Warren's present home is about four miles from where he was born. Cx-119.

2. Mr. Warren received no formal education, and as a result cannot read or write, except for his name. He has spent his entire life working on the farm. Farming has been his life - it is all that he knows. *Id.*.

3. Mr. Warren married at age 21 and through the course of his marriage had fourteen surviving children, nine sons and five daughters. Mr. Warren's wife died in 1988 of a heart attack at age 56. Her death was abrupt and unexpected. *Id.*

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[2]The abbreviations used in this decision are as follows: RR-#, for the bound volume or "running record" submitted by FSA; Cx-# for the Complainant's exhibits; Rx-# for the Respondent's exhibits; and Tr. #, for the hearing transcript.

4. Throughout the years leading up to the discrimination, Mr. Warren had been an active and respective member of his local community. He is a deacon and trustee of his church. He is considered by those who know him as a God-fearing man, and one of decency, honesty and integrity. Cx-18, Cx-107, RRex11. At the trial, I found him to be a highly credible witness.

5. In or about 1959, Mr. Warren and his wife, bought an additional 76-acre farm, giving him a total of 180 acres of owned farm land. His successful farming allowed him and his wife to raise and support fourteen children. The land is rich in fertility and with the help of his children, Mr. Warren was able to produce excellent crops. He was a "first-rate farmer." Cx-18, Cx 107.

6. During the years from 1950 to the late 1960's, Mr. Warren lived in a rural, racially segregated community. In Southampton County, White residents owned all of the major commercial enterprises in the community - farm supply companies, feed companies, equipment sales companies, financial lenders, etc.

7. As a Black farmer, Mr. Warren enjoyed a fairly good relationship with the local commercial banks and local farm suppliers until about 1969-1970, when he spoke up at a local school board meeting. At the meeting, he "publicly and vehemently" opposed segregated school busing in the County. Immediately afterwards, he began to feel repercussions from his outspoken stance. Many White residents expressed disapproval of his position on the busing issue and of his perceived activism. When he next went to the bank where he had done business for years, the bank called in his demand loan, and refused to extend him further credit. Tr. 52-60, Cx-71. Other banks followed suit, refusing to extend credit to him, even though at the time he was quite creditworthy in that he had one farm free and clear of debt. Thus, in 1970, he turned to FSA for financial assistance, as a lender of last resort. [3]

8. Mr. Warren's relationship with FSA was not without difficulty. He, as did all Black farmers in the County, had to deal with the local FSA county committee members who approved or disapproved farm loans. The committee members were all local White farmers. Despite these substantial odds, he was able to thrive as a farmer through his hard work and industry. Tr. 59, Cx-119.

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[3] The FSA, an agency of the USDA, lends money to farmers and ranchers who are unable to obtain loans elsewhere. 7 U.S.C. § 1922 (1988). USDA's regulations provide that if a person is able to obtain credit from another source at a reasonable rate, they have an obligation to obtain credit from that source. Cx-106.

9. In May 1970, Mr. Warren and his wife obtained from FSA a Farm Operating Loan of $58,280. His two farms were used as collateral.

10. With the help of FSA, Mr. Warren enjoyed a successful farm operation into the early 1980's. For more than ten years, Mr. Warren received and paid off numerous operating loans made to him by FSA. He expanded his operation beyond his 180 acres of land by leasing farm land owned by others. He was selected as one of an elite group of farmers to grow certified, registered foundation peanuts in cooperation with the Agricultural Experiment Station at Virginia Polytechnic Institute and State University ("VPI"). In order to qualify to participate in the VPI program, he had to meet the high standards of the Virginia Crop Improvement Association, which placed him in the top echelon of Virginia farmers. Only one out of one hundred farmers were so selected. Cx-18, Cx-99. He grew certified, registered foundation peanuts for nearly twenty years for Severn Peanut Company, under the scrutiny of the VPI program, ending in the early 1990's. Cx-18.

11. By the early 1980's, Mr. Warren was producing on 763 acres of land, all of it leased except for 170 acres that he owned. In 1983 and 1984, he was farming 300 acres of soybeans, 250 acres of peanuts, 213 acres of corn, and was producing hogs for market. Tr. 46. Cx-99.[4] He had become one of the largest farmers in Southampton County of any race. Cx-99, Cx-121, CX-38, Cx-79, Cx-80.

12. All of Mr. Warren's children grew up on the farm. All nine of his sons worked on the farm after school and during vacations. All of his sons worked on the farm after finishing high school. Moreover, all of his sons had intentions of making their living on the farm. Mr. Warren had intended to expand his farm. It was his goal to leave land to each of his sons upon his death so that they could continue the successful farming tradition in his family. However, as of 1992 only one son was still in the business. Cx-37.

13. Beginning in the early 1980's, Mr. Warren began to experience significant problems in his dealings with FSA. Although he obtained Farm Operating loans from

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[4]The USDA has challenged this number of acres farmed in 1983. However, Mr. Warren submitted affidavits from two county farm extension agents who worked with him in the late 1970's and early 1980's who stated that Mr. Warren farmed approximately 800 acres of land during that time. Moreover, in his own affidavit, Mr. Warren identified the farms he leased by owner, acreage and farm number. Cx-99. The USDA has not rebutted this information. I, therefore, find that Mr. Warren farmed 763 acres in 1983 and 1984.

FSA up to 1984, he usually received funds late in the planting season.[5] He noticed that White farmers were being given their money early in the spring, while he and other Black farmers received their money late in the spring. Cx-103, Cx-119.

14. The county supervisor serves as the local office manager as well as the loan approval official. The county supervisor is required by FSA regulations to offer sincere assistance to the farmer. 7 C.F.R. 1910.3. and 1910.7. The county supervisor is responsible for completing loan applications, with the farmer's input, if the farmer is illiterate. It is FSA's policy to do so. Cx-106. Because he could not read or write, Mr. Warren necessarily relied upon the county supervisors for their sincere assistance. RR, ex.7.

15 Because Mr. Warren cannot read or write, he relied upon the county supervisor to prepare his application package, including the required Farm and Home Plan ("FHP") - a plan used to determine farm loan eligibility.[6] When he applied for loans he often signed a blank application. On other occasions he would signed an application after it had been completely filled in by the county supervisor. Mr. Warren depended on the county supervisor for accurate and fair assistance in helping him fill out virtually all of the loan application package. He trusted the county supervisor to act in his best interest in helping him to obtain the maximum loan and services for which he qualified. Mr. Warren believes that in the 1980's, the county supervisors did not always include accurate information on his FHPs, to his detriment.[7] Tr. 46-54.

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[5]Operating loans are critical to farmers because they are used to purchase livestock, poultry, equipment, feed, seed, farm chemicals and supplies and to provide soil and water conservation. In general, farmers come in to their local offices between November and February to obtain and submit their applications. The goal is to get the operating money in hand before planting season. Cx-106.

[6]In order to qualify for an operating loan, the farmer fills out an application packet. Included in the packet is a farm and home plan. This plan shows financial details of the farmer's operation. It shows assets, liabilities, capital expenditure, household expenditures, live stock, debts and payment of debts. The plan is the foundation of the application and is critical for FSA. Cx-106.

[7]The record shows that Mr. Warren obtained an FSA loan in April 1983 for $48,380. Cx-3. He stated that he learned, well after the fact, that his FHP for 1983 showed that he farmed 299 acres of land. Cx-99. I have found that the preponderance of the evidence supports his claim that he farmed 763 acres of land in 1983. F. of F. at ¶11. Had the FHP accurately reflected the full 763 acres cultivated by Mr. Warren, Mr. Warren would likely have qualified for a substantially higher loan in 1983 than he received. In 1983, operating loans were available up to $200,000. Cx-106.

16. Any loans proceeds paid to Mr. Warren by FSA were deposited into an FSA account supervised and controlled by the county supervisor. All Mr. Warren did was sign the application and waited for the check to arrive, once the application was approved. With a supervised account, the farmer brings a bill in from a supplier or other creditor. Both the farmer and the county supervisor sign the check and the creditor is paid.

17. In 1981 and 1983 to 1984, Southampton County farmers experienced disastrous farm conditions. This severely affected all farmers, Black and White. In those years, Mr. Warren applied for and received three loans. However, Mr. Warren has questioned whether he received the full face value of the loans reported. RR, ex.1a.

18. In any event, the loans of 1983 and 1984 would be the last loans Mr. Warren would obtain from FSA, although he applied each year thereafter. Beginning in 1985, and continuing through 1991, Mr. Warren would go through a process where he would apply for a loan or loan services, his application would be denied, he would appeal the denial, FSA's decision would be reversed, and FSA would be ordered to continue to process his application. However, despite these victories on appeal, FSA never approved any of Mr. Warren's applications after 1984.

19. Throughout the 1980's, White farmers would come to Mr. Warren wanting to buy his farm. Mr. Warren had no intention of selling any part of his farm and had given no indication that he was interested in doing so.

DENIAL OF OPERATING LOAN APPLICATIONS - 1985

20. In early 1985, Mr. Warren applied for a Farm Operating Loan, and debt set-aside. His applications were denied on May 29, 1985. The county committee certification shows that the denial was based on lack of managerial ability. Cx-39. The letter to Mr. and Mrs. Warren stated the specific reasons as:

> You have shown poor managerial ability. Your past history shows no progress over the past three years. You did not follow farm plan, as submitted in the spring, as indicated by the actual analysis of your operation. Cx 40

Mr. Warren appealed the denial of his application to the National Appeals Division, USDA, ("NAD"). His appeal was heard on September 16, 1985. He was represented at the hearing by an attorney. The NAD reversed FSA's denial on October 10, 1985. The Appeals Officer stated:

> Based on information presented at the hearing and information contained in your case file, it appears that the county committee's decision was based on generality rather than specificity. Records kept by FmHA county supervisor indicate an excellent attitude and *good* managerial ability on your part. Therefore, I question whether all the facts were presented to the county committee when its decision was made to certify you ineligible for a farm operating loan." emphasis added. Cx-41.

The evidence shows that the records to which the Appeals Officer referred included two farm visit checklists, previously completed by the county supervisor. On one visit check sheet rating for farm ownership and farm operating loan dated September 9, 1993, Mr. Warren's farm operation was described, in part, as follows:

> Borrower's crops look good considering dry weather. Should repay operating loan and other debts. Equipment and security on land is [sic] adequately maintained. Cx-42

An October 5, 1984,[8] visit check sheet for farm ownership/operating loan/emergency loan showed the following notation:

> Borrower crops look very good. Prospect for making obligations as stated for farm and home plan . . . is excellent. Equipment is well maintained and buildings are in good condition. Taxes and insurance have been paid. Cx-43

Further, testimony from Ben S. Lee, a Southampton county farm extension agent (Black), showed that Mr. Warren's 1985 FHP showed repayment ability of an operational loan, and his opinion that Mr. Warren had the managerial ability to have carried out a successful farming operation in 1985. He also testified that it was not unusual for farmers not to follow a farm plan for a certain year because "farmers often make changes to earn more money." Cx-44. Further, Mr. Lee testified that Mr. Warren did not make any unusual deviation in his farming operation in 1983. Finally, the extension agent testified that due to weather conditions, very few farmers had made progress during the last three years. Disasters had been declared from July 1980 - 1981 and from September 10, 1983 through March 30, 1984, due to drought. Cx 31, 39, 41- 44.

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[8]Although the year date is not clear on the document, it is made clear in the testimony of the county supervisor at the hearing on September 16, 1985. Cx-44.

The chairman of the county committee was asked to explain why the committee determined Warren's to be ineligible for the Operating Loan. He was asked the following question and he gave his reply:

> Attorney for Mr. Warren: Did the 1985 Plan show he [Mr. Warren] would be able to repay the operating loan for this year?
>
> Committee Chair: I don't recall what his plan was. I think we considered his past history as much as the plan he presented.

Finding that the evidence did not support the basis for the denial of the operating loan, the Appeals Officer required the county supervisor and committee to reprocess Mr. Warren's loan applications. The county sought review of the reversal to the State Director, FSA. The State Director upheld the Appeal Officer's decision. Cx-41. Despite this victory, and the evidence which supported his qualification for a loan, Mr. Warren 1985 loan application was never approved.

21. OCR concluded that the evidence regarding the 1985 application denial was insufficient to make a determination that discrimination played a part in the denial of the application. However, I find, base on a preponderance of the evidence, that Mr. Warren's was qualified for the 1985 FSA operating loan for which he applied, that the reasons for denial of his application given by the county committee were not legitimate reasons, and that the reasons were a pretext for discrimination based on race. The finding by the committee that Mr. Warren lacked management ability was not supported by FSA's own records. In addition to the evidence of the check sheets ratings recounted above, Mr. Warren's long and successful history of farming, which included being certified by VPI to grow registered foundation peanuts, seriously contradicted the finding that he lacked managerial ability.[9]

22. As a result of the denial of his 1985, Farm Operating loan application, Mr. Warren suffered significant economic loss. He was unable to adequately plant and maintain his crops. His yields dropped dramatically. FSA then used his low yields to deny him further loans. Without proper operating funds, Mr. Warren found it increasingly more difficult to produce a profit on his farm. He had the acreage and the labor, but insufficient funds to properly plant, cultivate and harvest his crops. He was forced to surrender his leases on other farms that had constituted the majority of his farm acreage. The severe cash

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[9] Also, evidence in the record shows that in Southampton County, disaster caused by drought had been declared for the period from September 30, 1983 to March 30, 1984.

flow problem also hampered his ability to make payments on loan obligations he had with FSA and other creditors. Cx-102.

23. The denial of Mr. Warren's loan application for 1985 contributed significantly to his failure to demonstrate a positive cash flow in subsequent applications and FHPs filed with FSA.

24. By letter from FSA dated Feb. 19, 1986, Mr. Warren was notified that, as of December 31, 1985, his loan(s) with FSA were in default. Cx-08.

25. In 1986, Mr. Warren applied for a Farm Operating loan, loan servicing and debt set-aside, and for a disaster loan. His applications were denied in March 1986 due to no feasible plan of operation, in that his FHP plan did not show sufficient cash flow to pay all his debts. Cx-04, Cx-05.

26. In April 1986, Mr. Warren went to the county supervisor, seeking to have his delinquent loans rescheduled. The county supervisor agreed to reinstate Mr. Warren's application for a Farm Operating Loan for 1986, if Mr. Warren sold a portion of his farm. Money from the sale of his farm, the county supervisor advised, would give Mr. Warren money to reduce his total debt load and give his operation a positive cash flow. Cx-09. Mr. Warren reluctantly agreed to put his farm up for sale, believing he had no choice but to do so. He put the asking price for sale on his farm at $150,000.

27. Evidence of record indicates that a Farm Operating Loan was approved for Mr. Warren for $46,200, and the deal closed on June 2, 1986. The county supervisor wrote to Mr. Warren on September 26, 1986, that as of that date Mr. Warren had not met the condition for the loan, i.e., that he had not sold a part of his farm. Cx-10. By letter dated March 9, 1987, Mr. Warren was given 120 days from February 5, 1987 to liquidate his assets. He was informed that if he did not do so, FSA would reject his request for restructuring the debts by forcing the sale of a portion of his assets. The only significant asset he owned was his farm. Cx-12. Mr. Warren never was able to obtain a buyer of his farm at his asking price, and he never received the benefit of the $46,200 that reportedly had been approved for him. The county supervisor notified him that the $46,200 loan had been canceled. Cx-100, Cx-10.

28. For the next several years Mr. Warren would apply for loan or loan servicing and his applications would be denied. Most often, the denial would be based on a mere technicality. Mr. Warren would appeal the denials, always hopeful that the appeals process would work to correct what he was sure was an unfairness at the county level. He

would win at the NAD level, and had faith in the appeals process. However, each victory on appeal was met with further denial of his applications on remand.

DENIAL OF APPLICATION FOR PRIMARY AND PRESERVATION LOAN SERVICING[10]

29. By 1988, Mr. Warren's financial situation had significantly worsened. He continued to be pressured to sell one of his farms. He was having difficulty paying his real estate taxes due to lack of funds.

30. In July 1988, a new county supervisor, Ronald Norton, arrived in Southampton County. Mr. Norton is White. On July 8, 1988, Mr. Norton wrote Mr. Warren that his tax matters had to be turned over to the county attorney for possible foreclosure action. Cx-55. In early 1988, Mr. Warren's application for Primary Loan Servicing was denied. The basis for denial was failing to show a positive cash flow. A former State Director, FSA, in his 1997 affidavit, stated that an FHP showing a lack of cash flow should help a farmer qualify for Primary Loan Servicing, not harm him. Cx-106. In November 1988, Mr. Norton wrote Mr. Warren offering Primary Loan Servicing (debt restructure) due to the delinquency of his accounts. On April 19, 1989, Mr. Norton denied Mr. Warren's application. The denial was because Mr. Warren had failed to return the paperwork within the 45-days allotted. As to this basis for denial, a former FSA State Director stated that the county supervisors have discretionary authority and routinely use it to avoid the rejection of late applications. Cx-106

31. In 1989, Mr. Warren applied for Preservation Loan Servicing. Mr. Norton denied this application in January 1990 for failure to circle a required item on the application. Mr. Warren appealed this denial, as well. Cx-45.

32. The appeals on the denial of both the Primary Loan Servicing and the Preservation Loan Servicing applications were heard in June 1990. The evidence at the hearing showed that Mr. Warren was sent the Primary Loan Servicing application package shortly

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[10] The Primary Loan Servicing Program is available when FSA borrowers are unable to make scheduled payments on their debts to FSA due to reasons beyond their control. In such case, federal law provides a process by which their loan accounts can be serviced to avoid foreclosure or liquidation. Preservation Loan Servicing Program comes into play after foreclosure. When foreclosure occurs and FSA takes the secured property into its inventory, the borrower is provided the opportunity to apply to lease or purchase his homestead and up to 10 acres of land, including farm buildings. 7 C.F.R. § 1951.909.

after the sudden and unexpected death of his wife. It showed that Mr. Norton at first accepted the application under the good faith policy (due to bereavement period) and processed it. He developed a FHP, and ran eligibility programs, etc., necessary to qualify Mr. Warren for the loan. Inexplicably, after going through all the steps for determining eligibility for Primary Loan Servicing for 1988 and 1989, Mr. Norton denied Mr. Warren's loan servicing application due to not having provided a completed application within the stated deadline. Cx-47. The Appeals Officer determined that the original good faith finding should not have been rescinded under the circumstances and also that Mr. Norton had failed to follow the regulations and FSA policy by denying the application for failure to return within the 45-day period. FSA's regulation required the county supervisor to send follow-up notices before denial of loan servicing. Cx-45. The Appeals Officer reversed the denial and required Mr. Norton and FSA to continue processing Mr. Warren's Primary Loan Servicing application. With regard to the denial of the Preservation Servicing Loan application for failure to circle an item, the Appeals Officer found again that Mr. Norton had failed to follow FSA regulations and policy.

33. As to the technical reasons for denial, one USDA official commented that the idea that an application is rejected by the county supervisor because something is not circled is "absurd" and "I would have to wonder what his motivation was. Typically, if there was a mistake in an application, the county supervisor contacted the farmer and told him or her that the information was missing and needed to be provided." He stated that the county supervisor had discretion to allow Mr. Warren to correct the item, and that FSA's guidelines encouraged the county supervisors to assist farmers in filling out applications to avoid and correct these kinds of omissions. Affidavit of State Director, USDA Rural Development, Virginia. RR.-ex 7, p.131, Cx-45. Another official, an Agricultural Credit Director for FSA stated: "I cannot fathom that an application would be turned down because something was not circled." Cx-109.

34. Despite the July 1990 ruling of the Appeals Officer, Mr. Norton denied another of Mr. Warren's application for the technical reason of failure to return an application or document within the 45-day period allotted. Cx- 47.

35. On September 20, 1990, Mr. Norton offered Preservation Loan Servicing (Homestead Protection/Leaseback/Buyback) to Mr. Warren. Mr. Warren had not wanted Preservation Loan Servicing but Primary Loan Servicing. In any event, Preservation Loan servicing was denied because Mr. Norton determined that FSA could not obtain clear title to Mr. Warren's land because of a junior lien on the property. Mr. Warren appealed this denial. On June 27, 1991, the Appeals Officer reversed the county's decision, again, finding that the reason for denial did not comport with FSA's regulations. The regulations required that FSA, before denying an application, determine whether it

was in the best interest of the government to settle the junior liens and then accept the voluntary conveyance. The Appeals Officer urged that FSA not only reprocess the Preservation Loan Servicing application, but believing that Mr. Warren had not been given appeal rights on a denial of a previous Primary Loan Servicing Application, encouraged FSA to give Mr. Warren opportunity to restart that process. Cx-03

36. Upon the reprocessing of Mr. Warren's Primary Loan Servicing application, it was again denied. Cx-47.

37. In 1991, Mr. Warren came under rapidly escalating financial pressures. FSA was continuing to threaten foreclosure on his farm.[11] He had become delinquent on an SBA loan, as well. He borrowed money from his sister to prevent a judgment against him by SBA.

RETALIATION: THE TIMBER INCIDENT/FINDING OF LACK OF GOOD FAITH

38. By the fall of 1991, Mr. Warren's financial situation had become desperate. Mr. Warren sought permission from Mr. Norton to sell some timber on his land so that he could make money to pay his sister back and to help pay on other bills. The approval was needed because FSA had a secured interest on the farms. Mr. Norton approved the cutting of the timber. During that same time period, Mr. Warren brought the subject of cutting timber on his farm in conversation with an attorney with whom he had dealt for years. He told the attorney that Mr. Norton had no objection to his cutting the timber. His attorney told him that it would be fine to cut the timber since Mr. Norton had no objection to the cutting of the timber. Selling the timber on the land did not significantly put at risk FSA's lien on the property. The timber that was cut had not been on the property when the lien was placed. Cx-06.

39. It was not uncommon for FSA county supervisors to give approval for such used of secured property, and to give it orally, rather than in writing. Cx-45. However, Mr. Norton would later deny giving Mr. Warren such approval.

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[11]FSA may acquire title to property securing a particular loan if the borrower defaults on the FSA loan. 7 U.S.C. § 1985(a).

40. Sometimes around December 1991, Mr. Warren and his sons began cutting, hauling and selling the timber in question. Mr. Warren used the proceeds to pay his sister and other non-FSA bills.

41. The hearing on Mr. Warren's July 1991 appeal was held on December 19, 1991. At the hearing, Mr. Warren raised, for the first time, a claim of race discrimination. He was frustrated that the appeals process had not worked for him. He asserted that FSA was not willing to help Black farmers as they did White farmers. He observed that White farmers were coming to him trying to buy his land. He did not want to sell. He had seen other Black farmer lose their land which was then bought up by White farmers. He stated his belief that it was the intent of Mr. Norton and the county committee to force Black farmers into foreclosure so that White farmers could buy their land.

The Appeals Officer found that in denying the application for Primary Loan Servicing, FSA had not complied with its regulations. He reversed the denial and directed the county to again process Mr. Warren's Primary Loan Servicing application. He also informed Mr. Warren on how to file a discrimination complaint.

42. In late December 1991 to early January, 1992, Mr. Warren, aided by his attorney, Robert H. Cooley, III, filled out the application for Primary Loan Servicing for reprocessing pursuant to the Appeals Officer's decision. Attorney Cooley assisted Mr. Warren in filing his FHP for the operational loan being sought. The FHP showed a positive cash flow, but was not complete because Mr. Warren needed information on how much he needed to pay the USDA.[12]

43. On January 7, 1992, Mr. Warren filed an official complaint of race discrimination with the USDA. In his complaint, he specifically named Mr. Norton as one of the chief perpetrators of the discrimination. Cx-102.

44. In March, 1992, Mr. Norton invited Mr. Warren to come to his office to discuss the Primary Loan Service package Mr. Warren had submitted. When Mr. Warren mentioned the timber cutting, Mr. Norton said to him "I got you, now." Mr. Norton then asked Mr. Warren for an accounting of the timber. Mr. Warren realized at that time that he had been "set up" by Mr. Norton with regard to the timber matter. *Id.*, RR-ex8.

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[12]According to Attorney Cooley, he tried for months to get the information needed for the FHP from Mr. Norton, but Mr. Norton delayed in providing the information for over a year. RR-ex.8

45. Mr. Norton subsequently sent a memorandum to USDA's Office of General Counsel ("OGC") for an opinion on whether the facts, as he alleged them, supported the prosecution of Mr. Warren for fraudulent conversion of secured property. He reported that Mr. Warren had cut and sold timber from land on which FSA had a security interest without approval by FSA, and had then spent the money on non-FSA bills. OGC declined to pursue prosecution, citing a lack of evidence of criminal intent. However, it was OGC's opinion that the facts allowed for a finding of "lack of good faith," based on the scenario sent to it by Mr. Norton. Cx-21.

46. FSA regulations require that before eligibility is established for a loan, a showing must be made that a borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements made with FSA. A farmer who has received such a finding can never receive loans or assistance from the USDA, with one exception – a farmer can benefit from Homestead Preservation, i.e., he can retain his farmhouse and ten acres on which it sits. 7 C.F.R. § 1951.909 (c)(2).

47. The underlying decision on whether good faith exists is a determination to be made by the FSA county supervisor who has wide discretion in deciding whether to make a finding of lack of good faith. Cx-21. While a technical conversion could occur, the county supervisor may nonetheless decide that, based on the borrower's sincerity, that the borrower did operate in good faith. Cx-21,22.

48. On May 29, 1992, Mr. Warren wrote Mr. Norton, stating that he had told him on two different occasions during the past winter that he was going to cut some timber off his land and that he had never told him of any negative consequences. He stated that he believed he had increased the value of the land, overall, because he would soon be able to farm more acres that had been cleared off. He sought help in getting his debt restructured. Cx-17.

49. By letter dated July 20, 1992, Robert H. Cooley, III, a local attorney, wrote to the FSA State Director, on Mr. Warren's behalf, regarding the timber incident. Attorney Cooley stated his knowledge of Mr. Warren as an honest, Christian man, a hardworking, "master farmer" and that he "believed him completely when he said that he sought Mr. Norton approval before cutting the timber. He described Mr. Warren and his family as one of the "most industrious, hardworking, gentle, and God-fearing families" that he had the pleasure of knowing and working with." Cx-18.

Attorney Cooley stated that he had known Mr. Warren for at least 18 years and that Mr. Warren had been a law client of his late father. He stated that he was convinced that Mr. Warren had acted innocently and in the best of good faith in cutting the timber on his

land in that he had relied on the apparent authority of the county supervisor in cutting the timber. Attorney Cooley stated that Mr. Warren was still actively engaged in farming, even though he has had no substantial funding assistance from FSA or any other commercial source since 1985. He related that Mr. Warren had sought and obtained Mr. Norton's approval to cut the timber in the fall of 1991, and that Mr. Warren, after cutting the timber, took the timber receipts to Mr. Norton. These facts, he argued, certainly negated any conclusion that Mr. Warren acted in bad faith. Moreover, he stated, Mr. Norton was a neighbor of Mr. Warren's and he could not have concealed the timber cutting from Mr. Norton, even had he wanted to.

Attorney Cooley stated that the issue of the timber cutting came after Mr. Warren's success, after numerous appeals, in obtaining the opportunity to apply for Primary Loan Servicing and on the heels of a January 10, 1992, complaint file with [EEO] in which Mr. Warren complained of having been racially discriminated against by FSA, in general, and by Mr. Norton, in particular. He stated his view that Mr. Norton used the timber incident as an opportunity to interfere with, or to completely block, Mr. Warren's efforts to qualify for additional financing and Primary Loan Servicing, and was being most unfair to Mr. Warren. He noted that the timber that was cut represented "absolutely no impairment to the Government's security." That the FSA loans were well-secured by the vast farmlands of Mr. Warren's and were in no way jeopardized by Mr. Warren's efforts to survive. He asked that FSA forgive Mr. Warren's actions and assist him in restructuring his debt and continuing his farming operation. Cx-18. Attorney Cooley later signed an Affidavit to the same effect. RR-ex.8.

50. Attorney Cooley also stated that, in December 1991, Mr. Warren asked him about the propriety of cutting the timber, and that he told him that as long as he had obtained the concurrence of Mr. Norton, then he saw no objection. He regretted having given Mr. Warren that advice, although it was appropriate at the time. He knows now that, considering all the difficulties Mr. Warren was having with Mr. Norton, that he should have told Mr. Norton to get the approval in writing. RR-ex8.

51. In September 1992, Mr. Norton made the finding that Mr. Warren had acted with a "lack of good faith" by cutting and selling timber on property secured by FSA without FSA's prior approval. Using this finding, he denied Mr. Warren's 1992 application for Primary Loan Servicing. Cx-57, 58.

53. The finding of "lack of good faith" has not been made against any other farmer in Southampton County, Virginia – only in Mr. Warren's case. Cx-16, Rx-1.

54. In a letter to the FSA State Director, in July, 1992, Mr. Norton never flatly denied that Mr. Warren spoke to him about cutting the timber, but said that he "did not recall" ever discussing the sale of timber with Mr. Warren. He stated, however, that he learned of the cutting of the timber on January 30, 1992, when one of Mr. Warren's creditors called him to tell him so. Cx-113, Cx-19. When asked why he did not speak to Mr. Warren about the matter, or intervene to stop the cutting, Mr. Norton responded that he was too busy preparing a loan package for Mr. Warren -which package was required by the NAD decision - to do so. Cx-19. He later told the investigator that he had not spoken to Mr. Warren because he wanted to investigate the allegation before speaking with Mr. Warren. Rx-1.

55. USDA guidelines require a county supervisor to use his discretion to prevent a farmer's conversion of secured property in the interest of the farmer and to protect FSA's lien interest. Cx-106.

56. Internal USDA memoranda showed that USDA State officials believed that Mr. Warren's problems were caused by incompetent legal advice. They believed that Mr. Warren had a claim of malpractice against the attorney who told him it was fine to cut the timber and advised that he should obtain money for restitution from the attorney. Cx-14, Cx-24.

57. Mr. Warren appealed the denial of his Primary Loan Service application which was based on lack of good faith. His appeals hearing was held in 1993. For the first time in his dealings with FSA, the denial of his application was upheld. Cx-57, 58.

58. All applications filed by Mr. Warren after 1992 were denied for lack of good faith. Cx-62, C-63, C-64. The denial notices stated, in part, that "it has been determined that you have not acted in good faith when timber on which FmHA [FSA] holds a first deed of trust was sold. . . ." *See,* e.g. Cx-63.

59. Mr. Warren was informed that he could be considered again for loan servicing if he made restitution of the amount of money he obtained from the cutting of the timber (approximately $26,000.) He did not have the funds to do so. Attorney Cooley tendered a promissory note to FSA on Mr. Warren's behalf. His note was rejected for lack of adequate consideration. RR-ex8. Mr. Warren's church offered to pay the amount on Mr. Warren's behalf, but that offer, too, was rejected. The church's bishop was told that it

was too late for Mr. Warren to make restitution. Cx-110. Mr. Warren also sought to develop a repayment installment plan, but his plan was rejected. Rx-1.

60. Despite the finding of lack of good faith which Mr. Norton made, and FSA maintained, Mr. Norton continued to send Mr. Warren invitations to apply for loans and debt restructuring, as well as announcements of new programs available to farmers. When Mr. Warren would apply for these, he would be rejected based on the finding in his record of lack of good faith. In 1993, e.g., the USDA offered two programs for disadvantaged farmers. The first offered farmers loans at market or below market rates to purchase or enlarge farms, exclusive opportunity to purchase farm land in USDA inventory, and debt restructuring at a reduced rate of interest. Cx-53. The second offered low interest loans to low income farmers who could not afford to borrow at regular rates under other programs Debt restructuring was also available. Cx-60. Mr. Warren was notified of these programs on March 25, 1993. It had always been Mr. Warren's dream to significantly expand the number of acres he owned; however, because of the lack of good faith finding, he was not eligible for these programs.

61. On September 24, 1994, Mr. Norton notified Mr. Warren that he was eligible for Homestead Protection services. The letter listed ten items Mr. Warren was required to provide within 30 days. Cx-65. On November 1, 1994, without further correspondence with Mr. Warren, Mr. Norton denied Mr. Warren's application for Homestead Protection because of his failure to supply the ten items within the 30-day time period required. Cx-66.

62. Mr. Warren, through his daughter, Vivian, repeatedly wrote and made telephone calls to the USDA, seeking a resolution of his discrimination complaint. A notation made by one USDA staffer indicated: "Vivian Warren continues to call on a regular basis, requesting the status of her father's discrimination complaint." Cx-72. When he received no resolution, he corresponded with his Congressman, seeking assistance in getting his claim resolved. He complained to the Congressman that the finding of lack of good faith had been made in retaliation for his filing a civil rights complaint. The Congressman wrote to the USDA, yet the USDA took no apparent effort to resolve the complaint. Cx-20, 26-28, 33.

63. Still receiving no formal response, Mr. Warren filed two other complaints of discrimination: the second was filed on May 15, 1995,(Cx-74) and a third on January 22, 1997. Cx-102. He was repeatedly told that his complaints were being considered and would be resolved. Cx-54, 84, 25, 116-117.

64. On September 5, 1995, the District Director, FSA, wrote Mr. Warren that if he did not pay his loans in 30 days, foreclosure action would begin. Cx-29. Upon receipt of this notice, Mr. Warren and Vivian Warren repeatedly called USDA officials, and the Congressman in an attempt to stop the foreclosure until there had been an investigation of the discrimination complaints. Cx-72.

65. In October 1995, Mr. Warren received notice that the foreclosure action was being rescinded pending the resolution of the civil rights claim. Cx-30-31. However, his case was flagged, erroneously, for foreclosure in June, 1996. Cx-32.

66. In 1997, OCR commissioned an investigation of Mr. Warren's complaint by the independent law firm of Delany, Siegel, Zorn & Associates. The investigating attorney spent three months on the investigation and provided a report and recommendation to OCR in October 1997. RR-ex.1.

67. In March 1999, based on the investigator's report, the Special Assistant to the Director, Office of Civil Rights, made a "Decision" on Mr. Warren's complaint. He concluded that the evidence supported finding that Mr. Norton had discriminated against Mr. Warren, based on race. Rx-1. Based on all the evidence available, the "Decision" found that Mr. Norton discriminated against Mr. Warren by: 1) denying him adequate loan servicing from 1988 to the present; and 2) by retaliating against Mr. Warren by giving him a bad faith determination for the sale of timber which secured his loans. It made the credibility determination that Mr. Warren informed Mr. Norton of his intentions to cut and sell timber from his property to pay non-FSA debts, and concluded that Mr. Norton decided to make a finding of lack of bad faith against Mr. Warren in retaliation for his successful NAD appeals and for the filing of his race discrimination complaint on January 10, 1992. It concluded:"[w]e can find no other credible explanation for [Mr. Norton's] actions." Rx-1.

I agree with the "Decision" and accept these findings as they are adequately supported by the evidence of record. *See* Cx18, Cx-19, Cx-104, Cx-108, Cx-106-7, Cx-110, 113 and 114. In the words of the investigator regarding the timber incident and Mr. Norton's involvement: "This action reeks of retaliation." RR-ex.1.

68. Considering all the evidence, I further conclude that the preponderance of the evidence supports these additional findings:

a) that the objective of the county committee in denying Mr. Warren's Farm Operating Loan in 1985 and every year thereafter, and Mr. Norton's and the county committee's objective, beginning in 1988, was to deprive Mr. Warren of the financing he

needed to successfully operate his farm with the ultimate goal of forcing Mr. Warren to lose his land. Cx-12, Cx-13. Cx-106.

b) that the USDA, through its FSA county supervisors, failed to provide Mr. Warren the assistance he needed to understand the application process and to correctly and fairly complete his Farm and Home Plans. Its failure to do so was based on race.

c) that Mr. Norton, knowing Mr. Warren was uneducated and illiterate, used technicalities contained in the USDA regulations against Mr. Warren in direct violation of his responsibility as county supervisor. His objective in doing so was to deny Mr. Warren loan benefits based on race. Cx-104. His ultimate objective was to cause Mr. Warren to lose his land.

69. Mr. Warren continues to be ineligible for FSA loan services based on the finding of lack of good faith.

FAILURE TO GIVE PROPER ACCOUNTING OF LOAN HISTORY:

70. Mr. Warren and lawyers, acting on his behalf, have attempted to get an accurate accounting of Mr. Warren's loans, yet the USDA has not given Mr. Warren an official and accurate accounting of his FSA loan record. An internal memoranda from USDA reflects the fact that FSA's accountants could not fully explain some entries on Mr. Warren's account. Cx-06, Cx-117.[13]

Mr. Warren had never received an official accounting of three loans he received in 1983 and 1984. While Mr. Warren was charged with the full face value of the loans, it is unclear how much of the money was used on Mr. Warren's behalf. One note accompanying Mr. Warren's records from FSA stated: "I could not locate the old management card, but I did piece together the information for you with the exception of one loan that I could not find." Cx 112. In 1995, the District Director wrote to Mr. Norton that Mr. Warren's "agcredit history" must be corrected before FSA proceed to foreclosure. Cx-06. On January 13, 1997, the Agricultural Credit Manager stated that the "Problem Explanation Sheet" concerning Mr. Warren's Farm Ownership loan showed a principal balance significantly larger than the note amount. The Finance Office had attempted to follow the history of the loan to determine how the numbers were developed, but had difficulty doing so. Cx-07.

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[13]As of the date of the trial, Mr. Warren's request for an official accounting of the balance due and owing on his account still was not available. Tr. 12.

BEGINNING DATE OF DISCRIMINATION

71. Mr. Warren alleges damaging beginning 1983. Cx-99. However, he has not established, by a preponderance of the evidence, any act of discrimination occurring before 1985.

USDA'S ADMISSION OF NATIONWIDE RACIAL DISCRIMINATION

72. The USDA has admitted that FSA county supervisors and county committees throughout the United States discriminated against Black farmers. It has admitted that as a result of that discrimination, Black farmers have lost their land and their livelihoods. *See* Consent Decree in *Pigford, et al v. Glickman*, Dist Ct. DC (Civil Action No. 98-1693 (PLF))

FINDINGS ON DAMAGES

Economic

73. Due to USDA's discrimination against him, based on race, Mr. Warren suffered substantial economic loss. He: 1) lost the opportunity to expand his farming operation, including opportunity to purchase his sister's farm of 365 acres of land; 2) lost all leases he had on farmland in the County; 3) lost his prized peanut production under the VPI program; and 4) was forced to give up his swine operation. Moreover, his ability to obtain credit was destroyed.

Emotional

74. As a direct result of the USDA's discrimination against him, Mr. Warren has suffered severe emotional distress over nearly a 17-year period. He has watched the emotional suffering of his family, as well.

DISCUSSION AND SUBSIDIARY FINDINGS

Mr. Warren brings this claim pursuant to the provisions of the Equal Credit Opportunity Act ("ECOA"), 15 USC §§ 1691 *et seq.*, which was enacted in 1974, and became effective on October 28, 1975, and amended in 1976. It is a provision of the Consumer Credit Protection Act, 15 USC §§ 1601 *et seq.*

The ECOA prohibits creditors from discriminating against any applicant, with respect to any aspect of a credit transaction on the basis of race. 15 USC § 1691(a)(1).

Regulation B defines "credit transaction" as including "[e]very aspect of an applicant's dealings with a creditor regarding an application for credit, or an existing extension of credit (including but not limited to information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.)" Reg. B, 12 C.F.R. § 202.2 (m).

The ECOA applies to the USDA and the FSA. The statute provides that when the government or a governmental subdivision, agency or instrumentality extends credit, it is subject to the provisions of the ECOA, except that no action can be brought against a governmental creditor for punitive damages. 15 USC 1691e(b). The USDA agrees that the ECOA applies to FSA's loan servicing transactions. Rx-1.

The USDA stipulated to liability in this case for discriminating against Mr. Warren on the basis of race, beginning in 1985.[14] The evidence supports that finding. Accordingly, I find that the USDA discriminated against Mr. Warren with respect to aspects of numerous credit transaction on the basis of race in violation of 15 U.S.C § 1691(a)(1). Specifically, the USDA, through Mr. Norton, the county supervisor and/or the county committee members, discriminated against Mr. Warren, based on his race, regarding an application for a loan or loan servicing, including, but not limited to, deliberately delaying action on his loan applications, denying his applications for loan or loan servicing, setting unfair conditions for the approval of loan or loan servicing, and falsifying information and using that information to deny loan servicing. In addition, the USDA, through FSA and Mr. Norton, violated the ECOA by retaliating against Mr. Warren for exercising a right granted him under the Consumer Credit Protection Act, i.e., the right to protest the illegal and discriminatory action of a credit lender. Sec.1691a(3).

DAMAGES

Section 706(a) and (b) and 702(g) of the ECOA provides that any creditor that fails to comply with a requirement imposed by the Act or the regulation is subject to civil liability for actual damages suffered by the individual. 15 U.S.C. 1691e. *See also* 12 CFR 202.14. Actual damages are damages deemed to compensate the injured party for losses sustained as a direct result of the injury suffered. They "are the damages awarded to a person as a compensation, indemnity or restitution for harm sustained by him." Restatement (Second) of Torts § 903 (1979). One purpose of actual damages is "to make

[14] See Rx-3.

persons whole for injuries suffered on account of unlawful discrimination." *Albemarle Paper Co. v. Moody*, 422 U. S. 405, 418 (1975)

There are two categories of actual or compensatory damages: tangible and intangible. Tangible includes economic loss. Intangible damages include compensation for emotional distress, and pain and suffering, *Bohac v. Dept of Agriculture*, 239 F. 3d 1334, (Fed. Cir. 2001); injury to personal and professional reputation, *Fabry v. Comm'r of IRS*, 223 F. 3d 1261 at 1265, (11th Cir. 2000); injury to credit reputation, mental anguish, humiliation or embarrassment, (*Fischl v. General Motors Acceptance Corp.*, C.A.5 (La.) 1983, 708 F. 2d 143); "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering" *U. S. v. Burke*, 504 U. S. 229, 112 S. Ct. 1867 at 1874 (1992); and intentional infliction of emotional distress. *Ricci v. Key Bancshares, Inc.*,662 F. Supp 1132 (D.C. Me. 1987) and *HUD v. Wilson*, 2 FH-FL (Aspen) ¶ 25,146, (HUDALJ 2000).

While damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. *Tri County Industries, Inc. v. District* of Columbia, et al, 200 F. 3d 836 at 851 (D. C. Cir. 2000) The inquiry must be whether the damage award is within a "reasonable range within which the jury may properly operate." *Langevine v D. C.*, 106 F. 3d 1018 at 1024 (D.C. Cir 1997).

TANGIBLE DAMAGES

Loss of Farm Income :

As a result of the USDA's discrimination against him, Mr. Warren suffered loss of income from farming operations. FSA never approved a loan for him after 1985. He was denied farm operating loans, disaster assistance loans and/or grants, Primary and Preservation Loan Servicing. Because he was denied a loan in 1985 and every year thereafter, Mr. Warren did not have the money to buy fertilizer, seed, chemical, equipment, etc. that was needed to carry on a successful farm operation. Despite his best efforts, without funds, he could not hold on to the leased lands that he farmed, and thus suffered a devastating loss of farm income from that year forward. Moreover, the finding that Mr. Warren had acted with lack of good faith precluded him from qualifying for these benefits. Cx-79.

Mr. Warren seeks a total of $3,972,104 in loss of farm income for the period from 1983 to 2001. This claim is based upon the report and analysis of his expert economist, Dr. Adeli Brown. Specifically, he seeks $1,389,429.31 for farm crop and swine losses,

$270,000 for replacement costs on farm equipment and machinery from 1983-2001 (@ $15,000 per year), and interest on $1,561,677.08 at 9.9% compounded over the 17-year period. Cx-99.

The USDA challenges Dr. Brown's assessment of loss and presents instead a calculation of loss that is between $301,731 and $323,720, minus actual income earned by Mr. Warren over the same 17-year period. Accordingly, the determination of which expert opinion should be accepted is of critical importance in this case.

Both economists have similar academic backgrounds, both having obtained PhD degrees in Agricultural Economics - Dr. Brown from Louisiana State University (1983) and Dr. Glaze from Mississippi State (1985). Dr. Brown is currently associated with Southern University and has spent a substantial amount of time working with farmers in his capacity as Agricultural Program leader in the Universities' Cooperative Extension Program at Baton Rouge, Louisiana. He has worked as an extension specialist in the area of farm management and as a consultant for the National Office for Small-Scale Agriculture. He has also worked with farmers, assisting them in putting together budgets, preparing their FHPs and helping them in their management practices. Dr. Glaze has worked as an economist for OCR-USDA since 1997. His resume shows that he has received recognition for leadership in developing and implementing farm-level budgets.

Both Mr. Warren and the USDA agree that the way to calculate Mr. Warren's economic damages is to calculate what he would have earned with a fully functioning farm during the years since 1983, adjusted for actual income earned during the same time. Thus, both parties have not attempted to do a specific proximate cause analysis that seeks to trace the damages caused by each distinct act of discrimination. The method used by both parties takes into account all types of damages by looking at the net income that Mr. Warren would have made from farming (i.e. gross income minus costs) during the years in question if his farm operation had been unaffected by discrimination. The formula used by both is as follow:

Net Returns - crops = [Price x (Yield x Acres] - [Costs per Acre x Acres] +

Net Returns - hogs = [Price x (Market Wt. x Hogs sold] - [Cost per 100 lbs x hogs sold]

Economic Loss = Net Returns (crops + hogs) - Actual Net Returns(crops +hogs)[15]

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[15]The First Circuit Court of Appeals found no fault with the trial court's jury instruction in an employment case that: "Actual damages include any wages or fringe benefits you find plaintiff would

Further, both used published figures from the Economic Research Service (ERS) and the National Agricultural Statistics Service (NASS), as a data source. The ERS reports price, yield and cost data based on survey of farms on a regional and state wide level. The NASS reports price and yield data based on a survey of farms at the county level. The NASS does not report on costs of production.

The parties agree on the overall methodology, but have serious disagreements on the calculation of lost income. First, the USDA believes that Mr. Warren can only recover economic damages from 1985 to present, since 1985 is the earliest that discriminatory conduct was alleged in an eligible complaint. I agree. I have already determined that the evidence is insufficient to establish a basis for economic loss for any year prior to 1985. *See* Finding of Fact, ¶ 71. Second, the USDA contends that there is no support in the record for the 763 acres Mr. Warren allegedly farmed in 1983. I disagree. The evidence supports finding that Mr. Warren farmed 763 acres in 1983. *See* Finding of Fact, ¶ 11, and *fn* 4. However, since I have found that there is no basis for a finding of economic damages resulting from discriminatory acts which occurred before 1985, the first year for which Mr. Warren may be compensated is 1985.

Dr. Brown used 1983 as a base year and determined losses beginning with the year 1984. Because I find that the evidence does not establish calculable economic injury before 1985, Dr. Brown's figures must be modified to show 1984 as the base year and to calculate loss beginning in 1985. By extrapolating from his data, the calculation of loss beginning 1985 can be made. Dr. Glaze provided calculation for loss beginning in 1985 in his report. [16] *See* Rx-3, tables 1 and 2.

The USDA's most fundamental disagreement with Mr. Warren's economic claim is the methodology used by Dr. Brown. Dr. Glaze, USDA's economist, believed there were serious problems with Dr. Brown's analysis. Dr. Brown attempted to simulate Mr. Warren's farming practice as it would likely have been had he had the funds and resources unfairly denied to him during the years in question. Before doing so, he visited Southampton County, and over several days talked with individuals in the community to get a feel for what Mr. Warren's farming operation was like in 1983 and what patterns of operation and management he could discern. He looked at farm records, visited a county FSA office, and visited others in the community who knew about Mr. Warren's farming

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have earned in [his/her] employment with defendant if [he/she] had not been discharged . . .minus the amount of earnings and benefits from other employments received by [such] plaintiff during that time." Sanchez v. Sosa, _F 3d _ (1st Cir. 1999).

[16]Dr. Glaze presented scenarios using averages for 1985-2001 as well as averages for 1983-2001.

operation. He talked with two former county farm extension agents and visited the experiment station in the area. He concluded that Mr. Warren had a good track record and was perceived as an excellent farmer in the area. One piece of information he had was that for nearly 20 years, Mr. Warren had been 1 out of 100 farmers selected to grow certified seed peanuts for a county in North Carolina. (To qualify for continued participation in that program, Mr. Warren had to produce a minimum yield which was higher than the reported ERS and NASS yields). He learned that Mr. Warren had a good grasp of how to farm, of farming operations, and management practices. Tr. 116-117. Dr. Brown modified the ERS and NASS data in an attempt to model Mr. Warren's farm operation. Cx-99.

Dr. Brown testified that the method he used to calculate damages in Mr. Warren's case is a standard methodology used on the ground level working with farmers to determine damages, e.g., to determine what a farmer should be paid as a result of a loss suffered from disaster by flooding. He testified that the average annual net loss reflected in his calculations was excessive. Tr. 124.

Dr. Glaze contended that the better approach to take to assess fair compensation for loss in this case, and which he used, was to model the average farmer in the area. Rx-3 Mr. Warren counters that he was not an average farmer, but an excellent farmer.

For the reasons indicated below, I find Dr. Glaze's calculation of loss to be highly implausible and unreliable. Accordingly, I cannot credit his calculation of loss.

I find the USDA's net loss calculation to show virtually impossible results. By using Dr. Glaze's approach to calculate crop and enterprise loss, the average farmer, growing the same crops as Mr. Warren on 763 acres of land, over the 17-year period in question, would have had the following returns :[17]

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[17]Derived by subtracting yearly costs from yearly revenue, per commodity or enterprise.

Corn (213 acres) Positive net returns in 3 out of 18 years

$0 net return = 1985, 1986, 1987, 1988, 1989 ($593), 1990, 1991, 1992, 1993, 1994, 1997, 1998, 1999, 2000, 2001

Soybeans (300 acres) Positive net returns in 5 out of 18 years

$0 net returns = 1984, 1985,1986, 1987, 1989, 1990, 1991, 1992, 1993,1994, 1999, 2000, 2001

Swine (640 hogs) Positive net returns in 5 out of 18 years
(640 fallow hogs)
$0 net returns =1984, 1985, 1988, 1989, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001

See Appendix A. These facts were not readily discernible from Dr. Glaze's report. His report shows annual returns on the combined commodities. Rx-3. *See* Appendix 5. However, a breakdown of the individual enterprises for annual return shows that, using the USDA's scenario, only the peanut crop showed sustained profit - showing profit in all but one year (1993).

As shown above, the results obtained using Dr. Glaze's analysis undermine the credibility and reliability of his approach. It is totally implausible that the average farmer in Southampton County, or anyplace for that matter, would have managed his/her farm operation as suggested by these results. No farmer would have, or could have, continued to grow corn when for 10 consecutive years (from 1985 through 1994) that crop yielded 0 returns. Similarly, no farmer would continue to grow soybeans when for the 10-year period from 1984 to 1994, it netted a profit in only one year. Nor would a farmer continue to raise hogs if they, in 10 consecutive years (1992-2001) brought in 0 returns. Moreover, the chances are nil that FSA would continue to loan a farmer money to operate a farm in a case where he/she had numerous consecutive years of negative returns. Thus, I cannot rely on the results from Dr. Glaze's analysis as being an accurate estimate of net returns on a 763-acre farm in a Southampton County for even the average farmer during the period 1985 through 2001. Certainly, such returns are in no way consonant with the management capability of Mr. Warren, as shown on this record.

Using Dr. Brown's calculation of loss, as modified to reflect the base year of 1985 rather than 1984, and extrapolating from Dr. Brown's calculation of loss from 1984 to

determine loss from 1985, yields the results shown in *Appendix B*. This shows loss through 2001 of $1,098,839.00.[18]

Since the decision is coming at the end of 2002, I have included losses for the year 2002. [19] The total calculated loss through 2002 is $1,162,723.00. That amount will be awarded.

Prejudgment Interest:

Mr. Warren seeks prejudgment interest on his economic lost, at 9.9%, compounded annually. The USDA argues that although prejudgment interest might seem reasonable to award in this case, such interest is precluded as against the United States. Citing the Supreme Court's decision in *Library v. Shaw*, 478 U.S. 310, at 314 (1986), it argues that interest can be recovered against the United States only if expressed consent to such a recovery has been given by Congress. It argues that although Congress has waived sovereign immunity from award of actual damages in ECOA cases, (*see Moore v. USDA*, 55 F. 3d 991 (5th Cir. 1995) it has not waived immunity as to interest payment. I agree.

Title 7 U.S.C § 2279 provides at Section 741 for the Waiver of Statute of Limitation in ECOA cases:

> (a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by an statute of limitations.

It further provides that upon the filing of an eligible complaint – USDA shall:

> 2) award the complainant such relief as would be afforded under the applicable statute from which the eligible complaint arose notwithstanding any statute of limitations...."

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[18] I have omitted from these calculations, the 15% yearly depreciation costs included in Dr. Brown's calculation. Equipment and machinery depreciation costs had been subtracted from the ERS costs.

[19] A complainant is entitled to compensatory damages incurred during the period between the conclusion of the trial and the court's rendering of its decision. *Dunn v. State of New Jersey*, (N. J. Super. Ct App. Div. 6-15-98), Fair Housing- Fair Lending (Aspen Hill) ¶ 18,234. I have used the lower of two sets of figures: 1) the average loss for combined commodities for the three-year period from 1999-2001, or 2) the loss for combined commodities for the last year reported (2001). Since the lower figure was that reported for the 2001 year, I used that figure to compensate for loss in the year 2002.

The applicable statute is found at 15 U. S.C. 1691e. It provides for the awarding of "actual damages" as follows:

> (a) Individual or class action for actual damages
>
> Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant . . . 15 U.S.C. § 1691e (a)
>
> (b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award
>
> Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages . . .15 U.S.C. 1691e

In *Library*, the Supreme Court held, in what has become known as the "no-interest rule," that "[in] the absence of express congressional consent to the award of interest, separate from a general waiver of immunity to suit, the United States is immune from an interest award." *See also Lane v. Pena*, 116 S.Ct. 2092, 2096 (1996) ("We must construe waivers of immunity strictly in favor of the sovereign)."

Although I conclude that there are strong reasons to award prejudgment interest in this case: 1) The statute waives immunity from "actual" damages. The purpose of an actual damage award is to make the injured person whole. The Supreme Court "has long recognized that . . .a monetary award does not fully compensate for an injury unless it includes an interest component." *Kansas v. Colorado*, 533 U. S. 1 (2001); 2) The statute specifically reserves governmental immunity from punitive damages, but does not specifically reserve immunity from interest. This can be seen to imply that it intended to allow interest payment as part of "actual" damages; and 3) Prejudgment interest is allowed on judgments against the United States in Title VII cases, to which ECOA discrimination cases are often compared, *(see Garcia et al v. Ponce Federal Bank, et al*, 779 F. Supp 620 (D. C. for District of Puerto Rico, 1991)). I can discern no sound reason for allowing interest against the United States in a Title VII discrimination case and not in an ECOA discrimination case. However, the fact is that Congress expressly waived governmental immunity from interest in Title VII cases. *See* Civil Rights Act of 1991, 42 U.S.C. 2000e § 114. I can find no express waiver of interest payment in ECOA cases. Accordingly, I am constrained to deny the request for prejudgment interest.

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INTANGIBLE DAMAGES

Mr. Warren seeks $36,535,186 for emotional distress; $2,000,000 for damage to professional reputation, $1,000,000 for damage to reputation for honesty, $1,000,000 for damage to credit reputation, and $500,000 for damage to ability to respond to emergency and inconvenience, for a total of $41,035,000 in intangible damages.

Emotional Distress:

The Complainant seeks $36,535,186 for emotional distress and mental anguish suffered as a direct result of the discrimination in this case. However, in this amount he appears to have included damages for the emotional suffering of his fourteen children. Cx-119. Although it is clear that his children have suffered emotional injury, they are not named as complainants in this case, and thus no award may be made for their suffering. Mr. Warren may be compensated, however, for his distress resulting from having had to watch his loved ones suffer. (Punitive damages are not available against the government in ECOA cases). Thus, such an enormous award is not warranted based on his claim. However, I conclude that a very substantial award is justified by the facts and circumstances in this case.

The Supreme Court has said that "[m]ental distress is a personal injury familiar to the law, customarily proved by showing the nature and circumstances of the wrong and its effect on the plaintiff. . . . Although essentially, subjective, genuine injury in this respect may be evidenced by one's conduct and observed by others." *Carey v. Piphus*, 435 U. S. 247, 264 n. 20 (1978).

Nature and Circumstances of the Wrong:

For a period of more than 17 years, Mr. Warren has suffered through a relentless campaign by FSA staff to cause him economic and emotional harm. The acts of FSA have been continuous, severe, flagrant, and have caused Mr. Warren to suffer constant and irreparable emotional pain and suffering. The undisputed facts show that since the early 1980's, FSA staff made, at best, little effort to assist Mr. Warren in dealing with the complex loan application process for obtaining monetary assistance from FSA. Worse, it can reasonably be inferred based on the evidence, that at least since 1985, the all-White county committee and later, Mr. Norton, the White county supervisor, conspired to damage Mr. Warren emotionally, economically and professionally, because of his race. Mr. Norton's scheme to repeatedly delay the processing of Mr. Warren's applications and then to deny them with the most technical of reasons, to use his discretion in every instance against Mr. Warren, as well as his resistance to implementing the decisions of

the NAD, could only have worked with the cooperation of the county committees or their reckless disregard for the interests and rights of Mr. Warren.

Of all the discriminatory acts committed against Mr. Warren, Mr. Norton's retaliation against him for filing a civil rights complaint is the most egregious. Mr. Norton retaliated against Mr. Warren by initiating a series of actions that resulted in a false USDA finding, which he made, of "lack of good faith" against Mr. Warren, and a referral of the matter to OGC for an opinion on criminal prosecution. This finding of lack of good faith meant that Mr. Warren would never again qualify for any USDA program assistance except for Homestead Protection, and the certain end to his farming career. It was an extraordinary and extreme finding for a program that has as its mission the assistance of farmers. Mr. Warren is the only farmer in all of Southampton County, Virginia, ever to have received such a finding. Cx-16.

One of the primary and specific responsibilities of Mr. Norton's job as county supervisor with FSA was to provide assistance to farmers such as Mr. Warren. That is FSA's mission. Yet, Mr. Norton used his position and his knowledge of Mr. Warren and his limited educational abilities, to sabotage and undermine Mr. Warren's professional and economic position. By his finding of lack of good faith, he branded Mr. Warren as a dishonest person, and one not to be trusted. His finding impugned Mr. Warren's reputation for honesty and integrity in his dealings and caused him extreme embarrassment in his community.

The evidence supports finding that in making the finding of lack of good faith in Mr. Warren's case, Mr. Norton sought to preclude any further successful appeals by Mr. Warren and force him into certain foreclosure so that Mr. Warren would lose his land, as well as to retaliate against Mr. Warren for having filed the discrimination complaint. Mr. Norton's conduct can only be described as outrageous. His suggestion of the possibility of having Mr. Warren prosecuted on false charges was callous, wanton and unconscionable. It is reasonable to infer that these actions against Mr. Warren were intended to send a chilling message, not only to Mr. Warren, but to other Black farmers, as well.

In making the finding of lack of good faith, Mr. Norton acted with malice. Actual malice exists when the defendant's conduct is motivated by ill will toward the plaintiff. Implied malice arises when deliberate conduct by the defendant is so outrageous that malice may be assumed. *See Ricci v. Key Banchares*, 662 F. Supp. 1132 (U.S.D.C., Dist of Me. April 27, 1987) *citation omitted.* The evidence shows Mr. Norton's actions were motivated by ill-will against Mr. Warren and a desire to injure Mr. Warren for filing a race discrimination complaint against him.

The actions of Mr. Norton are even more egregious because of the fact that FSA's State office failed to intervene to prevent the finding from being made. At the time the finding of lack of good faith was being considered, FSA's State office knew, or had reason to know: 1) that Mr. Norton had repeatedly, over a course of four years, denied Mr. Warren's applications for FSA benefits on bases that had been reversed on appeal; 2) that Mr. Warren had filed a complaint of race discrimination against FSA, specifically naming Mr. Norton as one of the chief perpetrators; 3) that Mr. Warren had claimed that he had obtained Mr. Norton's approval to cut the timber; 4) that Mr. Warren had also acted, in part, on the advice of his attorney in cutting the timber; 5) that, even if Mr. Norton had not given his approval, he had been aware of the cutting of the timber and had watched in silence for several months while the cutting was taking place, without speaking to Mr. Warren about it; and 6) that the cutting of the timber on the property did not seriously put FSA's interest at risk. Cx-18. Cx-17. RR-ex8. The fact that Mr. Warren had cut the timber, in part, after his attorney had given him the go-ahead to do so, should by itself, have ended the lack of good faith inquiry. Here is a man who cannot read or write and who had acted on the advice of an attorney. These facts should have prompted the State FSA to remove the decision on a finding of lack of good faith from Mr. Norton. Despite Mr. Norton's obvious conflict of interest, the State FSA left it to Mr. Norton's discretion, and allowed the finding to be made.

Mr. Norton's and FSA's conduct fall within what the Restatement (Second) of Torts describes as "Outrageous Conduct Causing Severe Emotional Distress":

> 1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress

Restatement (Second) of Torts § 46 (1965). The Comments to the *Restatement* describe extreme and outrageous conduct, *inter alia*, as follows:

> Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Restatement (Second) of Torts § 46 Comment d (1965). Clearly, this is such a case.

By making this false claim, and referring the case to OGC for an opinion on whether Mr. Warren should be criminally prosecuted, Mr. Norton put Mr. Warren in danger of criminal prosecution for criminal conversion of property, an offense he knew

Mr. Warren had not committed. Moreover, by making the false claim against Mr. Warren, a claim that went to his reputation for honesty and integrity, Mr. Norton defamed Mr. Warren's character. In doing all of these, Mr. Norton intentionally inflicted emotional distress on Mr. Warren

As a result of Mr. Norton's discriminatory actions, Mr. Warren suffered severe emotional distress. The finding that he had unlawfully converted secured property and acted dishonestly was devastating to Mr. Warren. It caused him to experience the most stressful time of his life – "I almost lost my mind." He struggled daily to hold his head up. Only his family, his church and his faith in God helped him get through one day at a time. Cx-48. His emotional investment in his farm is captured in his statement that "I will die to keep my farm." Cx-103.

I find that Mr. Norton's conduct was outrageous. I also conclude that if the facts of Mr. Norton's betrayal were presented to the average member of the community, they would arouse extreme resentment against Mr. Norton's actions and lead the community member to exclaim them to be "Outrageous." I find that the acts of Mr. Norton constitute intentional infliction of emotional distress as it is described in the Restatement and that Mr. Norton and FSA are liable for damages suffered by Mr. Warren as a result thereof.

The Effect on Mr. Warren:

The evidence shows that farming was more than Mr. Warren's business, it was his life. It was all that he knew. He loved farming, not just for himself, but for his family. Farming had allowed him to successfully raise 14 children and he enjoyed having them work on his farm.

As a result of the discrimination by FSA, Mr. Warren lost nearly 70% of his farming capability. This loss has had more than an economic impact. In a family where farming was a way of life, and all members wanted to stay and farm together, the emotional toll has been great. Because of the loss of farm land, Mr. Warren's sons no longer work with him - all but one had to seek work elsewhere. However, all nine boys and three of the grandchildren have expressed their desire to return to farming with Mr. Warren if such were feasible. Tr.46-54. The extent to which Mr. Warren is emotionally invested in his farm and in his farming family is shown in his statement to the investigator in 1997: "I will die to save my farm." RR-ex1.

In his statement to the investigator in 1997, Mr. Warren described how emotionally wrenching and "horrible" his 17-year the ordeal with FSA has been. He describes how he has shed many tears over the years, suffered headaches, stomach

problems, difficulty sleeping, great anxiety about his family's emotional and economic well-being, and suffered extreme humiliation. He has found it difficult to hold his head up and maintain his dignity. He stated that only his faith in God had brought him through the continuing ordeal. Cx-103. Despite overwhelming odds, he has been able to survive through his personal industry, perseverance, and hard work.

Mr. Warren was evaluated in 1998 for three hours over a two-day period by Dr. James Corcoran, a psychiatrist. Mr. Warren recounted the long history of discrimination against him, the finding of lack of good faith, and the consideration of possible criminal prosecution against him. Dr Corcoran observed that Mr. Warren was sad and subdued. Mr. Warren reported that he obsessed constantly about his problems, had difficulty sleeping with nightmares, had frequent periods of no appetite and had low energy. He related that the timber episode had been the most stressful of his life -extremely humiliating and embarrassing. He abhored that he had been victimized because of the color of his skin, and by the government. It had caused him to isolate himself from associates, friends and neighbors. He felt comfortable only with family. Dr. Corcoran diagnosed Post Traumatic Stress Disorder. Cx-119.

Mr. Warren testified that when FSA started denying his applications in 1985, he had faith that the USDA system would correct the wrong denials. His reliance seemed well placed, since he won a series of appeals resulting in the reversal of county supervisor and county committee decisions. He knew that racism was common in Southampton County. He did not believe, however, that the federal government would discriminate against him. He had faith that the program operated by the federal government, unlike private county businesses, would treat him with fairness. He makes a persistent plea throughout his many writings to the USDA and to his Congressman - you are the federal government, please help me and correct this problem! In his 1997, complaint he shows his despair and feeling of betrayal at the government's lack of response. He wrote: "[t]he agency that I thought was going to help me has only tried to help me lose my land." RR, p.81, Cx-102 at p.15.

At trial, Mr. Warren testified that he has suffered greatly since 1986 when FSA first threatened with foreclosure on his farm. He worried about losing his farm and everything that he had worked for. His worries and fear of losing his farm intensified in 1992. He was devastated by the finding of lack of good faith made against him -- "I tell you I likely lost my mind." It was a very "bad" time for him, he said, and it continues to be. It bothered him that he might not be able to continue to farm, but also that he might not have any farm land to leave to his sons. Tr. 48-51.

The whole incident about the timber cutting and the finding of lack of good faith was extremely embarrassing to Mr. Warren. He lives in a small community, is a member of a church community, serving both as a deacon of the church and as a trustee of the church. Because it is such a small community, everyone became aware of his situation to his great embarrassment and humiliation. Moreover, before the discrimination by FSA, he had a good reputation as a farmer, and a sound credit reputation. He was a highly respected farmer. He was only one of a few farmers in the area selected to grow certified foundation peanuts. Before the discrimination, his credit allowed him to get "most anything [he] wanted." However, after the discrimination began, his credit was ruined and he had to pay for everything in cash. His limited farm operation now is run by paying cash. He is not able to get anything on credit.

Mr. Warren testified that it distressed him to see young White farmers in his community expand their farm operation, while he was losing land. He chronically felt sick to his stomach. He suffers chronic anxiety attacks, and has headaches. "It's a bad feeling, I can tell you that, when people treat you like that. . . for no other reason [than the color of your skin.]" Tr. 50. He testified that he went to doctors over the years, but that he did not keep going to them because he continued to have the same problems. He is affected by having to relive the cycle of denials and appeals and threatened foreclosure that he experienced. Tr. 85. It makes him nervous. He still suffers "a lot" from stomach problems every day. He says, physically, he constantly feels like he has a cold, but he does not actually have a cold. He has faced the threat of foreclosure on his farm since the mid 1980's. Every day he wakes up to the same reality that he may not be able to continue to farm and may not have any farm to leave to his sons.

Mr. Warren found it a tremendous challenge over the years to keep his head up. The once large farmer who "could get anything he wanted to" had been reduced to going back and forth to the county supervisor for help, hoping that each time would be different. It never was. The finding of lack of good cause caused Mr. Warren to suffer extreme humiliation. When he learned that he was being considered for criminal prosecution, he nearly "lost [his] mind" Cx-48, p.15.

Vivian Warren, age 35, daughter of Mr. Warren, testified to the severe suffering of her father. She described the turmoil she has seen in his life and how his life has been devastated by his long fight with USDA. She testified that she was the one who most helped her father pursue his claim of discrimination. She stated that the family's whole life was absorbed in the quest for fair credit treatment and to have the finding of lack of good faith removed from Mr. Warren's records. She and her father have tried to get the USDA to correct the unfairness to her father since 1992. Her efforts to resolve the complaint included repeated phone calls over the years, as well as trips to Washington to

meet with USDA officials. She testified that they went to Washington many times over the years, sometimes missing being home at Christmas and Thanksgiving. Tr.131.

Ms. Warren testified that her father had thought that he would receive better treatment from the federal government than from their local county, and was crushed when it discriminated, too. She testified that her father's reputation as a farmer has suffered from the discrimination, as has his credit, and his reputation for honesty. That he went from being an excellent farmer, used to raising certified peanut seeds, to being down to a point where he is considered a poor farmer, unable to manage his farm business. The lack of good faith finding, and the threat of prosecution, she said, caused people to question his honesty. He is a deacon and trustee in his church. Where he had a good credit record prior to the discrimination, he cannot now get credit and has to pay everything in cash. Where before he was financially independent, now his family keeps him going. He has no ability to respond to emergencies, and everything he has to do, he has to get help from someone else to do it. His situation is such that he had to borrow money to take care of a relative's funeral expenses. Tr. 131-134.

When Ms. Warren was asked to discuss how the case had affected her father's mental disposition, she said that she worried about him "so much." She wonders "whether he is going to make it." With that expression of concern, she choked up and, for a time, was unable to continue. She sobbed uncontrollably. When she was able to continue, she described how hard it had been for her to watch her father suffer. She testified that he had frequent "sick spells" and suffered from frequent headaches and stomach problems. He suffered from depression. He no longer found pleasure in things he used to do. He used to love working in his garden, but now has no interest in it. He had no appetite. She testified how it pained him to see other farmers in the field with nice tractors, harvesting their crops, when he could not do so and did not know how he would pay his bills. In her opinion, he has made it his far "only through the Grace of God."

Ms. Warren was a very credible witness. Her sobbing was not for my benefit, but the expression of long term pent-up feelings and heartfelt anguish of a child who grieved for a suffering parent. She also had a fear for her father's future. It is reasonable to infer from her testimony and her statements throughout the record that her distress came from watching her father, who had once been a proud and independent provider, financially self-sufficient, become a shell of the person he used to be. It was "hard" for her to watch him suffer, she kept saying. The record shows her many pleas in forms of repeated letters and phone calls to USDA personnel and to her Congressman, pressing them to take action to rectify her father's situation. One letter from an OCR agent related that Vivian "calls nearly every day" about her father's case. It was clear from her testimony that her concern was for Mr. Warren's emotional well-being.

Mr. Warren, too, was a very credible witness. I observed Mr. Warren both as he sat in the court throughout the day of the hearing and as he sat on the witness stand within a few feet of me. His demeanor was consistent with that described in the report from the consulting psychiatrist, and by Mr. Warren - he was sad and subdued, seeming almost defeated, with just a flicker of hope. A considerable amount of time has passed since I heard his testimony. I have had time to reflect on the person of Mr. Warren that I saw, as contrasted to the man reflected in the hundreds of documents of record. I find it difficult to imagine that the man who sat within a few feet of me, had ever felt the independence and self-confidence and courage necessary to stand up before a hostile school board meeting and challenge the White community's resistance to integrate school busing. But the evidence shows he did just that. It shows that he was a man who was proud of his abilities as a farmer and what he had been able to accomplish as a farmer, despite being virtually illiterate. It is reasonable to infer that his self-esteem and confidence were tied to having been financially able to provide for his large family and to have been an accomplished farmer in the area, despite his lack of formal education.[20] He was a man who had fought hard over the many years to preserve his belief in himself and in fair treatment for all. He was a man who believed in a government that held itself out as promoting equal treatment for all its citizens. Now, he is broken in spirit. Over and again, he mentions being betrayed by a government that held itself out as being an equal opportunity lender. He knew racism was widespread in the county, indeed, he had been victimized by it; however, he held on to his faith that the federal government would treat him fairly. Regrettably, he found that this was not to be. Mr. Warren challenged the establishment and he has paid a hefty price for it. Racial discrimination is vicious, destructive, and debilitating. The evidence shows that Mr. Warren has tried for years to maintain his dignity - to keep his head up. He is still fighting, but the years have taken a toll on him.

The assessment of damages for mental anguish, humiliation and embarrassment, etc., is difficult. There is no magic formula. Mr. Warren has stated that no amount of money can give him back what he has lost, nor heal the pain and humiliation he and his family have suffered, and that is likely so, but he deserves "just"compensation. Cx-48.

The facts in Mr. Warren's case are similar to those in the ECOA case of *Ricci et al v. Key Bancshares of Maine, Inc. et al,* 662 F. Supp 1132 (U. S. Dist Ct. Me., April, 1987), and *Ricci* , 662 F. Supp. 1139 (June 1997). In that case the evidence was found

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[20]For Black men, higher income has, to a great extent, positive correlation with life satisfaction and psychological well-being. Ball, R.E. & Robbins, L. (1986), Black husbands' satisfaction with their family life. *Journal of Marriage and the Family, 48*, 849-855.

sufficient for the jury to return a verdict for Mr. Ricci of $1,000,000 emotional distress resulting from discrimination against him based on national origin in violation of §1691(a) of ECOA, and $6,000,000 for the intentional infliction of emotional distress under state law.

The evidence before the jury showed that the defendant Bancshares responded "recklessly, callously and discriminatorily" against Mr. Ricci upon hearing allegations from state and federal law enforcement officials connecting him to organized crime. These allegations were erroneous. That response included the immediate and permanent cancellation of further credit to Mr. Ricci; the concealment from Mr. Ricci of the specific actual reasons for the cancellation; the refusal to even discuss the allegations with Mr. Ricci or with others who were most familiar with Mr. Ricci's businesses; and the subsequent failure to take adequate remedial steps to cure the devastating injuries its actions caused to Mr. Ricci's business operations and personal reputation. The court found that the evidence did not support a finding that the defendant acted with malice against Mr. Ricci, but that the bank acted out of self-centered business interests. The evidence supported, the court said, the $1,000,000 ECOA award for emotional distress in that the violations were accompanied by a degree of callousness and recklessness that amounted to intentional conduct. The court also sustained the jury's award of $6,000,000 on a state claim for the intentional infliction of emotional distress against Mr. Ricci, based on its finding that, by the defendant's actions, it recklessly inflicted severe emotional distress upon Mr. Ricci, or was certain or substantially certain that such distress would result from its conduct.

As in *Ricci,* we have in Mr. Warren's case, the deliberate denial and cancellation of credit, the concealment of the actual reasons for the denial of his many applications through the technical bases for denials, the refusal to provide official and accurate information on Mr. Warren's account, and the failure of FSA and USDA to take remedial steps to remove the injurious finding of lack of good faith. However, in the Warren case we have the additional element of actual malice, which makes the case more egregious than in *Ricci.* There is the deliberate falsification of evidence to do injury to Mr. Warren - an act showing actual malice and ill-will against Mr. Warren, while malice was expressly not found in *Ricci.* Indeed, the findings in Mr. Warren's case support the $6,000,000 award affirmed in Ricci for the intentional infliction of emotional distress.[21]

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[21]In setting aside a $12,500,000 punitive damage award, the court found that the evidence did not show that the defendant acted with the sort of malice towards Mr. Ricci which the law required to support a claim for punitive damages - that the evidence reasonably showed only that the defendant was motivated by self-centered, business interests (such as its ambitions to merge with other banks) and placed those interests above any concern for the impact its actions had or might have had upon Mr. Ricci.

The facts in Mr. Warren's case are similar to those in *Passantino v. Johnson & Johnson Consumer Products, Inc.* ("CPI"), 212 F. 3d 493 (9th Cir. 2000), a Title VII case involving allegation of sex discrimination and retaliation for filing a discrimination complaint. In that case, the jury returned a verdict for the defendant CPI on the sex discrimination charge, but found for Passantino on the retaliation charge.

Jennifer Passantino began working at CPI in 1979, at age 25 years. Over the next 18 years she rose through the ranks at CPI to become one of the most successful female managers and was characterized by executives as "a leader in her field. Her success was all the more remarkable because she worked within CPI's "military" division, described as an "old boy network." In spite of this success, her career prospects deteriorated rapidly after she complained that her advancement within the company was being limited by sex discrimination. After she filed an EEO complaint, she experienced a range of retaliatory acts by CPI, making it nearly impossible for her to perform her job effectively.

Passentino testified that, as a result of this stressful series of events, she constantly worried, cried, and felt trapped and upset. She felt she was forced to spend less time with her family because she feared she would lose her job, given that her performance rating had been declining. She testified, and her husband and sister corroborated, that she experienced substantial anxiety as well as her rashes, stomach problems, and other symptoms, as a result of her sense that she could no longer advance within the company. She also sought help from her pastor for this anxiety, due to CPI's retaliatory action.

The jury found for defendant CPI on the sex discrimination claim, but found that CPI retaliated against Passantino for complaining about what she perceived as sex discrimination. It awarded her $1,000,000 in compensatory emotional distress damages. CPI argued that the compensatory damages award was not supported by the evidence. In upholding the $1,000,000 award, the 9th Circuit stated that the purpose of Title VII's anti-retaliation provision is to bar employers from taking actions which could have "a deleterious effect on the exercise of these rights [to file discrimination complaint] by others. It allows employees to freely report actions that they reasonably believe are discriminatory, even if those actions are in fact lawful. Absent a judicial remedy, the type of actions Passantino asserted her employer engaged in could discourage other employees from speaking freely about discrimination." 212 F. 3d at 506.

The facts in Mr. Warren's case are more egregious than in *Passantino*. In Mr.Warren's case, the race discrimination was real, not just perceived. Moreover, it is

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In the Court's view, such motives did not rise to the level of "malice" required to support a claim of punitive damages

reasonable to infer in Mr. Warren's case that the retaliatory actions taken against him were intended to send a chilling message not only to Mr. Warren, but to other Black farmers, as well. It is important that farmers, such as Mr. Warren, not be discouraged from speaking freely about discrimination.

An award of $1,100,000 was made in the Fair Housing Act (Title VIII) case of *HUD v. Wilson* 2 FH-FL Aspen) ¶25,146 (HUDALJ 2000). There the administrative law judge found that the respondent had intentionally inflicted emotional distress on the complainant and her daughter. Although the acts involved in the case were egregious in a different way - they involved threats and intimidation to the complainants - the malicious motive, and the dehumanizing injury inflicted upon Mr. Warren over more than ten years, justifies a similarly large award. *See Mardell v. Harleysville Life Insurance Company*, (a victim of discrimination suffers a dehumanizing injury as real as, and often of far more severe and lasting harm than from a physical assault.) 31 F 3d 1221 at 1232 (3d Cir. 1994).

The USDA suggest that Mr. Warren's damages should be modest. It offers no dollar figure, but suggests consideration of the fact that this is not a case involving allegations of "overt harassment, verbal slurs, or any other egregious behavior by Agency personnel". It says Mr. Warren has described the conduct of USDA personnel, even the offender, as "friendly," - "showing a problem in its decision, not in its conduct." This reference is to Vivian Warren's testimony that Mr. Norton was "friendly. He just denied everything." Tr. 128. I am disturbed by the USDA's argument. That Mr. Norton was not overtly hostile to Mr. Warren, but smiled in Mr. Warren's face while he worked to totally undermine Mr. Warren's economic and emotional security and possibly bring about his criminal prosecution does not make his conduct less egregious, but more so. By pretending he was acting in the interest of Mr. Warren, his duplicity was able to go undetected for nearly four years.

In making a determination of a damage award for emotional distress, I have relied upon my own observations of Mr. Warren's demeanor and testimony, the demeanor and testimony of his daughter, Vivian, as well the documentary evidence. I have considered the egregiousness nature of the discriminatory acts against Mr. Warren as well as their effect on Mr. Warren during the 17 long years over which they were committed.[22] I have

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[22] I have considered that Mr. Warren did not present evidence of significant medical attention, either for his physical or mental distress. He stated that he went to doctors on a number of occasions, but did not continue in treatment because he kept having the same chronic symptoms. He saw Dr. Corcoran only once - for evaluation. I do not consider the absence of doctor's visits a reason not to credit the severity of Mr. Warren's suffering. The evidence is that Mr. Warren was financially strapped. Based on

also considered the awards which have been made in similar cases. I conclude that nothing short of $1,000,000 would do justice in Mr. Warren's case to compensate him for the mental distress intentionally inflicted upon him by Mr. Norton and the USDA, and the other acts of discrimination in this case. I, therefore, award that amount.

DAMAGE TO REPUTATION

Mr. Warren seeks $2,000,000 for damage to professional reputation; $1,000,000 for damage to reputation for honesty; $1,000,000 for damage to credit reputation; and $500,000 for damage to ability to respond to emergencies and inconveniences.

Damage to credit reputation/ Damage to ability to attend to emergencies:

Mr. Warren suffered a significant injury to his credit reputation. Where before the discrimination, Mr. Warren was self-sufficient and financially independent – able to pay for goods and services for his farm and his family - after the discrimination he was left without any credit opportunities. Before the discrimination, he "could get anything he wanted." After the discrimination, he had to borrow from family and pay with cash or go without goods and services. He became seriously delinquent on his bills.

It might be said that the fact that Mr. Warren borrowed from FSA indicated that his credit was already damaged since FSA is a bank of last resort. Such is not the case. Mr. Warren came to FSA, not because of a damaged credit history, but because of inability to borrow in the private industry, due to racial bigotry in the county.

Mr. Warren has suffered daily from diminishing credit since 1985, a period of 17 years. The lack of credit not only affected the size and quality of his farm operation, but the quality of life that he was able to provide for himself and his large family. The finding of lack of good faith virtually assured that Mr. Warren would have no source of credit other than family and loyal friends. Instead of being in a position where he could comfortably enjoy the "golden" years of his life as the result of his life of hard work and industry, he lived with stress, day in and day out, worrying about how he would save his farm and the family business.

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the evidence in this record, he would have had to borrow to pay for the doctor's visits. Moreover, Mr. Warren is an elderly Black man, lacking in formal education. Black men of his generation and his background rarely have seek the help of a mental health professional. They tend to seek counsel from their family, friends and church family. *See* W.W.Dressler (1985), Extended family relationships, social support and mental health in a southern Black Community. *Journal of Health and Social Behavior*, 26, 39-48.

The damage to ability to attend to emergencies overlaps the injury to credit reputation. Because Mr. Warren no longer is able to obtain credit and has to pay for everything by cash, he is hamstrung in his ability to take care of emergencies. For damage to credit reputation and ability to attend to emergencies, I award $100,000.

Damage to reputation for honesty and fair dealing:

The greatest injury to reputation seemed to his reputation for honesty -- by the finding of bad faith or "lack of good faith." By this finding, FSA branded Mr. Warren a dishonest person. Not only did Mr. Norton make a finding that he had lacked good faith in his dealings with FSA, but raised the specter of criminal prosecution for wrongdoing. Mr. Warren described his reaction to the lack of good faith finding - "I almost lost my mind." "It was the most stressful period of my life." Mr. Warren was extremely embarrassed when he first turned to a family friend and attorney for help in paying restitution. When his attorney's promissory note was not accepted, he turned to the only other source he knew - he sought the help of his church of 50 years. He described the "extreme humiliation" he felt when he turned to his church. He is a deacon at his church and a trustee. After this humiliation, he was frustrated and resentful when FSA refused the offer from his church to make restitution on his behalf, thus leaving the finding of bad faith on his record.

Ms. Warren testified that the fact that Mr. Norton had made a lack of good faith finding against him was known throughout the community and it embarrassingly reflected negatively on his reputation for honesty. Although Mr. Warren was convinced that all of this was done so that he would lose his land, he was aware that the finding had caused other persons who did not know him well to question his honesty and integrity - others had been saying things about him that were not true. He became isolated from associates, friends and neighbors. Cx-119.

Mr. Norton made the finding of lack of good faith with the specific intent to injure Mr. Warren's reputation for honesty. All of the evidence shows that Mr. Warren had lived a long life as an honest and decent man. Cx-48. That Mr. Norton would seek to destroy Mr. Warren's reputation out of racial bigotry and retaliation for Mr. Warren's standing up for his civil rights, is nothing short of deplorable. The USDA has taken no action in ten years to correct that wrong. Although no amount of money can give back his good name and reputation, he deserves a substantial award. I award $250,000.

Damage to professional (business) reputation:

Damages may be awarded upon proof of actual injury for injury to professional reputation. *See Memphis Community School District v. Stachura*, 477 U S 299 (1986).

Mr. Warren has proved that he suffered a significant injury to his professional reputation. Mr. Warren's ability to farm successfully was of paramount importance to him. Farming was his life. It was all he knew. He considered himself a "master" farmer. It can be seen from the numerous letters written on his behalf, that he took immense pride in the fact that he was one of a few farmers selected to grow "certified foundation" peanuts. He had built a large farming operation which he had hoped to expand so that he would leave farm land upon his death to all of his nine sons. This was an immense achievement for a man who could not read or write.

However, the USDA's discrimination made it impossible for Mr. Warren to maintain a successful farm record and his reputation as a farmer suffered. As a result of the damage to his credit by the denials of farm operating funds, he was reduced to a small farmer, whose crops suffered from an inability to purchase adequate seed, fertilizer, etc. needed for a high quality yield. He tried to farm all his acres, but with inadequate resources, his yields suffered badly. The low yields were then used against him as evidence of poor farming ability.

The injury to professional reputation is a separate injury from the injury to credit reputation. The injury to professional reputation comes from the illegal denial of credit for the purpose of damaging Mr. Warren's reputation in his occupation. Mr. Warren has suffered severe damage to his professional reputation. Since 1985, has gone from being one of the largest farmers in Southampton County, producing on nearly 800 acres of land, to farming on 170 acres and defending daily the threatened foreclosure on these remaining acres. Only the filing of his discrimination complaint staved off this disaster. I award $100,000.

OTHER RELIEF:

Mr. Warren seeks other equitable relief. Finding all requested relief appropriate, it will be ordered below. The relief is needed to allow Mr. Warren to quickly and efficiently reestablish himself as a full-time, successful and high producing farmer, able to employ his children in the business to the extent that he would have had he not been discriminated against beginning in 1985.

CONCLUSION AND ORDER

Having concluded that the USDA has discriminated against Mr. Warren in violation of § 1691 of ECOA (15 U.S.C. § 1691 *et seq.*), it is hereby

ORDERED that:

1. Within ten (10) days of the date on which this Order becomes final, the USDA shall pay damages in the amount of $2,612,723 to Mr. Warren for his injuries suffered as a result of the discrimination;

2. The USDA shall immediately terminate any foreclosure proceedings that have been initiated against Mr. Warren's real property in connection with the claims resolved in this case;

3. The USDA shall not take any retaliatory actions against Mr. Warren for his filing of the complaints in this case or any other complaint of discrimination against FSA or any component of the USDA;

4. The USDA shall immediately remove from Mr. Warren's administrative record the finding, and any subsequent reference thereto, that he acted with a "lack of good faith" in cutting timber from his land in 1991-1992, and shall not use that finding against Mr. Warren upon consideration of any future application for loan or loan services. [23]

5. The USDA shall discharge all of Mr. Warren's outstanding debts to the FSA that were involved in the claims resolved in this case and shall thereafter hold harmless Mr. Warren for such debt.[24] The discharge of his debt shall not adversely affect his eligibility

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[23] The USDA states that it does not have a strong position on whether this finding should be removed. It claims that "the Complainant did not produce 'enough' evidence at the hearing for this tribunal to determine if such relief is appropriate in this case." Post-trial brief, at 21. I find this statement quite troubling. The USDA has admitted that the determination of lack of good faith and its inclusion in Mr. Warren's record resulted from a discriminatory act, (Rx-1), yet it does not, even now, agree to its deletion. The correction is essential to repairing the damage done to Mr. Warren.

[24] The USDA objects to this requested relief. It argues that discharge of the debt in addition to damages would be a double recovery. However, I find that the discharge of any indebtedness to FSA growing out of loans charged to his account prior to 1985 is appropriate and reasonable based on the fact that FSA has failed to date to provide Mr. Warren with an official and reliable accounting of his debt. Based on the evidence of record, I have no confidence that an accounting at this time would accurately reflect that amount which is just and owing by Mr. Warren.

for future participation in any USDA loan or loan servicing program, and will not trigger the statutory provisions of Section 648 of the Federal Agriculture Improvement and Reform Act of 1996 that preclude an individual who has received debt forgiveness from obtaining future farm loans from USDA or from obtaining future debt forgiveness, or otherwise be used in any negative manner in conjunction with Mr. Warren's applications for, or participation in, any USDA program, benefit or activity;

6. The USDA shall give Mr. Warren, within the next three years at his election, priority consideration[25] for the purchase, lease, or other acquisition of farms in the USDA inventory in Southampton County, Virginia, including farms with peanut allotment/quotas, on the most favorable terms permitted by law. Mr. Warren must exercise his right to the relief provided in this section in writing within the three year period. Priority consideration as used in this Order means that an application will be given first priority as to processing and as to the availability of funds for the type of loan at issue, above all other applicants listed in 7 C.F.R. 1955.107(f)(1);

7. The USDA shall provide Mr. Warren with priority consideration for any direct farm ownership loan and any farm operating loan that he applies for at any time up to the next three years after the date of this Order. Mr. Warren has the obligation to notify the USDA in writing when he decides to exercise his right under this provision to priority consideration in order to receive such consideration. His election must be made within the three year period allowed;

8. Any application for a farm ownership or operating loan, or for inventory property, submitted by Mr. Warren within three years of the date of this Order shall be viewed by the USDA in a light most favorable to Mr. Warren, and the amount and terms of any loan shall be the most favorable permitted by the law and USDA regulations. Any outstanding

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[25]Priority consideration for a direct farm operating or direct farm ownership loan - applications receiving "priority consideration" are expedited and processed ahead of other applications (the applicant must meet all regular eligibility requirements for the loan, of course). If the loan is approved but there is limited funding available for loans, the priority application will be funded before non-priority applications.

Priority consideration on inventory property - i.e. will be considered before other persons, in purchasing property in inventory from USDA. For example, if property is first offered to those who meet the definition of a "beginning farmer," prevailing farmer who meet that definition will have the opportunity to purchase the property before any other "beginning farmers." If there are no "beginning farmers," and the property becomes available for purchase by others, prevailing members have the opportunity to purchase the property before any other farmers.

debt against Mr. Warren which is to be discharged pursuant to this Order shall not adversely affect Mr. Warren's eligibility for future participation in any USDA loan or loan servicing program. In making a determination on a loan application, the USDA will not take into account the sum paid to Mr. Warren under paragraph 1 of this Order. Mr. Warren will still have to meet eligibility requirements for loans as set forth in 7 CFR 1941 and 1943;

9. The USDA shall, upon request of Mr. Warren and in conjunction with any application from him for farm ownership or operating loan or for inventory property, provide Mr. Warren with reasonable technical assistance and service, including the preparation of a Farm and Home Plan, and the assistance of qualified USDA employees, in connection with Mr. Warren's preparation and submission of any such application;

10. Final approval or disapproval of any application for a USDA loan will be completed under the auspices of the national office of FSA. In addition, the national office of FSA will monitor all assistance provided to Mr. Warren for the next three years; and

11. OCR will monitor FSA's compliance with the programmatic remedies set forth above.

This Determination shall become final 35 days after issuance unless reviewed within that time by the Assistant Secretary for Administration of the United States Department of Agriculture, either upon the Assistant Secretary's own initiative or pursuant to request by the Complainants. *See* 7 C.F.R. §15f.24.

Constance T. O'Bryant

CONSTANCE T. O'BRYANT
Administrative Law Judge

APPENDIX A

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Corn	52,830.60	43756.29	25620.41	30890.50	43476.37	52533.30	41640.12	47753.84	54388.31	43237.79	53871.24	65311.49	70732.36	57650.80	30944.64	38540.22	51743.31	49172.57
	50742.99	45964.37	40661.70	41552.04	45622.47	51969.87	49049.64	54278.79	56455.59	53767.59	60153.33	63857.18	61207.68	83075.69	58536.66	60183.15	61986.64	53228.42
	2087.61	-2208.00	-15041.29	-10661.54	-2146.10	563.43	-7409.52	-6524.95	-2067.34	-19529.80	-6282.09	1454.31	9524.68	-25424.89	-27592.02	-21642.93	-10243.33	-4055.85
Soybean	42411.09	38010.30	32265.54	34941.84	55777.50	42133.77	38138.84	44655.10	46089.54	43907.18	51273.00	55315.66	64246.50	63798.00	65160.00	36288.00	57037.48	57274.58
	43089.00	40635.00	37179.00	38499.00	44187.00	48466.00	46080.00	49485.00	50883.00	50889.00	54867.00	55122.00	57657.00	59031.00	60870.00	59745.00	61537.35	62766.10
	-677.91	-2624.70	-4913.46	-3557.16	11590.50	-6332.23	-7941.16	-4829.90	-4793.46	-6981.82	-3594.00	193.66	6589.50	4767.00	4290.00	-23457.00	-4499.87	-5493.52
Peanut	190363.50	169569.80	221942.08	184498.30	196620.20	190725.00	232058.25	224689.83	230377.90	131831.25	257632.48	186152.68	208014.10	183011.40	200208.10	178650.10	192078.30	192647.80
	148875.00	130495.00	164312.50	163140.00	172557.50	172605.00	184152.50	202620.00	195265.00	185622.50	206010.00	170727.50	174175.00	180407.50	171645.10	170477.50	175591.83	179103.66
	41488.50	39074.80	57629.50	21358.30	24062.70	19920.00	47905.75	22069.83	35112.95	-53791.25	51622.48	15425.18	33839.10	2603.90	28555.00	8172.50	16486.49	13544.18
Hogs	73329.64	66352.00	77368.32	77998.08	65433.80	66585.60	83266.56	74634.24	64266.24	73989.12	66339.84	68920.32	85816.32	83758.08	58583.04	53606.40	70136.83	70380.13
	83280.33	73443.23	69780.48	67891.2	68290.56	71162.88	69749.76	68674.24	75755.52	79160.08	82867.2	86353.92	100761.6	96150.4	94095.36	86535.04	91191.09	93014.91
	-9951.69	-7091.23	7587.84	10106.88	-2856.76	-4577.28	13516.80	5960.00	-11489.28	-5170.96	-16527.36	-17433.60	-14945.28	-12392.32	-35512.32	-32928.64	-21054.26	-22634.78

NET REVENUES BEFORE ADJUSTMENT FOR ACTUAL INCOME USING DATA FROM Rx-3, Appendix 5.

Appendix B

Annual Total Farm Loss by Enterprise

	Soybean	Corn	Peanuts	Hogs	Yr. Total
1984					
1985	1375	1978	47255		$56,081
1986	2861	1339	56139		$60,339
1987	1722	2717	38848		$43,287
1988	13858	15375	38073		$67,305
1989	6764	6904	38970	19334	$71,972
1990	7010	8128	67713	19334	$102,186
1991	3840	6866	45286	19334	$75,326
1992	2178	3188	43660	19334	$68,360
1993	2631	5744	11777	19334	$39,485
1994	3853	2376	54901	19334	$80,464
1995	2405	9838	19141	19334	$50,718
1996	12545	14253	29946	19334	$76,078
1997	9858	10407	2607	19334	$42,206
1998	7419	3078	31446	19334	$61,278
1999	11406	1664	39551	19334	$71,956
2000	10531	9846	28204	19334	$67,915
2001	10532	7850	26248	19334	$63,884
2002	10532	7850	26248	19334	$63,884
				Grand Total	$1,162,723

CERTIFICATE OF SERVICE

I hereby certify that copies of this DETERMINATION issued by CONSTANCE T. O'BRYANT, Administrative Law Judge, in HUDALJ No. 00-19-NA, were sent to the following parties on this 17th day of December, 2002, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

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Sedley, VA 23878

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APPENDIX 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

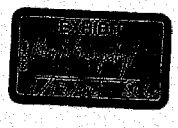
BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, et al. Defendants.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, et al., the Haynies, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, et al. Defendants.	Civil Action No. 00-2516 (PLF / DAR)

Declaration of S. Murthy Kambhampaty Regarding

Estimated Damages to the Haynies' Farming Operation in C.A. 00-2516

1. My name is S. Murthy Kambhampaty. I am a Vice President of Glassman-Oliver Economic Consultants, Inc. My Curriculum Vitae is attached as Exhibit A.

2. I have been asked by Steptoe & Johnson LLP, counsel for Plaintiffs in the above captioned case, Civil Action No. 00-2516, Philip J. Haynie, II (individually, "Mr. Haynie") and



Judith S. Haynie (individually "Judith Haynie" and collectively with Mr. Haynie, "the Haynies" or "Plaintiffs") to estimate economic damages attributable to race discrimination in administering farm lending programs by the United States Department of Agriculture ("USDA"). Glassman-Oliver Economic Consultants, Inc. is being compensated at the hourly rate of $300 for my work.

3. In carrying out this task, I have reviewed the following:

- USDA Office of Civil Rights' draft Final Agency Decision ("Draft Final Agency Decision") in case number 970423-1450, finding racial discrimination against the Plaintiffs by the USDA
- USDA Economic Research Service ("ERS") data and analyses of farm costs and returns
- USDA National Agricultural Statistics Service ("NASS") published data on prices for crops and livestock for the relevant period
- Selected other USDA documents on U.S. farms and farming, listed in Exhibit B
- Budgets for the relevant crops prepared by Virginia Cooperative Extension ("VCE")
- US Government statistics on inflation
- Telephone conversations with specialists at USDA and VCE
- Records of Farm and Home plans filed with the USDA by the Haynies (attached as Exhibit C)
- Tax returns filed by the Haynies
- Available receipts and loan records, from the records of Mr. Haynie, pertaining to the farm and related enterprises
- Personal interviews with Mr. Haynie regarding the Haynies' farm and related enterprises
- Complaint filed by Plaintiffs in Civil Action No. 00-2516 ("the Complaint")
- Determination in In Re Earl Sylvester Warren, Complainant, USDA Docket No 1194. HUDALJ No. 00-19-NA (December 17, 2002)

4. As additional information becomes available to me, I may revise my analysis accordingly.

Background

5. Plaintiffs operated a farm in Northumberland County, Virginia and the surrounding counties of Lancaster, Richmond and Westmoreland, which are located in a region of Virginia known as the Northern Neck. The Northern Neck is bordered on the north and south by the Potomac and Rappahannock rivers, respectively. Bordered by the Chesapeake Bay on the East, it has a temperate climate and flat topology beneficial to farming.[1]

6. Mr. Haynie worked on his father's farm in Northumberland County during grade school, high school, and college. In 1976 he received a B.S. *cum laude* from Virginia State University in animal science. A college education in farming-related disciplines offers recognized advantages to farmers, for adapting to competitive pressures, technological advances, and changing regulations. In fact, the current Occupational Outlook Handbook states that "modern farming requires college training in agriculture and work experience acquired through growing up on a farm" (emphasis added).[2] Yet, in 1993 only 16% of U.S.

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[1] Northumberland County, U.S. Census of Agriculture. Distributed by Virginia Agricultural Statistics Service, Richmond, VA. (http://www.nass.usda.gov/ve/northumberland.pdf, last viewed November 21, 2003).

[2] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook Online. See "Farmers, Ranchers, and Agricultural Managers" (http://www.bls.gov/oco/ocos176.htm; last viewed November 21, 2003).

farmers had completed college, and just over a third (36%) had some college (including the 16% who completed college).[3]

7. The Haynies' started their own farming operation in 1976, operating roughly 200 acres of land. By 1981, the farm had grown and was operating more than 1000 acres, and by 1984 it was operating more than 2000 acres of land.[4] The Haynies leased the majority of the land operated by the farm, which is typical for U.S. farms.[5]

8. The Haynies grew barley, corn, soybeans and wheat and had a hog farrow-to-finish operation.[6] This diversification protected the Haynies to some degree against the risk that prices, and therefore earnings, for a given crop might fall drastically.

9. There were many ways in which the Haynies operated the farm to enhance efficiency, i.e. to lower production costs and raise crop and livestock yields. The Haynies farmed large-acre tracts of land, reducing the costs of moving and setting up equipment. Mr. Haynie stayed current in, and employed, best practices for fertilizer application, soil preparation, and precision farming techniques. The Haynies improved crop yields by double-cropping their land and rotating crops. They selectively participated in set-aside programs provided by USDA to maximize returns on marginal lands. Further enhancing the farm's

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[3] Hoppe, Robert A., et al. Structural and Financial Characteristics of U.S. Farms, 1993: 18th Annual Family Farm Report to Congress. Rural Economy Division, Economic Research Service, U.S. Department of Agriculture. Agriculture Information Bulletin No. 728. (See Table 8, p. 25).

[4] The Haynies' Farm and Home Plans show actual acreage farmed in 1981 was 1090 (FHP # A-3-5, Bates stamp H2516-0296) and actual acreage farmed in 1984 was 2286 acreas (FHP # D-3-39, Bates-stamp H2516-0317).

[5] Hoppe, *et al.*, p. 16 "Farm Ownership and Use".

[6] Farrow-to-finish operations raise hogs from birth to sale.

efficiencies, Mr. Haynie became qualified to apply fertilizers and maintained his own fertilizer application equipment, thereby avoiding the costs of hiring others to do the task. The Haynies owned trucks used for transporting bulk purchases of feed, seed and other inputs, and for transporting crops and livestock to non-local markets to receive higher prices, reducing expenses and maximizing flexibility; in the off-season the trucks provided a source of off-farm revenue from providing hauling services to other businesses. Plaintiffs also owned grain storage facilities located on the farm, which allowed more efficient use of harvesters and hauling equipment and also allowed storage of grain for sale at higher prices in later months.[7]

10. Every indication is that the Haynies' farm was positioned for success and for growth: it had a favorable location, Mr. Haynie was an extremely capable farmer using the best production practices, and the farm had invested in equipment and facilities to improve efficiency. Nonetheless, the inability to access low-interest loans available from USDA, and to refinance existing loans, hampered the growth of the farm, reduced its profitability and eventually caused its decline and Mr. Haynie's filing for personal bankruptcy.

11. Along with the inability to receive new loans, the inability to receive timely loan processing drastically reduced the yield of the farm. Timing is critical in farming, and

[7] As the USDA points out in the "Commodity Costs and Returns" section of its "Farm Income and Costs" Briefing Room (http://www.ers.usda.gov/briefing/farmincome/costsandreturns.htm), "...producers often delay sales and store commodities with the expectation that the price in later months will exceed the harvest-period price plus the costs associated with carrying the crop inventory. This means that the estimates of returns above operating and total costs likely understate those actually received by producers." (Last viewed November 19th, 2000.)

delays have a drastic effect on production, as the USDA's Civil Rights Action Team acknowledged in its 1997 report:

> The minority ... farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office might claim to have no applications available and ask the farmer to return later. Upon returning, the farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often these requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced.[8]

12. After 1981 the Haynies were unable to obtain any new loans from USDA, due to continuing race discrimination.[9] Mr. Haynie sought to continue operating the farm by borrowing from commercial lenders. While this allowed him to continue to expand up to 1984—albeit at a lower rate than he had planned—higher interest rates and limited volume of commercial loans made it difficult to operate the farm profitably. Moreover, the USDA had a blanket lien on his assets and crops, yet failed to offer timely servicing on outstanding loans, particularly emergency loans. The lack of collateral raised the Haynies' interest rates to the highest rates for non-USDA loans, exacerbating the effects of not granting them low-interest loans for which they qualified.

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[8] See CRAT ¶15, cited in Complaint ¶101.

[9] See Complaint; Draft Final Agency Decision.

Damage Estimation Methodology

13. To estimate damages, I first estimated the earnings of farms presumed to be unaffected by discrimination but otherwise similar to the Haynies' farm,[10] i.e., I estimated the "but-for" earnings, in each year from 1981 to 2002, using USDA data on farm costs and returns.[11] I then calculated the Haynies' actual farm-related earnings during the period ("mitigating income"), which I subtracted from but-for earnings to get net damages or lost profits.

14. The Haynies' farm grew several different crops and raised hogs during the relevant period; in other words, the Haynies' farm was a "multi-enterprise" farm during the relevant period. As returns on each enterprise vary independently, but-for earnings for each enterprise are estimated separately and summed across enterprises to estimate total but-for earnings.

[10] In certain circumstances, damages from discrimination may be estimated using a "before-after" approach: calculating the earnings of the subject of discrimination during the period of discrimination and after discrimination ends (or before discrimination commenced). However, in this case, the Haynies were driven out of independent farming and Mr. Haynie forced to file for bankruptcy. Moreover, the damages occurred over a period of two decades, during which there was considerable technology change. Thus, comparing returns from the Haynies farm before 1981 against their returns in, say, 1989 would not give an accurate estimate of damages. The "with-without" analysis that I perform is informed by USDA data from two points in time roughly a decade apart. Therefore, I am able to account for variations in yields and technology change in estimating but-for earnings.

[11] USDA surveys US farms by crop- and livestock-type to determine production costs and returns. During the eighties, the survey was called the Farm Costs and Returns survey (FCRS), and consisted of annual interview of selected farmers; the survey is now called the Agricultural Resource Management Survey (ARMS), and consists of two interview – the first one focuses on farm operating costs and yields, and is conducted in the Fall of the survey year, while the second focuses on finances and capital costs and occurs in the spring. Based on the FCRS and the ARMS, USDA publishes detailed analyses showing farm costs and earnings for various categories of farms.

15. I used average prices received by Virginia farmers as the benchmark for measuring prices received by farms similar to the Haynies but unaffected by discrimination. For each enterprise, ERS data on the earnings of farms in the same "acreage class" – i.e., farms of similar size – as the Haynies were used as the benchmark by which to measure the costs and yields for farms unaffected by discrimination.[12] Given that this choice of benchmark does not account for all of the efficiencies discussed above of the Haynie farm, the estimated but-for earnings are very likely to understate the earnings of farms similar to the Haynies' but presumed to be unaffected by discrimination. Therefore, the level of confidence in the estimate of but-for earnings is very high.

16. For each crop, namely corn, double-cropped barley, double-cropped wheat, double-cropped soybeans, and full-season ("early") soybeans, I first estimate but-for earnings per acre for each year from 1981 to 2002 (i.e., "the damages period")[13] based on (i) average prices per bushel received by Virginia farmers, (ii) annual estimates of yields (bushels per acre) for benchmark farms, and (iii) annual estimates of the full production costs per acre

[12] The data for 1987, which are used to estimate earning for the eighties are not reported by size group, so I used the data for the median farm as the benchmark. This is an extremely conservative assumption that likely understates damages to the Haynies.

[13] It is my understanding that damages are, in fact, ongoing. However, since data sufficient to estimate damages without extrapolation are only available through 2002, I limit the damage period to 2002. Avoiding extrapolation further increases the reliability of the damage estimates. If information sufficient to determine but-for earnings beyond 2002 becomes available in a timely manner, I may revise my estimates accordingly.

for benchmark farms. The per acre but-for earnings are then multiplied by the number of planted acres for that crop to determine but-for earnings by enterprise.[14]

17. For hogs, I first estimate earnings per head in each year as the estimated value per head less the product of cost per hundred-weight gain times average weight per hog in hundred-weights.

18. My estimate of damages is the grand total of annual but-for earnings across all enterprises net of mitigating income, in inflation-adjusted 2002 dollars, and equals $12.2 million dollars.[15] My calculations are discussed in greater detail below.

Acreages and Per Acre Crop Damages

19. The Haynie farm was expected to continue growing well into the 1990s. In particular, Mr. Haynie expected that the farm would have expanded crops by at least 500 acres in each of 1986 and 1987, and by 200 acres in each year thereafter until 1995.[16] In other words, the Haynie farm would have doubled in size between 1985 and 1995, from a planned 2,775

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[14] Algebraically, the calculations, for each year, for each enterprise are:

(i)(a) Per Acre Returns, Crops = Price Per Bushel x Yield – Costs Per Acre; where yield = bushels per acre
(i)(b) Total But-For Earnings = Per Acre Returns x Total Acres
(ii)(a) Per Head Returns, Hogs = Price Per Head – Cost per cwt gain x average cwt per head
(ii)(b) Total But-For Earnings = Per Head Returns x Total Number of Head

[15] This estimate does not include prejudgment interest, and is the present value (in 2002 dollars) adjusting only for inflation (as measured by the Consumer Price Index).

[16] Farm and Home Plans for these years were not in Mr. Haynie's file at USDA for the years 1986 through 1988, and therefore the mix of acreages for different crops is unavailable for these years. Therefore, the crop mix for these years was set to 1989 proportions. After 1990, which is the last year for which a Farm and Home Plan was in Mr. Haynie's file, the crop mix was held fixed at the 1990 proportions.

acres to about 5,275 acres. I have assumed that the Haynie farm's size would remain unchanged thereafter.

20. As the Haynie farm grew in size from roughly 1,000 acres of land operated in 1981 to approximately 2,300 acres in 1984,[17] it is reasonable to expect that its size would have doubled again in the subsequent 10 years. The total acreage is held unchanged after 1995, a conservative assumption adopted to restrict the uncertainty in estimated but-for earnings, and to therefore increase the reliability of the estimate.

21. For livestock operations, I assume that activity levels remain constant at 3,400 head for the period from 1981 to 2002. The Haynies farrow-to-finish operations had a planned size of 3,400 head as early as 1981, when a fire burned their hog house. Unable to obtain, from USDA, emergency loans sufficient for fully rebuilding the facility, the Haynies settled for a feeder-to-finish operation of approximately 950 head. Therefore a farrow-to-finish operation of the original size is the appropriate benchmark for estimating but-for earnings.

22. To estimate benchmark yields and costs per acre for the relevant period, I adjust the ERS data using annual average price and yield data from NASS. I further adjust my cost estimates to account for the fact that while the ERS data are reported for full season crops, the Haynies double-cropped wheat and barley with soybeans. The most recent crop budgets prepared by Virginia Cooperative Extension indicate that double-cropping soybeans after wheat or barley gives slightly better than 10% percent cost savings, relative

[17] These are the "actual" acres reported in the Farm and Home Plans for 1981 and 1984.

to the sum of per acre costs for soybeans and wheat. Accordingly, I discounted double-cropped soybean, barley and wheat costs by 10%. Of course, on acreages for full-season soybeans, the relevant cost per acre is the full soybean production cost per acre. Exhibit D demonstrates the calculations used to estimate the appropriate discount, while Exhibit E demonstrates the calculations used to estimate yields and costs per acre.

23. I obtained Virginia average crop price data for 1981 to 2002 from the NASS online database.[18] For hogs, NASS does not report Virginia prices; therefore I used US average prices (value of production) per head.[19]

Mitigating Income

24. Tax returns for 1983 show $13,384 in net income. However, revenues from truck hauling operations were $106,560. As truck-hauling was an off-farm operation, conducted only when the truck was not needed on the farm, revenue from hauling operations, net of fuel costs and wear-and-tear, does not reduce damages, and is thus appropriately netted out of the estimated mitigating income for 1983.

25. The Haynies' tax returns report losses of $295,702, $918,148, and $261,952, and $326,633 on Schedule F for 1984, 1985, 1986 and 1987 respectively, and for these years the Haynies' tax returns generally do show that the truck was used for generating off-farm

[18] Published Estimates Database. USDA National Agricultural Statistics Service. <http://www.nass.usda.gov:81/ipedb/>.

[19] Price data were unavailable for 1981; I adjust the 1982 price to the missing year's price based on the Prices Received Index for All Commodities (Source: <http://usda.mannlib.cornell.edu/data-sets/crops/95917/rec7593.wk1>)

incomes as well. If I am successful in developing a reliable method of determining capital recovery and other costs for the trucking operation alone, I may revise my estimates to incorporate the losses for 1983 through 1987 into my damage calculations, as actual losses attributable to race discrimination are appropriately netted against but-for earnings in calculating total damages.

26. The IRS has notified the Haynies that their income for 1988, 1989, 1990 and 1991 are $63,237, $205,406, $67,117 and $188,371 respectively.[20] I understand that Mr. Haynie disputes the IRS's corrections to his tax returns, which implies that treating the entire sum as mitigating income could understate damages. However, I treat the IRS's corrections as mitigating income to avoid the risk of overstating damages.

27. The Haynies 1992 tax return shows income of $24,337, which is treated as mitigating income for 1992.

28. After 1992, Mr. Haynie managed Or-Grow's farm operations through 1995, but it is my understanding that he was unable to generate any income from this enterprise. In late 1995, Or-Grow filed for reorganization under Chapter 11 of the Bankruptcy Code, subsequently converted to Chapter 7. In 1996, Mr. Haynie managed a farm operation of about 1,500 acres as well as a trucking operation for Trash Management Services, Inc. ("TMS"), a firm owned by Belinda D. Haynie. Mr. Haynie's W-2 for the year 1996 shows earnings of $3,301.

[20] These figures are calculated as the sum of adjustments to "gross receipts," "farm expenses from Schedule F," and the negative of "itemized deductions".

29. It is my understanding that, after having been unable to secure employment from 1997 to 2002, Mr. Haynie has provided fee-based consulting services in farm management this year. If information sufficient to determine mitigating income beyond 2002 becomes available in a timely manner, I may revise my estimates accordingly.

30. Exhibit E provides a detailed summary of the calculations, showing annual totals for the farm as whole, as well as for individual enterprises. Tables for individual enterprises report the values of the various factors underlying the calculations, as discussed above.

Conclusion

31. The benchmark used for estimating but-for earnings was based on the ERS data for farms in the same acreage class (e.g., "over 750 acres" for corn) as the Haynies' farm. It is also entirely reasonable to define the data for "low cost" farms as the benchmark, given the similarities between this group of farms and production practices on the Haynies' farm. This "low cost farms" benchmark would have given a substantially higher estimate of but-for earning and therefore damages. However, the more conservative benchmark was chosen because it is beyond reasonable dispute. I have also limited the analysis to economic costs and returns, and have not accounted for revenues from government

payments, which are reported to average $28,374 for farms of 750 acres or greater size in 1996.[21]

32. In my professional opinion, the $12.2 million estimate is a well-founded and decidedly conservative estimate of damages attributable to (i) Plaintiffs' inability to obtain additional low-interest loans from USDA, (ii) Plaintiffs' inability to receive timely service on their loans and to restructure their payments, and (iii) the USDA's blanket liens on Plaintiffs' assets and crops.

S. Murthy Kambhampaty

21 November 2003

[21] Foreman, Table 12, p. 23.

Exhibit A

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Areas of Specialization

Microeconomic analysis; industrial organization including antitrust policy; applied econometrics and quantitative methods

Education

PhD, Agricultural and Applied Economics, 1994
Dissertation: An Analytic Model of the Food Consumption Behavior of Health-Conscious Individuals.

MA, Economics, 1994
MUA, Urban Affairs, 1990
Virginia Polytechnic Institute and State University (Virginia Tech)

BE, Electrical and Electronics Engineering, 1985, Andhra University, India

Recent Employment

Vice President, Glassman-Oliver Economic Consultants, Inc., March 1999 to present
Senior Economist, Glassman-Oliver Economic Consultants, Inc., September 1996 to March 1999
Consultant, Apogee Research, Incorporated, July and August 1996
Research Associate, Virginia Tech, March 1996 to May 1996 and September 1994 to December 1995

Expert Testimony

TelCentral Communications, Inc. vs. MCI Telecommunications Corp., J.A.M.S./Endispute Case No. 976110010 (1997).

Major Consulting Projects

- For a leading pharmaceutical drug manufacturer – analyzed the effects of a stipulated injunction with a generic manufacturer in the context of ongoing patent litigation; submitted white paper to the FTC; participated in meetings discussing the findings of the analysis with

FTC Staff and with individual Commissioners; in related litigation, drafted text for economic expert report, and assisted counsel's preparation for opposing expert's deposition

- For a leading corn processing firm – tested data against alleged price increases from global market allocation of various products using cost function estimation and simulation; devised an approach for testing the content of communications against claims of market allocation; assisted counsel in preparing to depose DoJ's economic expert; submitted economic expert's report on impact of concerted activity among co-producers to the EC Competition Directorate-General; drafted economic expert testimony on impact of objective agreements among competitors; assisted counsel in drafting appeal rebutting the EC's finding of impact from objective agreements among competitors
- For several branded food products manufacturers in numerous mergers – analyzed "unilateral effects" of a proposed merger and presented results to the FTC Staff and to individual Commissioners
- For a family farm – analyzed damages from racial discrimination in the administration of USDA farm credit programs; submitted report to the US Department of Agriculture ("USDA"), Director of Civil Rights
- For a leading manufacturer of agricultural chemical products – submitted a position paper on compensating data producers for the cost of regulatory risk related to pesticide registration with the US Environmental Protection Agency
- For the USDA – analyzed whether concentration in beef packing depresses fed-cattle prices using supply function estimation; tested models of beef-packer conduct using axiomatic analysis; made multiple presentations at the USDA before an inter-agency task force; submitted report which USDA published and also submitted to the US Congress
- For a telecommunications reseller – critiqued carrier's methodology for testing various types of billing errors; submitted critique to arbitrator; testified in arbitration proceeding
- For a world leader in data networking – provide market definition analysis as part of a defense against monopolization and conspiracy charges
- For several investment banks – provided an assessment of the antitrust risk of numerous mergers in information technology industries
- For a federal regulatory agency – developed testable hypotheses for examining the effect of market structure on airlines' pricing
- For the EPA – developed econometric model of highway utilization for measuring the environmental effects of alternative highway improvements
- For a municipality – estimated a model of real estate demand; examined the effects of development control on property prices using the estimated demand model
- For a health insurer – prepared memorandum on the pro-competitive effects of a most favored customer clause in service provider contracts

Selected Publications

S. M. Kambhampaty. "Is Empirical Merger Analysis Reliable?" Clayton Act Newsletter, Volume I, Number 2, Spring 2001

Driscoll, P. J., S. M. Kambhampaty, and W. D. Purcell. "Nonparametric Tests of Profit Maximization Under Oligopoly with Application to the U.S. Beef Packing Industry." *American Journal of Agricultural Economics*, August 1997.

Kambhampaty, S. M., L. Shabman, P. Driscoll, and M. Tang. 1996. "The Effect of Development Controls on Land Prices: The Green Line of Virginia Beach, Virginia." Blacksburg, Virginia: Agricultural and Applied Economics, Working Paper 96LSK01.

Kambhampaty, S. M., P. J. Driscoll, W. D. Purcell, and E. B. Peterson. *Effects of Concentration on Prices Paid for Cattle*. Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, GIPSA-RR 96-4, June 1996.

Zipper, C. E., and S. Murthy Kambhampaty. 1996. "Effects of Virginia Coalfield Employment Enhancement Tax Credit Legislation." Blacksburg, Virginia: Virginia Center for Coal and Energy Research (March).

Batie, S. S., D. B. Taylor, P. L. Diebel, and S. M. Kambhampaty. 1993. "An Economic Analysis of Low-Input Agriculture as a Groundwater Protection Strategy." Blacksburg, Virginia: Department of Agricultural and Applied Economics, Virginia Tech (March). Research funded under grant #14-08-0001-G1724 of the United States Geological Service.

Membership in Professional Organizations

Member, American Economic Association
Member, American Statistical Association
Member, Econometric Society
Member, Institute of Electrical and Electronics Engineers
Associate Member, American Bar Association, Antitrust Section
Associate Member, Sigma Xi, The Scientific Research Society

Exhibit B

Public Documents and Data Sources Reviewed:

Ahearn, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 599 (May 1990).

Ali, Mir B. "Characteristics and Production Costs of U.S. Wheat Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-5 (July 2002).

Ali, Mir B. and Nora L. Brooks, "U.S. Barley Production Costs and Returns, 1992, An Economic Basebook," Economic Research Service, United States Department of Agriculture, Agricultural Economic Report No. 726 (February 1996).

Consumer Price Index for All Urban Consumers, Series ID: CUUR0000SA0, Bureau of Labor Statistics, <www.bls.gov>.

"Farm Income and Costs Briefing," Economic Research Service, United States Department of Agriculture, <http://www.ers.usda.gov/briefing/farmincome/costsandreturns.htm >. (Last viewed November 19th, 2000.)

Foreman, Linda and Janet Livezey, "Characteristics and Production Costs of U.S. Soybean Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-4 (March 2002).

Foreman, Linda, "Characteristics and Production Costs of U.S. Corn Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974 (August 2001).

McBride, William D. and Nigel Key, "Economic and Structural Relationships in U.S. Hog Production," Resource Economics Division, Economic Research Service, United States Department of Agriculture, Agricultural Economic Report No. 818 (February 2003).

"Northumberland County", U.S. Census of Agriculture. Distributed by Virginia Agricultural Statistics Service, Richmond, VA. <http://www.nass.usda.gov/va/northumberland.pdf>(Last viewed November 21, 2003.

Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nassr/price/zap-bb/agpran03.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nassr/price/zap-bb/agpran00.txt>; Prices Paid index for 1981-1993 from Prices Paid and Received Indexes (95917). <http://usda.mannlib.cornell.edu/data-sets/crops/95917/>.

Prices Received Index from Prices Paid and Received Indexes (95917), <http://usda.mannlib.cornell.edu/data-sets/crops/95917/ >

Published Estimates Database. USDA National Agricultural Statistics Service. <http://www.nass.usda.gov:81/ipedb/>.

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Virginia Cooperative Extension, Crop Budgets, <http://www.ext.vt.edu/cgi-bin/WebObjects/Docs.woa/wa/getcat?cat=ir-cg-cr-cb>.

Virginia Cooperative Extension, "Soybeans -- Roundup Ready, Minimum Till", <http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/sybnrt35.xls>

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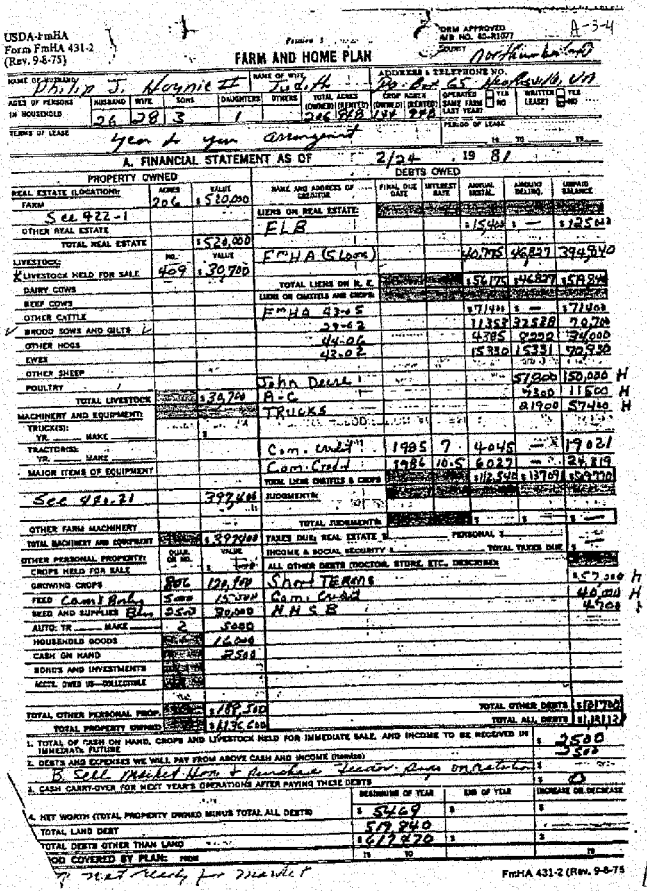
Virginia Cooperative Extension, "Wheat Grain, Soybeans Double Crop", <http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/w50sb30d.xls>

Exhibit C



USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

FARM AND HOME PLAN

FORM APPROVED
M/B NO. 40-R1077

A-3-4

COUNTY Northumberland

NAME OF HUSBAND: Philip J. Hennie II | NAME OF WIFE: Twila H. | ADDRESS & TELEPHONE NO.: Rt. 2 Box 65 Heathsville, VA

AGES OF PERSONS IN HOUSEHOLD: HUSBAND 26 | WIFE 28 | SONS 3 | DAUGHTERS 1 | OTHERS | TOTAL ACRES (OWNED) 206 (RENTED) 98A

CROP ACRES (OWNED) 12A (RENTED) 9AA | OPERATED SAME FROM LAST YEAR? YES NO | WRITTEN (LEASE) YES NO

TERMS OF LEASE: Year to year arrangement | PERIOD OF LEASE: 19 to 19

A. FINANCIAL STATEMENT AS OF 2/24, 19 81

PROPERTY OWNED

	ACRES	VALUE
REAL ESTATE (LOCATION): FARM See 422-1	206	$520,000
OTHER REAL ESTATE		
TOTAL REAL ESTATE		$520,000
LIVESTOCK: NO. / VALUE		
X LIVESTOCK HELD FOR SALE	469	$30,700
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS		
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		$30,700
MACHINERY AND EQUIPMENT:		
TRUCKS: YR. ____ MAKE ____		
TRACTORS: YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		
See 422.21		397,400
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		$397,400
OTHER PERSONAL PROPERTY:	QUAN. OR NO.	VALUE
CROPS HELD FOR SALE		
GROWING CROPS	80C	120,960
FEED Corn Barley	500	15,000
SEED AND SUPPLIES Bl.	250	30,000
AUTO: YR. ____ MAKE ____	2	5000
HOUSEHOLD GOODS		16,000
CASH ON HAND		2500
BONDS AND INVESTMENTS		
ACCTS. OWED US—COLLECTIBLE		
TOTAL OTHER PERSONAL PROP.		$189,510
TOTAL PROPERTY OWNED		$1,136,610

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
FLB			$1540	$ —	$125,443
FmHA (5 Loans)			40,785	46,827	394,940
TOTAL LIENS ON R. E.			$42,325	$46,827	$520,383
LIENS ON CHATTELS AND CROPS:					
FmHA 43-05			$7,494	$ —	$71,408
39-02			11,352	33,528	70,728
44-06			4,785	9,990	30,000
42-02			15,930	15,291	92,540
			570	570	5,700
John Deere				5700	150,000 H
A-C				930	11600 H
TRUCKS				1900	57480 H
Com. Credit	1985	7	4045	—	17021
Com. Credit	1984	10.5	6027	—	24,819
YOUR LIENS CHATTELS & CROPS			$12,542	$1370	$400770
JUDGMENTS:					
TOTAL JUDGMENTS			$ —	$ —	$ —
TAXES DUE: REAL ESTATE $ ____ PERSONAL $ ____					
INCOME & SOCIAL SECURITY $ ____ TOTAL TAXES DUE					
ALL OTHER DEBTS (DOCTORS, STORE, ETC., DESCRIBE):					
Short Terms					$57,200 H
Com. Credit					40,000 H
NHSB					4704 H
TOTAL OTHER DEBTS					$121,704
TOTAL ALL DEBTS					$1,121,137

1. TOTAL OF FARM OR HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE: $ 3500 500

2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize): B. Sell Market Hog + Purchase Tractor Pay Operating $ —

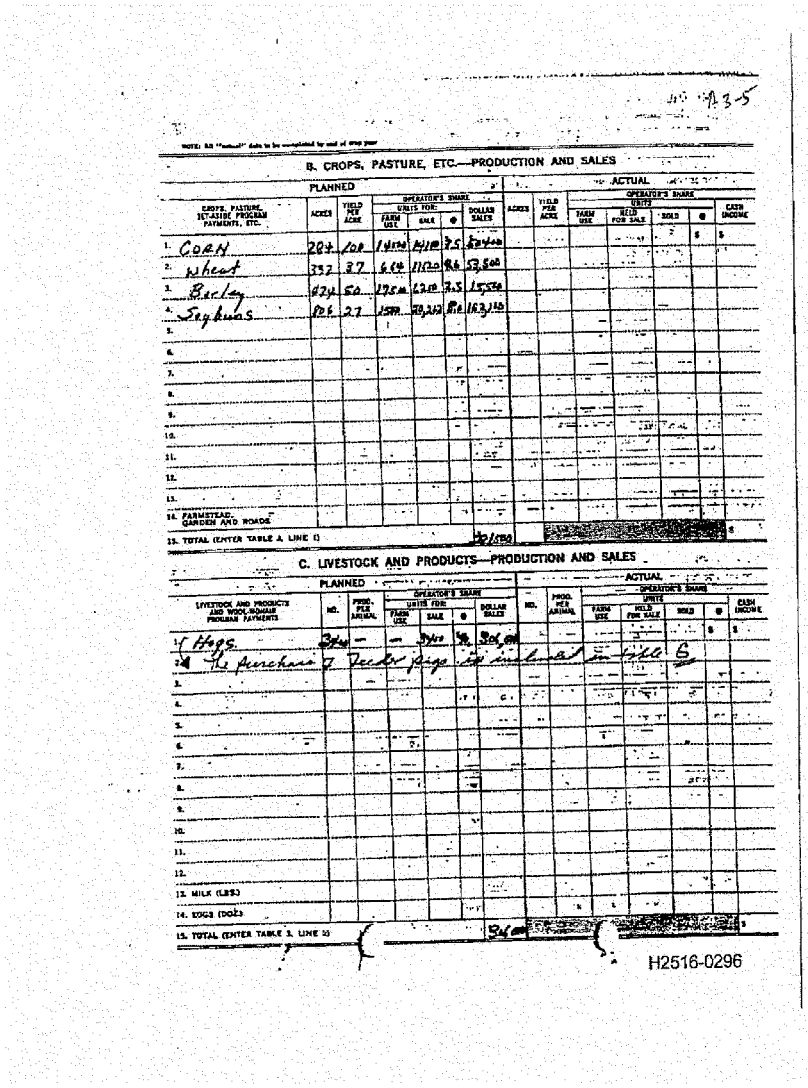
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS: $ 0

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 5469	$	$
TOTAL LAND DEBT	579,940		
TOTAL DEBTS OTHER THAN LAND	$ 617,870	$	$
OD COVERED BY PLAN: FROM	19	TO 19	19

Need Mark for Market

FmHA 431-2 (Rev. 9-8-75)

H2516-0295



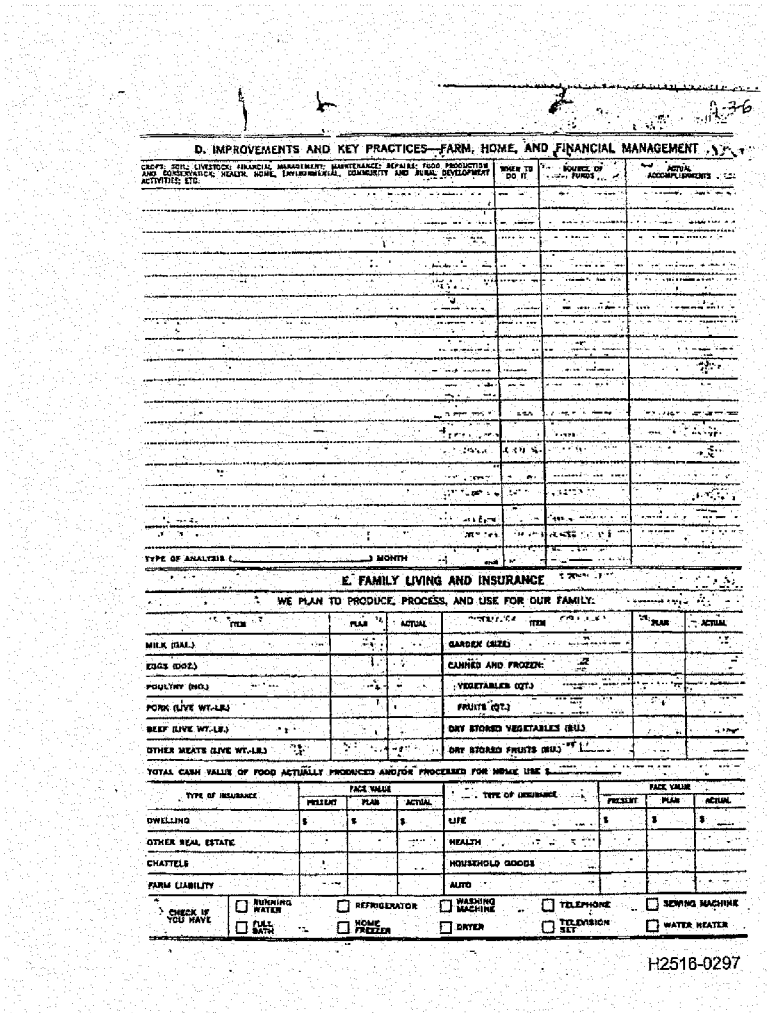
B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE @	PLANNED OPERATOR'S SHARE DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: SOLD	ACTUAL OPERATOR'S SHARE @	ACTUAL CASH INCOME
1. CORN	284	108	14200	44100	3.5	204400						$	$
2. Wheat	332	37	6640	11200	4.6	53,500							
3. Barley	674	50	17500	42500	3.5	197550							
4. Soybeans	104	27	1500	28,242	Pe	163,145							
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE A, LINE 1)						1,270,750							

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

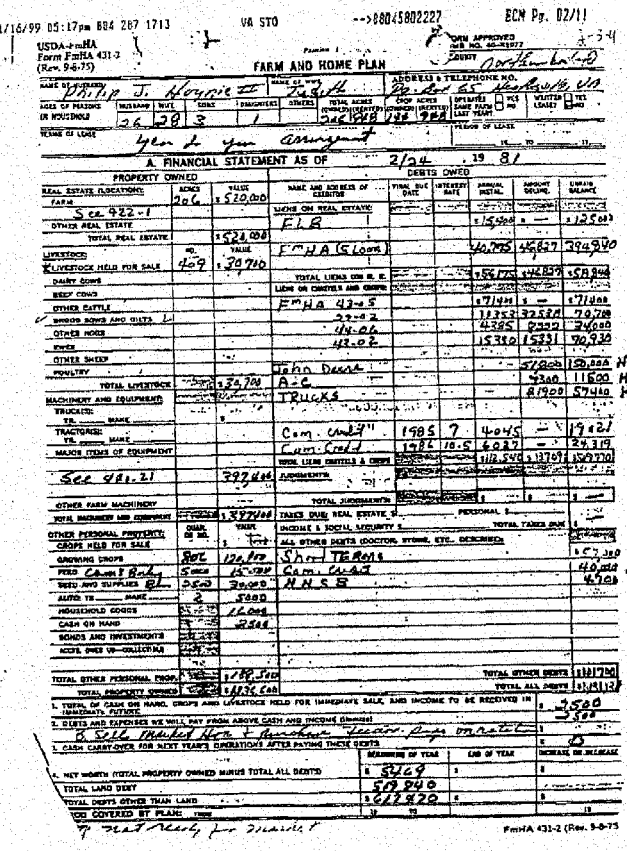
LIVESTOCK AND PRODUCTS AND WOOL INCOME PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE @	PLANNED OPERATOR'S SHARE DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: SOLD	ACTUAL OPERATOR'S SHARE @	ACTUAL CASH INCOME
1 Hogs	324	—	—	324	$	324,000						$	$
2 To purchase 7 feeder pigs to put in boat in fall 6													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS)													
14. EGGS (DOZ)													
15. TOTAL (ENTER TABLE 3, LINE 1)						324,000							

H2516-0296



D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS, SOIL; LIVESTOCK; FINANCIAL MANAGEMENT; MAINTENANCE; REPAIRS; FOOD PRODUCTION AND CONSERVATION; HEALTH; HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES; ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENTS



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USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

OMB APPROVED
OMB NO. 40-R1077

FARM AND HOME PLAN

COUNTY Northumberland

NAME OF FARMER Philip J. Hoggie II
NAME OF WIFE Faith
ADDRESS & TELEPHONE NO. Rt. 1 Box 65 Heathsville, VA

AGES OF PERSONS IN HOUSEHOLD: HUSBAND 26, WIFE 28, CHILDREN 3, OTHERS 1
TOTAL ACRES: OWNED 242 RENTED 148 — CROP ACRES: OWNED 148 RENTED 148
IRRIGATED SAME FARM ☐ YES ☐ NO SAME FARM LAST YEAR ☐ YES ☐ NO
WATERED LOAD ☐ YES ☐ NO

TERMS OF LEASE Year to year Arrangement — PERIOD OF LEASE FROM 10 TO 11

A. FINANCIAL STATEMENT AS OF 2/24, 19 81

PROPERTY OWNED

REAL ESTATE (LOCATION): FARM	ACRES	VALUE
See 422-1	206	$520,000
OTHER REAL ESTATE		
TOTAL REAL ESTATE		$520,000
LIVESTOCK	NO. 409	VALUE $70,740
LIVESTOCK HELD FOR SALE		
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS		
OTHER HOGS		
SHEEP		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		$70,740
MACHINERY AND EQUIPMENT		
TRUCKS: YR. MAKE		
TRACTORS: YR. MAKE		
MAJOR ITEMS OF EQUIPMENT		
See 48.21		797,448
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		$797,448
OTHER PERSONAL PROPERTY:	QUAN. OR NO.	VALUE
CROPS HELD FOR SALE		$
GROWING CROPS	Soy	126,120
FEED Corn & Barley	5 acres	14,700
SEED AND SUPPLIES	250	30,000
AUTOS YR. MAKE	2	5000
HOUSEHOLD GOODS		16,000
CASH ON HAND		2500
BONDS AND INVESTMENTS		
ACCTS. OWED YOU—COLLECTIBLE		
TOTAL OTHER PERSONAL PROP.		$199,320
TOTAL PROPERTY OWNED		$1,587,508

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
FLB			$ 15,600	$ —	$ 125,000
FmHA (5 Loans)			40,795	46,827	394,840
TOTAL LIENS ON R. E.			$56,395	$46,827	$519,840
LIENS ON CHATTELS AND CROPS:					
FmHA 42-5			$7,491	$ —	$ 71,488
22-02			13,352	32,584	70,708
44-06			4385	9350	34,000
42-02			15,330	15,331	70,930
John Deere				57,800	130,000 H
A-C				4300	11600 H
TRUCKS				21900	57410 H
Com. Cred. "11"	1985	7	4045	—	17,621
Com. Cred.	1982	10.5	6037	—	24,319
TOTAL LIENS CHATTELS & CROPS			$112,540	$137,015	$439,770
JUDGMENTS:					
TOTAL JUDGMENTS			$	$	$
TAXES DUE: REAL ESTATE $ PERSONAL $ TOTAL TAXES DUE $					
INCOME & SOCIAL SECURITY $					
ALL OTHER DEBTS (DOCTOR, HOSPITAL, ETC., DESCRIBED):					
Short Term Loans					$ 57,360 H
Com. Cred.					40,000 H
NNSB					4701 L
TOTAL OTHER DEBTS					$102,061
TOTAL ALL DEBTS					$1,061,312

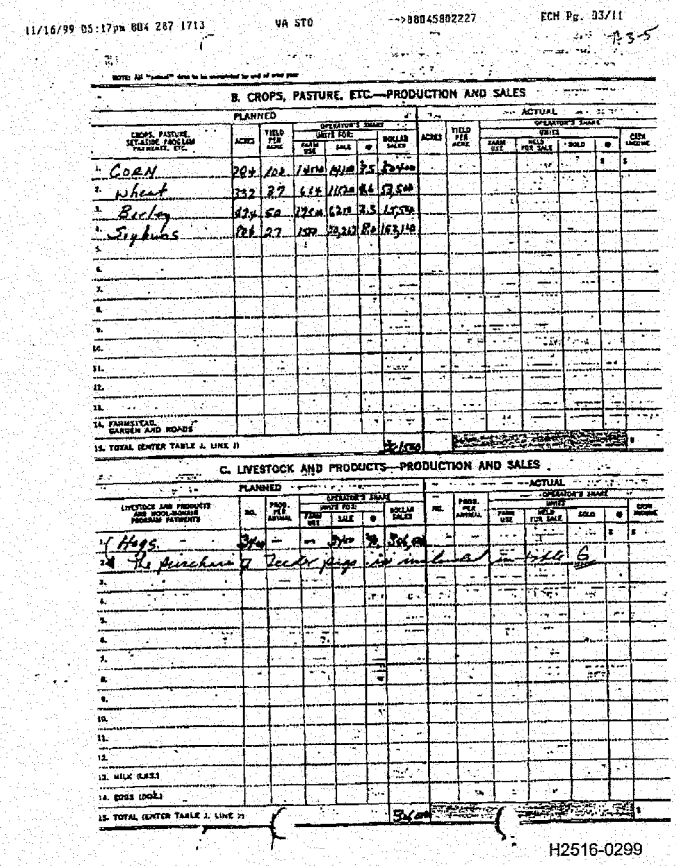
1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE AND INCOME TO BE RECEIVED IN (MONTHS) FUTURE: $ 3500
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Describe): $ 3500
   Sale Market Hog + Purchase Feeder Pigs monthly
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS: $ 0

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
A. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 5469	$	$
TOTAL LAND DEBT	509,840		
TOTAL DEBTS OTHER THAN LAND	$ 612,820	$	$
YOU COVERED BY PLAN: YES	19	19	19

Y Need Yearly for District

FmHA 431-2 (Rev. 9-8-75)

H2516-0298



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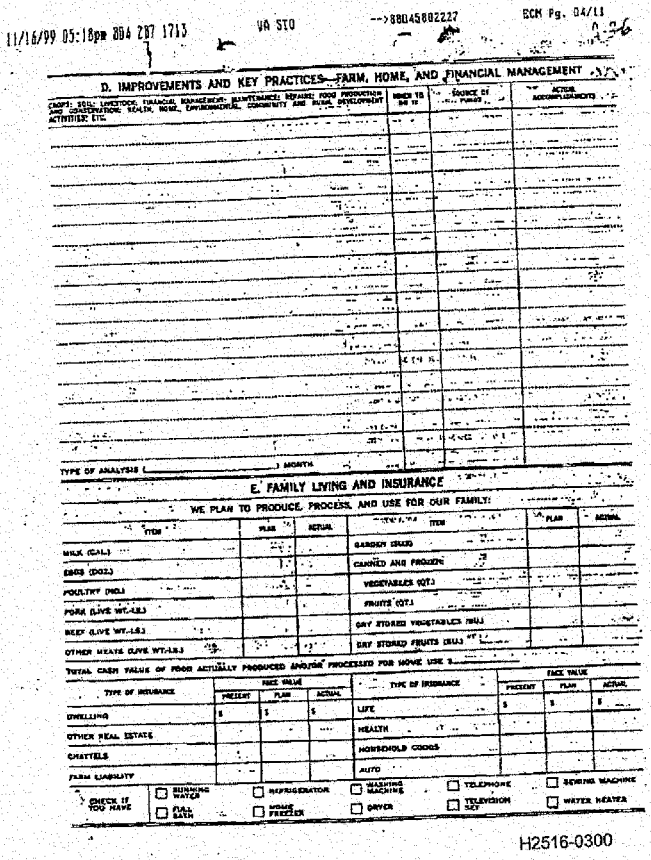
B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE, FARM-LOAN PROGRAMS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE UNITS FOR: @	PLANNED OPERATOR'S SHARE DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: SOLD OR PUT UNDER LOAN	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: @	ACTUAL OPERATOR'S SHARE CASH INCOME
1. CORN	204	102	14414	4408	3.5	39480							
2. Wheat	332	27	6115	11120	4.4	53,500							
3. Barley	134	50	2204	6218	3.5	27,500							
4. Soybeans	186	27	1570	3,243	8.2	163,140							
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARM STAG, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE 2, LINE 1)						324,620							

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

LIVESTOCK AND PRODUCTS AND DAIRY INCOME PROGRAM PAYMENTS	PLANNED NO.	PLANNED FROM BEGINNING INVENTORY	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE UNITS FOR: @	PLANNED OPERATOR'S SHARE DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: SOLD	ACTUAL OPERATOR'S SHARE UNITS: @	ACTUAL OPERATOR'S SHARE CASH INCOME
1. Hogs	340	—	—	340	78	26,520							
2. To purchase 4 Feeder pigs													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE 2, LINE 2)						26,520							

H2516-0299



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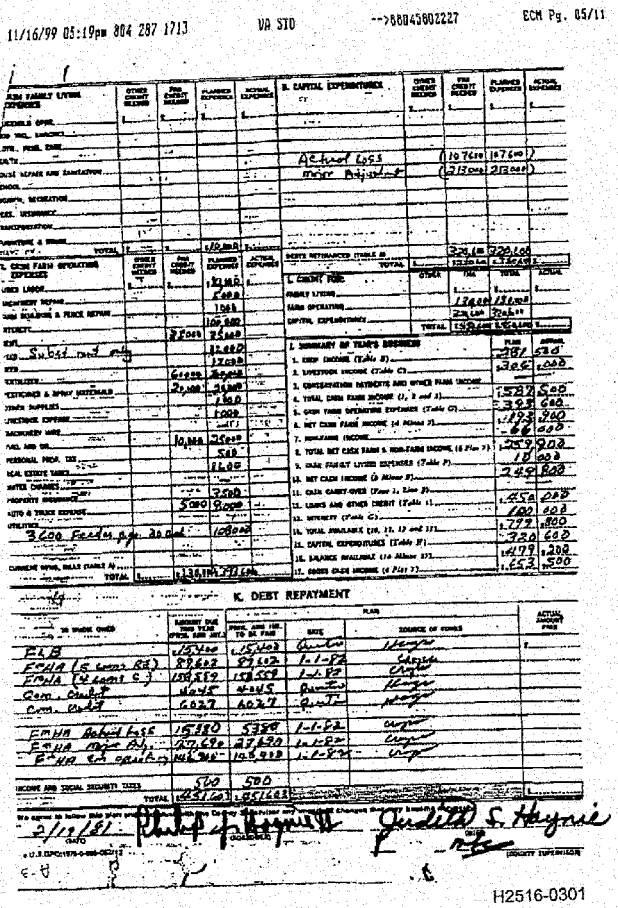
D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS: SOIL; LIVESTOCK; FINANCIAL MANAGEMENT; MAINTENANCE; REPAIRS; FOOD PRODUCTION AND CONSERVATION; HEALTH; HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES; ETC.	WHEN TO BE DONE	SOURCE OF FUNDS	ACTION ACCOMPLISHED



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Farm Service Agency

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- ☐ Call Me
- ☐ Urgent
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- ☐ For Your Information
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- ☐ For Your Approval
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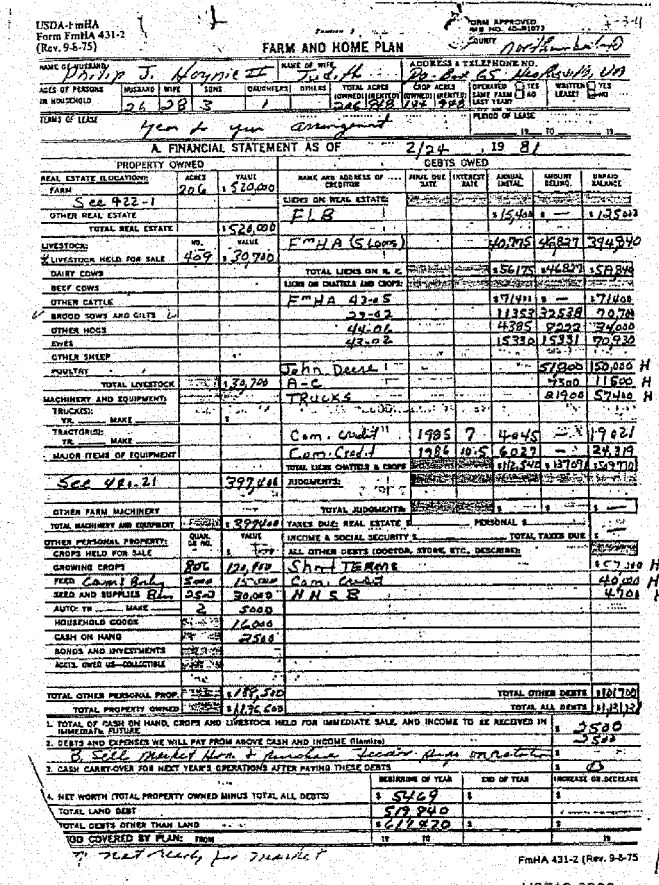


USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

FARM AND HOME PLAN

FORM APPROVED
OMB NO. 05-R1027

COUNTY Northumberland

NAME OF HUSBAND: Phillip J. Hoggard II | NAME OF WIFE: Judith H. | ADDRESS & TELEPHONE NO.: Rt. 1 Box 65 Heathsville, VA

AGES OF PERSONS IN HOUSEHOLD	HUSBAND	WIFE	SONS	DAUGHTERS	OTHERS	TOTAL ACRES OWNED	TOTAL ACRES RENTED	CROP ACRES OWNED	CROP ACRES RENTED	OPERATED SAME FARM LAST YEAR	WRITTEN LEASE?
	26	28	3	1		206	148	148	148	☒ YES ☐ NO	☐ YES ☐ NO

TERMS OF LEASE: Year to year arrangement | PERIOD OF LEASE: 19 TO 19

A. FINANCIAL STATEMENT AS OF 2/24, 19 81

PROPERTY OWNED

REAL ESTATE (LOCATION)	ACRES	VALUE
Farm	206	$520,000
See 422-1		
OTHER REAL ESTATE		
TOTAL REAL ESTATE		$528,000

LIVESTOCK:	NO.	VALUE
☑ LIVESTOCK HELD FOR SALE	409	$30,720
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS		
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		$30,720

MACHINERY AND EQUIPMENT:		
TRUCKS: YR. ____ MAKE ____		
TRACTORS: YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		
See 422.21		397,688
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		$397,688

OTHER PERSONAL PROPERTY:	QUAN. & WT.	VALUE
CROPS HELD FOR SALE		$
GROWING CROPS	806	120,900
FEED Corn/Bulk	5000	15,000
SEED AND SUPPLIES Bl.	350	20,000
AUTO: YR. ____ MAKE ____	2	5000
HOUSEHOLD GOODS		16,000
CASH ON HAND		2568
BONDS AND INVESTMENTS		
ACCTS. OWED US—COLLECTIBLE		
TOTAL OTHER PERSONAL PROP.		$189,510
TOTAL PROPERTY OWNED		$1176,608

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT BEHIND	UNPAID BALANCE	
LIENS ON REAL ESTATE:						
FLB			$15,480	$ —	$ 135,000	
FmHA (5 Loans)			40,705	46827	394,940	
TOTAL LIENS ON R. E.			$56,185	$46827	$529,940	
LIENS ON CHATTELS AND CROPS:						
FmHA 42-05			$17,491	$ —	$ 71,408	
22-02			11353	32528	70,708	
44.06			4385	8220	74,000	
43.02			15330	15331	70,922	
John Deere			5700	5700	150,000	H
A-C			4500	11600	11600	H
TRUCKS			21908	57410	57410	H
Com. Credit	1985	7	4645	—	19021	
Com. Cred.	1986	10.5	6027	—	24,319	
TOTAL LIENS CHATTELS & CROPS			$116,540	$137071	$509,710	
JUDGMENTS:						
TOTAL JUDGMENTS				$	$	
TAXES DUE: REAL ESTATE $ ____ PERSONAL $ ____						
INCOME & SOCIAL SECURITY $ ____ TOTAL TAXES DUE					$	
ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE):						
Short Terms					$ 57,300	H
Com. Cred					40,000	H
NNSB					4701	H
TOTAL OTHER DEBTS					$101,001	
TOTAL ALL DEBTS					$1,121,121	

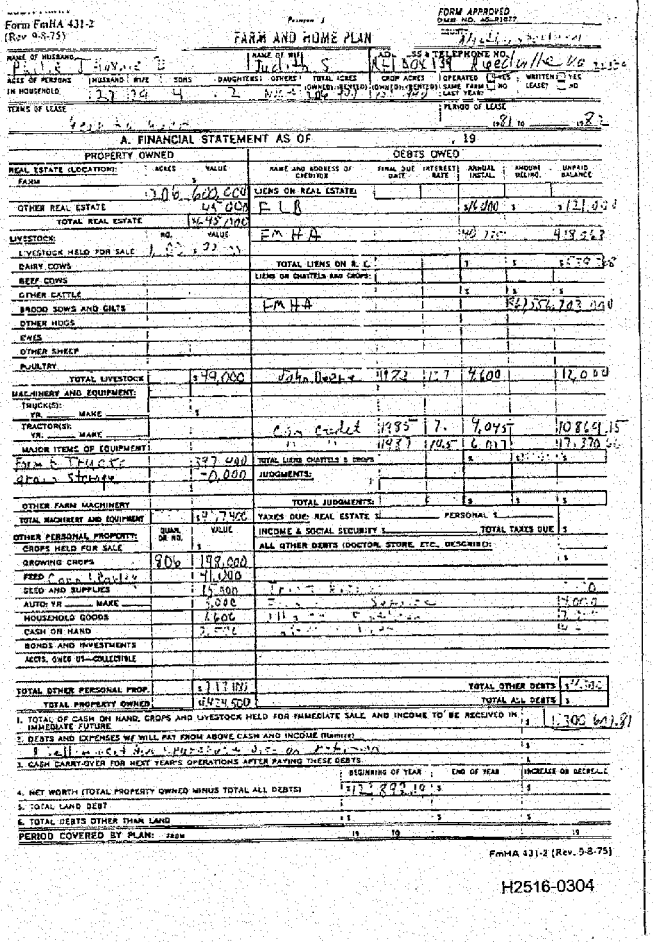
1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE	$ 3580 3580
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize) B. Sell Market Hog + Purchase Feeder Pigs monthly	$
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS	$ 0

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 54469	$	$
TOTAL LAND DEBT	519,940		
TOTAL DEBTS OTHER THAN LAND	$ 619,870	$	$
YOU COVERED BY PLAN: FROM	19	TO 19	19

Tr. Tract Ready for Transfer

FmHA 431-2 (Rev. 9-8-75)

H2516-0303



Form FmHA 431-2
(Rev. 9-8-75)

FARM AND HOME PLAN

FORM APPROVED
OMB NO. 40-R1877

NAME OF HUSBAND: Paul T. [illegible]
NAME OF WIFE: Judith S.
ADDRESS: RT 1 Box 139 Rectortown Va
SS & TELEPHONE NO.:

AGES OF PERSONS IN HOUSEHOLD	HUSBAND	WIFE	SONS	DAUGHTERS	OTHERS	TOTAL ACRES OWNED	RENTED	CROP ACRES OWNED	RENTED	OPERATED SAME FARM LAST YEAR	OTHER FARM	WRITTEN LEASE	YES / NO
	32	30	4	2		106	150	70	150				

TERMS OF LEASE: [illegible]
PERIOD OF LEASE: 1981 TO 1982

A. FINANCIAL STATEMENT AS OF , 19

PROPERTY OWNED

REAL ESTATE (LOCATION): FARM	ACRES	VALUE
	106	600,000
OTHER REAL ESTATE		45,000
TOTAL REAL ESTATE		645,000

LIVESTOCK:	NO.	VALUE
LIVESTOCK HELD FOR SALE	1	2,000
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS		
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		49,000

MACHINERY AND EQUIPMENT:		
TRUCK(S): YR. ____ MAKE ____		
TRACTOR(S): YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT:		
Farm Trucks		397,000
grain storage		20,000
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		417,000

OTHER PERSONAL PROPERTY:	QUAN. OR NO.	VALUE
CROPS HELD FOR SALE		
GROWING CROPS	806	198,000
FEED FOR LIVESTOCK		41,000
SEED AND SUPPLIES		15,000
AUTO: YR. ____ MAKE ____		5,000
HOUSEHOLD GOODS		1,606
CASH ON HAND		3,000
BONDS AND INVESTMENTS		
ACCTS. OWED US—COLLECTIBLE		
TOTAL OTHER PERSONAL PROP.		213,606
TOTAL PROPERTY OWNED		434,500

DEBTS OWED

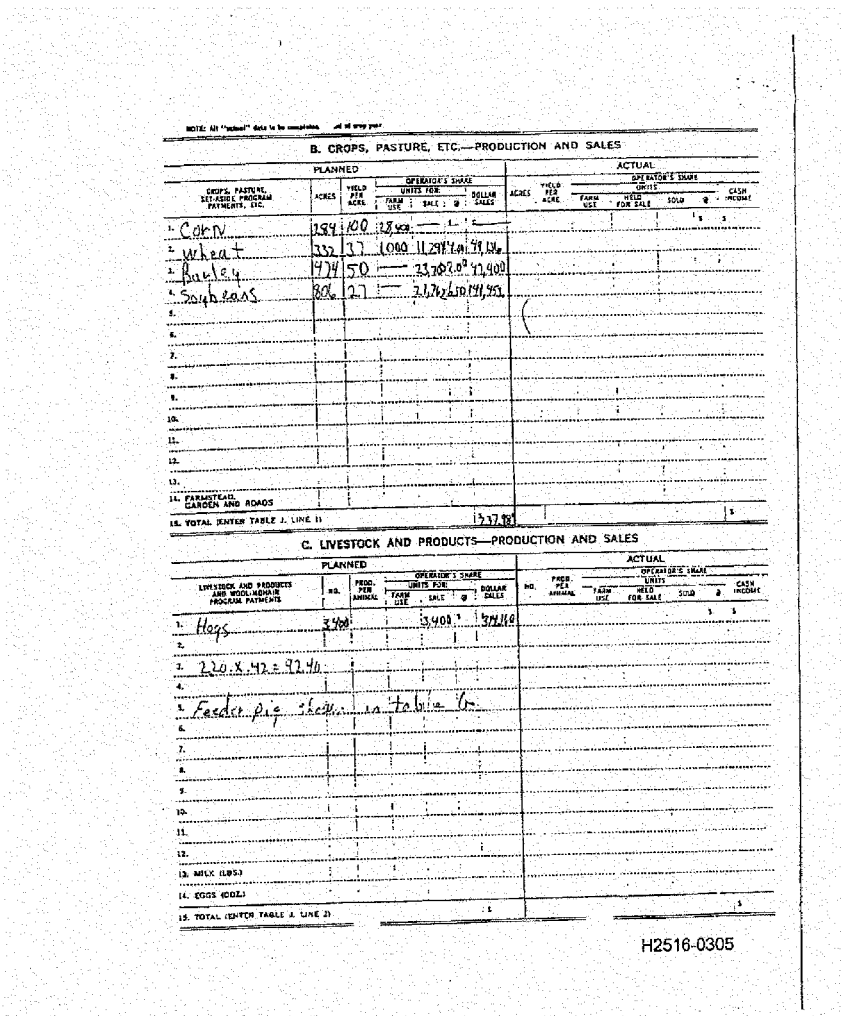
NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
FLB			16,000		121,000
FMHA			40,000		418,263
TOTAL LIENS ON R. E.					539,263
LIENS ON CHATTELS AND CROPS:					
FMHA					82,703.00
John Deere	1973	7%	4,600		12,000
Case Cadet	1985	7.	9,045		10869.15
" "	1983	10.5	6,017		17,370.66
TOTAL LIENS CHATTELS & CROPS					
JUDGMENTS:					
TOTAL JUDGMENTS					
TAXES DUE: REAL ESTATE $ ____ PERSONAL $ ____				TOTAL TAXES DUE	
INCOME & SOCIAL SECURITY $ ____					
ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE):					
[illegible]					0
[illegible]					14,000
[illegible]					7,000
[illegible]					0
TOTAL OTHER DEBTS					14,000
TOTAL ALL DEBTS					

1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR FARM SALE AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE: 1,305,603.81
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize):
Sell machine and pasture to pay debts
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS:

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	773,899.10		
5. TOTAL LAND DEBT			
6. TOTAL DEBTS OTHER THAN LAND			
PERIOD COVERED BY PLAN: FROM	19	19	19

FmHA 431-2 (Rev. 5-8-75)

H2516-0304



NOTE: All "actual" data to be completed ... of crop year

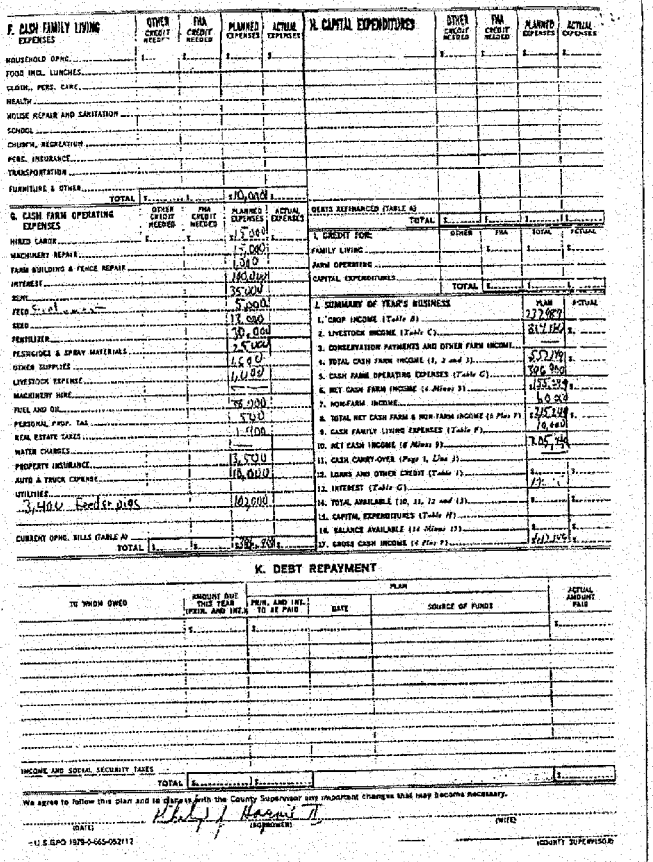
B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

	PLANNED						ACTUAL						
			OPERATOR'S SHARE						OPERATOR'S SHARE				
			UNITS FOR:						UNITS				
CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	ACRES	YIELD PER ACRE	FARM USE	SALE	@	DOLLAR SALES	ACRES	YIELD PER ACRE	FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. Corn	284	100	28,400	—	—	—						$	$
2. Wheat	332	37	1000	11,294	4.00	49,136							
3. Barley	474	50	—	23,700	2.00	47,400							
4. Soybeans	806	27	—	21,762	6.50	141,453							
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)						337,98[illegible]							$

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

	PLANNED						ACTUAL						
			OPERATOR'S SHARE						OPERATOR'S SHARE				
			UNITS FOR:						UNITS				
LIVESTOCK AND PRODUCTS AND WOOL-MOHAIR PROGRAM PAYMENTS	NO.	PROD. PER ANIMAL	FARM USE	SALE	@	DOLLAR SALES	NO.	PROD. PER ANIMAL	FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. Hogs	3400			3,400		314,160						$	$
2.													
3. 220 x .42 = 92.40													
4.													
5. Feeder pig shown in table G													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LINE 2)						$							$

H2516-0305



F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG.	$	$	$	$
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL	$	$	$10,000	$

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR	$	$	$15,000	$
MACHINERY REPAIR			15,000	
FARM BUILDING & FENCE REPAIR			1,000	
INTEREST			100,000	
RENT			35,000	
FEED Steel [illegible]			5,000	
SEED			13,000	
FERTILIZER			30,000	
PESTICIDES & SPRAY MATERIALS			25,000	
OTHER SUPPLIES			1,500	
LIVESTOCK EXPENSE			1,000	
MACHINERY HIRE			—	
FUEL AND OIL			35,000	
PERSONAL PROP. TAX			500	
REAL ESTATE TAXES			1,000	
WATER CHARGES			—	
PROPERTY INSURANCE			13,500	
AUTO & TRUCK EXPENSE			10,000	
UTILITIES				
3,400 Feed St. pigs			102,000	
CURRENT OPNG. BILLS (TABLE A)				
TOTAL	$	$	$386,800	$

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
	$	$	$	$
DEBTS REFINANCED (TABLE A)				
TOTAL	$	$	$	$

I. CREDIT FOR:	OTHER	FHA	TOTAL	ACTUAL
FAMILY LIVING		$	$	$
FARM OPERATING				
CAPITAL EXPENDITURES				
TOTAL		$	$	$

J. SUMMARY OF YEAR'S BUSINESS	PLAN	ACTUAL
1. CROP INCOME (Table B)	237,989	
2. LIVESTOCK INCOME (Table C)	314,180	$
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	—	
4. TOTAL CASH FARM INCOME (1, 2 and 3)	552,199	$
5. CASH FARM OPERATING EXPENSES (Table G)	306,900	
6. NET CASH FARM INCOME (4 Minus 5)	155,299	$
7. NON-FARM INCOME	60,000	
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	215,299	$
9. CASH FAMILY LIVING EXPENSES (Table F)	10,000	
10. NET CASH INCOME (8 Minus 9)	205,299	
11. CASH CARRY-OVER (Page 1, Line 3)	—	
12. LOANS AND OTHER CREDIT (Table I)	$	$
13. INTEREST (Table G)	[illegible]	
14. TOTAL AVAILABLE (10, 11, 12 and 13)	$	$
15. CAPITAL EXPENDITURES (Table H)		
16. BALANCE AVAILABLE (14 Minus 15)	$	$
17. GROSS CASH INCOME (4 Plus 7)	$[illegible]	$

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN: PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
	$	$			$
INCOME AND SOCIAL SECURITY TAXES					
TOTAL	$	$			$

We agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary.

(DATE) [signature] (BORROWER) (WIFE)

U.S.GPO 1979-0-665-052/12 (COUNTY SUPERVISOR)

H2516-0306

D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS, SOIL, LIVESTOCK, FINANCIAL MANAGEMENT, MAINTENANCE, REPAIRS, FOOD PRODUCTION AND CONSERVATION, HEALTH, HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES, ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENTS

TYPE OF ANALYSIS: 1. _____) MONTH

E. FAMILY LIVING AND INSURANCE

WE PLAN TO PRODUCE, PROCESS, AND USE FOR OUR FAMILY:

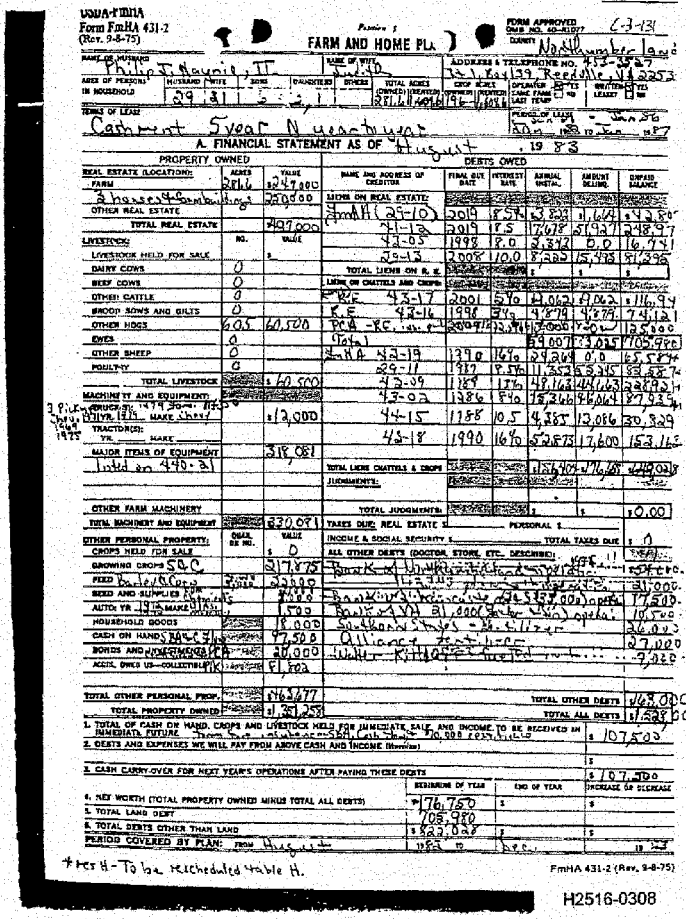
ITEM	PLAN	ACTUAL	ITEM	PLAN	ACTUAL
MILK (GAL.)			GARDEN (SIZE)		
EGGS (DOZ.)			CANNED AND FROZEN:		
POULTRY (NO.)			VEGETABLES (QT.)		
PORK (LIVE WT.-LB.)			FRUITS (QT.)		
BEEF (LIVE WT.-LB.)			DRY STORED VEGETABLES (BU.)		
OTHER MEATS (LIVE WT.-LB.)			DRY STORED FRUITS (BU.)		

TOTAL CASH VALUE OF FOOD ACTUALLY PRODUCED AND/OR PROCESSED FOR HOME USE $_____

TYPE OF INSURANCE	FACE VALUE PRESENT	FACE VALUE PLAN	FACE VALUE ACTUAL	TYPE OF INSURANCE	FACE VALUE PRESENT	FACE VALUE PLAN	FACE VALUE ACTUAL
DWELLING	$	$	$	LIFE	$	$	$
OTHER REAL ESTATE				HEALTH			
CHATTELS				HOUSEHOLD GOODS			
FARM LIABILITY				AUTO			

CHECK IF YOU HAVE: ☐ RUNNING WATER ☐ REFRIGERATOR ☐ WASHING MACHINE ☐ TELEPHONE ☐ SEWING MACHINE ☑ FULL BATH ☐ HOME FREEZER ☑ DRYER ☐ TELEVISION SET ☐ WATER HEATER

H2516-0307



USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

FARM AND HOME PLA

FORM APPROVED OMB NO. 40-R1077

6-3-131

COUNTY Nuckolls

NAME OF HUSBAND: Philip T. Haynie, II
NAME OF WIFE: Linda
ADDRESS & TELEPHONE NO.: 321 Kay 139 Reading, NE 2253

AGES OF PERSONS IN HOUSEHOLD: HUSBAND 29, WIFE 31, SONS 5, 1, DAUGHTERS, OTHERS
TOTAL ACRES (OWNED / LEASED): CROP ACRES 391.1 / 106.6, PASTURE 196.6 / 4.0
OPERATED LAST YEAR: FARM ☒ YES ☐ NO, RANCH ☐ YES ☐ NO
WRITTEN LEASE? ☐ YES ☐ NO

TERMS OF LEASE: Cash rent 5 year Nuechterlein
PERIOD OF LEASE: Jan 83 - Jan 88
Dec 1983 TO Jan 1987

A. FINANCIAL STATEMENT AS OF August 1983

PROPERTY OWNED

REAL ESTATE (LOCATION):	ACRES	VALUE
FARM	286	$247,000
3 houses + 3 sheds		250,000
OTHER REAL ESTATE		
TOTAL REAL ESTATE		497,000

LIVESTOCK:	NO.	VALUE
LIVESTOCK HELD FOR SALE		$
DAIRY COWS	0	
BEEF COWS	0	
OTHER CATTLE	0	
BROOD SOWS AND GILTS	0	
OTHER HOGS	605	60,500
EWES	0	
OTHER SHEEP	0	
POULTRY	0	
TOTAL LIVESTOCK		$ 60,500

MACHINERY AND EQUIPMENT:		
TRUCK(S): YR. 1979 MAKE Ford		
YR. 1974 MAKE Chevy		$ 12,000
TRACTOR(S): YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		318,081
listed on 440-31		
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		330,081

OTHER PERSONAL PROPERTY:	OWNER OR NO.	VALUE
CROPS HELD FOR SALE		$ 0
GROWING CROPS SOC		217,875
FEED Bushels Corn	7,000	22,400
SEED AND SUPPLIES		4,000
AUTOS YR. 1975 MAKE Olds		1,500
HOUSEHOLD GOODS		18,000
CASH ON HAND		17,508
BONDS AND MISCELLANEOUS		20,000
ACCTS. OWED US—COLLECTIBLE		51,800
TOTAL OTHER PERSONAL PROP.		$ 363,077
TOTAL PROPERTY OWNED		$ 1,190,658

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
FmHA (29-10)	2019	1%	$ 3,893	$ 1,604	$ 142,58
41-13	2019	1.5	17,678	5,927	348,97
42-05	1998	8.0	2,832	0.0	16,741
42-13	2008	10.0	8,225	15,498	91,396
TOTAL LIENS ON R. E.			$	$	$
LIENS ON CHATTELS AND CROPS:					
PMC 43-17	2001	5%	$ 1,062	$ 1,062	$ 16,94
F.E. 42-16	1998	8%	4,879	4,879	74,121
PCA - RE - 43-01	2007	5%	7,000	7,000	125,000
(Total)			$ 9,007	$ 13,035	105,980
FmHA 42-19	1990	16%	29,209	0.0	165,584
29-11	1987	8.5%	11,352	5,345	55,587
42-09	1989	12%	48,162	44,663	324,923
43-02	1986	8%	18,246	46,064	87,934
44-15	1988	10.5	4,287	13,086	30,329
43-18	1990	16%	5,287	17,600	153,162
TOTAL LIENS CHATTELS & CROPS			$ 156,404	$ 76,08	$ 449,02
JUDGMENTS:					
TOTAL JUDGMENTS:			$	$	$ 0.00
TAXES DUE: REAL ESTATE $ ____ PERSONAL $ ____					
INCOME & SOCIAL SECURITY $ ____ TOTAL TAXES DUE					$ 0
ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE):					
Bank Note (Unsecured)					30,000
Bank Note (Unsecured)					17,500
Bank Note #1,800 (Semi-Ann.)					10,500
Southern States - Unsecured					26,093
Alliance Tractor					27,000
John - Kittle - Unsecured					7,020
TOTAL OTHER DEBTS					$ 118,113
TOTAL ALL DEBTS					$ 567,133

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE. From Sec. 440-32 $70,508 Feb. Sold			$ 107,508
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize)			$
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS			$ 107,508
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 776,760	$	$
5. TOTAL LAND DEBT	705,980		
6. TOTAL DEBTS OTHER THAN LAND	$ 822,042	$	$
PERIOD COVERED BY PLAN: FROM August 1983 TO Dec 1983			18 mo

* Sch H - To be rescheduled Table H.

FmHA 431-2 (Rev. 9-8-75)

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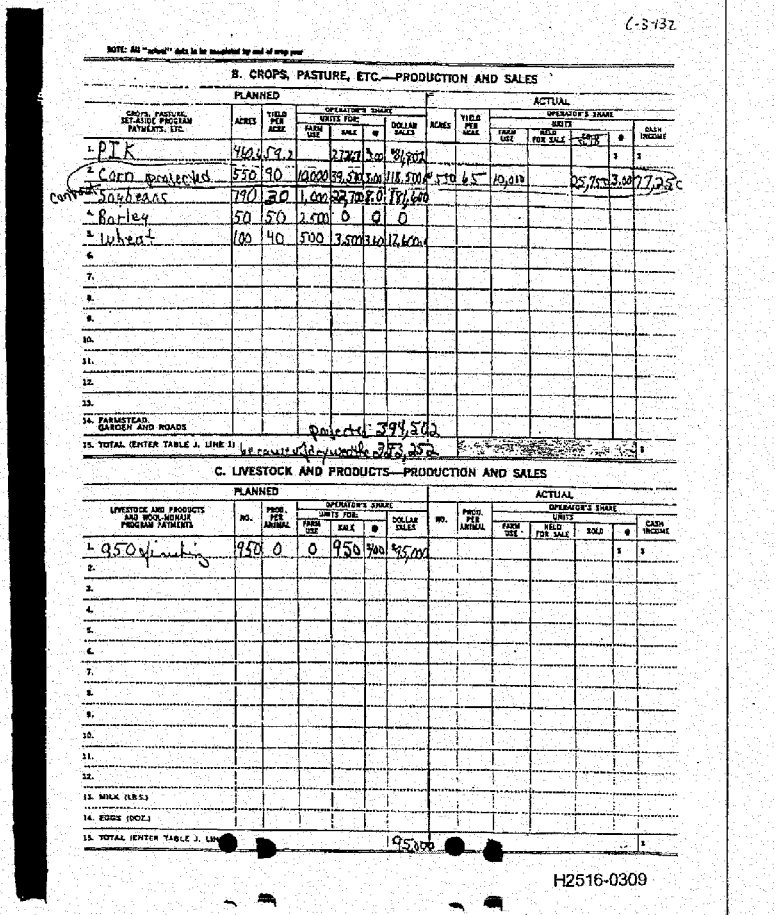


C-3732

NOTE: All "actual" data to be completed by end of crop year

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED SALE	PLANNED @	PLANNED DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	HELD FOR SALE	SOLD	@	ACTUAL CASH INCOME
1. PIK	440.5	59.2		27,727	3.00	83,181						$	$
2. Corn protected	550	90	10000	39,500	3.00	118,500	570.65	70.65	10,000		25,750	3.00	77,250
Contract 3. Soybeans	190	30	1,000	22,700	8.00	181,600							
4. Barley	50	50	2,500	0	0	0							
5. Wheat	100	40	500	3,500	3.40	12,600							
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)			Projected: 394,531										$

We could use projected 383,252

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

LIVESTOCK AND PRODUCTS AND WOOL INCREASE PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED SALE	PLANNED @	PLANNED DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	HELD FOR SALE	SOLD	@	ACTUAL CASH INCOME
1. 950 yearlings	950	0	0	950	100	95,000						$	$
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LI						95,000							$

H2516-0309

C-3133

D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS, SOIL, LIVESTOCK, FINANCIAL MANAGEMENT, MAINTENANCE, REPAIRS, FOOD PRODUCTION AND CONSERVATION, HEALTH, HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES, ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENTS

H2516-0311

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG.	$	$	$	$
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL	$	$	$15,000	$

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR	$	$	$15,000	$
MACHINERY REPAIR			5,000	
FARM BUILDING & FENCE REPAIR			500	
INTEREST			140,400	
RENT Bank of Lancaster	17,500		80,230	
FEED B of N. Ave.	4,000		4,000	
SEED B of N. Ave.	21,750		21,750	
FERTILIZER SS, AT, BVA	61,840		61,840	
PESTICIDES & SPRAY MATERIALS BN	9,380		9,380	
OTHER SUPPLIES BN	29,440		29,440	
LIVESTOCK EXPENSES C/T/B of N	5,430		25,650	
MACHINERY HIRE				
FUEL AND OIL Walter Kilduff	7,000		7,000	
PERSONAL PROP. TAX			800	
REAL ESTATE TAXES			3,000	
WATER CHARGES			0	
PROPERTY INSURANCE			1,450	
AUTO & TRUCK EXPENSE B of N	5,000		5,000	
UTILITIES BVA	1,160		4,800	
CURRENT OPNG. BILLS (TABLE A)	163,000			
TOTAL	263,000		431,240	

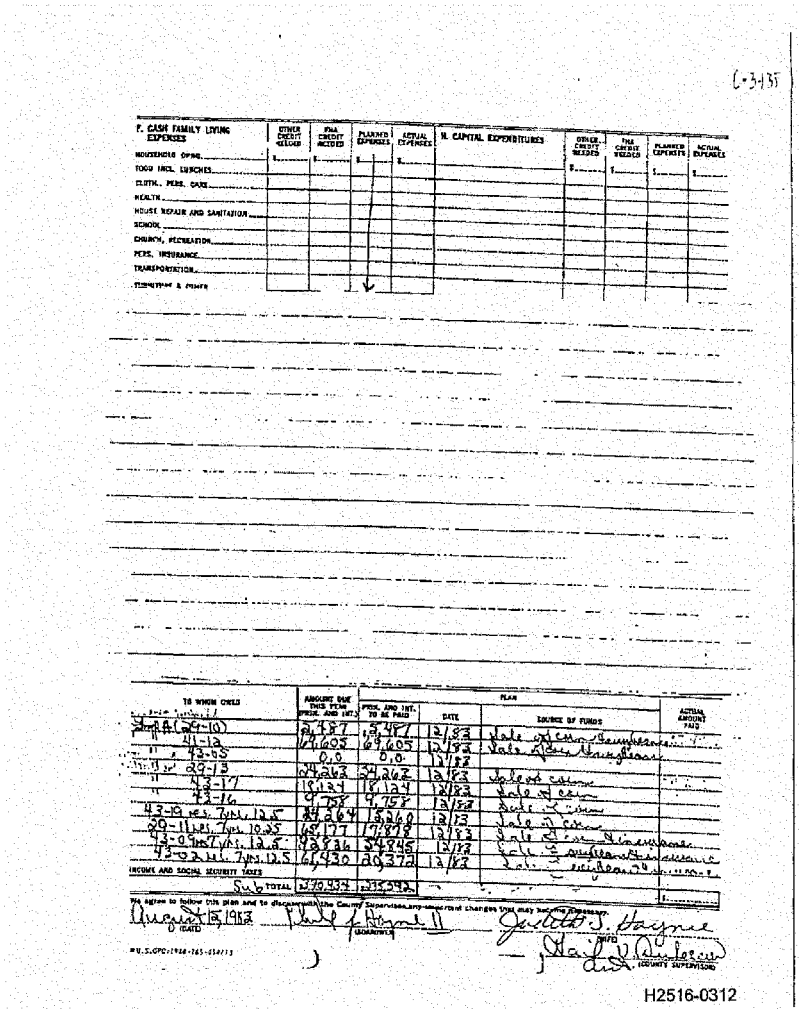
H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
	$	$	$	$
DEBTS REFINANCED (TABLE B)		659,783		
TOTAL	$	659,783		$

I. CREDIT FUNC.	OTHER	FHA	TOTAL	ACTUAL
FAMILY LIVING		$	$	$
FARM OPERATING	163,000			
CAPITAL EXPENDITURES		659,783		
TOTAL		822,783		$

J. SUMMARY OF YEAR'S BUSINESS	PLAN	ACTUAL
1. CROP INCOME (Table B)	271,450	
2. LIVESTOCK INCOME (Table C)	95,000	
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	81,802	
4. TOTAL CASH FARM INCOME (1, 2 and 3)	448,252	
5. CASH FARM OPERATING EXPENSES (Table G)	431,240	
6. NET CASH FARM INCOME (4 Minus 5)	17,012	
7. NON-FARM INCOME Trucking	65,000	
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	82,012	
9. CASH FAMILY LIVING EXPENSES (Table F)	15,000	
10. NET CASH INCOME (8 Minus 9)	67,012	
11. CASH CARRY-OVER (Page 1, Line 5)	107,800	
12. LOANS AND OTHER CREDIT (Table I)	822,783	
13. INTEREST (Table G)	140,400	
14. TOTAL AVAILABLE (10, 11, 12 and 13)	1,137,695	
15. CAPITAL EXPENDITURES (Table H)	659,783	
16. BALANCE AVAILABLE (14 Minus 15)	477,912	
17. GROSS CASH INCOME (4 Plus 7)	513,252	

K. DEBT REPAYMENT

To Whom Owed (Cont)	Amount due this year	Principal & Int. To Be Paid	Date	Source of Fund
FmHA 44-15	21,308.00	21,308.00	12/83	Sale of soybean
43-18, 7 yrs. 125	70,473	37,183	12/83	Sale of soybean
PCA 10/2/83	13,000	13,000	12/83	Sale of soybean
(Current oper. exp.)				
Bank of Northumberland	54,000	54,000	12/83	Sale of gigs
" paid 11/23/83	21,000	21,000	12/83	Sale of gigs
Bank of VA	10,500	10,500	12/83	Sale of gigs
Southern States	26,000	26,000	12/83	Sale of soybean
Alliance Fert.	27,000	27,000	12/83	Sale of soybean etc.
Walter Kilduff	7,000	7,000	12/83	Sale of gigs
Bank of Lancaster	17,500	17,500	12/83	Trucking income
Total	668,715	170,[illegible]		



C-3-135

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES	H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG.	$	$	$	$		$	$	$	$
FOOD INCL. LUNCHES									
CLOTH., PERS. CARE									
HEALTH									
HOUSE REPAIR AND SANITATION									
SCHOOL									
CHURCH, RECREATION									
PERS. INSURANCE									
TRANSPORTATION									
SUBMITTER & OTHER									

TO WHOM OWED	AMOUNT DUE THIS PLAN (PRIN. AND INT.)	PLAN: PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
Sub A (29-10)	2,487	2,487	12/83	Sale of corn & sunflower	
" 41-12	69,605	69,605	12/83	Sale of corn & soybeans	
" 43-05	0.0	0.0	12/83		
" 29-13	24,263	24,263	12/83	Sale of corn	
" 43-17	18,124	18,124	12/83	Sale of corn	
" 43-16	9,758	9,758	12/83	Sale of corn	
43-19 res. 7 yrs. 12.5	24,264	15,260	12/83	Sale of corn	
29-11 res. 7 yrs. 10.25	65,177	17,878	12/83	Sale of corn & insurance	
43-09 res. 7 yrs. 12.5	92,836	54,845	12/83	Sale of soybeans & insurance	
43-02 res. 7 yrs. 12.5	61,430	20,372	12/83	Sale of soybeans & insurance	
INCOME AND SOCIAL SECURITY TAXES					
Sub TOTAL	370,934	235,592			$

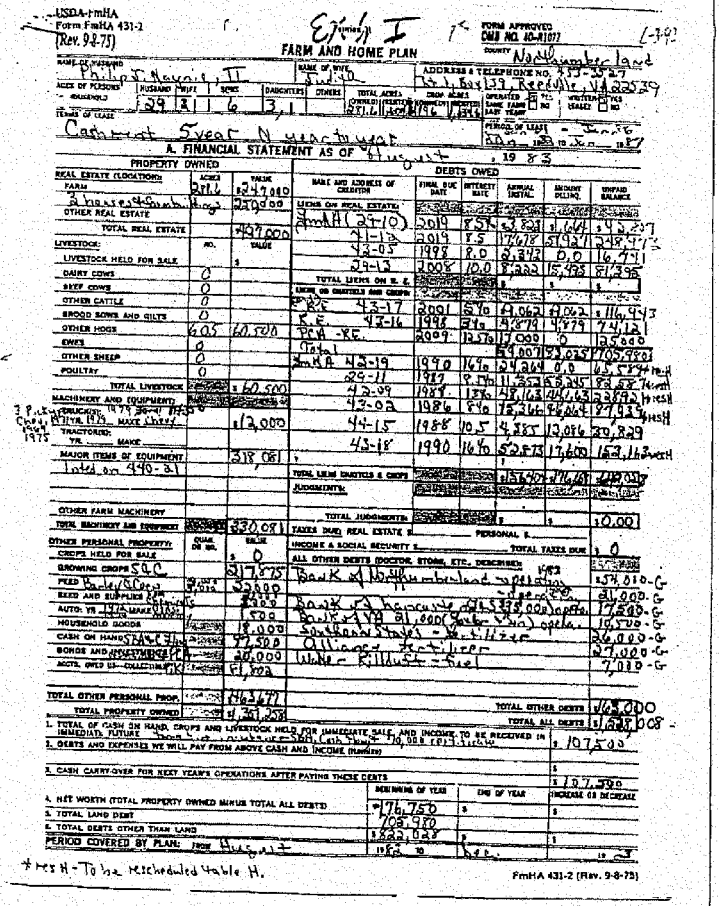
We agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary.

August 15, 1983 (DATE) Paul J. Hayne II (BORROWER) Judith J. Hayne (CHIEF)

Harold V. Anderson (COUNTY SUPERVISOR)

U.S.GPO:1980-765-654/13

H2516-0312



USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

Exhibit I

FARM AND HOME PLAN

FORM APPROVED
OMB NO. 40-R1072

COUNTY Northumberland

NAME OF HUSBAND: Philip S. Nevins, II
NAME OF WIFE: Sandra
ADDRESS & TELEPHONE NO.: Rt. 1, Box 139, Reedville, VA 22539 804-453-3527

AGES OF PERSONS (HOUSEHOLD): HUSBAND 39 | WIFE 3 | SONS 1 | 6 | DAUGHTERS 3, 1 | OTHERS
TOTAL ACRES: OWNED 571.6 | LEASED 1,000 | CROP ACRES: OWNED 196 | LEASED 1,000 | PASTURE
OPERATED: FARM LAST YEAR ☑ YES ☐ NO | WORKED (LEASE): ☑ YES ☐ NO
TERMS OF LEASE: Cash rent 5 year N Macedonia
PERIOD OF LEASE: 1983 to Jan 1987

A. FINANCIAL STATEMENT AS OF August 1983

PROPERTY OWNED

	ACRES	VALUE
REAL ESTATE (LOCATION): FARM 1. Rt. 1 Box 139 Reedville VA	571.6	$247,000
OTHER REAL ESTATE	1 bldg	230,000
TOTAL REAL ESTATE		477,000
LIVESTOCK:	NO.	VALUE $
LIVESTOCK HELD FOR SALE		
DAIRY COWS	0	
BEEF COWS	0	
OTHER CATTLE	0	
BROOD SOWS AND GILTS	0	
OTHER HOGS	605	60,500
EWES	0	
OTHER SHEEP	0	
POULTRY	0	
TOTAL LIVESTOCK		$ 60,500
MACHINERY AND EQUIPMENT:		
AUTOMOBILES: YR. 1975 MAKE Chevy	1	2,000
TRACTORS: YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		318,081
Listed on 490-3.1		
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		330,081
OTHER PERSONAL PROPERTY:	QUAN. OR WT.	VALUE
CROPS HELD FOR SALE		$ 0
GROWING CROPS Soy C		87,875
FEED Barley/Corn	2 tons / 2 tons	2,000
SEED AND SUPPLIES		300
AUTOS: YR. 1975 MAKE Olds	1	1,500
HOUSEHOLD GOODS		18,000
CASH ON HAND		22,500
BONDS AND INVESTMENTS (FSA)		20,000
ACCTS. OWED US—COLLECTIBLE		21,922
TOTAL OTHER PERSONAL PROP.		176,277
TOTAL PROPERTY OWNED		$ 983,358

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	INCOME PLEDGE	UNPAID BALANCE
LIENS ON REAL ESTATE:					
FmHA (2nd)	2019	5%	3,801	1,141	43,237
41-12	2019	5.5	17,478	5,243	248,571
42-05	1998	8.0	2,342	0.0	16,491
29-13	2008	10.0	8,222	15,498	81,398
TOTAL LIENS ON R. E.			$	$	$
LIENS ON CHATTELS AND CROPS:					
FmHA 43-17	2001	5%	11,062	11,062	116,443
F.E. 43-16	1998	5%	4879	4879	24,12
FCA -RE	2009	12.5%	17,000	0	125,000
Total			34,007	33,035	705,980
FmHA 42-19	1990	16%	24,264	0.0	165,594
29-11	1987	9.5%	11,352	5,345	58,68
42-09	1989	15%	48,163	48,163	338,42
42-02	1986	5%	15,266	14,064	97,934
44-15	1988	10.5	4,385	13,016	30,829
43-18	1990	16%	52,573	17,600	153,162
TOTAL LIENS CHATTELS & CROPS			153,607	96,188	749,091
JUDGMENTS:					
TOTAL JUDGMENTS			$	$	10.00
TAXES DUE: REAL ESTATE $ ____ PERSONAL $ ____				TOTAL TAXES DUE	$ 0
INCOME & SOCIAL SECURITY $					
ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE):				1983	
Bank of Northumberland operating					34,010-G
Bank of Northumberland operating					21,000-G
Bank of VA $1,000 (Bank of No) oper.					17,500-G
Southern States - Wm. Hilltop					10,500-G
Ollinger Fertilizer					26,000-G
Water Billiott - Seed					27,000-G
					7,000-G
TOTAL OTHER DEBTS					163,000
TOTAL ALL DEBTS					$ 912,008

1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE (from C.B. number 5000, Cash Flow) 10,000 (P13) 117,500 — $ 107,500
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Handling) — $
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS — $ 107,500

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 176,750	$	$
5. TOTAL LAND DEBT	709,980		
6. TOTAL DEBTS OTHER THAN LAND	$ 522,028	$	$
PERIOD COVERED BY PLAN: FROM August 1983 TO Dec. 19 87			

*Yes H - To be Rescheduled Table H.

FmHA 431-2 (Rev. 9-8-75)

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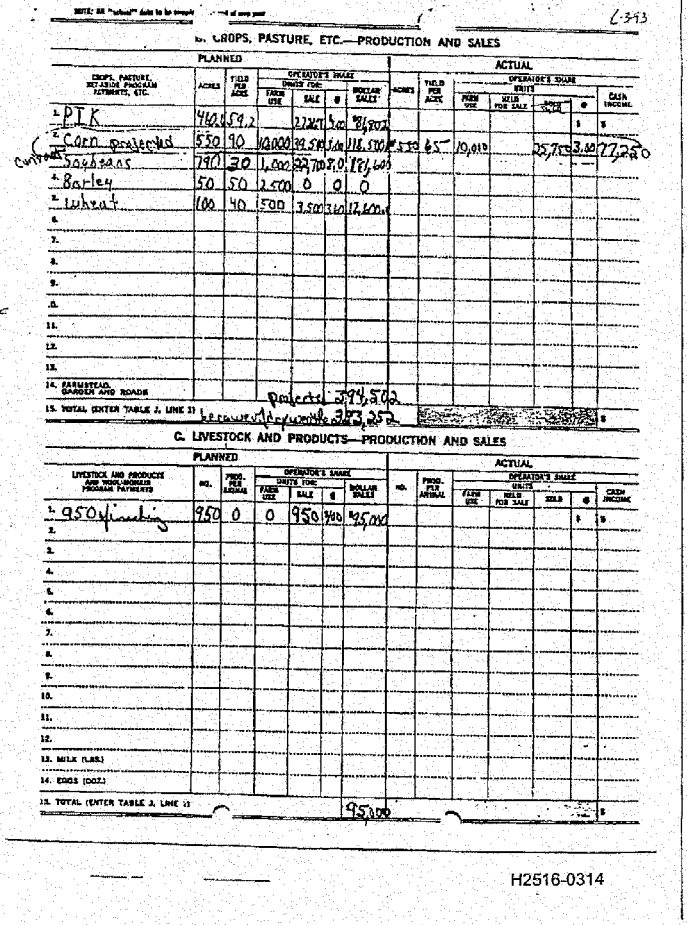


NOTE: All "actual" data to be [illegible] of [illegible]

C-393

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

PLANNED							ACTUAL						
CROPS, PASTURE, RETAINED PROGRAM PAYMENTS, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. PIK	460.6	59.2		27,267	3.00	$81,802						$	$
2. Corn projected	550	90	10,000	39,500	3.00	118,500	550	65	10,010		25,750	3.00	77,250
contract Soybeans	790	30	1,000	22,700	8.0	181,600							
4. Barley	50	50	2,500	0	0	0							
5. Wheat	100	40	500	3,500	3.60	12,600							
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)													$

projected 394,502

because of expenditure 393,252

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

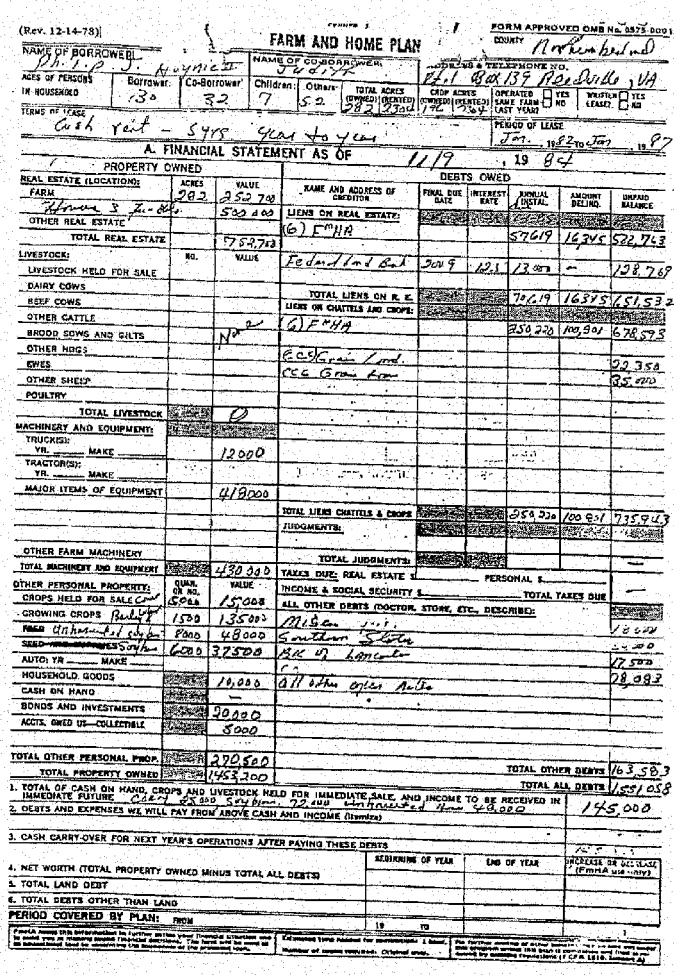
PLANNED							ACTUAL						
LIVESTOCK AND PRODUCTS AND WOOL-INCOMES PROGRAM PAYMENTS	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. 950 finishing	950	0	0	950	3.00	$95,000						$	$
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LINE 1)						95,000							$

H2516-0314

C-344

D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS; SOIL; LIVESTOCK; FINANCIAL MANAGEMENT; MAINTENANCE; REPAIRS; FOOD PRODUCTION AND CONSERVATION; HEALTH, HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES; ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENTS



(Rev. 12-14-78)

FARM AND HOME PLAN

FORM APPROVED OMB No. 0575-0001

NAME OF BORROWER: D. L. & J. Haynie II — NAME OF CO-BORROWER: Jr & Jr — COUNTY: Northumberland

ADDRESS & TELEPHONE NO.: Rt. 1 Box 139 Roxbury VA

AGES OF PERSONS IN HOUSEHOLD	Borrower: 30	Co-Borrower: 32	Children: 7	Others: 52	TOTAL ACRES (OWNED) 282	(RENTED) 394	CROP ACRES OWNED 170	RENTED 394	OPERATED SAME FARM LAST YEAR? YES NO	WHOLLY LEASED? YES NO

TERMS OF LEASE: Cash rent - 5 yrs Year to year — PERIOD OF LEASE: Jan. 1982 TO Jan 1987

A. FINANCIAL STATEMENT AS OF 1/1/84

PROPERTY OWNED

REAL ESTATE (LOCATION):	ACRES	VALUE
FARM Home & Lot	282	250 700
OTHER REAL ESTATE		500 000
TOTAL REAL ESTATE		750,700

LIVESTOCK:	NO.	VALUE
LIVESTOCK HELD FOR SALE		
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS	None	
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		0

MACHINERY AND EQUIPMENT:		
TRUCK(S): YR. ____ MAKE ____		12000
TRACTOR(S): YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		418000
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		430 000

OTHER PERSONAL PROPERTY:	QUAN. OR NO.	VALUE
CROPS HELD FOR SALE Corn	5000 bu	15,000
GROWING CROPS Barley	1500	135000
FEED Hay & Silage	8000	48000
SEED Soybeans	6000	37500
AUTO: YR. ____ MAKE ____		10,000
HOUSEHOLD GOODS		
CASH ON HAND		—
BONDS AND INVESTMENTS		20000
ACCTS. OWED US—COLLECTIBLE		5000
TOTAL OTHER PERSONAL PROP.		270,500
TOTAL PROPERTY OWNED		1453,200

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
(6) FmHA			$7619	16,245	522,763
Federal Land Bank	2009	12.5	13 000	—	198,769
TOTAL LIENS ON R. E.			20,619	16,245	751,532
LIENS ON CHATTELS AND CROPS:					
(2) FmHA			250,220	100,901	678,573
Ecclesia Land					92,358
CCC Grain Loan					35,000
TOTAL LIENS CHATTELS & CROPS			250,220	100,901	735,931
JUDGMENTS:					
TOTAL JUDGMENTS					

TAXES DUE: REAL ESTATE $ _____ PERSONAL $ _____

INCOME & SOCIAL SECURITY $ _____ TOTAL TAXES DUE

ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBED):

Misc	12,000
Southern States	2,500
Bk of Lancaster	17,500
All other open Accts	28,993

TOTAL OTHER DEBTS 163,583

TOTAL ALL DEBTS 1,651,058

1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE Corn 5000 bu Soybeans, 72,000 Wheat Harvested June $ 70,000 — 145,000

2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize)

3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE (FmHA use only)
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)			
5. TOTAL LAND DEBT			
6. TOTAL DEBTS OTHER THAN LAND			

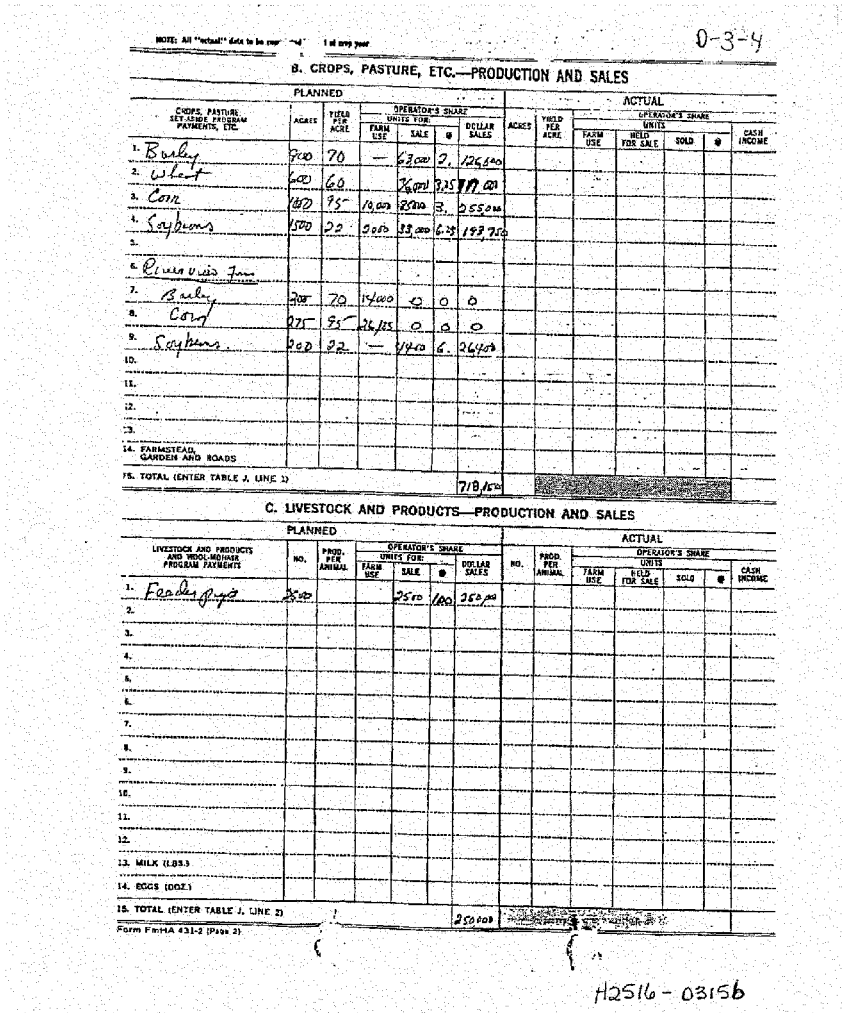
PERIOD COVERED BY PLAN: FROM _____ 19 ____ TO _____

FmHA keeps this information on purchasers who request loans to keep you informed about loan servicing programs that may be beneficial to you. The form will not be used in any other way without your consent, and is voluntary.

Estimated time needed for completion: 1 hour. Number of copies required: Original only.

The Farmers Home Administration is an equal opportunity lender. Complaints of discrimination should be sent to Secretary of Agriculture, Washington, D.C. 20250.

H2516-0315a



NOTE: All "actual" data to be reported [illegible] 1 of any year

D-3-4

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. Barley	900	70	—	63,000	2.	126,500							
2. Wheat	600	60		36,000	3.25	117,000							
3. Corn	1000	95	10,000	85000	3.	255000							
4. Soybeans	1500	22	2000	33,000	6.25	193,750							
5.													
6. Riverview Farm													
7. Barley	300	70	14000	0	0	0							
8. Corn	275	95	26,125	0	0	0							
9. Soybeans	200	22	—	4400	6.	26400							
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)						718,150							

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

LIVESTOCK AND PRODUCTS AND WOOL-MOHAIR PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. Feeder pigs	2500			2500	100	250,000							
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LINE 2)						250000							

Form FmHA 431-2 (Page 2)

H2516-0315b

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG.				
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL			15,000	

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR			40,000	
MACHINERY REPAIR			15,000	
FARM BUILDING & FENCE REPAIR			1000	
INTEREST			140,000	
RENT			125565	
FEED Sap mt			20,000	
SEED			80,000	
FERTILIZER			70,000	
PESTICIDES & SPRAY MATERIALS			20,000	
OTHER SUPPLIES			1000	
LIVESTOCK EXPENSE			1000	
MACHINERY HIRE			–	
FUEL AND OIL			7000	
PERSONAL PROP. TAX			800	
REAL ESTATE TAXES			3000	
WATER CHARGES			0	
PROPERTY INSURANCE			18,000	
AUTO & TRUCK EXPENSE			5000	
UTILITIES			7000	
Corp Ins			24000	
Feeder Pig Purchase			114,000	
CURRENT OPNG. BILLS (TABLE A)				
TOTAL			692363	

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
DEBTS REFINANCED (TABLE A)				
TOTAL				

I. CREDIT FOR:	OTHER	FHA	TOTAL	ACTUAL
FAMILY LIVING				
FARM OPERATING				
CAPITAL EXPENDITURES				
TOTAL				

J. SUMMARY OF YEAR'S BUSINESS	PLAN	~~ACTUAL~~
1. CROP INCOME (Table B)	718	150
2. LIVESTOCK INCOME (Table C)	250	000
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	–	–
4. TOTAL CASH FARM INCOME (1, 2 and 3)	968	150
5. CASH FARM OPERATING EXPENSES (Table G)	692	365
6. NET CASH FARM INCOME (4 Minus 5)	275	785
7. NON-FARM INCOME	0	000
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	275	785
9. CASH FAMILY LIVING EXPENSES (Table F)	15	000
10. NET CASH INCOME (8 Minus 9)	260	785
11. CASH CARRY-OVER (Page 1, Line 1)	145	000
12. LOANS AND OTHER CREDIT (Table I)	0	000
13. INTEREST (Table G)	140	000
14. TOTAL AVAILABLE (10, 11, 12 and 13)	545	785
15. CAPITAL EXPENDITURES (Table H)	0	00
16. BALANCE AVAILABLE (14 Minus 15)	545	785
17. GROSS CASH INCOME (4 Plus 7)	968	150

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN: PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
1984 Bills	$78,083	$78,083			$
FmHA (RE) (6)	57619	54,873			
ELB	13,000	13,000			
FmHA (CC) (6)	250,220	161,252			
SCC (2)	57,350	57,350			
MISC	18,000	18,000			
Southern State	50,000	50,000			
Bk of Lanc	17,500	17,500			
Corp Ins 1984	24500	24,500			
Interest on note	15,000	15,000			
INCOME AND SOCIAL SECURITY TAXES					
TOTAL	501272	492,558			

We agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary.
This instrument is a prospective plan only and does not release the security interest of the government in any security referred to herein.

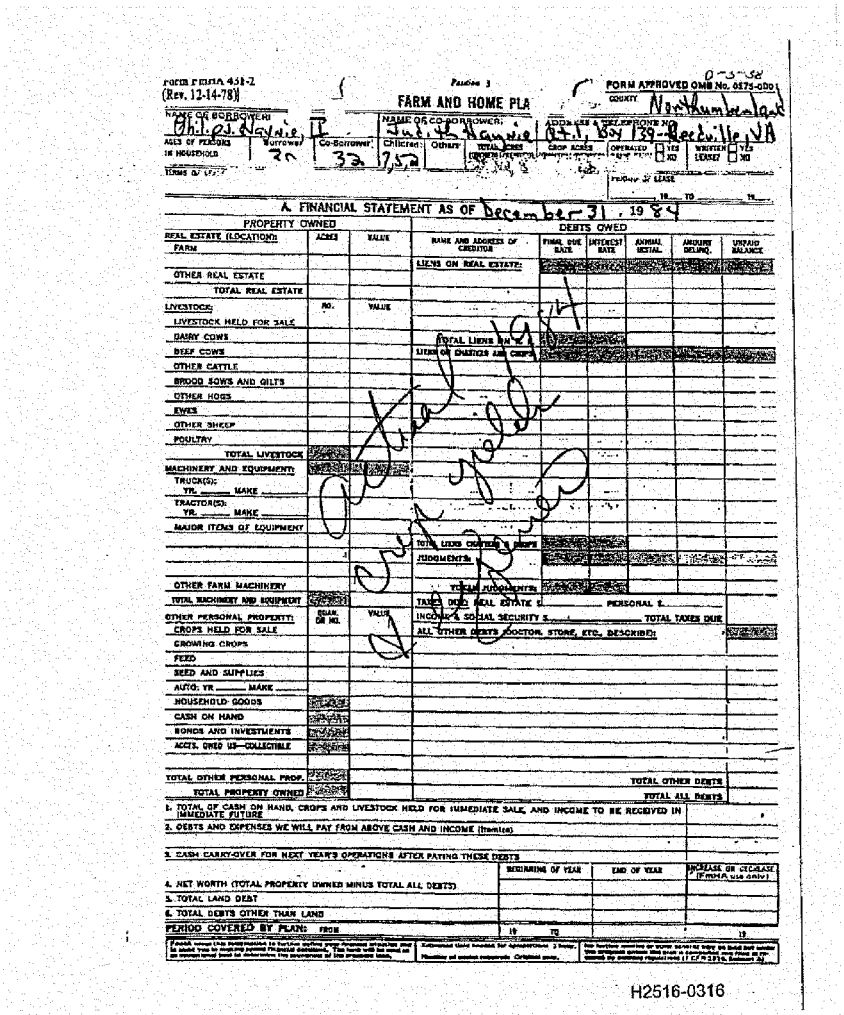
11/9/84
(Date)

(Borrower) [signature] (Co-Borrower)

[signature]
(County Supervisor)

Form FmHA 431-2 (Page 4)

H2516-0315e



FmHA FORM 431-2 (Rev. 12-14-78) — Page 3

FARM AND HOME PLA

FORM APPROVED OMB No. 0575-0001

COUNTY Northumberland

NAME OF BORROWER(S): Phillip Nevius

NAME OF CO-BORROWER: Sarah Hancock

ADDRESS & TELEPHONE NO.: 87.1, Box 139 - Reedville, VA

AGES OF PERSONS IN HOUSEHOLD: Borrower(s) 30; Co-Borrower 32; Children 1,5,a; Others

TOTAL ACRES OPERATED (Optional): 87

CROP ACRES: 87

OPERATED NOW FULLY: YES / NO

WRITTEN LEASE?: YES / NO

TERMS OF LEASE:

PRESENT LEASE: 19__ TO 19__

A. FINANCIAL STATEMENT AS OF December 31, 1984

PROPERTY OWNED

REAL ESTATE (LOCATION): FARM	ACRES	VALUE
OTHER REAL ESTATE		
TOTAL REAL ESTATE		

LIVESTOCK:	NO.	VALUE
LIVESTOCK HELD FOR SALE		
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS		
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		

MACHINERY AND EQUIPMENT:		
TRUCK(S): YR. ____ MAKE ____		
TRACTOR(S): YR. ____ MAKE ____		
MAJOR ITEMS OF EQUIPMENT		
OTHER FARM MACHINERY		
TOTAL MACHINERY AND EQUIPMENT		

OTHER PERSONAL PROPERTY:	EQUIP. OR NO.	VALUE
CROPS HELD FOR SALE		
GROWING CROPS		
FEED		
SEED AND SUPPLIES		
AUTO: YR ____ MAKE ____		
HOUSEHOLD GOODS		
CASH ON HAND		
BONDS AND INVESTMENTS		
ACCTS. OWED US—COLLECTIBLE		
TOTAL OTHER PERSONAL PROP.		
TOTAL PROPERTY OWNED		

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
TOTAL LIENS ON R.E.					
LIENS ON CROPS AND CHOPS					
TOTAL LIENS CHATTELS & CROPS					
JUDGMENTS					
TOTAL JUDGMENTS					

TAXES DUE: REAL ESTATE $ _____ PERSONAL $ _____

INCOME & SOCIAL SECURITY $ _____ TOTAL TAXES DUE

ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE):

TOTAL OTHER DEBTS

TOTAL ALL DEBTS

1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE

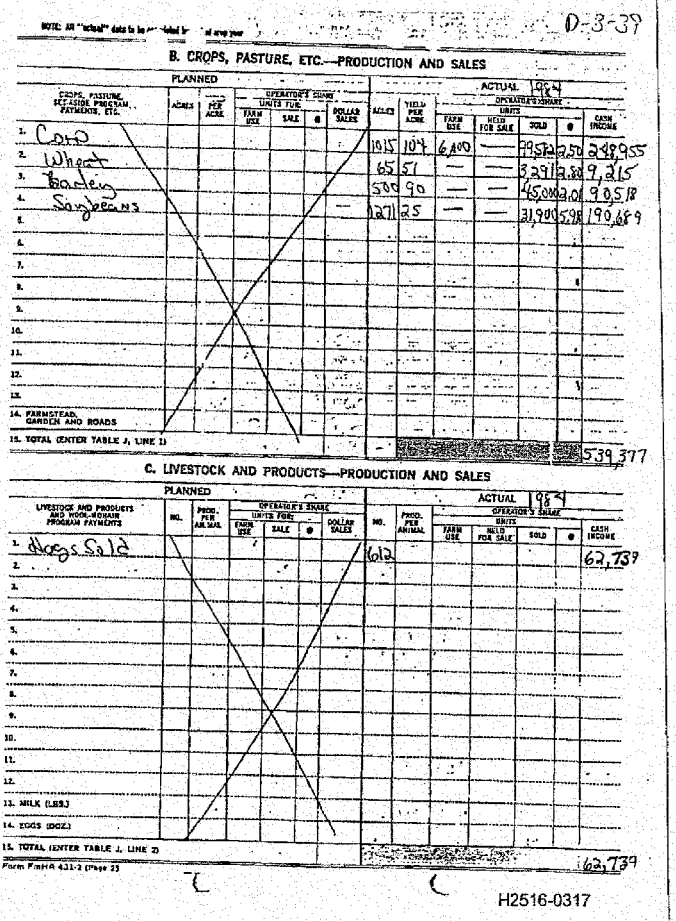
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize)

3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR (DECREASE) (FmHA use only)
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)			
5. TOTAL LAND DEBT			
6. TOTAL DEBTS OTHER THAN LAND			

PERIOD COVERED BY PLAN: FROM 19__ TO 19__

H2516-0316



D-3-39

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

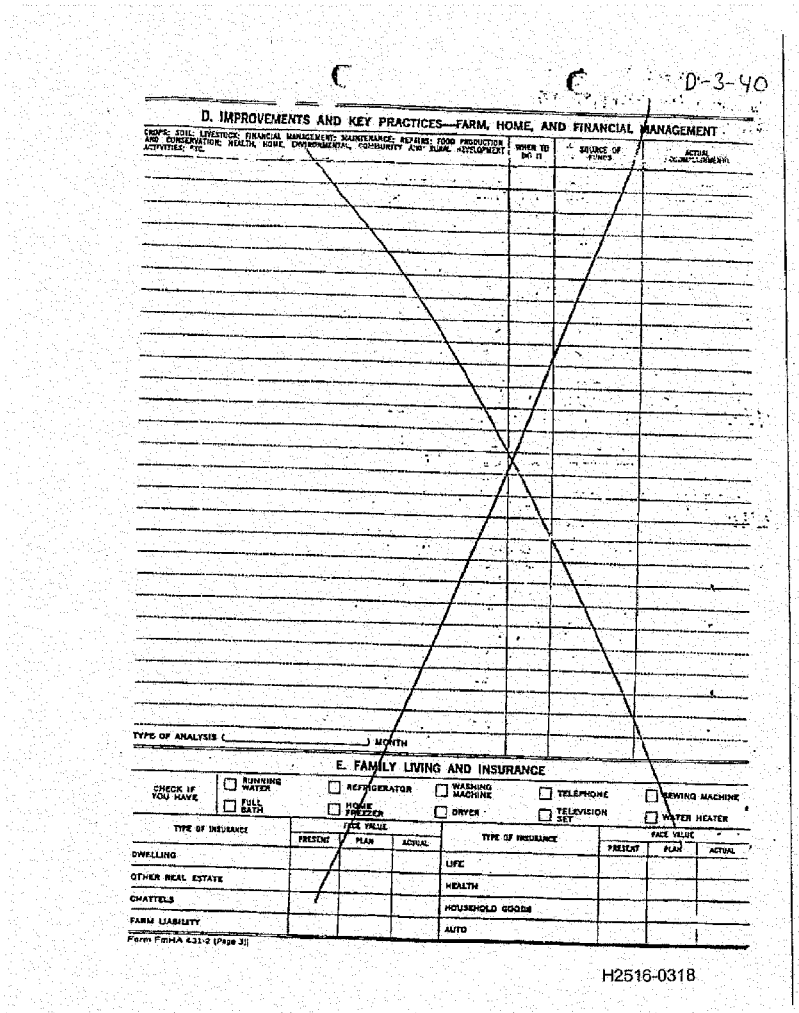
CROPS, PASTURE, SET-ASIDE PROGRAM, PAYMENTS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED SALE	PLANNED #	PLANNED DOLLAR SALES	ACTUAL 1984 ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1. Corn							1015	104	6,400	—	99,552	2.50	248,955
2. Wheat							65	57	—	—	3,291	2.88	9,315
3. Barley							500	90	—	—	45,000	2.01	90,518
4. Soybeans						—	1271	25	—	—	31,900	5.98	190,689
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)													539,377

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

LIVESTOCK AND PRODUCTS AND WOOL-MOHAIR PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED SALE	PLANNED #	PLANNED DOLLAR SALES	ACTUAL 1984 NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1. Hogs Sold							612						62,739
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LINE 2)													62,739

Form FmHA 431-2 (Page 2)

H2516-0317



D-3-40

D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS; SOIL; LIVESTOCK; FINANCIAL MANAGEMENT; MAINTENANCE; REPAIRS; FOOD PRODUCTION AND CONSERVATION; HEALTH; HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES; ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENT

TYPE OF ANALYSIS ( ) MONTH

E. FAMILY LIVING AND INSURANCE

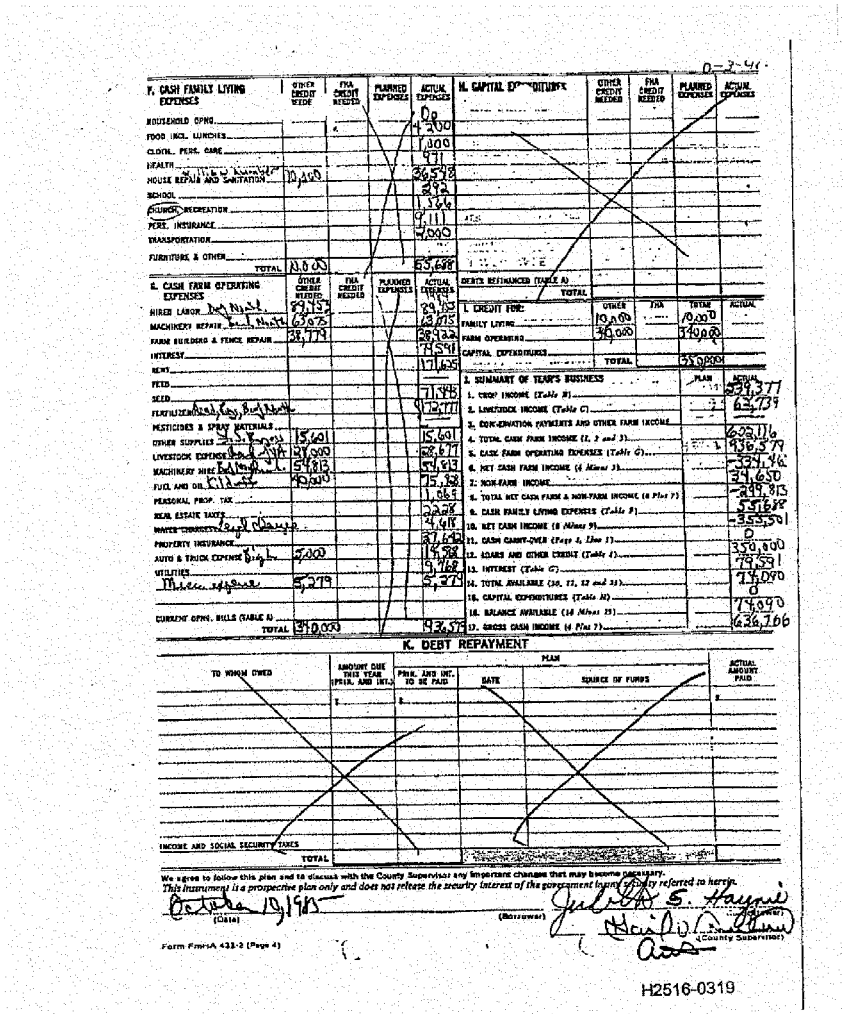
CHECK IF YOU HAVE: ☐ RUNNING WATER ☐ FULL BATH ☐ REFRIGERATOR ☐ HOME FREEZER ☐ WASHING MACHINE ☐ DRYER ☐ TELEPHONE ☐ TELEVISION SET ☐ SEWING MACHINE ☐ WATER HEATER

TYPE OF INSURANCE	FACE VALUE			TYPE OF INSURANCE	FACE VALUE		
	PRESENT	PLAN	ACTUAL		PRESENT	PLAN	ACTUAL
DWELLING				LIFE			
OTHER REAL ESTATE				HEALTH			
CHATTELS				HOUSEHOLD GOODS			
FARM LIABILITY				AUTO			

Form FmHA 431-2 (Page 3)

H2516-0318

D-3-41



F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG.				0
FOOD INCL. LUNCHES				4,200
CLOTH. PERS. CARE				1,000
HEALTH				971
HOUSE REPAIR AND SANITATION	10,400			36,548
SCHOOL				292
CHURCH, RECREATION				1,566
PERS. INSURANCE				9,111
TRANSPORTATION				2,000
FURNITURE & OTHER				
TOTAL	10,000			55,688

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR Beg Nat'l	89,952			89,952
MACHINERY REPAIR Beg Nat'l	63,075			63,075
FARM BUILDING & FENCE REPAIR	38,779			38,922
INTEREST				79,591
RENT				17,625
FEED				
SEED				71,448
FERTILIZER Beg, Reg, Beg Nat'l				172,777
PESTICIDES & SPRAY MATERIALS				
OTHER SUPPLIES S.S. Rogers	15,601			15,601
LIVESTOCK EXPENSE Beg Nat'l	28,000			28,677
MACHINERY HIRE Beg Nat'l	54,813			54,813
FUEL AND OIL Kilgore	40,000			75,988
PERSONAL PROP. TAX				1,069
REAL ESTATE TAXES				2,228
WATER CHARGES Legal Charge				4,618
PROPERTY INSURANCE				37,642
AUTO & TRUCK EXPENSE Big L	5,000			14,588
UTILITIES				9,768
Misc. expense	5,279			5,279
CURRENT OPNG. BILLS (TABLE A)				
TOTAL	340,000			936,579

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
DEBTS REFINANCED (TABLE A)				
TOTAL				

I. CREDIT FOR:	OTHER	FHA	TOTAL	ACTUAL
FAMILY LIVING	10,000		10,000	
FARM OPERATING	340,000		340,000	
CAPITAL EXPENDITURES				
TOTAL			350,000	

J. SUMMARY OF YEAR'S BUSINESS	PLAN	ACTUAL
1. CROP INCOME (Table B)		539,377
2. LIVESTOCK INCOME (Table C)		62,739
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME		
4. TOTAL CASH FARM INCOME (1, 2 and 3)		602,116
5. CASH FARM OPERATING EXPENSES (Table G)		936,579
6. NET CASH FARM INCOME (4 Minus 5)		-334,46
7. NON-FARM INCOME		34,650
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)		-299,813
9. CASH FAMILY LIVING EXPENSES (Table F)		55,688
10. NET CASH INCOME (8 Minus 9)		-355,501
11. CASH CARRY-OVER (Page 4, Line 1)		0
12. LOANS AND OTHER CREDIT (Table I)		350,000
13. INTEREST (Table G)		79,591
14. TOTAL AVAILABLE (10, 11, 12 and 13)		74,090
15. CAPITAL EXPENDITURES (Table H)		0
16. BALANCE AVAILABLE (14 Minus 15)		74,090
17. GROSS CASH INCOME (4 Plus 7)		636,766

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
	$	$			$
INCOME AND SOCIAL SECURITY TAXES					
TOTAL					

We agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary.
This instrument is a prospective plan only and does not release the security interest of the government in any security referred to herein.

October 10, 1985 (Date) (Borrower) Judith S. Haynie (Borrower)

Harold V. [illegible] (County Supervisor)

Form FmHA 433-2 (Page 4)

H2516-0319

Position 1 ELS-11 FORM APPROVED OMB NO. 0575-0081

Form FmHA 431-2 (Rev. 7-88) U.S. Department of Agriculture Farmers Home Administration

PERIOD COVERED BY PLAN: From Jan 1 1989 to Dec 31 1980

NAME OF APPLICANT/BORROWER: Philip J Haxnie II

FARM AND HOME PLAN

CASE NUMBER:

DATE OF PLAN: 2-16-89

ACRES OWNED: TOTAL (200) CROP (1 20)

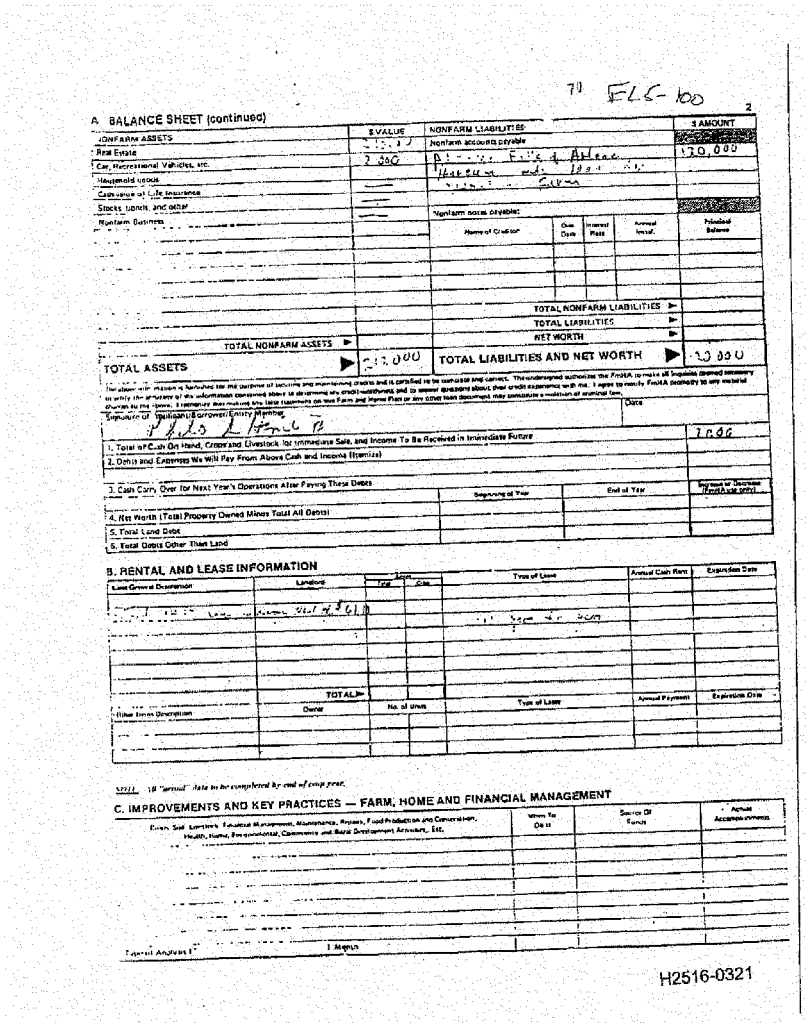
A. BALANCE SHEET

CURRENT FARM ASSETS			$ VALUE
Cash: Savings: ($) Checking: ($ 2,000)			
Other Invest: (Time Cert $) (Other $)			
Accounts and Notes Receivable			
Crops and Feed	Units	Value Per Unit	
Soybeans (seed)	1300	7.00	2,100
Livestock to be sold	Units	Unit Weight / Value Per Unit	
NONE			
Growing crops	Acres	Cost/Acre	
Wheat	150	$ 90	13,500
Barley	100	$ 90	8,000
Supplies & Prepaid Expenses	NONE		
Leases			
Other			
TOTAL CURRENT FARM ASSETS ►			23,600
INTERMEDIATE FARM ASSETS			
Accounts & Notes Receivable beyond 12 months			
Breeding Livestock	Units	Value Per Unit	
NONE			
Machinery, Equipment, Vehicles			75,000
Cash Value, Life Ins. (Face Amt. $)			
CCC Grain Reserves (Qty. 90,000 bu/ln) (Value/Unit 2.77)			249,300
Other			
TOTAL INTERMEDIATE FARM ASSETS ►			438,800
LONG TERM FARM ASSETS (Farm Real Estate)			
Farm Area	Date Purchased	Cost	
128.1 Remainder of tech	1979	100,000	100,000
70.5 Land	1975-1980	10,000	70,000
1.5 mill House	1975	Gift	45,000
Coop Stock			
Equity in Partnerships/Corporations/Joint Operations/Cooperatives			
Other			
TOTAL LONG TERM FARM ASSETS ►			215,000
TOTAL FARM ASSETS ►			677,400

CURRENT FARM LIABILITIES		$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)	Part Due	
Walter Kildaff	79.75	
Kilmonock Motor Sale	9,500	
Farmers Auto Service	16,065	
Rooster	72,000	
Martha Seed	17.95	
Farm Plan	8,400	
Northwest Tracer	6,000	
Lilian Lauber Co	12,599	
W.C. Conger	15,000	
Janice Forster	9,000	Total
Westmoreland Grain	60,000	1,295,593
CCC Loan: (Security Corn - Soybeans) (Due Date 1-30-89)		249,300
Current Portion of Principal Due on:		
Intermediate Liabilities Bank Northumberland		13,000
Long Term Liabilities		
Accrued Interest on:		
Accounts and Notes Payable		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (judgments, liens, etc.)		173,003
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ►		720,896
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Delinquency	
CCC Grain Reserve		
Facilities Part. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ►		
LONG TERM FARM LIABILITIES (portions due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Delinquency	
FMHA		1,760,820
Farm Credit		26,062
Other		
TOTAL LONG TERM FARM LIABILITIES ►		1,786,882
TOTAL FARM LIABILITIES ►		2,507,778

This reporting burden for this collection of information is estimated to average 2½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Officer, OIRM, 6 Bldg. 400-W, Washington, D.C. 20250, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

H2516-0320



71 FLC-100

A. BALANCE SHEET (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES	$ AMOUNT
Real Estate		Nonfarm accounts payable	
Car, Recreational Vehicles, etc.	2,000	Doctor Bills & Misc	120,000
Household Goods		Medical and Misc	
Cash value of Life Insurance		Taxes	
Stocks, bonds, and other		Nonfarm notes payable:	
Nonfarm Business		Name of Creditor / Date / Interest Rate / Annual Install. / Principal Balance	
TOTAL NONFARM ASSETS ▶		TOTAL NONFARM LIABILITIES ▶	
		TOTAL LIABILITIES ▶	
		NET WORTH ▶	
TOTAL ASSETS ▶	2,000	TOTAL LIABILITIES AND NET WORTH ▶	120,000

I (we) authorize the FmHA to make all inquiries deemed necessary to verify the accuracy of the information contained above as determine my (our) creditworthiness and to obtain answers about their credit experience with me. I agree to notify FmHA promptly of any material change to the items. I understand that making any false statements on this Farm and Home Plan or any other loan document may constitute a violation of criminal law.

Signature of Applicant(s)/Borrower/Entity Member — Date

Phillip L Hall Jr

1. Total of Cash On Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future	2000
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)	
3. Cash Corn, Over (or Next Year's Operations After Paying These Debts	

	Beginning of Year	End of Year	Increase or Decrease (Explain on page 3)
4. Net Worth (Total Property Owned Minus Total All Debts)			
5. Total Land Debt			
6. Total Debts Other Than Land			

B. RENTAL AND LEASE INFORMATION

Land General Description	Landlord	Acres: Tillable	Acres: Other	Type of Lease	Annual Cash Rent	Expiration Date
	TOTAL ▶					

Other Items Description	Owner	No. of Units	Type of Lease	Annual Payment	Expiration Date

NOTE: All "annual" data to be completed by end of crop year.

C. IMPROVEMENTS AND KEY PRACTICES — FARM, HOME AND FINANCIAL MANAGEMENT

Farm, Soil, Livestock, Financial Management, Maintenance, Repairs, Food Production and Conservation, Health, Home, Environmental, Community and Rural Development Activities, Etc.	When To Do It	Source Of Funds	Actual Accomplishments

Financial Analysis #: 1 Applic

H2516-0321

ELS-101

D. CROPS, PASTURE, ETC. — PRODUCT . AND SALES 3

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED 1984 ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	#	DOLLAR SALES	ACTUAL ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1. Corn	340	100		34000	3.00	102,000	340	31.01			10,545	2.47	26,046
2. Wheat	268	50	450 seed	12950	3.00	38,850	268	45	450		11,620	3.00	34,830
3. Barley	180	60	300 seed	10,500	1.40	14,700	180	55	300		9,600	1.45	13,920
4. Soybeans	1257	25	1000 seed	30,425	6.00	182,550	1257	18.9			CCC 23,800	CCC 4.82	114,716
5.													
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, GARDEN AND ROADS													
12. TOTAL (ENTER TABLE J, LINE 1)						338,100	1615						189,572

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

LIVESTOCK AND PRODUCTS AND WOOL, MOHAIR PROGRAM PAYMENTS	PLANNED NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	#	DOLLAR SALES	ACTUAL NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1.													
2.	NONE												
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
12. TOTAL (ENTER TABLE J, LINE 2)													

H2516-0322

FL5-102

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG				4,200
FOOD INCL. LUNCHES				5,000
CLOTH., PERS. CARE				1,500
HEALTH				[illegible]
HOUSE REPAIR AND SANITATION				[illegible]
SCHOOL				210
CHURCH, RECREATION				1,500
PERS. INSURANCE [illegible]				3,000
TRANSPORTATION				3,000
FURNITURE & OTHER				200
TOTAL ▶				[illegible]

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR			[illegible]	31,000
MACHINERY REPAIR			[illegible]	[illegible]
FARM BUILDING & FENCE REPAIR			[illegible]	500
INTEREST			[illegible]	19,000
RENT			[illegible]	[illegible]
FEED			[illegible]	[illegible]
SEED			8,500	8,500
FERTILIZER			50,000	105,400
PESTICIDES & SPRAY MATERIALS			[illegible]	57,225
OTHER SUPPLIES				
LIVESTOCK EXPENSE				—
MACHINERY HIRE			—	[illegible]
FUEL AND OIL			[illegible]	14,574
PERSONAL PROP. TAX			1,000	1,900
REAL ESTATE TAXES			[illegible]	[illegible]
WATER CHARGES				—
PROPERTY INSURANCE			[illegible]	7,500
AUTO & TRUCK EXPENSE			[illegible]	[illegible]
UTILITIES			[illegible]	[illegible]
[illegible]			[illegible]	20,000
CURRENT OPNG. BILLS (TABLE A)				
TOTAL ▶			[illegible]	[illegible]

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
NOTE				
DEBTS REFINANCED (TABLE A)				
TOTAL ▶				

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
FAMILY LIVING				26,100
FARM OPERATING				566,149
CAPITAL EXPENDITURES				—
TOTAL ▶				[illegible]

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME (Table D)	338,100	184,5[illegible]
2. LIVESTOCK INCOME (Table E)		
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	50,000	50,000
4. TOTAL CASH FARM INCOME (1, 2 and 3)	388,100	239,[illegible]
5. CASH FARM OPERATING EXPENSES (Table G)	[illegible]	566,[illegible]
6. NET CASH FARM INCOME (4 Minus 5)		-326,6[illegible]
7. NON-FARM INCOME		1,500
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	—	325,1[illegible]
9. CASH FAMILY LIVING EXPENSES (Table F)	—	24,100
10. NET CASH INCOME (8 Minus 9)	—	351,2[illegible]
11. CASH CARRY-OVER (Page 2, Line 3)		—
12. LOANS AND OTHER CREDIT (Table I)		[illegible]
13. INTEREST (Table G)		[illegible]
14. TOTAL AVAILABLE (10, 11, 12 and 13)		
15. CAPITAL EXPENDITURES (Table H)		—
16. BALANCE AVAILABLE (14 Minus 15)		
17. GROSS CASH INCOME (4 Plus 7)		

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN: PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶					

I agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary. This instrument is a prospective plan only and does not release the security interest of the government in any security referred to in this plan.

"THE COURSE THAT MAKING ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW."

Signature of Applicant Borrower | Date

Signature of County Supervisor | Date

U.S. GOVERNMENT PRINTING OFFICE [illegible]

H2516-0323

ELS-98

MAR 21 1989

Gail.

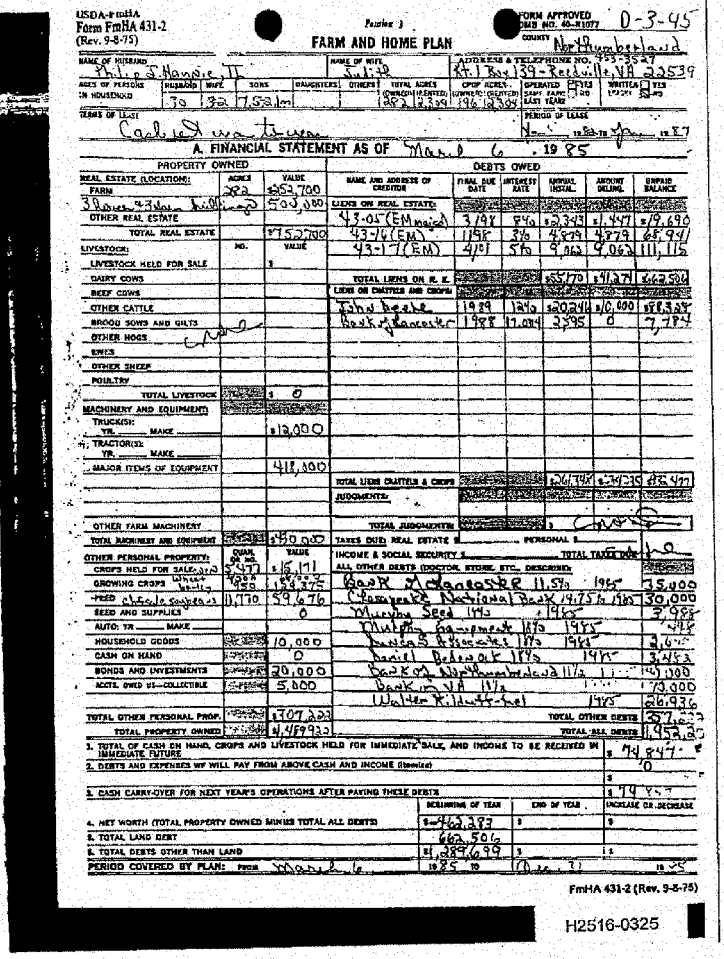
Attached is the 1989 + 1994 F+H Plan for Philip Haynie.
Also supporting info we received from him.
You will see on his deferral plan I estimated that he would still
be making pymts on his overdue accounts + judgements. I also
did not fill in F+H part of table K because Dalles figures
this part + you need to know his other pymts due.

If you have any questions or want to change anything, feel free
to contact me.

Mike

Also attached is your copy of letter detailing me to
Warsaw

H2516-0324



USDA-FmHA
Form FmHA 431-2
(Rev. 9-8-75)

Position 3

FORM APPROVED
OMB NO. 40-R1077 D-3-45

FARM AND HOME PLAN

COUNTY Northumberland

NAME OF HUSBAND	NAME OF WIFE	ADDRESS & TELEPHONE NO.
Philip S. Hancock II	Sukey	Rt. 1 Box 139 - Reedville, VA 22539

AGES OF PERSONS IN HOUSEHOLD	HUSBAND	WIFE	SONS	DAUGHTERS	OTHERS	TOTAL ACRES	CROP ACRES	OPERATED	WRITTEN
	30	32	7, 3 mo			OWNED / LEASED: 183 / 2,339	196 / 1,309	FULL FARM ☐ YES ☐ NO; LAST YEAR	1985? ☐ YES ☐ NO

TERMS OF LEASE Cash & warehouse — PERIOD OF LEASE No. — 19 86 TO 19 87

A. FINANCIAL STATEMENT AS OF March 6, 1985

PROPERTY OWNED

REAL ESTATE (LOCATION): FARM	ACRES	VALUE
30 Acres w/ House Lot	202	$352,700
		500,000
OTHER REAL ESTATE		
TOTAL REAL ESTATE		$752,700

LIVESTOCK:	NO.	VALUE
LIVESTOCK HELD FOR SALE		$
DAIRY COWS		
BEEF COWS		
OTHER CATTLE		
BROOD SOWS AND GILTS	CMO	
OTHER HOGS		
EWES		
OTHER SHEEP		
POULTRY		
TOTAL LIVESTOCK		$ 0

MACHINERY AND EQUIPMENT	
TRUCK(S): YR. ____ MAKE ____	$12,000
TRACTOR(S): YR. ____ MAKE ____	
MAJOR ITEMS OF EQUIPMENT	418,000
OTHER FARM MACHINERY	
TOTAL MACHINERY AND EQUIPMENT	$430,000

OTHER PERSONAL PROPERTY:	QUAN. OR NO.	VALUE
CROPS HELD FOR SALE	5477	$ 15,171
GROWING CROPS Winter Barley	1055	124,375
FEED Whole soybeans	11,770	59,676
SEED AND SUPPLIES		0
AUTO: YR. ____ MAKE ____		
HOUSEHOLD GOODS		10,000
CASH ON HAND		0
BONDS AND INVESTMENTS		20,000
ACCTS. OWED US—COLLECTIBLE		5,000
TOTAL OTHER PERSONAL PROP.		$207,203
TOTAL PROPERTY OWNED		$1,489,903

DEBTS OWED

NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
LIENS ON REAL ESTATE:					
43-05 (EM mortgage)	3/87	5%	$ 2,343	$ 1,447	$ 19,690
43-16 (EM)	1195	5%	4879	4779	66,941
43-17 (EM)	4/01	5%	9,063	9,063	111,115
TOTAL LIENS ON R. E.				$ 15,289	$ 197,746
LIENS ON CHATTELS AND CROPS:					
John Deere	1989	12%	$ 20,241	$ 10,600	$ 58,389
Bank of Lancaster	1988	11.0%	3595	0	7,794
TOTAL LIENS CHATTELS & CROPS			$ 24,236	$ 10,600	$ 66,183
JUDGMENTS:					
TOTAL JUDGMENTS			$		
TAXES OWED REAL ESTATE $ ____ PERSONAL $ ____				TOTAL TAXES DUE	No
INCOME & SOCIAL SECURITY $ ____				TOTAL TAXES DUE	
ALL OTHER DEBTS (DOCTOR, STORE, ETC., DESCRIBE)					
Bank of Kilmarnock 11.5%	1985				35,000
Chesapeake National Bank 14.75%	1985				30,000
Mumford Seed 1985	1985				3,955
Multiple Equipment 11%	1985				548
Daniel S. Hancock 11%	1985				3,000
Daniel Rebarchek 11%	1985				3,453
Bank of Northumberland 11%	1				40,000
Bank of VA 11%					19,000
Walter Kidwell-Sail	1985				26,936
				TOTAL OTHER DEBTS	357,292
				TOTAL ALL DEBTS	1,955,292

1. TOTAL OF CASH ON HAND, CROPS AND LIVESTOCK HELD FOR IMMEDIATE SALE, AND INCOME TO BE RECEIVED IN IMMEDIATE FUTURE	$ 74,847
2. DEBTS AND EXPENSES WE WILL PAY FROM ABOVE CASH AND INCOME (Itemize)	0
	$
3. CASH CARRY-OVER FOR NEXT YEAR'S OPERATIONS AFTER PAYING THESE DEBTS	$ 74,847

	BEGINNING OF YEAR	END OF YEAR	INCREASE OR DECREASE
4. NET WORTH (TOTAL PROPERTY OWNED MINUS TOTAL ALL DEBTS)	$ 462,387	$	$
5. TOTAL LAND DEBT	662,506		
6. TOTAL DEBTS OTHER THAN LAND	$ 1,289,699	$	$
PERIOD COVERED BY PLAN: FROM March 6	19 85 TO	(One yr. ?)	19 86

FmHA 431-2 (Rev. 9-8-75)

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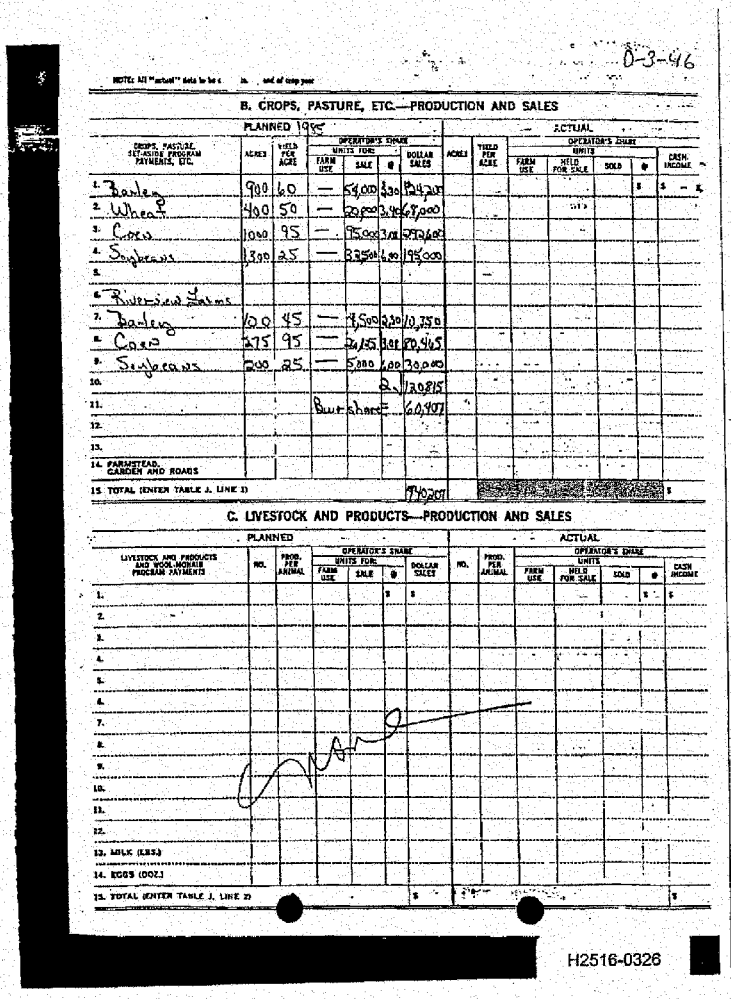

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NOTE: All "actual" data to be c... in ... end of crop year

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

	PLANNED 1955						ACTUAL						
CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1. Barley	900	60	—	54,000	2.30	124,200						$	$ — $
2. Wheat	400	50	—	20,000	3.40	68,000							
3. Corn	1000	95	—	95,000	3.08	292,600							
4. Soybeans	1300	25	—	32,500	6.00	195,000							
5.													
6. Riverview Farms													
7. Barley	100	45	—	4,500	2.30	10,350							
8. Corn	275	95	—	26,125	3.08	80,465							
9. Soybeans	200	25	—	5,000	6.00	30,000							
10.						120,815							
11.			Burt share =			60,407							
12.													
13.													
14. FARMSTEAD, GARDEN AND ROADS													
15. TOTAL (ENTER TABLE J, LINE 1)						940,207							$

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

	PLANNED						ACTUAL						
LIVESTOCK AND PRODUCTS AND WOOL-MOHAIR PROGRAM PAYMENTS	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1.					$	$						$	$
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13. MILK (LBS.)													
14. EGGS (DOZ.)													
15. TOTAL (ENTER TABLE J, LINE 2)						$							$

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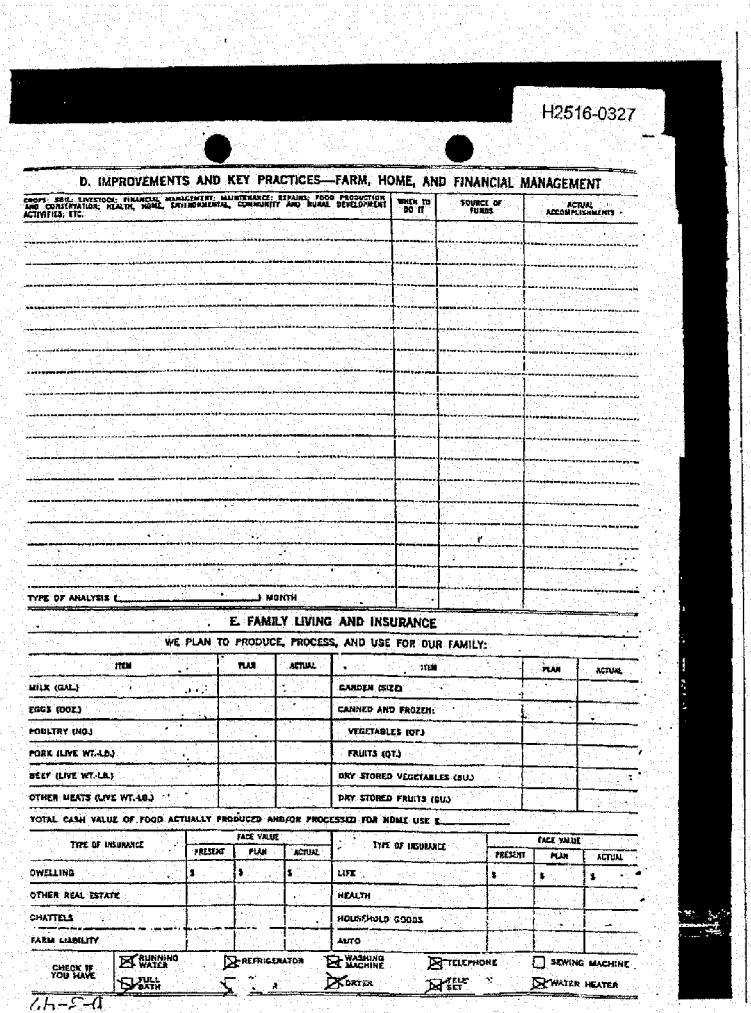

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D. IMPROVEMENTS AND KEY PRACTICES—FARM, HOME, AND FINANCIAL MANAGEMENT

CROPS, SOILS, LIVESTOCK, FINANCIAL MANAGEMENT, MAINTENANCE, REPAIRS, FOOD PRODUCTION AND CONSERVATION, HEALTH, HOME, ENVIRONMENTAL, COMMUNITY AND RURAL DEVELOPMENT ACTIVITIES, ETC.	WHEN TO DO IT	SOURCE OF FUNDS	ACTUAL ACCOMPLISHMENTS
TYPE OF ANALYSIS (_____) MONTH			

E. FAMILY LIVING AND INSURANCE

WE PLAN TO PRODUCE, PROCESS, AND USE FOR OUR FAMILY:

ITEM	PLAN	ACTUAL	ITEM	PLAN	ACTUAL
MILK (GAL.)			GARDEN (SIZE)		
EGGS (DOZ.)			CANNED AND FROZEN:		
POULTRY (NO.)			VEGETABLES (QT.)		
PORK (LIVE WT.-LB.)			FRUITS (QT.)		
BEEF (LIVE WT.-LB.)			DRY STORED VEGETABLES (BU.)		
OTHER MEATS (LIVE WT.-LB.)			DRY STORED FRUITS (BU.)		

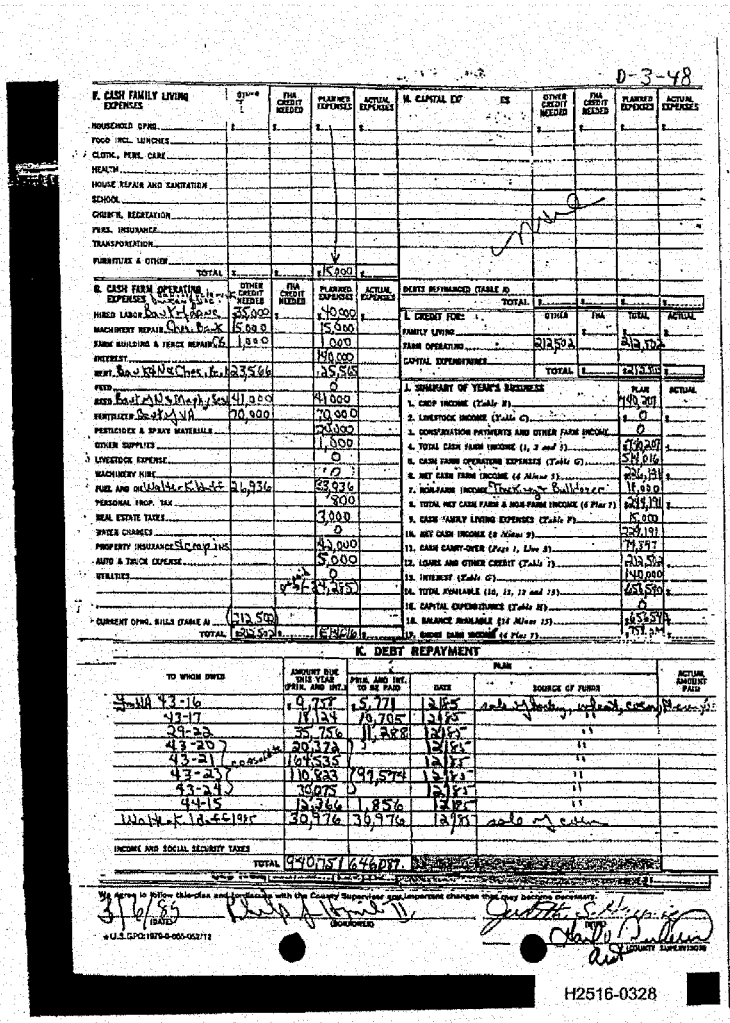
TOTAL CASH VALUE OF FOOD ACTUALLY PRODUCED AND/OR PROCESSED FOR HOME USE $_____

TYPE OF INSURANCE	FACE VALUE			TYPE OF INSURANCE	FACE VALUE		
	PRESENT	PLAN	ACTUAL		PRESENT	PLAN	ACTUAL
DWELLING	$	$	$	LIFE	$	$	$
OTHER REAL ESTATE				HEALTH			
CHATTELS				HOUSEHOLD GOODS			
FARM LIABILITY				AUTO			

CHECK IF YOU HAVE

☒ RUNNING WATER	☒ REFRIGERATOR	☒ WASHING MACHINE	☒ TELEPHONE	☐ SEWING MACHINE
☒ FULL BATH	☒	☒ DRYER	☒ TELE SET	☒ WATER HEATER

7h-E-a



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F. CASH FAMILY LIVING EXPENSES	Size 7	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD EXPS.		$	$	$
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL		$	$15,000	$

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR Bank Y Farms	35,000	$	$ 40,000	$
MACHINERY REPAIR Chas. Bank	15,000		15,000	
FARM BUILDING & FENCE REPAIR Bk	1,000		1,000	
INTEREST			90,000	
RENT Bank N & Chas. Jr.	23566		25,565	
FEED			0	
SEED Bank N & Murphy Seed	41,000		41,000	
FERTILIZER Bank N & NA	70,000		70,000	
PESTICIDES & SPRAY MATERIALS			20,000	
OTHER SUPPLIES			1,000	
LIVESTOCK EXPENSE			0	
MACHINERY HIRE			0	
FUEL AND OIL Wallace K Bk	26,936		53,936	
PERSONAL PROP. TAX			800	
REAL ESTATE TAXES			3,000	
DRYER CHARGES			0	
PROPERTY INSURANCE Scrap Ins.			43,000	
AUTO & TRUCK EXPENSE			5,000	
UTILITIES			0	
		Bank	$ 25,355	
CURRENT OPNG. BILLS (TABLE J)	(212,500)			
TOTAL	$ 236,936		$ 436,656	

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FHA CREDIT NEEDED	PLANNED EXPENDITURES	ACTUAL EXPENDITURES
	$	$	$	$
DEBTS REFINANCED (TABLE K)				
TOTAL	$	$	$	$

I. CREDIT FOR:	OTHER	FHA	TOTAL	ACTUAL
FAMILY LIVING		$	$	$
FARM OPERATING	212,500		212,500	
CAPITAL EXPENDITURES				
TOTAL	$	$	$ 221,500	$

J. SUMMARY OF YEAR'S BUSINESS	PLAN	ACTUAL
1. CROP INCOME (Table B)	149,207	
2. LIVESTOCK INCOME (Table C)	$ 0	$
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	0	
4. TOTAL CASH FARM INCOME (1, 2 and 3)	$ 149,207	$
5. CASH FARM OPERATING EXPENSES (Table G)	534,016	
6. NET CASH FARM INCOME (4 Minus 5)	$ (384,131)	$
7. NON-FARM INCOME Tractor + Bulldozer	18,000	
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	$ (366,131)	$
9. CASH FAMILY LIVING EXPENSES (Table F)	15,000	
10. NET CASH INCOME (8 Minus 9)	(381,131)	
11. CASH CARRY-OVER (Part I, Line 8)	74,597	
12. LOANS AND OTHER CREDIT (Table I)	212,500	
13. INTEREST (Table G)	140,000	
14. TOTAL AVAILABLE (10, 11, 12 and 13)	$ (453,500)	$
15. CAPITAL EXPENDITURES (Table H)	0	
16. BALANCE AVAILABLE (14 Minus 15)	$ (453,500)	$
17. FARM INCOME (4 Plus 7)	167,207	$

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN: PRIN. AND INT. TO BE PAID	PLAN: DATE	PLAN: SOURCE OF FUNDS	ACTUAL AMOUNT PAID
Bank WA 93-16	$ 9,758	$ 5,771	12/85	sale of livestock, equipment, crops	
93-17	17,124	10,705	12/85	"	
93-20	35,756	11,788	12/85	"	
93-20	20,378	"	12/85	"	
93-21	104,535		12/85	"	
93-23	110,933	99,574	12/85	"	
93-24	39,075	"	12/85	"	
94-15	15,766	1,856	12/85	"	
Wallace Bk 6619	30,976	30,976	12/85	sale of cotton	
INCOME AND SOCIAL SECURITY TAXES					
TOTAL	$ 970,758	$ 646,077			

We agree to follow the plan and proposals with the County Supervisor and report changes that may become necessary.

3/6/85
DATE

BORROWER

BORROWER

COUNTY SUPERVISOR

*U.S.GPO:1979-0-055-052/12

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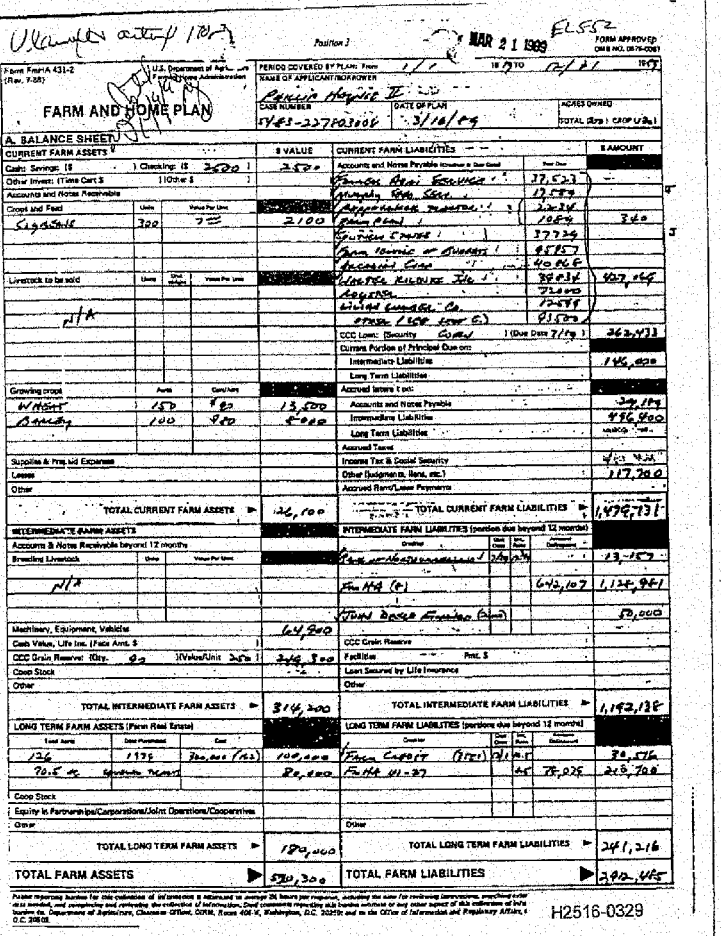

Position 1

MAR 2 1 1989

FL552

Form FmHA 431-2 (Rev. 7-88) — U.S. Department of Agriculture, Farmers Home Administration

FARM AND HOME PLAN

PERIOD COVERED BY PLAN: From 1/1 19 89 TO 12/31 19 89

NAME OF APPLICANT/BORROWER: Phillip Hopkins II

CASE NUMBER: 543-22-7903-06

DATE OF PLAN: 3/10/89

ACRES OWNED: TOTAL (Exs.) CROP (Acs.)

A. BALANCE SHEET

CURRENT FARM ASSETS		$ VALUE
Cash; Savings: ($) Checking: ($ 3500)		3500
Other Invest: (Time Cert.$) (Other $)		
Accounts and Notes Receivable		
Crops and Feed — Units: Silage Tons; Value Per Unit: 7	300	2100
Livestock to be sold — Units: ; Gross Weight: ; Value Per Unit:		
N/A		
Growing crops — Acres: ; Cost/Acre:		
Wheat	150	13,500
Barley	100	8000
Supplies & Prepaid Expenses		
Leases		
Other		
TOTAL CURRENT FARM ASSETS ►		26,100
INTERMEDIATE FARM ASSETS		
Accounts & Notes Receivable beyond 12 months		
Breeding Livestock — Units: ; Value/Unit:		
N/A		
Machinery, Equipment, Vehicles		64,900
Cash Value, Life Ins. ($ Face Amt. $)		
CCC Grain Reserve: (Qty. 80) (Value/Unit 3.58)		286,300
Coop Stock		
Other		
TOTAL INTERMEDIATE FARM ASSETS ►		$14,200
LONG TERM FARM ASSETS (Farm Real Estate)		
126 acres — Date Purchased: 1975 — Cost: 800,000 (Est.)		100,000
70.5 ac — Residence Home		80,000
Coop Stock		
Equity in Partnerships/Corporations/Joint Operations/Cooperatives		
Other		
TOTAL LONG TERM FARM ASSETS ►		180,000
TOTAL FARM ASSETS ▶		530,300

CURRENT FARM LIABILITIES	Due Date	$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)		
Farmers Assn Exchange		37,523
Kennedy Seed Store		12,587
Agricultural Chemical		2,234
Farm Plant		1084
Southern Electric		37734
Farm Service or Supply		8585
Accounts Close		40 N.C.
Electric Kilowatt Inc		38634
Insurance		72000
Allied Mutual Co.		12688
Store (Coop Store C)		81589
CCC Loan: (Security Grain)	(Due Date 7/89)	362,933
Current Portion of Principal Due on:		
Intermediate Liabilities		146,400
Long Term Liabilities		
Accrued taxes t ext:		
Accounts and Notes Payable		34,184
Intermediate Liabilities		496,600
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (Judgments, liens, etc.)		117,700
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ►		1,476,731
INTERMEDIATE FARM LIABILITIES (portions due beyond 12 months)		
Creditor — Use Class — Int. Rate — Repayment		
Bank of Mountainside	2/89	13,157
FmHA (E)		642,107 1,134,961
John Deere Finance (Equip)		50,000
CCC Grain Reserve		
Facilities — Prod. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ►		1,192,128
LONG TERM FARM LIABILITIES (portions due beyond 12 months)		
Creditor — Use Class — Int. Rate — Repayment — Delinquent		
Farm Credit (FICB)	2/1	80,576
FmHA 41-37	45	78,025 213,700
Coop Stock		
Other		
TOTAL LONG TERM FARM LIABILITIES ►		241,216
TOTAL FARM LIABILITIES ▶		2,910,075

Public reporting burden for this collection of information is estimated to average 26 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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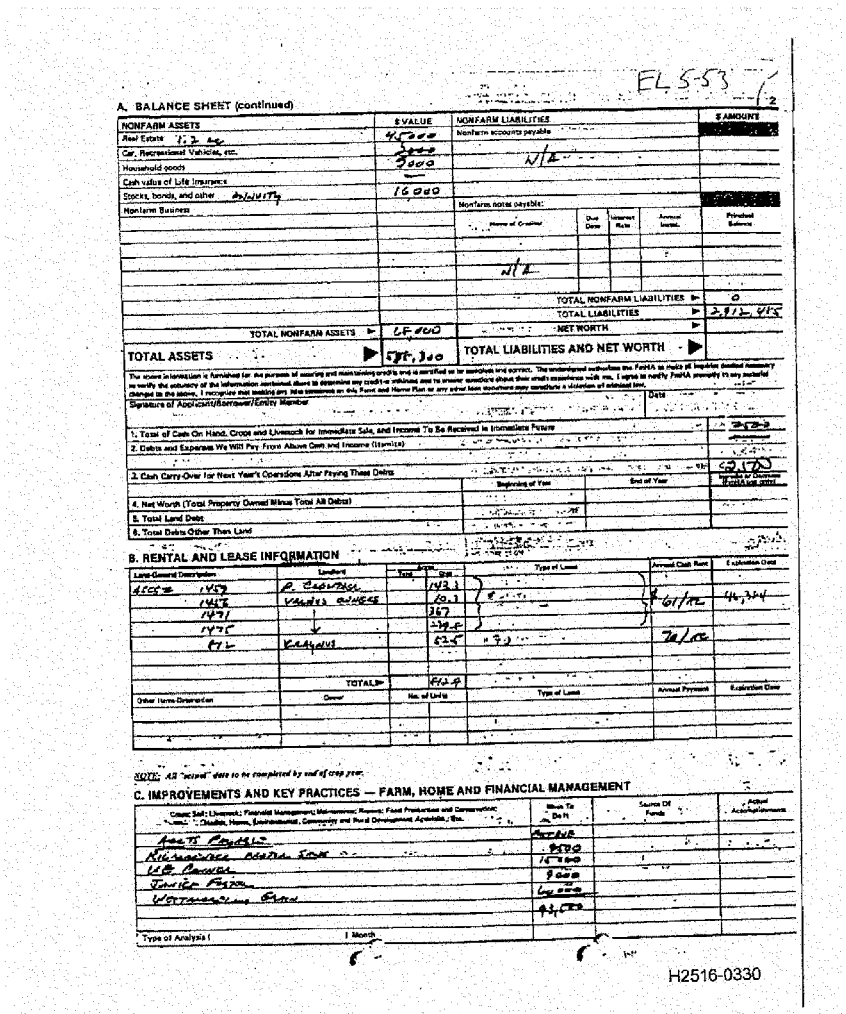

EL 5-53

A. BALANCE SHEET (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES	$ AMOUNT
Real Estate 1.2 ac	45000	Nonfarm accounts payable	
Car, Recreational Vehicles, etc.	3000	N/A	
Household goods	3000		
Cash value of Life Insurance			
Stocks, bonds, and other Vehicle	16000		
Nonfarm Business		Nonfarm notes payable:	
		Name of Creditor / Due Date / Interest Rate / Annual Instal. / Principal Balance	
		N/A	
		TOTAL NONFARM LIABILITIES ▶	0
		TOTAL LIABILITIES ▶	2,812.415
TOTAL NONFARM ASSETS ▶	64,000	NET WORTH ▶	
TOTAL ASSETS ▶	67,300	TOTAL LIABILITIES AND NET WORTH ▶	

The above information is furnished for the purpose of securing and maintaining credit and is certified to be complete and correct. The undersigned authorizes the FmHA or more of its/their designated representative to verify the accuracy of the information contained above to determine my credit or continued use to ensure compliance with me. I agree to notify FmHA promptly in any material changes to the above. I recognize that making any false statement on this Farm and Home Plan or any other loan documents may constitute a violation of criminal law.

Signature of Applicant/Borrower/Entity Member — Date

1. Total of Cash On Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future		2520
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)		
3. Cash Carry-Over for Next Year's Operations After Paying These Debts		52,170
	Beginning of Year	End of Year
4. Net Worth (Total Property Owned Minus Total All Debts)		
5. Total Land Debt		
6. Total Debts Other Than Land		

B. RENTAL AND LEASE INFORMATION

Land-General Description	Landlord	Acres: Tract	Acres: Size	Type of Lease	Annual Cash Rent	Expiration Date
4506 1459	P. Caudill		143.1		$ 61/AC	44,324
1458	Vaughn Quigley		10.1			
1471	↓		267			
1475	↓		39.5		70/AC	
476	Vaughns		625	" "		
	TOTAL ▶		442.9			
Other Items-Description	Owner		No. of Units	Type of Lease	Annual Payment	Expiration Date

NOTE: All "actual" data to be completed by end of crop year.

C. IMPROVEMENTS AND KEY PRACTICES — FARM, HOME AND FINANCIAL MANAGEMENT

Cover Soil; Livestock; Financial Management; Maintenance; Forest; Food Production and Conservation; Health, Home, Environmental, Community and Rural Development Activities; Etc.	Dollars To Be Spent	Source Of Funds	Actual Accomplishments
Auto Repair	Actual		
Miscellaneous Maint. Shop	1500		
Lift Compressor	1000		
Tractor Payoff	9000		
Veterinarian Bills	4000		
	24,500		
Type of Analysis:	1 Month		

H2516-0330

EL 5-54

D. CROPS, PASTURE, ETC. — PRODUCTIO.. AND SALES 1984

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED ACRES	PLANNED YIELD PER ACRE	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE UNITS FOR: #	PLANNED DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: SOLD	ACTUAL OPERATOR'S SHARE UNITS: #	CASH INCOME
1. Wheat	150	41	450	5700	3 [illegible]	19,950	170	44	—	—	6,800	340	19,800
2. Barley	100	58	200	5500	2 [illegible]	11,000	100	60	—	—	6,000	300	12,000
3. Corn	300	98		29,400	2 [illegible]	63,700	300	115	—	—	34,500	2,300	69,000
4. Soybeans	262	24	700	5586	6 [illegible]	36,322	262	25	100	5,200	11,200	500	64,625
5. Dry Hay	250	12		3000	6 [illegible]	19,500	220	25	—	6,200			
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, SHELTERBELTS AND ROADS													
12. TOTAL (ENTER TABLE J, LINE 1)	512					149,952							165,425

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

LIVESTOCK AND PRODUCTS AND WOOL MOHAIR PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE UNITS FOR: #	PLANNED DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS: FARM USE	ACTUAL OPERATOR'S SHARE UNITS: HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS: SOLD	ACTUAL OPERATOR'S SHARE UNITS: #	CASH INCOME
1.													
2.													
3.													
4. N/A													
5.													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
12. TOTAL (ENTER TABLE J, LINE 2)													

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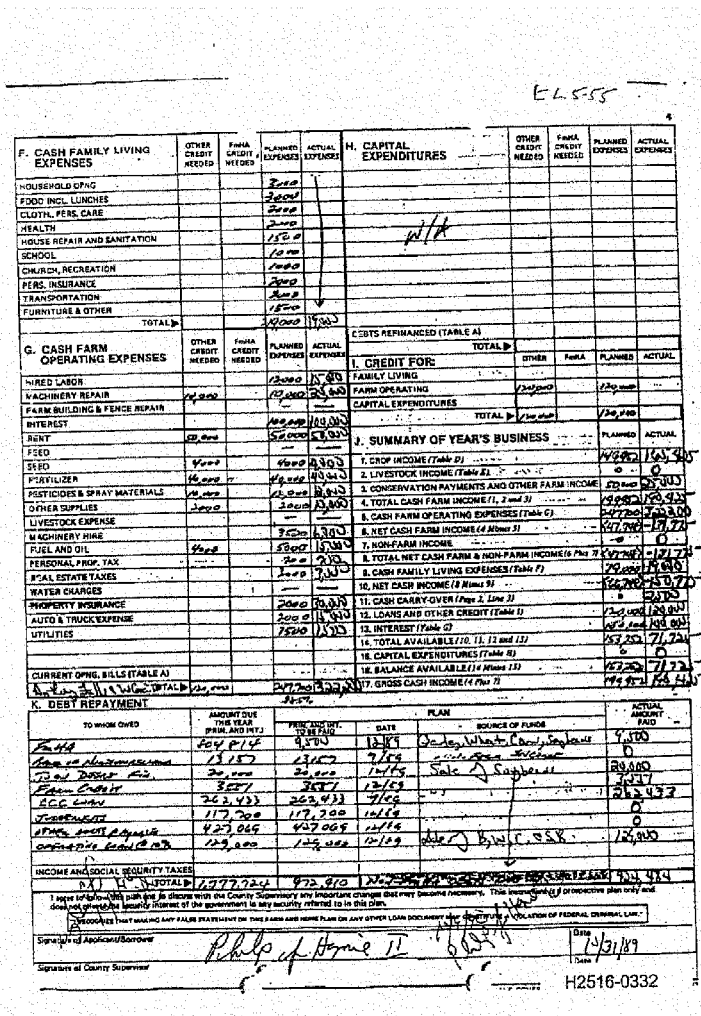


EL 5-55

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG			2000	
FOOD INCL. LUNCHES			3600	
CLOTH., PERS. CARE			2000	
HEALTH			2000	
HOUSE REPAIR AND SANITATION			1500	
SCHOOL			1200	
CHURCH, RECREATION			1000	
PERS. INSURANCE			2000	
TRANSPORTATION			3000	
FURNITURE & OTHER			1500	
TOTAL ▶			24000	17,500

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR			12000	15,000
MACHINERY REPAIR	14,000		12,000	24,000
FARM BUILDING & FENCE REPAIR			—	—
INTEREST			109,000	109,000
RENT	50,000		50,000	53,000
FSEO			—	—
SEED	4000		4000	4,303
FERTILIZER	14,000		14,000	10,341
PESTICIDES & SPRAY MATERIALS	10,000		10,000	8,940
OTHER SUPPLIES	2000		3000	3,000
LIVESTOCK EXPENSE			—	—
MACHINERY HIRE			3500	4,300
FUEL AND OIL	4000		5800	5,500
PERSONAL PROP. TAX			300	210
REAL ESTATE TAXES			1000	730
WATER CHARGES			—	—
PROPERTY INSURANCE			2000	2,000
AUTO & TRUCK EXPENSE			2000	1,900
UTILITIES			7500	7,500
CURRENT OPNG. BILLS (TABLE A)				
TOTAL ▶	120,000		247,300	227,224

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
W/H				

DEBTS REFINANCED (TABLE A)

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
TOTAL ▶				
FAMILY LIVING				
FARM OPERATING	120,000		120,000	
CAPITAL EXPENDITURES				
TOTAL ▶	120,000		120,000	

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME (Table D)	147,982	165,545
2. LIVESTOCK INCOME (Table E)	0	0
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	20,000	25,000
4. TOTAL CASH FARM INCOME (1, 2 and 3)	167,982	190,545
5. CASH FARM OPERATING EXPENSES (Table G)	247,300	227,224
6. NET CASH FARM INCOME (4 Minus 5)	147,700	-36,679
7. NON-FARM INCOME	0	0
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	147,700	-36,679
9. CASH FAMILY LIVING EXPENSES (Table F)	24,000	17,500
10. NET CASH INCOME (8 Minus 9)	123,700	150,179
11. CASH CARRY-OVER (Page 2, Line 3)	0	50,000
12. LOANS AND OTHER CREDIT (Table I)	120,000	120,000
13. INTEREST (Table G)	109,000	109,000
14. TOTAL AVAILABLE (10, 11, 12 and 13)	153,700	71,721
15. CAPITAL EXPENDITURES (Table H)	0	0
16. BALANCE AVAILABLE (14 Minus 15)	153,700	71,721
17. GROSS CASH INCOME (4 Plus 7)	167,982	165,545

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PRIN. AND INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS	ACTUAL AMOUNT PAID
FmHA	504 P/I	9,500	12/89	Sale, Wheat, Canola, Soybeans	9,500
Farm Machinery Inc.	13,150	13,150	9/89	Sale of Soybeans	0
John Deere Fin.	29,000	29,000	11/89	Sale of Soybeans	29,000
Farm Credit	3,537	3,537	12/89		3,537
ACC Corp	262,433	262,433	9/89		262,433
Insurance	117,700	117,700	10/89		0
Farm Fuel Supply	427,065	427,065	12/89		0
Operating Loan CB	129,000	129,000	11-89	Sale of B, W, C, SSK	129,000
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶	1,277,724	972,810			734,484

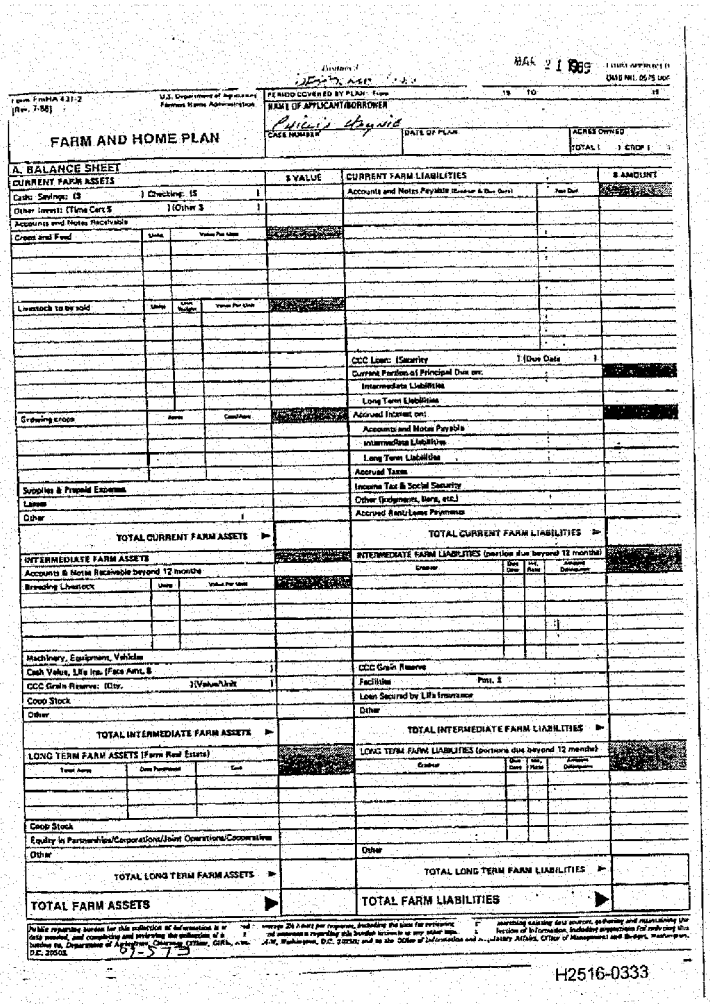
I agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary. This instrument is a protective plan only and does not give the security interest of the government in any security referred to in this plan.

I KNOW IT IS A VIOLATION OF FEDERAL CRIMINAL LAW TO MAKE ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT FOR THE PURPOSE OF OBTAINING A LOAN.

Signature of Applicant/Borrower: Philip A. Haynie II — Date: 12/31/89

Signature of County Supervisor — Date

H2516-0332



Division 3

MAR 21 1989

FORM APPROVED
OMB NO. 0575 [illegible]

Form FmHA 431-2
(Rev. 7-88)

U.S. Department of Agriculture
Farmers Home Administration

PERIOD COVERED BY PLAN: From 19 TO 19

NAME OF APPLICANT/BORROWER: Philip's Haynie

FARM AND HOME PLAN

CASE NUMBER | DATE OF PLAN | ACRES OWNED TOTAL ( ) CROP ( )

A. BALANCE SHEET

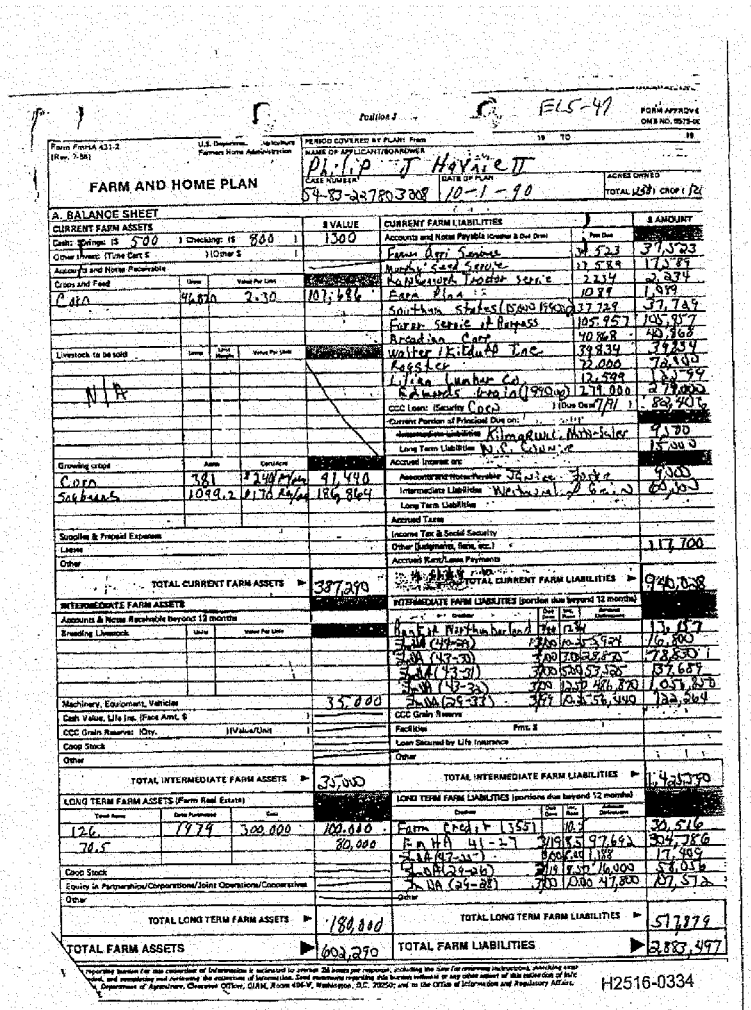
CURRENT FARM ASSETS			$ VALUE
Cash: Savings: ($) Checking: ($)			
Other Invest: (Time Cert.$) (Other $)			
Accounts and Notes Receivable			
Crops and Feed	Units	Value Per Unit	
Livestock to be sold	Units	Unit Budget	Value Per Unit
Growing crops	Acres	Cost/Acre	
Supplies & Prepaid Expenses			
Leases			
Other			
TOTAL CURRENT FARM ASSETS ►			
INTERMEDIATE FARM ASSETS			
Accounts & Notes Receivable beyond 12 months			
Breeding Livestock	Units	Value Per Unit	
Machinery, Equipment, Vehicles			
Cash Value, Life Ins. (Face Amt. $)			
CCC Grain Reserve: (Qty.) (Value/Unit)			
Coop Stock			
Other			
TOTAL INTERMEDIATE FARM ASSETS ►			
LONG TERM FARM ASSETS (Farm Real Estate)			
Total Acres	Date Purchased	Cost	
Coop Stock			
Equity in Partnerships/Corporations/Joint Operations/Cooperatives			
Other			
TOTAL LONG TERM FARM ASSETS ►			
TOTAL FARM ASSETS ►			

CURRENT FARM LIABILITIES		$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)	Pay Out	
CCC Loan: (Security) (Due Date)		
Current Portion of Principal Due on:		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Interest on:		
Accounts and Notes Payable		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (Judgments, Bans, etc.)		
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ►		
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Delinquent	
CCC Grain Reserve		
Facilities Pmt. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ►		
LONG TERM FARM LIABILITIES (portions due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Delinquent	
Other		
TOTAL LONG TERM FARM LIABILITIES ►		
TOTAL FARM LIABILITIES ►		

Public reporting burden for this collection of information is [illegible] average 20 hours per response, including the time for reviewing [illegible] searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of [illegible] and comments regarding this burden estimate or any other [illegible] collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, [illegible] AW, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

07-573

H2516-0333



Position 3 FLS-49

Farm Form A 431-2 (Rev. 7-86) — U.S. Department of Agriculture, Farmers Home Administration

FARM AND HOME PLAN

PERIOD COVERED BY PLAN: From ____ 19__ TO ____ 19__

NAME OF APPLICANT/BORROWER: Philip J Havaie II

CASE NUMBER: 54-83-2878038 | DATE OF PLAN: 10-1-90 | ACRES OWNED: TOTAL 1581 CROP 121

A. BALANCE SHEET

CURRENT FARM ASSETS

			$ VALUE
Cash: Savings $ 500	Checking: $ 800		1300
Other Assets: (Time Cert $)	(Other $)		
Accounts and Notes Receivable			
Crops and Feed	Units	Value Per Unit	
Corn	46,870	2.30	107,801
N/A			
Livestock to be sold	Units	Value Per Unit	
Growing crops	Acres	Cost/Acre	
Corn	381	$240.00/Ac	91,440
Soybeans	1099.2	$170.00/Ac	186,864
Supplies & Prepaid Expenses			
Loans			
Other			
TOTAL CURRENT FARM ASSETS			387,290

INTERMEDIATE FARM ASSETS

Accounts & Notes Receivable Beyond 12 months			
Breeding Livestock	Units	Value Per Unit	
Machinery, Equipment, Vehicles			35,000
Cash Value, Life Ins. (Face Amt. $)			
CCC Grain Reserves (Qty.)		(Value/Unit)	
Coop Stock			
Other			
TOTAL INTERMEDIATE FARM ASSETS			35,000

LONG TERM FARM ASSETS (Farm Real Estate)

Tract Name	Date Purchased	Cost	
126	1979	300,000	100,000
78.5			80,000
Coop Stock			
Equity in Partnerships/Corporations/Joint Operations/Cooperatives			
Other			
TOTAL LONG TERM FARM ASSETS			180,000
TOTAL FARM ASSETS			602,290

CURRENT FARM LIABILITIES	Pmt Due	$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)		
Farm Agri Services	M 523	37,523
Hamby Seed Service	11 589	17,589
Rawlerigh Tractor Service	2334	2,334
Farm Plan	1089	1,989
Southern States (Loan #5000 1550)	37 729	37,729
Farm Service at Bayboss	105,957	105,957
Arcadia Corp	40,868	40,868
Walter Kitchen Inc	39834	39,834
Register	22,000	78,990
Lilian Lumber Co	12,599	1,599
Edwards Georgia (9900)	279,000	279,000
CCC Loan: (Security Corn) (Due Date 7/91)		88,401
Current Portion of Principal Due on:		
Accounts/Notes Payable: Kilmarnock Motor Sales		4,370
Long Term Liabilities: N.C. Commerce		15,000
Accrued Interest on:		
Accounts and Notes Payable: Farmers Supply		9,000
Intermediate Liabilities: Merchants Bank		60,603
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (Judgments, liens, etc.)		117,700
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES		946,038

INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)

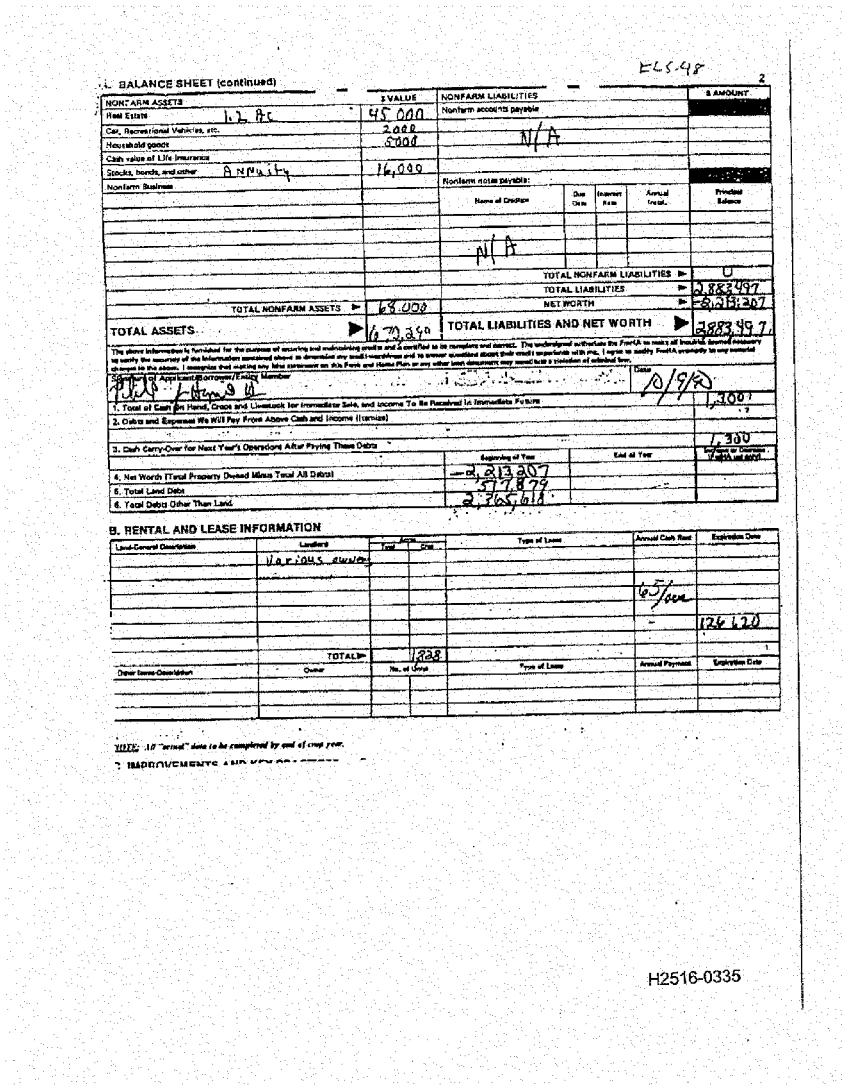
Creditor	Due Date	Rate	Amount Delinquent	
Farm Fit Northumberland	199	12%		15,857
FmHA (49-38)	1300	10-5-3994		16,800
FmHA (49-39)	1400	10-5-3994		78,830
FmHA (93-01)	1300	10-5-3994		87,689
FmHA (93-38)	1700	12-19-4018		1,031,858
FmHA (29-39)	1999	10-5-3994		122,264
CCC Grain Reserve				
Facilities Pmt. #				
Loan Secured by Life Insurance				
Other				
TOTAL INTERMEDIATE FARM LIABILITIES				1,463,330

LONG TERM FARM LIABILITIES (portions due beyond 12 months)

Creditor	Due Date	Rate	Amount Delinquent	
Farm Credit (355)		10.5		32,516
FmHA 41-27	2/19	8.5	97,692	304,786
FmHA (93-01)	1700	8.00	1,182	17,499
FmHA (29-38)	2/19	8.5	16,000	58,038
FmHA (93-38)	1700	1000	47,800	107,572
Other				
TOTAL LONG TERM FARM LIABILITIES				517,879
TOTAL FARM LIABILITIES				2,887,497

Reporting burden for this collection of information is estimated to average 28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

H2516-0334



ELS-48

2

A. BALANCE SHEET (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES	$ AMOUNT
Real Estate 1.2 Ac	45,000	Nonfarm accounts payable	
Car, Recreational Vehicles, etc.	2000	N/A	
Household goods	5000		
Cash value of Life Insurance			
Stocks, bonds, and other Annuity	16,000		
Nonfarm Business		Nonfarm notes payable:	

Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance
N/A				

		TOTAL NONFARM LIABILITIES ▶	0
		TOTAL LIABILITIES ▶	2,883,497
TOTAL NONFARM ASSETS ▶	68,000	NET WORTH ▶	-2,213,207
TOTAL ASSETS ▶	670,290	TOTAL LIABILITIES AND NET WORTH ▶	2,883,497

The above information is furnished for the purpose of securing and maintaining credit and is certified to be complete and correct. The undersigned authorizes the FmHA to make all inquiries deemed necessary to verify the accuracy of the information contained above to determine my credit worthiness and to answer questions about this credit in conformity with me. I agree to notify FmHA promptly in any material changes in the above. I recognize that making any false statement on this Form and Home Plan or any other loan document may result in a violation of criminal law.

Signature of Applicant/Borrower/Entity Member: [signature] Date: 10/9/20

1. Total of Cash on Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future	1,300
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)	
	1,300
3. Cash Carry-Over for Next Year's Operations After Paying These Debts	

	Beginning of Year	End of Year	Increase or Decrease (FmHA net worth)
4. Net Worth (Total Property Owned Minus Total All Debts)	-2,213,207		
5. Total Land Debt	517,879		
6. Total Debts Other Than Land	2,365,618		

B. RENTAL AND LEASE INFORMATION

Land-General Description	Landlord	Acres Total	Acres Crop	Type of Lease	Annual Cash Rent	Expiration Date
	Various owners					
					65/acre	
					-	126,620
	TOTAL ▶		1,828			

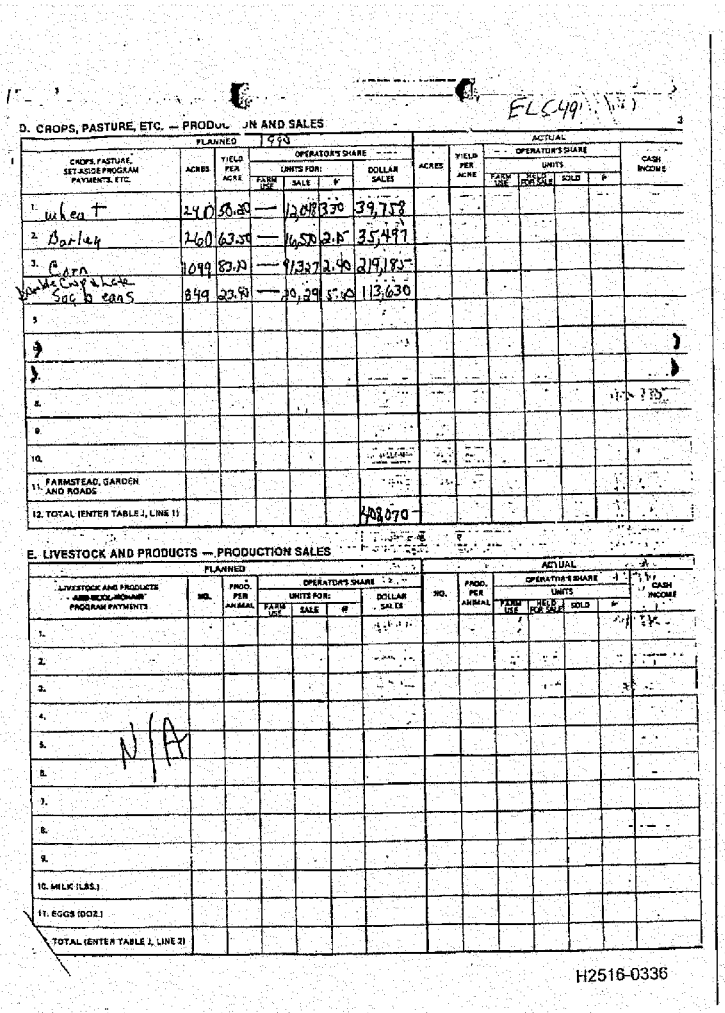
Other Items-Description	Owner	No. of Units	Type of Lease	Annual Payment	Expiration Date

NOTE: All "actual" data to be completed by end of crop year.

C. IMPROVEMENTS AND KEY PROJECTS

H2516-0335

ELC491



D. CROPS, PASTURE, ETC. — PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED 1990 ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	#	DOLLAR SALES	ACTUAL ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1. wheat	240	50.20	—	12,048	3.30	39,758							
2. Barley	260	63.50	—	16,510	2.15	35,497							
3. Corn	1099	83.10	—	91,327	2.40	219,185							
Barble Crop & Late Soy beans	849	23.90	—	20,291	5.60	113,630							
5.													
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, GARDEN AND ROADS													
12. TOTAL (ENTER TABLE 1, LINE 1)						408,070							

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

LIVESTOCK AND PRODUCTS AND SOCIAL-HONAIR PROGRAM PAYMENTS	PLANNED NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	#	DOLLAR SALES	ACTUAL NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	#	CASH INCOME
1.													
2.													
3.													
4.													
5. N/A													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
12. TOTAL (ENTER TABLE 2, LINE 2)													

H2516-0336

EL5-5D

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD DPNG			3,000	
FOOD INCL. LUNCHES			3,000	
CLOTH., PERS. CARE			2,000	
HEALTH			2,000	
HOUSE REPAIR AND SANITATION			1,500	
SCHOOL			1,000	
CHURCH, RECREATION			1,000	
PERS. INSURANCE			2,000	
TRANSPORTATION			3,000	
FURNITURE & OTHER			1,500	
TOTAL ▶			19,000	

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR			30,000	
MACHINERY REPAIR			25,000	
FARM BUILDING & FENCE REPAIR				
INTEREST			100,000	
RENT			136,624	
FEED			—	
SEED Farmers Co-op	10,000		10,000	
FERTILIZER Farmers Co-op	249,000		249,000	
PESTICIDES & SPRAY MATERIALS SS	15,000		15,000	
OTHER SUPPLIES J.D.	5,000		6,000	
LIVESTOCK EXPENSE			—	
MACHINERY HIRE			40,000	
FUEL AND OIL VA Fuels	20,000		24000	
PERSONAL PROP. TAX			72.8	
REAL ESTATE TAXES			3,000	
WATER CHARGES			—	
PROPERTY INSURANCE			2,500	
AUTO & TRUCK EXPENSE			9,000	
UTILITIES			7,000	
CURRENT DPNG. BILLS (TABLE A)			594,000	
TOTAL ▶	378,000		654,880	

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
N/A				
DEBTS REFINANCED (TABLE A)				
TOTAL ▶				

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
FAMILY LIVING			—	
FARM OPERATING	318,000		315,000	
CAPITAL EXPENDITURES			—	
TOTAL ▶	318,000		315,000	

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME (Table D)	498,870	
2. LIVESTOCK INCOME (Table E)	—	
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	50,000	
4. TOTAL CASH FARM INCOME (1, 2 and 3)	548,870	
5. CASH FARM OPERATING EXPENSES (Table G)	452,870	
6. NET CASH FARM INCOME (4 Minus 5)	196,000	
7. NON-FARM INCOME	—	
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	196,870	
9. CASH FAMILY LIVING EXPENSES (Table F)	19,000	
10. NET CASH INCOME (8 Minus 9)	177,870	
11. CASH CARRY-OVER (Page 2, Line 3)	1,300	
12. LOANS AND OTHER CREDIT (Table I)	314,000	
13. INTEREST (Table G)	100,000	
14. TOTAL AVAILABLE (10, 11, 12 and 13)	—	
15. CAPITAL EXPENDITURES (Table H)	0	
16. BALANCE AVAILABLE (14 Minus 15)	202,370	
17. GROSS CASH INCOME (4 Plus 7)	548,870	

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (Prin. and Int.)	PRIN. AND INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS	ACTUAL AMOUNT PAID
Farmers Co-op (FSA)	329.18	329.18	12/90	Sale of Corn soybeans	
Stafford Stocks (FSA)	93,520	93,520	12/90	Sale of Calves soybeans	
J.D. (FSA)	5,480	5,480	12/90	Sale of Hay	
VA Fuels (FSA)	21,603	21,603	12/90	Sale of soybeans	
Agri-Credit	30,376	30,376	12/90		
Bell Northwestern	13,167	13,167	12/90		
Judgments	117,700	117,700	due now		
FSA Loan	89,350	89,350	7/91	Sale of Calves	
Gill Gulf + Western	482,193	482,193	due now		
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶	1,004,817	1,004,817			

I agree to follow this plan and to discuss with the County Supervisor any important changes that may become necessary. This instrument is a prospective plan only and does not release the security interest of the government in any security referred to in this plan.

"I RECOGNIZE THAT MAKING ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW."

Signature of Applicant(s) [signature] Date 10/9/90

Signature of County Supervisor [signature] Date 10/9/90

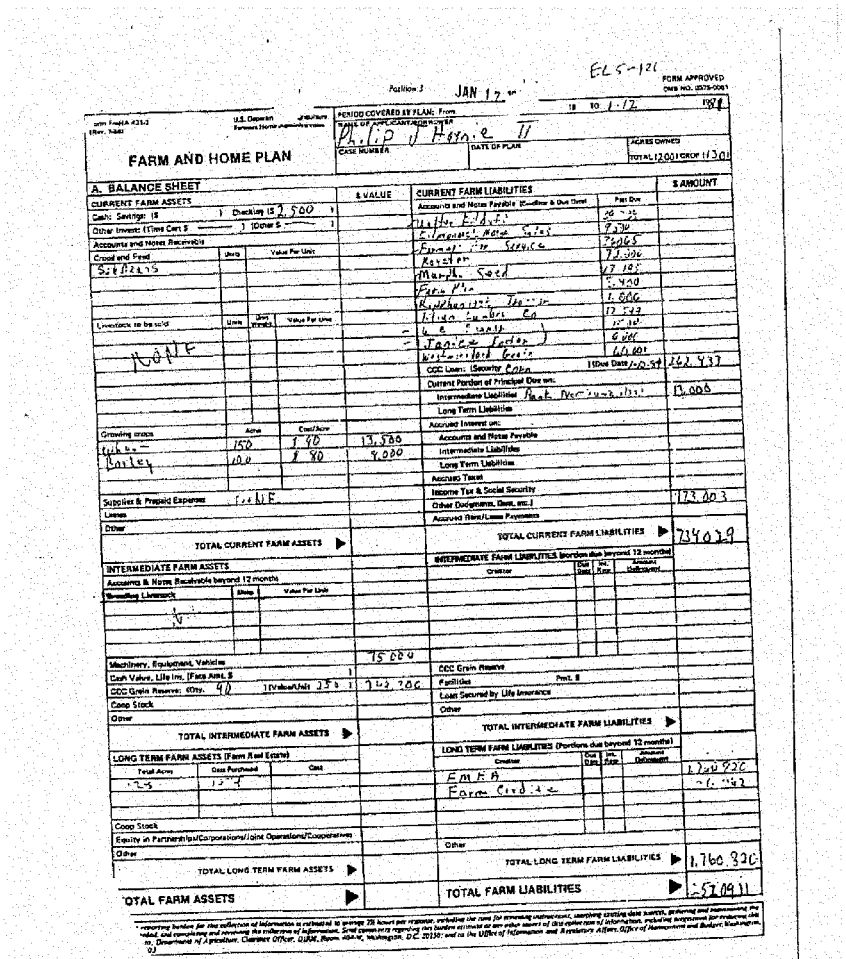
H2516-0337

Crop	act yields 1984	County Northumberland Average 1988	1987	1986	1985	County EL5-51 avg 5 year
Barley	60	76	71	53.5	57	63.50
Wheat	44	61	56	44	46	50.20
Corn	115	81	74	48.	97.5	83.10
Soybeans	25	23	20.5	24	27	23.90

for Philip J. Hagie, II file

5 yr. average yield per acre used in planned 1990 (EL5-49)

H2516-0338



EL 5-12

Position 2 JAN 12 19

FORM APPROVED
OMB NO. 0575-0001

form FmHA 431-2
(Rev. 1-88)

U.S. Department of Agriculture
Farmers Home Administration

PERIOD COVERED BY PLAN: From 19 TO 1-12 19

NAME OF APPLICANT(S)
Philip H Hoyle II

CASE NUMBER

DATE OF PLAN

ACRES OWNED
TOTAL 12001 CROP 1130

FARM AND HOME PLAN

A. BALANCE SHEET

CURRENT FARM ASSETS		$ VALUE
Cash: Savings [$] Checking [$ 2,500]		
Other Invest: [Time Cert $] [Other $]		
Accounts and Notes Receivable		
Crops and Feed	Units / Value Per Unit	
Soybeans		
Livestock to be sold	Units / Unit Weight / Value Per Unit	
NONE		
Growing crops	Acres / Cost/Acre	
Wheat	150 / 90	13,500
Barley	100 / 90	9,000
Supplies & Prepaid Expenses	NONE	
Leases		
Other		
TOTAL CURRENT FARM ASSETS ▶		
INTERMEDIATE FARM ASSETS		
Accounts & Notes Receivable beyond 12 months		
Breeding Livestock	Units / Value Per Unit	
Machinery, Equipment, Vehicles		15000
Cash Value, Life Ins. [Face Amt. $]		
CCC Grain Reserve: [Qty. 90] [Value/Unit 3.82]		343.80
Coop Stock		
Other		
TOTAL INTERMEDIATE FARM ASSETS ▶		
LONG TERM FARM ASSETS (Farm Real Estate)		
Total Acres / Cross Purchased / Cost		
125	125	
Coop Stock		
Equity in Partnership/Corporations/Joint Operations/Cooperatives		
Other		
TOTAL LONG TERM FARM ASSETS ▶		
TOTAL FARM ASSETS ▶		

CURRENT FARM LIABILITIES	Past Due	$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)		
Hoyle Equity	20.35	
Edmonds Motor Sales	9,230	
Farmers Home Service	73,065	
Revolver	73,306	
Morris Seed	17 105	
Farm Plus	5,420	
Robbins Tire	1,606	
Illini Lumber Co	12,547	
[illegible]	15 [illegible]	
[illegible]	6,001	
Jagoe Farley	6,001	
Hutchinson Grain	6,001	
CCC Loan: [Security Coin] [Due Date 10-84]		262,937
Current Portion of Principal Due on:		
Intermediate Liabilities Rent Mar 24, 1991		15,000
Long Term Liabilities		
Accrued Interest on:		
Accounts and Notes Payable		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other Deductions, Rent, etc.]		173,003
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ▶		734029
INTERMEDIATE FArm LIABILITIES (Portions due beyond 12 months)		
Creditor / Due Date / Int. Rate / Amount Delinquent		
CCC Grain Reserve		
Facilities Pmt. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ▶		
LONG TERM FARM LIABILITIES (Portions due beyond 12 months)		
Creditor / Due Date / Int. Rate / Amount Delinquent		
FmHA		1,760,930
Farm Credit		1,760,930
Other		
TOTAL LONG TERM FARM LIABILITIES ▶		1,760,930
TOTAL FARM LIABILITIES ▶		2,494,959

Public reporting burden for this collection of information is estimated to average 75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC.

H2516-0339

EL5-121

A. BALANCE SHEET (continued)

2

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES	$ AMOUNT
Real Estate	250,000	Nonfarm accounts payable	[redacted]
Car, Recreational Vehicles, etc.	500	NONE	
Household goods	3000		
Cash value of Life Insurance	—		
Stocks, bonds, and other	16,000		
Nonfarm Business		Nonfarm notes payable:	

Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance
NONE				

TOTAL NONFARM LIABILITIES ▶	
TOTAL LIABILITIES ▶	
NET WORTH ▶	
TOTAL NONFARM ASSETS ▶	
TOTAL ASSETS ▶	TOTAL LIABILITIES AND NET WORTH ▶

The above information is furnished for the purpose of securing an [illegible] and is [illegible] to be complete and correct. The undersigned authorizes the FmHA to make all inquiries deemed necessary to verify the accuracy of the information contained above to determine any credit worthiness and to answer questions about their credit transactions with me. I agree to notify FmHA promptly to any material changes to the above. I recognize that making any false statement on this Form and Home Plan or any other loan document may constitute a violation of criminal law.

Signature of Applicant/Borrower/Entity Member: Philip A. Hayne II — Date: 1-12-84

1. Total of Cash On Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future	None
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)	—
3. Cash Carry-Over for Next Year's Operation After Paying These Debts	—

	Beginning of Year	End of Year	Increase or Decrease (Total $ and Cash)
4. Net Worth (Total Property Owned Minus Total All Debts)			
5. Total Land Debt			
6. Total Debts Other Than Land			

B. RENTAL AND LEASE INFORMATION

Land-General Description	Landlord	Acres Total	Acres Crop	Type of Lease	Annual Cash Rent	Expiration Date
Farm No. 1454	P. Crowther		143.3	Annual		
" " 1456			10.3	Annual		
" " 1471			367.0	Annual		
" " 1475	Fives Thunder Hill		239.8	Annual		
" " 812	[illegible]		52.5	Annual		
	TOTAL ▶		813.9			

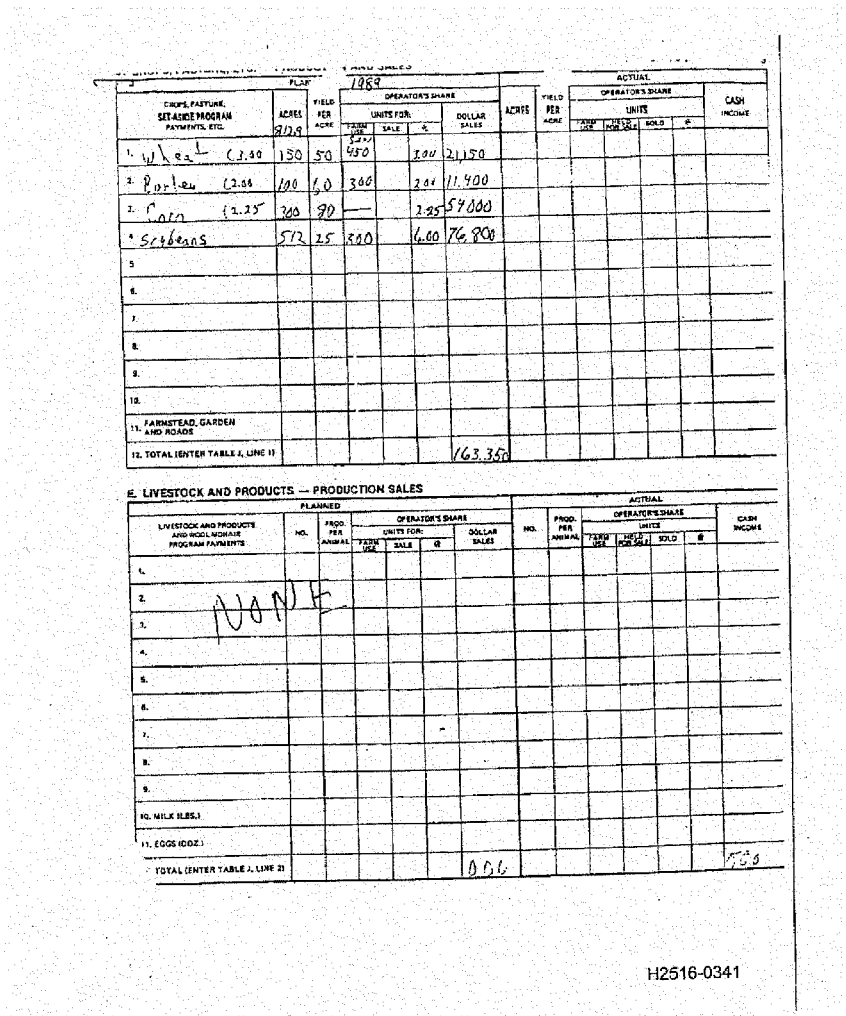
Other Items-Description	Owner	No. of Units	Type of Lease	Annual Payment	Expiration Date

NOTE: All "actual" data to be completed by end of crop year.

C. IMPROVEMENTS AND KEY PRACTICES — FARM, HOME AND FINANCIAL MANAGEMENT

Crops; Soil; Livestock; Financial Management; Maintenance; Repairs; Food Production and Conservation; Health, Home, Environmental, Community and Rural Development Activities; Etc.	When To Do It	Source Of Funds	Actual Accomplishments
Liquidate Land equipment to help [illegible]	1982		
[illegible] cash flow			
Negotiate debts with judgments holders	1982		
[illegible] creditors			
Type of Analysis: 1 Month			

H2516-0340



CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLAN 1989 ACRES	PLAN YIELD PER ACRE	PLAN OPERATOR'S SHARE UNITS FOR: FARM USE	PLAN OPERATOR'S SHARE UNITS FOR: SALE	PLAN OPERATOR'S SHARE UNITS FOR: %	PLAN OPERATOR'S SHARE DOLLAR SALES	ACTUAL ACRES	ACTUAL YIELD PER ACRE	ACTUAL OPERATOR'S SHARE UNITS FARM USE	ACTUAL OPERATOR'S SHARE UNITS HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS SOLD	ACTUAL OPERATOR'S SHARE UNITS %	ACTUAL CASH INCOME
1. Wheat (3.30)	150	50	450		100	21,150							
2. Barley (2.86)	100	60	300		200	11,400							
3. Corn (2.25)	200	90	—		2.25	54000							
4. Soybeans	512	25	300		6.00	76,800							
5													
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, GARDEN AND ROADS													
12. TOTAL (ENTER TABLE J, LINE 1)						163,350							

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

LIVESTOCK AND PRODUCTS AND WOOL MOHAIR PROGRAM PAYMENTS	PLANNED NO.	PLANNED PROD. PER ANIMAL	PLANNED OPERATOR'S SHARE UNITS FOR: FARM USE	PLANNED OPERATOR'S SHARE UNITS FOR: SALE	PLANNED OPERATOR'S SHARE UNITS FOR: %	PLANNED OPERATOR'S SHARE DOLLAR SALES	ACTUAL NO.	ACTUAL PROD. PER ANIMAL	ACTUAL OPERATOR'S SHARE UNITS FARM USE	ACTUAL OPERATOR'S SHARE UNITS HELD FOR SALE	ACTUAL OPERATOR'S SHARE UNITS SOLD	ACTUAL OPERATOR'S SHARE UNITS %	ACTUAL CASH INCOME
1.													
2. NONE													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
TOTAL (ENTER TABLE J, LINE 2)						000							000

H2516-0341

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG			2,000	
FOOD INCL. LUNCHES			7,000	
CLOTH., PERS. CARE			2,000	
HEALTH			1,000	
HOUSE REPAIR AND SANITATION			1,515	
SCHOOL			1,000	
CHURCH, RECREATION			1,000	
PERS. INSURANCE			2,000	
TRANSPORTATION			2,000	
FURNITURE & OTHER			1,500	
TOTAL ▶			18,000	

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR			12,000	
MACHINERY REPAIR			5,000	
FARM BUILDING & FENCE REPAIR			2,000	
INTEREST			6,000	
RENT			46,600	
FEED				
SEED			4,100	
FERTILIZER			40,000	
PESTICIDES & SPRAY MATERIALS			12,000	
OTHER SUPPLIES				
LIVESTOCK EXPENSE				
MACHINERY HIRE				
FUEL AND OIL				
PERSONAL PROP. TAX			700	
REAL ESTATE TAXES			3,060	
WATER CHARGES				
PROPERTY INSURANCE			2,000	
AUTO & TRUCK EXPENSE			2,000	
UTILITIES			580	
CURRENT OPNG. BILLS (TABLE A)				
TOTAL ▶			139,980	

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
NONE				
DEBTS REFINANCED (TABLE A)				
TOTAL ▶				

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
FAMILY LIVING			18,000	
FARM OPERATING			129,980	
CAPITAL EXPENDITURES				
TOTAL ▶			147,980	

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME (Table D)	163,350	
2. LIVESTOCK INCOME (Table E)		
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME	8,000	
4. TOTAL CASH FARM INCOME (1, 2, and 3)	171,350	
5. CASH FARM OPERATING EXPENSES (Table G)	129,800	
6. NET CASH FARM INCOME (4 Minus 5)	41,550	
7. NON-FARM INCOME		
8. TOTAL NET CASH FARM & NON-FARM INCOME (6 Plus 7)	41,550	
9. CASH FAMILY LIVING EXPENSES (Table F)	18,000	
10. NET CASH INCOME (8 Minus 9)	23,550	
11. CASH CARRY-OVER (Page 3, Line 33)		
12. LOANS AND OTHER CREDIT (Table I)	147,980	
13. INTEREST (Table C)	6,350	
14. TOTAL AVAILABLE (10, 11, 12 and 13)	177,350	
15. CAPITAL EXPENDITURES (Table H)		
16. BALANCE AVAILABLE (14 Minus 15)		
17. GROSS CASH INCOME (4 Plus 7)		

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PRIN. AND INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS	ACTUAL AMOUNT PAID
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶					

I agree to follow this plan and to discuss with the County Supervisory any important change that may become necessary. This instrument is a prospective plan only and does not release the security interest of the government in any security referred to in this plan.

I RECOGNIZE THAT MAKING ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW.

Signature of Applicant(s)/Borrower: [signature] — Date: 1-12-89

Signature of County Supervisor — Date

H2516-0342

Form FmHA 410-9 *Position 3*
(Rev. 3/87)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

JAN 1 [illegible]

STATEMENT REQUIRED BY THE PRIVACY ACT

The Farmers Home Administration (FmHA) is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.); and Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471 et. seq.), or other Acts administered by FmHA to solicit the information requested on FmHA applications forms.

Disclosure of information requested is voluntary. However, failure to disclose certain items of information requested including your Social Security Account or Federal Identification Number may result in a delay in the processing of an application or its rejection.

The principal purposes for collecting the requested information are to determine eligibility for FmHA credit or other financial assistance, the need for interest credit or other servicing actions, for the servicing of your loan, and for statistical analysis. Information provided may be used outside of the Department of Agriculture for the following purposes:

1. Release to interested parties who submit requests under the Freedom of Information Act.
2. To provide the basis for borrower success stories in Department of Agriculture news releases.
3. Referral to the appropriate law enforcement agency as set forth in 40 FR 38924 (1975).
4. Referral to employers, businesses, landlords, creditors or others to determine repayment ability and eligibility for FmHA programs.
5. Referral to a contractor providing services to FmHA in connection with your loan.
6. Referral to a credit reporting agency.
7. Referral to a person or organization when FmHA decides such referral is appropriate to assist in the collection or servicing of the loans.
8. Referral to a Federal Records Center for storage.

Every effort will be made to protect the privacy of applicants and borrowers.

FEDERAL EQUAL CREDIT OPPORTUNITY ACT STATEMENT

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency which administers compliance with this law concerning the Farmers Home Administration is the Federal Trade Commission, Pennsylvania Avenue at Sixth Street N.W., Washington, D.C. 20580.

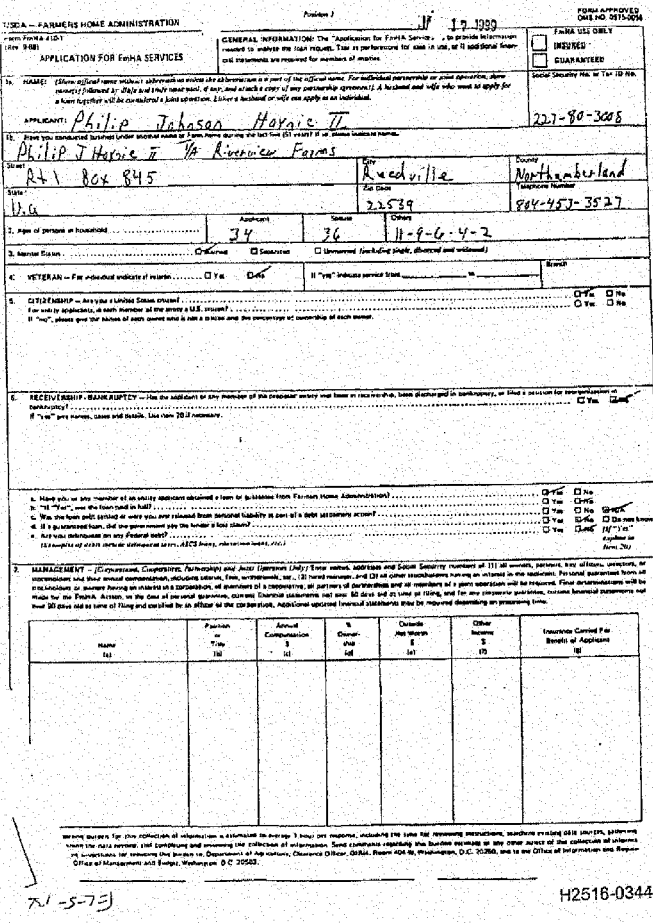
This is to acknowledge my receipt of the above and also, in the case of applicants for business and industry, limited profit rural rental housing and emergency loans to other than individuals, that I have read the reverse of this form, and accept the conditions stated thereon.

[signature] 1-12-89
APPLICANT (Signature) CO-APPLICANT (Signature) DATE

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

SEI-573

H2516-0343



USDA – FARMERS HOME ADMINISTRATION

Form FmHA 410-1
(Rev. 9-88)

APPLICATION FOR FmHA SERVICES

Position 1

JF 1-7-1989

FORM APPROVED
OMB NO. 0575-0014

GENERAL INFORMATION: The "Application for FmHA Services" is to provide information needed to evaluate the loan request. Title to personal property for loan security, and financial statements are required for members of entities.

FmHA USE ONLY
☐ INSURED
☐ GUARANTEED

1a. NAME: (Show official name without abbreviation unless the abbreviation is a part of the official name. For individual partnership or joint operation, show names followed by: Style and mail address, if any, and attach a copy of any partnership agreement.) A husband and wife who seek to apply for a loan together will be considered a joint operation. Either a husband or wife can apply as an individual.

APPLICANT: Philip Johnson Harris II — Social Security No. or Tax ID No. 227-80-3008

1b. Have you conducted business under another name or Farm Name during the last five (5) years? If so, please indicate name.

Philip J Harris II T/A Riverview Farms

Street: Rt 1 Box 845		City: Reedville	County: Northumberland
State: VA		Zip Code: 22539	Telephone Number: 804-453-3527

	Applicant	Spouse	Others
2. Ages of persons in household	34	36	11-9-6-4-2

3. Marital Status: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced and widowed)

4. VETERAN – For individual indicate if veteran: ☐ Yes ☐ No — If "yes," indicate service branch _____ to _____ — Branch

5. CITIZENSHIP – Are you a United States citizen? ☐ Yes ☐ No
For entity applicants, is each member of the entity a U.S. citizen? ☐ Yes ☐ No
If "no", please give the names of each owner who is not a citizen and the percentage of ownership of each owner.

6. RECEIVERSHIP - BANKRUPTCY – Has the applicant or any member of the proposed entity ever been in receivership, been discharged in bankruptcy, or filed a petition for reorganization or bankruptcy? ☐ Yes ☐ No
If "yes" give names, cases and details. Use item 20 if necessary.

a. Have you or any member of an entity applicant obtained a loan or guarantee from Farmers Home Administration? ☐ Yes ☐ No
b. If "Yes", are the loans paid in full? ☐ Yes ☐ No ☐ N/A
c. Was the loan paid, settled or were you ever released from personal liability in part of a debt adjustment action? ☐ Yes ☐ No ☐ Do not know
d. If a guaranteed loan, did the government pay the lender a loss claim? ☐ Yes ☐ No If "Yes" explain on Form 76-1
e. Are you delinquent on any Federal debt? ☐ Yes ☐ No
(Examples of debts include delinquent taxes, FICA taxes, unpaid loans, etc.)

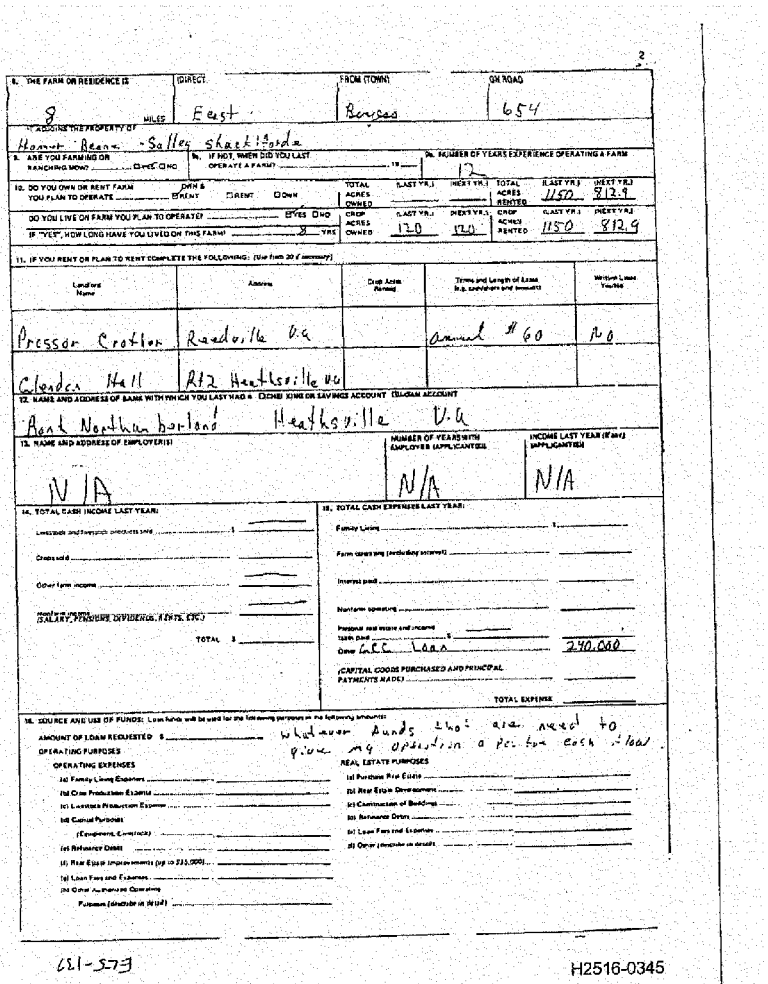
7. MANAGEMENT – (Corporations, Cooperatives, Partnerships and Joint Operators Only) Enter names, addresses and Social Security numbers of (1) all owners, partners, key officials, directors, or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (2) hired managers, and (3) all other stockholders having an interest in the applicant. Personal guarantees from all stockholders or owners having an interest in a corporation, all members of a cooperative, all partners of partnerships and all members of a joint operation will be required. Final determinations will be made by the FmHA. Action on the loan of personal guarantee, current financial statements not over 90 days old at time of filing, and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

Name (a)	Position or Title (b)	Annual Compensation $ (c)	% Ownership (d)	Owned Net Worth $ (e)	Other Income $ (f)	Insurance Carried For Benefit of Applicant (g)

Burden Notice: Public reporting for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

RI-5-75

H2516-0344



2

8. THE FARM OR RESIDENCE IS	(DIRECT)	FROM (TOWN)	ON ROAD
8 MILES	East	Burgess	654

9. ADJOINS THE PROPERTY OF Homer Beane - Salley Shackleford

8. ARE YOU FARMING OR RANCHING NOW? ☐ YES ☐ NO

9a. IF NOT, WHEN DID YOU LAST OPERATE A FARM? ____ 19__

9b. NUMBER OF YEARS EXPERIENCE OPERATING A FARM: 12

10. DO YOU OWN OR RENT FARM YOU PLAN TO OPERATE ____ OWN & ☐ RENT ☐ RENT ☐ OWN

DO YOU LIVE ON FARM YOU PLAN TO OPERATE? ____ ☐ YES ☐ NO

IF "YES", HOW LONG HAVE YOU LIVED ON THIS FARM? ____ 8 YRS

	(LAST YR.)	(NEXT YR.)		(LAST YR.)	(NEXT YR.)
TOTAL ACRES OWNED			TOTAL ACRES RENTED	1150	812.9
CROP ACRES OWNED	120	120	CROP ACRES RENTED	1150	812.9

11. IF YOU RENT OR PLAN TO RENT COMPLETE THE FOLLOWING: (Use from 20 if necessary)

Landlord Name	Address	Crop Acres Rented	Terms and Length of Lease (e.g. cash/share and amount)	Written Lease Yes/No
Pressor Crotton	Reedville VA		annual $60	No
Glendon Hall	Rt2 Heathsville VA			

12. NAME AND ADDRESS OF BANK WITH WHICH YOU LAST HAD A ☐ CHECKING OR SAVINGS ACCOUNT ☐ LOAN ACCOUNT

Bank Northumberland Heathsville VA

13. NAME AND ADDRESS OF EMPLOYER(S)	NUMBER OF YEARS WITH EMPLOYER (APPLICANT(S))	INCOME LAST YEAR (if any) (APPLICANT(S))
N/A	N/A	N/A

14. TOTAL CASH INCOME LAST YEAR:

Livestock and livestock products sold	$
Crops sold	
Other farm income	
Nonfarm income (SALARY, PENSIONS, DIVIDENDS, RENTS, ETC.)	
TOTAL	$

15. TOTAL CASH EXPENSES LAST YEAR:

Family Living	$
Farm operating (excluding interest)	
Interest paid	
Nonfarm operating	
Personal real estate and income taxes paid	$
Other GCC Loan	240,000
(CAPITAL GOODS PURCHASED AND PRINCIPAL PAYMENTS MADE)	
TOTAL EXPENSE	

16. SOURCE AND USE OF FUNDS: Loan funds will be used for the following purposes in the following amounts:

AMOUNT OF LOAN REQUESTED $ ____ whatever funds that are need to give my operation a positive cash flow.

OPERATING PURPOSES

OPERATING EXPENSES

(a) Family Living Expenses ____
(b) Crop Production Expense ____
(c) Livestock Production Expense ____
(d) Capital Purposes (Equipment, Livestock) ____
(e) Refinance Debt ____
(f) Real Estate Improvements (up to $35,000) ____
(g) Loan Fees and Expenses ____
(h) Other Authorized Operating Purposes (describe in detail) ____

REAL ESTATE PURPOSES

(a) Purchase Real Estate ____
(b) Real Estate Development ____
(c) Construction of Buildings ____
(d) Refinance Debts ____
(e) Loan Fees and Expenses ____
(f) Other (describe in detail) ____

ECS-137

H2516-0345

3

17. FINA AL STATEMENT AS OF DATE OF APPLI ION

(Sho property owned and debts owed by applicant).

LIST ALL PROPERTY OWNED				$ VALUE
CURRENT FARM ASSETS				
Cash: Savings: ($ 0) Checking: ($ 2,500)				
Other Invest: (Time Cert $) (Other $)				
Accounts and Notes Receivable				
Crops and Feed	Units	Value Per Unit		
NONE				
Livestock to be sold	Units	Units Weight	Value Per Unit	
NONE				
Growing crops	Acres	Cost/Acre		
Wheat	150	40		13,500
Barley	100	80		8,000
Supplies & Prepaid Expenses				
Leases				
Other				
TOTAL CURRENT FARM ASSETS ▶				21,500
INTERMEDIATE FARM ASSETS				
Accounts & Notes Receivable beyond 12 months				
Breeding Livestock	Units	Value Per Unit		
Machinery, Equipment, Vehicles				75,000
Cash Value, Life Ins. (Face Amt. $)				
CCC Grain Reserve. (Qty.) (Value/Unit)				262,433
Coop Stock				
Other				
TOTAL INTERMEDIATE FARM ASSETS ▶				137,433
LONG TERM FARM ASSETS (Farm Real Estate)				
Total Acres	Date Purchased	Cost		
127	1979			95,000
Coop Stock				
Equity in Partnerships/Corporations/Joint Operations/Cooperatives				
Other				
TOTAL LONG TERM FARM ASSETS ▶				95,000
TOTAL FARM ASSETS ▶				453,433

LIST ALL DEBTS OWED		$ AMOUNT
CURRENT FARM LIABILITIES		
Accounts and Notes Payable (Creditor & Due Date)	Pmt Due	
Walter Kilduff	39,834	
Kilmarnock Motorsales	9,500	
Farmers Auri Service	36,065	
Roseton Ag	72,000	
FM HA	1760820	
Farm Credit	26,062	
Mauhu Seed	17,195	
Farm Plans	8,400	
Rappahannock Tractor	6,000	
Lilian Lumber Co	12,599	
Westmoreland Grain	60,000	
CCC Loan: (Security 262,433) (Due Date)		262,433
Current Portion of Principal Due on:		
Intermediate Liabilities Bank Northumberland		13,000
Long Term Liabilities		
Accrued Interest on:		
Accounts and Notes Payable		
Intermediate Liabilities Ag'Estate		24000
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (Judgments, liens, etc.)		173,003
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ▶		2520911
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Outstanding	
CCC Grain Reserve		262,433
Facilities Pmt. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ▶		262,433
LONG TERM FARM LIABILITIES (portions due beyond 12 months)		
Creditor	Due Date / Int. Rate / Amount Outstanding	
FM HA		1,760,820
Other		
TOTAL LONG TERM FARM LIABILITIES ▶		1760820
TOTAL FARM LIABILITIES ▶		2520911

H2516-0346

361 373

FINANCIAL STATEMENT (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES				$ AMOUNT
Real Estate	250,000	Nonfarm accounts payable				
Car, Recreational Vehicles, etc.	500					
Household goods	3000					
Cash value of Life Insurance	—					
Stocks, bonds, and other	16,000					
Nonfarm Business	—	Nonfarm notes payable:				
C.C.C. Corner	262,433	Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance
Farm Equipment	75,000					
		TOTAL NONFARM LIABILITIES ▶				
		TOTAL LIABILITIES ▶				
TOTAL NONFARM ASSETS ▶		NET WORTH ▶				
TOTAL ASSETS ▶	606,933	**TOTAL LIABILITIES AND NET WORTH** ▶				-1913978

18. Have you or any member, stockholder, partner or joint operator entity applicant been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance since December 23, 1985? ☐ Yes ☐ No
If yes, please provide date of conviction and details on a separate sheet.

19. I am unable to provide the needed items on my own account, and I am unable to obtain the necessary credit for such items from other sources upon terms and conditions which I can reasonably fulfill, including a Loan Guarantee (for an insured applicant), without a Loan Guarantee (for a guaranteed applicant). I certify that the statements made by me in this application are true, complete and correct, to the best of my knowledge and belief and are made in good faith to obtain a loan. I understand that the 60 day prompt approval period will not begin until a complete application has been filed.

WARNING: Section 1001 of Title 18, United States Code Provides: "Whoever, in any manner within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up ... a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false or [illegible] statement [illegible] to [illegible] any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or [illegible] than 5 years, or both."

1-12-89 (Date)

Philip J. Hynie II (Signature of Applicant)

20. ADDITIONAL SPACE FOR ANSWERS: (Name the number to which each answer applies. If you need more space, use sheets of paper the same size of this page. Do not sheet next applicant's name.)

21. VOLUNTARY INFORMATION FOR MONITORING PURPOSES

The following information is requested by the Federal Government in order to monitor Farm Ex's compliance with Federal laws prohibiting discrimination against loan applicants on the basis of race, color, national origin, religion, sex, marital status, handicapped condition or age [illegible]. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. Instead of your choice not to furnish it, Farm Ex is required to note the [illegible] on the basis of visual observation or surname.

APPLICANT	SEX
RACE/NATIONAL ORIGIN (Name of Hispanic) ☐ WHITE ☐ BLACK ☐ AMERICAN INDIAN OR ALASKAN NATIVE ☐ HISPANIC ☐ ASIAN OR PACIFIC ISLANDER ☐ OTHER (Specify)	☐ MALE ☐ FEMALE

621-573

H2516-0347

Exhibit D

GLASSMAN-OLIVER

Comparison of Total Production Costs

Full Season Wheat, Barley and Soybeans
vs
Barley, Wheat double-cropped with Soybeans

Barley, Full-season	$225.11
Soybeans, Full-season	$177.72
Total of Full Season Costs	$402.83
Barley/Soybeans, Double-cropped Costs	$358.78
Cost savings from double cropping	***10.9%***

Wheat, Full-season	$235.88
Soybeans, Full-season	$177.72
Total of Full Season Costs	$413.60
Wheat/Soybeans, Double-cropped Costs	$362.97
Cost savings from double cropping	***12.2%***

Source: Virginia Cooperative Extension, Crop Budgets
http://www.ext.vt.edu/cgi-bin/WebObjects/Docs.woa/wa/getcat?cat=in-cg-cr-cb

Wheat, Full Season: "Wheat Grain (Intensive Management) with 80 Bushel Yield"
http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/wheatim.xls
Barley, Full Season: "Barley Grain (Intensive Management) with 100 Bushel Yield"
http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/barleyim.xls
Soybeans, Full Season: "Soybeans -- Roundup Ready, Minimum Till"
http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/sybnrt35.xls
Barley/Soybeans: "Barley Grain, Soybeans Double Crop "
http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/b70sb35d.xls
Wheat/Soybeans: "Wheat Grain, Soybeans Double Crop "
http://www.ext.vt.edu/departments/agecon/spreadsheets/crops/w50sb30d.xls

Downloaded November 19th, 2003.

Exhibit E

Estimation of Barley Yields, 1981-2002

	USDA Reported Yield		
Annual Period	Average Yield, All US[2]	Benchmark Yield	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1992	62.5	57.25 [1]	0.916

		Estimated Yield
Annual Period	Average Yield, All US[2]	Based on 1992 Adjustment Factor
	(D)	(E) = (C@1992) x (D)
1981	52.4	47.998
1982	57.2	52.395
1983	52.3	47.907
1984	53.3	48.823
1985	50.9	46.624
1986	50.8	46.533
1987	52.4	47.998
1988	38	34.808
1989	48.6	44.518
1990	56.1	51.388
1991	55.2	50.563
1992	62.5	57.250
1993	58.9	53.952
1994	56.2	51.479
1995	57.2	52.395
1996	58.5	53.586
1997	58.1	53.220
1998	60	54.960
1999	59.2	54.227
2000	61.1	55.968
2001	58.2	53.311
2002	54.9	50.288

Sources:

1 Yield for barley producers with 400+ acres as reported in: Ali, Mir B. and Nora L. Brooks, "U.S. Barley Production Costs and Returns, 1997, An Economic Casebook," Economic Research Service, United States Department of Agriculture, Agricultural Economic Report No. 726 (February 1998), p.61.

2 United States Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Database, <http://www.nass.usda.gov:81/ipedb/>.

Estimation of Corn Yields, 1981-2002

	USDA Reported Yield		
Annual Period	Average Yield, All US[3]	Benchmark Yield	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1987	119.8	136 [1]	1.135
1996	127.1	147 [2]	1.157

		Adjusted Yield			
Annual Period	Average Yield, All US[3]	Based on 1987 Adjustment Factor	Based on 1996 Adjustment Factor	Weighting Factor	**Estimated Yield**
	(D)	(E) = (C@1987) x (D)	(F) = (C@1996) x (D)	(G)	**(H) = (E) x(1-G) +(F) x(G)**
1981	108.9	123.628	125.950	0.000	**123.626**
1982	113.2	128.508	130.924	0.000	**128.508**
1983	81.1	92.067	93.798	0.000	**92.067**
1984	106.7	121.129	123.406	0.000	**121.129**
1985	118	133.957	136.475	0.000	**133.957**
1986	119.4	135.546	138.094	0.000	**135.546**
1987	119.8	136.000	138.557	0.000	**136.000**
1988	84.6	96.040	97.846	0.111	**96.241**
1989	116.3	132.027	134.509	0.222	**132.578**
1990	118.5	134.524	137.054	0.333	**135.367**
1991	108.6	123.285	125.603	0.444	**124.316**
1992	131.5	149.282	152.089	0.556	**150.841**
1993	100.7	114.317	116.467	0.667	**115.750**
1994	139.6	157.342	160.301	0.778	**159.643**
1995	113.5	128.848	131.271	0.889	**131.001**
1996	127.1	144.287	147.000	1.000	**147.000**
1997	128.7	143.833	146.537	1.000	**146.537**
1998	134.4	152.574	155.443	1.000	**155.443**
1999	133.8	151.893	154.749	1.000	**154.749**
2000	136.9	155.412	158.334	1.000	**158.334**
2001	138.2	156.888	159.838	1.000	**159.838**
2002	130	147.579	150.354	1.000	**150.354**

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1987 Costs and Returns survey and analysis to the production practices circa the 1996 Costs and Returns survey and analysis; the weights reflect a simple approximation that in each year after 1987, 1/9th of the farms in the survey switch to the production practices circa 1996.

Sources:

[1] Yield for low-cost corn producers as reported in: Ahearn, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 699 (May 1995), p. 5.

[2] Yield for corn producers with 750+ acres as reported in: Foremen, Linda, "Characteristics and Production Costs of U.S. Corn Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974 (August 2001), p. 21.

[3] United States Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Database, < http://www.nass.usda.gov:81/ipedb/>.

Estimation of Soybean Yields, 1981-2002

	USDA Reported Yield		
Annual Period	Average Yield, All US [3]	Benchmark Yield	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1986	33.3	35 [1]	1.081
1997	38.9	41 [2]	1.054

		Adjusted Yield			
Annual Period	Average Yield, All US [3]	Based on 1986 Adjustment Factor	Based on 1997 Adjustment Factor	Weighting Factor	Estimated Yield
	(D)	(E) = (C@1986) x (D)	(F) = (C@1997) x (D)	(G)	(H) = (E) x(1-G) +(F) x(G)
1981	30.1	32.541	31.725	0.000	**32.541**
1982	31.5	34.054	33.201	0.000	**34.054**
1983	26.2	28.324	27.614	0.000	**28.324**
1984	28.1	30.378	29.617	0.000	**30.378**
1985	34.1	36.865	35.941	0.000	**36.865**
1986	33.3	36.000	35.098	0.000	**36.000**
1987	33.9	36.649	35.730	0.091	**36.565**
1988	27	29.189	28.458	0.182	**29.056**
1989	32.3	34.919	34.044	0.273	**34.680**
1990	34.1	36.865	35.941	0.364	**36.529**
1991	34.2	36.973	36.045	0.455	**36.552**
1992	37.6	40.649	39.630	0.545	**40.093**
1993	32.6	35.243	34.360	0.636	**34.681**
1994	41.4	44.757	43.635	0.727	**43.941**
1995	35.3	38.162	37.206	0.818	**37.380**
1996	37.5	40.649	39.630	0.909	**39.722**
1997	38.9	42.054	41.000	1.000	**41.080**
1998	38.9	42.054	41.000	1.000	**41.000**
1999	36.6	39.568	38.576	1.000	**38.576**
2000	38.1	41.189	40.157	1.000	**40.157**
2001	39.8	42.811	41.738	1.000	**41.738**
2002	38	41.081	40.051	1.000	**40.051**

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1987 Costs and Returns survey and analysis to the production practices circa the 1996 Costs and Returns survey and analysis; the weights reflect a simple approximation that, in each year after 1987, 1/9th of the farms in the survey switch to the production practices circa 1996.

Sources:

[1] Yield for mid-cost soybean producers as reported in: Ahearn, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 699 (May 1996), p. 7.

[2] Yield for soybean producers with 750+ acres as reported in: Foreman, Linda and Janet Livezey, "Characteristics and Production Costs of U.S. Soybean Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-4 (March 2002), p. 24.

[3] United States Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Database, < http://www.nass.usda.gov:81/ipedb/>.

Estimation of Wheat Yields, 1981-2002

	USDA Reported Yield		
Annual Period	Average Yield, All US[3]	Benchmark Yield	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1986	34.4	31 [1]	0.901
1998	43.2	40.7 [2]	0.942

		Adjusted Yield			
Annual Period	Average Yield, All US[3]	Based on 1986 Adjustment Factor	Based on 1998 Adjustment Factor	Weighting Factor	**Estimated Yield**
	(D)	(E) = (C@1986) x (D)	(F) = (C@1998) x (D)	(G)	(H) = (E) x(1-G) +(F) x(G)
1981	34.5	31.090	32.503	0.000	**31.090**
1982	35.5	31.991	33.446	0.000	**31.991**
1983	39.4	35.506	37.120	0.000	**35.506**
1984	38.8	34.965	36.555	0.000	**34.965**
1985	37.5	33.794	35.350	0.000	**33.794**
1986	34.4	31.000	32.409	0.000	**31.000**
1987	37.7	33.974	35.518	0.083	**34.103**
1988	34.1	30.730	32.127	0.167	**30.962**
1989	32.7	29.468	30.806	0.250	**29.803**
1990	39.5	35.596	37.214	0.333	**36.135**
1991	34.3	30.910	32.315	0.417	**31.495**
1992	39.3	35.416	37.026	0.500	**36.221**
1993	38.2	34.424	35.989	0.583	**35.337**
1994	37.6	33.884	35.424	0.667	**34.911**
1995	35.6	32.262	33.728	0.750	**33.362**
1996	36.3	32.712	34.199	0.833	**33.951**
1997	39.5	35.596	37.214	0.917	**37.079**
1998	43.2	38.930	40.700	1.000	**40.700**
1999	42.7	38.480	40.229	1.000	**40.229**
2000	42	37.849	39.569	1.000	**39.569**
2001	40.2	36.227	37.874	1.000	**37.874**
2002	35.3	31.811	33.257	1.000	**33.257**

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1987 Costs and Returns survey and analysis to the production practices circa the 1998 Costs and Returns survey and analysis; the weights reflect a simple approximation that in each year after 1987, 1/9th of the farms in the survey switch to the production practices circa 1998.

Sources:

1 Yield for mid-cost wheat producers as reported in: Ahearn, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 589 (May 1990), p. 8.

2 Yield for wheat producers with 400-799 acres as reported in: Ali, Mir B. "Characteristics and Production Costs of U.S. Wheat Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-5 (July 2002), p. 28.

3 United States Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Database, < http://www.nass.usda.gov:81/ipedb/>.

Estimation of Barley Costs, 1981-2002

	USDA Reported Cost		
Annual Period	Prices Paid Index[2]	Benchmark Cost	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1992	101	147.72 [1]	1.463

Annual Period	Prices Paid Index[2]	Estimated Cost Based on 1992 Adjustment Factor	Estimated Cost (Accounting for 10% Savings Due to Double Cropping)[1]
	(D)	(E) = (C@1992) x (D)	(F) = (E) x .90
1981	82	119.931	107.938
1982	86	125.781	113.203
1983	86	125.781	113.203
1984	89	130.169	117.152
1985	86	125.781	113.203
1986	85	124.319	111.887
1987	87	127.244	114.520
1988	91	133.094	119.785
1989	96	140.407	126.366
1990	99	144.795	130.315
1991	100	146.257	131.632
1992	101	147.720	132.948
1993	104	152.108	136.897
1994	106	155.033	139.530
1995	109	159.421	143.479
1996	115	168.196	151.376
1997	118	172.584	155.325
1998	115	168.196	151.376
1999	115	168.196	151.376
2000	120	175.509	157.958
2001	123	179.897	161.907
2002	124	181.359	163.223

Sources:

[1] Cost per acre to barley producers with 400+ acres as reported in: Ali, Mir B. and Nora L. Brooks, "U.S. Barley Production Costs and Returns, 1992, An Economic Casebook," Economic Research Service, United States Department of Agriculture, Agricultural Economic Report No. 726 (February 1996), p. 21.

[2] Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nassr/price/zap-bb/agpran03.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nassr/price/zap-bb/agpran00.txt>; Prices Paid index for 1981-1998 from Prices Paid and Received Indexes (95017), <http://usda.mannlib.cornell.edu/data-sets/crops/95017/>.

Estimation of Corn Costs, 1981-2002

	USDA Reported Cost		
Annual Period	Prices Paid Index[3]	Benchmark Cost	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1987	87	220.88 [1]	2.539
1995	115	227.68 [2]	1.980

		Adjusted Cost			
Annual Period	Prices Paid Index[3]	Based on 1987 Adjustment Factor	Based on 1995 Adjustment Factor	Weighting Factor	Estimated Cost
	(D)	(E) = (C@1987) x (D)	(F) = (C@1995) x (D)	(G)	(H) = (E) x(1-G) +(F) x(G)
1981	82	208.186	162.346	0.000	**208.186**
1982	86	218.341	170.265	0.000	**218.341**
1983	86	218.341	170.265	0.000	**218.341**
1984	89	225.958	176.205	0.000	**225.958**
1985	86	218.341	170.265	0.000	**218.341**
1986	85	215.802	168.285	0.000	**215.802**
1987	87	220.860	172.245	0.000	**220.860**
1988	91	231.035	180.164	0.111	**225.383**
1989	96	243.730	190.063	0.222	**231.804**
1990	99	251.346	196.003	0.333	**232.898**
1991	100	253.885	197.983	0.444	**229.040**
1992	101	256.424	199.962	0.556	**225.056**
1993	104	264.040	205.902	0.667	**225.281**
1994	108	269.118	209.862	0.778	**223.030**
1995	109	276.735	215.801	0.889	**222.571**
1996	115	291.968	227.680	1.000	**227.680**
1997	118	299.584	233.619	1.000	**233.619**
1998	115	291.968	227.680	1.000	**227.680**
1999	115	291.968	227.680	1.000	**227.680**
2000	120	304.662	237.579	1.000	**237.579**
2001	123	312.279	243.519	1.000	**243.519**
2002	124	314.817	245.498	1.000	**245.498**

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1987 Costs and Returns survey and analysis to the production practices circa the 1996 Costs and Returns survey and analysis; the weights reflect a simple approximation that in each year after 1987, 1/9th of the farms in the survey switch to the production practices circa 1996.

Sources:

[1] Cost per acre to low-cost corn producers as reported in: Ahearn, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 599 (May 1990), p. 5.

[2] Cost per acre to corn producers with 750+ acres as reported in:Foreman, Linda, "Characteristics and Production Costs of U.S. Corn Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974 (August 2001), p. 21.

[3] Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nassr/price/zap-bbl/agpran03.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/ reports/nassr/price/zap-bbl/agpran00.txt>; Prices Paid Index for 1981-1993 from Prices Paid and Received Indexes (85917). <http://usda.mannlib.cornell.edu/data-sets/prices/85917>.

Estimation of Soybean Costs, 1961-2002

	USDA Reported Cost		
Annual Period	Prices Paid Index[3]	Benchmark Cost	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1986	85	168.45 [1]	1.982
1997	118	135.94 [2]	1.152

		Adjusted Cost				
Annual Period	Prices Paid Index[3]	Based on 1986 Adjustment Factor	Based on 1997 Adjustment Factor	Weighting Factor	Estimated Cost	Estimated Cost (Accounting for 10% Savings Due to Double Cropping)
	(D)	(E) = (C@1986) x (D)	(F) = (C@1997) x (D)	(G)	(H) = (E) x(1-G) +(F) x(G)	(J) = (H) x .90
1961	82	162.565	94.467	0.000	162.565	146.254
1962	86	170.432	99.075	0.000	170.432	153.389
1963	86	170.432	99.075	0.000	170.432	153.389
1964	89	176.377	102.551	0.000	176.377	158.739
1965	86	170.432	99.075	0.000	170.432	153.389
1966	85	168.450	97.923	0.000	168.450	151.605
1967	87	172.414	100.227	0.091	165.851	149.266
1968	91	180.341	104.835	0.182	168.612	151.751
1969	96	190.249	110.595	0.273	168.526	151.673
1990	99	196.195	114.051	0.364	168.324	151.492
1991	100	198.175	115.203	0.455	160.461	144.415
1992	101	200.158	116.356	0.545	154.448	139.003
1993	104	206.104	119.812	0.636	151.190	136.071
1994	106	210.087	122.116	0.727	146.102	131.492
1995	109	216.032	125.572	0.818	142.015	127.814
1996	115	227.903	132.464	0.909	141.158	127.043
1997	118	233.848	135.940	1.000	135.940	122.346
1998	116	227.900	132.484	1.000	132.484	119.236
1999	115	227.903	132.484	1.000	132.484	119.236
2000	120	237.812	138.244	1.000	138.244	124.420
2001	123	243.757	141.700	1.000	141.700	127.530
2002	124	245.739	142.852	1.000	142.852	128.567

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1997 Costs and Returns survey and analysis to the production practices since the 1996 Costs and Returns survey and analysis; the weights reflect a simple approximation that in each year after 1997, 1/9th of the farms in the survey switch to the production practices circa 1996.

Sources:

[1] Cost per acre to mid-cost soybean producers as reported in: Ahearn, Mary, et.al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 599 (May 1990), p. 7.

[2] Cost per acre to soybean producers with 750+ acres as reported in: Fearson, Linda and Janet Livezey, "Characteristics and Production Costs of U.S. Soybean Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-4 (March 2002), p. 24.

[3] Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nass/price/zap-bb/agpres03.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics

Estimation of Wheat Costs, 1981-2002

	USDA Reported Cost		
Annual Period	Prices Paid Index[3]	Benchmark Cost	Adjustment Factor
	(A)	(B)	(C) = (B)/(A)
1986	85	121.49 [1]	1.429
1998	115	160.22 [2]	1.393

		Adjusted Cost				
Annual Period	Prices Paid Index[3]	Based on 1986 Adjustment Factor	Based on 1998 Adjustment Factor	Weighting Factor	Estimated Cost	Estimated Cost (Accounting for 10% Savings Due to Double Cropping
	(D)	(E) = (C@1986) x (D)	(F) = (C@1998) x (D)	(G)	(H) = (E) x(1-G) +(F) x(G)	(J) = (H) x .90
1981	82	117.202	114.244	0.000	117.202	105.482
1982	86	122.919	119.817	0.000	122.919	110.627
1983	86	122.919	119.817	0.000	122.919	110.627
1984	89	127.207	123.998	0.000	127.207	114.486
1985	86	122.919	119.817	0.000	122.919	110.627
1986	85	121.490	118.423	0.000	121.490	109.341
1987	87	124.349	121.210	0.083	124.087	111.678
1988	91	130.066	126.783	0.167	129.519	116.567
1989	96	137.212	133.749	0.250	136.348	122.712
1990	99	141.500	137.929	0.333	140.310	126.279
1991	100	142.929	139.322	0.417	141.426	127.284
1992	101	144.359	140.715	0.500	142.537	128.283
1993	104	148.647	144.895	0.583	146.455	131.812
1994	106	151.505	147.681	0.667	148.956	134.060
1995	109	155.793	151.861	0.750	152.644	137.559
1996	115	164.369	160.220	0.833	160.911	144.820
1997	118	168.657	164.400	0.917	164.754	148.279
1998	115	164.369	160.220	1.000	160.220	144.198
1999	115	164.369	160.220	1.000	160.220	144.198
2000	120	171.515	167.186	1.000	167.186	150.467
2001	123	175.803	171.366	1.000	171.366	154.229
2002	124	177.232	172.759	1.000	172.759	155.483

NOTE: The weighting factor implements an adjustment to account for change from the production practices circa the 1987 Costs and Returns survey and analysis to the production practices circa the 1996 Costs and Returns survey and analysis; the weights reflect a simple approximation that in each year after 1987, 1/6th of the farms in the survey switch to the production practices circa 1996.

Sources:

[1] Cost per acre to mid-cost wheat producers as reported in: Ahlstrom, Mary, et al., "How Costs of Production Vary," Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 599 (May 1990), p. 8.

[2] Cost per acre to wheat producers with 400-799 acres as reported in: Ali, Mir B. "Characteristics and Production Costs of U.S. Wheat Farms," Economic Research Service, United States Department of Agriculture, Statistical Bulletin No. 974-5 (July 2003), p. 26.

[3] Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nass/price/zap-bb/agpran02.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nass/price/zap-bb/agpran00.txt>; Prices Paid Index for 1981-1993 from Prices Paid and Received Indexes (93917). <http://usda.mannlib.cornell.edu/data-sets/crops/93917/>.

Estimation of Hog Costs, 1981-2002

	USDA Reported Cost		
Annual Period	Prices Paid Index[2] (A)	Benchmark Cost (B)	Adjustment Factor (C) = (B)/(A)
1996	115	40.8 [1]	0.355

		Estimated Cost
Annual Period	Prices Paid Index[2] (D)	Based on 1996 Adjustment Factor (E) = (C@1996) x (D)
1981	82	29.092
1982	86	30.511
1983	86	30.511
1984	89	31.576
1985	86	30.511
1986	85	30.157
1987	87	30.866
1988	91	32.285
1989	96	34.059
1990	99	35.123
1991	100	35.478
1992	101	35.833
1993	104	36.897
1994	106	37.607
1995	109	38.671
1996	115	40.800
1997	118	41.864
1998	115	40.800
1999	115	40.800
2000	120	42.574
2001	123	43.638
2002	124	43.993

Sources:

[1] Cost per cwt to large (2,000-4,999 head) farrow-finish hog growers as reported in: McBride, William D. and Nigel Key, "Economic and Structural Relationships in U.S. Hog Production", Resource Economics Division, Economic Research Service, United States Department of Agriculture, Agricultural Economic Report No. 818 (February 2003), p. 18.

[2] Prices Paid Index for 2000-2002 from Agricultural Prices 2002 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nass/price/zap-bb/agpran00.txt>; Agricultural Prices 1999 Summary, USDA National Agricultural Statistics Service, < http://usda.mannlib.cornell.edu/reports/nass/price/zap-bb/agpran00.txt>; Prices Paid Index for 1981-1993 from Prices Paid and Received Indexes (95917), <http://usda.mannlib.cornell.edu/data-sets/crops/95917/>.

Exhibit F

Acreage and Crop Mix as Reported in Farm and Home Plans

Year	Document Numbers	CORN		BARLEY (DOUBLE CROPPED)		WHEAT (DOUBLE CROPPED)		SOYBEANS (DOUBLE CROPPED)		SOYBEANS (EARLY)		TOTAL	
		Acres	%	Acres	%	Acres	%	Acres	%	Acres	%	Acres	%
2/24/1981	A-3-5	284	26.1%	474	43.5%	332	30.5%	806	73.9%		0.0%	1090	100.0%
1981/1982	Blank	284	26.1%	474	43.5%	332	30.5%	806	73.9%		0.0%	1090	100.0%
8/1/1983	C-3-132	550	41.0%	50	3.7%	100	7.5%	150	11.2%	640	47.8%	1340	100.0%
11/9/1984	D-3-4	1275	42.9%	1100	37.0%	600	20.2%	1700	57.1%		0.0%	2975	100.0%
3/8/1985	D-3-46	1275	45.9%	1000	36.0%	400	14.4%	1400	50.5%	100	3.6%	2775	100.0%
1986		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1987		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1988		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
3/10/1989	EL-5-54	300	36.9%	100	12.3%	150	18.5%	250	30.8%	262	32.3%	812	100.0%
10/1/1990	EL-5-49	1099	56.4%	260	13.3%	240	12.3%	500	25.7%	349	17.9%	1948	100.0%

PROJECTED GROWTH

		CORN		BARLEY (DOUBLE CROPPED)		WHEAT (DOUBLE CROPPED)		SOYBEANS (DOUBLE CROPPED)		SOYBEANS (EARLY)		TOTAL	
	Year	Acreage	%	Acreage	%	Acreage	%	Acreage	%	Acreage	%	Acreage	Change in Acreage
PLANNED	1981	284	26.1%	474	43.5%	332	30.5%	806	73.9%	0	0.0%	**1090**	
	1982	284	26.1%	474	43.5%	332	30.5%	806	73.9%	0	0.0%	**1090**	0
	1983	550	41.0%	50	3.7%	100	7.5%	790	11.2%	640	47.8%	**1340**	250
	1984	1275	42.9%	1100	37.0%	600	20.2%	1700	57.1%	0	0.0%	**2975**	1635
	1985	1275	45.9%	1000	36.0%	400	14.4%	1400	50.5%	100	3.6%	**2775**	-200
PROJECTED	1986	1210	36.9%	403	12.3%	605	18.5%	1008	30.8%	1057	32.3%	**3275**	500
	1987	1395	36.9%	465	12.3%	697	18.5%	1162	30.8%	1218	32.3%	**3775**	500
	1988	1469	36.9%	490	12.3%	734	18.5%	1224	30.8%	1283	32.3%	**3975**	200
	1989	1542	36.9%	514	12.3%	771	18.5%	1285	30.8%	1347	32.3%	**4175**	200
	1990	2468	56.4%	584	13.3%	539	12.3%	1123	25.7%	764	17.9%	**4375**	200
	1991	2581	56.4%	611	13.3%	554	12.3%	1174	25.7%	820	17.9%	**4575**	200
	1992	2694	56.4%	637	13.3%	588	12.3%	1226	25.7%	855	17.9%	**4775**	200
	1993	2807	56.4%	664	13.3%	613	12.3%	1277	25.7%	891	17.9%	**4975**	200
	1994	2920	56.4%	691	13.3%	638	12.3%	1328	25.7%	927	17.9%	**5175**	200
	1995	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	200
	1996	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	1997	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	1998	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	1999	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	2000	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	2001	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	2002	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0
	2003	3032	56.4%	717	13.3%	662	12.3%	1380	25.7%	963	17.9%	**5375**	0

Exhibit G

Lost Earnings from All Enterprises

Year	Total Return From Crops	Total Return From Hogs	Total Return from All Enterprises	Mitigating Income	Net Damages	Total Damages Adjusted to year 2002 dollars
1981	73,848.83	240,237.22	314,087.05		314,087.05	621,609.02
1982	51,246.24	199,599.14	250,845.39		250,845.39	467,638.19
1983	155,229.17	137,373.57	292,602.75		292,602.75	528,506.37
1984	198,124.66	139,064.93	335,189.60		335,189.60	580,371.59
1985	146,199.83	115,859.43	262,059.27		262,059.27	438,145.56
1986	15,808.25	171,639.71	187,445.97		187,445.97	307,678.19
1987	191,497.89	169,823.59	361,321.48		361,321.48	572,198.36
1988	188,058.63	95,600.92	283,659.55	63,237.00	220,422.55	335,198.78
1989	240,237.99	86,550.45	327,188.44	205,406.00	121,782.44	176,682.75
1990	328,157.93	172,492.93	500,650.86	67,117.00	433,533.86	596,731.00
1991	291,089.17	121,075.09	412,164.26	188,371.00	223,793.26	295,597.70
1992	439,631.22	56,918.06	496,550.28	24,337.00	472,213.28	605,496.57
1993	356,411.21	101,336.09	457,747.30		457,747.30	569,887.47
1994	633,150.59	35,709.51	669,860.10		669,860.10	813,143.26
1995	896,673.03	42,285.47	938,958.50		938,958.50	1,107,681.72
1996	1,057,834.93	116,545.08	1,174,680.01	3,301.60	1,171,378.41	1,343,090.98
1997	728,149.70	124,376.62	852,526.32		852,526.32	955,573.12
1998	496,506.44	(50,423.76)	446,082.68		448,082.68	494,540.33
1999	333,250.57	(82,045.51)	251,205.05		251,205.05	271,259.24
2000	247,551.65	22,769.62	270,321.27		270,321.27	282,408.81
2001	294,967.44	33,172.47	328,139.91		328,139.91	333,327.89
2002	606,352.00	(74,720.32)	531,631.68		531,631.68	531,631.68

TOTAL DAMAGES: $ 12,228,398.59

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

BARLEY

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	474	48	2.10	100.80	47,777.61	107.94	51,162.60	(7.14)	(3,385.00)	(6,699.24)
1982	474	52	1.90	99.55	47,187.12	113.20	53,658.34	(13.65)	(6,471.22)	(12,063.97)
1983	50	48	2.05	98.21	4,910.45	113.20	5,660.16	(14.99)	(749.72)	(1,354.15)
1984	1100	49	2.35	114.73	126,206.94	117.15	128,867.42	(2.42)	(2,660.48)	(4,606.55)
1985	1000	47	1.70	79.26	79,261.48	113.20	113,203.25	(33.94)	(33,941.77)	(56,748.36)
1986	403	47	1.50	69.60	26,129.08	111.89	45,090.43	(42.09)	(16,961.36)	(27,840.77)
1987	465	48	1.35	64.80	30,131.00	114.52	53,251.60	(49.72)	(23,120.60)	(36,614.40)
1988	490	35	1.95	67.88	33,259.04	119.76	58,694.57	(51.91)	(25,435.52)	(38,680.06)
1989	514	46	2.10	93.49	48,052.30	126.37	64,952.34	(32.88)	(16,900.04)	(24,518.69)
1990	584	51	2.10	107.91	63,021.75	130.32	76,104.17	(22.40)	(13,082.42)	(18,097.10)
1991	611	51	1.70	85.96	52,520.00	131.63	80,426.96	(45.67)	(27,906.96)	(36,860.98)
1992	637	57	1.90	108.78	69,289.68	132.95	84,687.88	(24.17)	(15,398.20)	(19,744.38)
1993	664	54	1.80	97.11	64,483.91	136.90	90,899.58	(39.78)	(26,415.67)	(32,887.05)
1994	691	51	1.80	92.66	64,029.83	139.53	96,414.94	(46.87)	(32,385.11)	(39,312.29)
1995	717	52	1.75	91.69	65,742.88	143.48	102,874.11	(51.79)	(37,131.23)	(43,631.42)
1996	717	54	2.90	155.40	111,421.37	151.38	108,536.90	4.02	2,884.47	3,307.30
1997	717	53	2.10	111.76	80,132.75	156.33	111,368.30	(43.56)	(31,235.55)	(35,911.06)
1998	717	55	1.40	76.94	55,168.85	151.38	108,536.90	(74.43)	(53,368.06)	(58,901.31)
1999	717	64	1.31	71.04	50,933.98	151.38	108,536.90	(80.34)	(57,602.92)	(62,201.47)
2000	717	56	1.35	75.56	54,173.84	157.96	113,255.90	(82.40)	(59,082.06)	(61,723.94)
2001	717	63	1.28	68.24	48,926.89	161.91	116,087.30	(93.67)	(67,160.41)	(68,222.24)
2002	717	50	1.40	70.40	50,479.50	163.22	117,031.10	(92.82)	(66,551.60)	(66,551.60)
										$ (749,073.71)

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

CORN

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	284	124	2.70	333.79	94,786.45	208.19	59,124.75	125.60	35,671.70	70,587.78
1982	284	129	2.50	321.27	91,240.33	218.34	62,008.89	102.93	29,231.45	54,494.69
1983	550	92	3.70	340.65	187,355.89	218.34	120,087.63	122.31	67,268.26	121,501.61
1984	1275	121	2.90	351.27	447,872.80	226.96	288,096.07	125.32	159,776.74	276,649.04
1985	1275	134	2.40	321.50	409,907.18	218.34	278,384.97	103.15	131,522.21	219,896.34
1986	1210	136	1.70	230.43	278,817.94	215.80	261,120.78	14.63	17,697.15	29,048.52
1987	1395	136	2.05	278.80	388,926.00	220.88	308,127.60	57.92	80,798.40	127,954.51
1988	1469	95	2.90	279.10	409,995.02	225.38	331,087.69	53.71	78,907.33	118,995.17
1989	1542	133	2.60	344.70	531,533.09	231.80	357,441.46	112.90	174,091.63	252,573.26
1990	2468	135	2.51	339.77	838,557.14	232.90	574,793.25	106.87	263,763.89	363,053.74
1991	2581	124	2.60	323.22	834,232.88	229.04	591,151.01	94.18	243,081.87	321,075.10
1992	2694	151	2.25	339.39	914,325.47	225.08	606,302.00	114.34	308,023.47	394,953.80
1993	2807	116	2.65	306.74	861,012.95	225.28	632,364.97	81.46	228,647.98	284,862.78
1994	2926	160	2.40	383.14	1,118,779.18	223.03	651,246.72	160.11	467,532.46	567,537.72
1995	3032	131	3.35	438.65	1,330,608.22	222.57	674,836.64	216.28	655,771.58	774,103.06
1996	3032	147	3.20	470.40	1,426,252.80	227.68	690,325.78	242.72	735,927.04	843,805.72
1997	3032	147	2.69	394.19	1,195,170.53	233.62	708,334.26	160.57	486,836.27	545,681.26
1998	3032	155	2.24	348.19	1,055,718.83	227.65	690,325.76	120.51	365,393.07	403,277.38
1999	3032	155	2.15	332.71	1,008,777.89	227.68	690,325.76	105.03	318,452.13	343,874.78
2000	3032	158	2.02	319.84	969,741.09	237.56	720,339.92	82.26	249,401.17	260,553.25
2001	3032	160	2.14	342.05	1,037,105.17	243.62	738,348.42	98.53	298,756.74	303,480.17
2002	3032	150	2.75	413.47	1,253,652.08	245.50	744,351.25	167.98	509,300.83	509,300.83
										$ 7,188,081.52

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

DOUBLE CROPPED SOYBEANS

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	806	33	6.10	198.50	159,988.82	146.25	117,880.91	52.24	42,107.91	83,335.67
1982	808	34	5.70	194.11	156,451.14	153.39	123,691.20	40.72	32,819.93	61,184.52
1983	790	28	7.85	222.35	175,853.30	153.39	121,176.98	68.96	54,476.31	98,386.47
1984	1700	30	5.95	180.75	307,277.30	156.74	269,856.90	22.01	37,420.40	64,792.39
1985	1400	37	5.15	189.85	265,795.68	153.39	214,744.02	36.47	51,051.65	85,354.95
1986	1008	36	4.90	176.40	177,811.20	151.61	152,817.64	24.80	24,993.36	41,024.68
1987	1162	37	6.05	221.22	257,056.61	149.27	173,447.09	71.95	83,609.51	132,406.25
1988	1224	29	7.40	215.02	263,179.17	149.95	183,540.13	65.08	79,639.04	121,107.89
1989	1285	35	5.70	197.68	254,015.30	151.67	194,899.80	46.00	59,115.50	85,765.14
1990	1123	37	5.55	202.74	227,671.65	149.69	168,104.07	53.04	59,567.58	81,990.86
1991	1174	37	5.50	201.03	236,014.62	144.42	169,543.55	56.62	66,471.07	87,798.42
1992	1226	40	5.50	220.51	270,345.59	139.00	170,417.49	81.51	99,929.09	128,134.31
1993	1277	35	6.45	223.69	285,656.20	136.07	173,763.17	87.62	111,893.03	139,304.89
1994	1528	44	5.35	235.05	312,191.35	131.49	174,821.54	103.59	137,569.81	166,996.01
1995	1380	37	6.85	255.05	353,349.04	127.81	176,383.18	128.24	176,965.85	208,898.66
1996	1380	40	6.60	270.11	372,755.38	127.04	175,318.68	143.07	197,436.71	226,378.99
1997	1380	41	6.20	254.20	350,796.00	122.35	168,837.48	131.85	181,958.52	203,952.26
1998	1380	41	5.30	217.30	299,874.00	119.24	164,545.00	98.03	135,329.00	149,360.04
1999	1380	39	4.50	173.59	239,555.94	119.24	164,545.00	54.36	75,010.94	80,999.20
2000	1380	40	4.35	174.68	241,061.34	124.42	171,699.13	50.26	69,362.21	72,463.77
2001	1380	42	4.30	179.47	247,672.04	127.53	176,991.61	51.94	71,680.43	72,813.72
2002	1380	40	5.54	221.88	306,201.07	128.57	177,422.44	93.32	128,778.63	128,778.63
										$ 2,521,237.77

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

EARLY SOYBEANS

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2092 dollars
1981	0	33	6.10	198.50	-	162.50	-	35.99	-	-
1982	0	34	5.70	194.11	-	170.43	-	23.68	-	-
1983	640	26	7.85	222.35	142,301.41	170.43	109,076.33	51.91	33,225.08	60,011.95
1984	0	30	5.95	180.75	-	176.38	-	4.37	-	-
1985	100	37	5.15	189.85	18,985.41	170.43	17,043.18	19.42	1,942.23	3,247.28
1986	1057	38	4.90	176.40	186,454.80	168.45	178,051.65	7.95	8,403.15	13,793.13
1987	1218	37	6.05	221.22	269,444.88	165.85	202,006.88	55.37	67,438.22	106,796.97
1988	1283	29	7.40	215.02	275,885.09	166.61	213,763.60	48.40	62,101.49	94,436.36
1989	1347	35	5.70	197.68	266,271.29	168.53	227,003.92	29.15	39,267.37	55,989.35
1990	784	37	5.55	202.74	158,944.41	166.32	130,398.33	36.41	28,546.08	39,291.82
1991	820	37	5.50	201.03	164,848.37	160.48	131,578.38	40.57	33,270.00	43,944.73
1992	855	40	5.50	220.51	188,536.97	154.45	132,052.71	66.06	56,484.27	72,427.08
1993	891	35	6.45	223.69	199,310.53	151.19	134,710.68	72.50	64,599.95	80,425.62
1994	927	44	5.35	235.08	217,922.72	146.10	135,436.68	85.98	82,485.64	100,129.57
1995	963	37	6.65	256.05	246,576.17	142.02	136,760.88	114.03	109,815.30	129,531.05
1996	963	40	6.80	270.11	260,118.43	141.16	135,935.50	128.95	124,182.93	142,386.93
1997	963	41	6.20	254.20	244,794.60	135.94	130,910.22	118.26	113,884.38	127,649.84
1998	963	41	5.30	217.30	209,259.90	132.48	127,581.99	84.82	81,677.91	90,146.35
1999	963	38	4.50	173.59	167,168.38	132.48	127,581.99	41.11	39,586.39	42,746.65
2000	963	40	4.35	174.68	168,218.89	138.24	133,129.04	36.44	35,089.86	36,655.92
2001	963	42	4.30	179.47	172,832.01	141.70	136,457.26	37.77	36,374.75	36,949.84
2002	963	40	5.64	221.88	213,875.09	142.85	137,565.67	79.03	76,108.42	76,108.42
										$ 1,353,754.07

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

WHEAT

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value Cost Per Acre		Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	332	31	3.34	103.84	34,475.21	105.48	35,019.99	(1.64)	(544.78)	(1,078.18)
1982	332	32	3.05	97.57	32,394.37	110.63	36,728.29	(13.05)	(4,333.92)	(8,079.50)
1983	100	36	3.40	120.72	12,071.98	110.63	11,062.74	10.09	1,009.24	1,822.91
1984	600	35	3.35	117.13	70,279.83	114.49	68,691.88	2.65	1,588.01	2,749.59
1985	400	34	2.35	98.69	39,876.45	110.63	44,250.95	(10.94)	(4,374.49)	(7,313.88)
1986	605	31	2.55	79.05	47,825.25	109.34	66,151.31	(30.29)	(18,326.06)	(30,080.81)
1987	697	34	2.55	86.96	60,812.15	111.68	77,839.80	(24.72)	(17,227.64)	(27,282.16)
1988	734	31	3.45	106.82	78,406.29	116.57	85,559.99	(9.75)	(7,153.70)	(10,878.71)
1989	771	30	3.45	102.82	79,274.30	122.71	94,610.76	(19.89)	(15,336.47)	(22,250.24)
1990	539	36	2.95	106.60	57,458.98	126.28	68,064.18	(19.66)	(10,607.20)	(14,600.12)
1991	564	31	2.70	85.04	47,961.15	127.28	71,787.95	(42.25)	(23,826.80)	(31,471.67)
1992	588	36	3.10	112.28	66,023.08	128.28	75,430.49	(16.00)	(9,407.41)	(12,062.67)
1993	613	35	2.70	95.41	58,486.76	131.81	80,800.84	(36.40)	(22,314.08)	(27,780.65)
1994	638	35	2.85	99.50	63,477.99	134.06	85,530.39	(34.56)	(22,052.41)	(25,759.42)
1995	662	33	3.70	123.44	81,715.87	137.56	91,064.33	(14.12)	(9,348.46)	(11,035.35)
1996	662	34	4.15	140.90	93,274.84	144.82	95,871.05	(3.82)	(2,596.22)	(2,978.80)
1997	662	37	3.05	113.09	74,866.76	148.28	98,160.68	(35.19)	(23,293.92)	(26,109.51)
1998	662	41	2.41	98.09	64,933.59	144.20	95,459.08	(46.11)	(30,525.48)	(33,690.39)
1999	662	40	2.00	80.46	53,263.11	144.20	95,459.08	(63.74)	(42,195.97)	(45,564.55)
2000	662	40	2.00	79.14	52,389.94	150.47	99,609.47	(71.33)	(47,219.53)	(49,330.97)
2001	662	38	2.29	86.73	57,415.64	154.23	102,099.71	(67.50)	(44,684.07)	(45,390.54)
2002	662	33	2.80	93.12	61,645.50	155.48	102,929.79	(62.36)	(41,284.28)	(41,284.28)
									$	(470,457.87)

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

ALL CROPS

Year	Total Revenue	Total Return	Net Income Adjusted to year 2002 dollars
1981	337,038.09	73,849.83	146,156.04
1982	327,272.96	51,246.24	95,535.74
1983	522,293.02	155,229.17	280,378.80
1984	951,636.92	196,124.66	339,584.47
1985	813,826.19	146,199.83	244,436.34
1986	719,038.26	15,805.25	25,944.78
1987	1,006,170.63	191,497.69	303,261.18
1988	1,060,704.60	188,058.63	285,982.65
1989	1,179,146.26	249,237.99	348,538.82
1990	1,345,651.93	328,187.93	451,729.22
1991	1,335,577.02	291,089.17	384,485.62
1992	1,508,521.79	439,631.22	563,718.15
1993	1,468,950.45	356,411.21	443,725.79
1994	1,776,401.06	633,150.59	768,581.59
1995	2,077,992.18	896,073.03	1,057,766.00
1996	2,263,822.82	1,057,834.93	1,212,903.14
1997	1,945,760.64	728,149.70	816,162.81
1998	1,684,955.17	498,506.44	550,192.07
1999	1,519,699.30	333,250.57	359,854.60
2000	1,485,585.11	247,561.65	258,621.03
2001	1,563,951.74	294,967.44	299,630.96
2002	1,885,653.25	606,352.00	606,352.00
			$ 9,843,541.79

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Profits from Hogs

Farrow to Finish

Year	Number of Hogs	cwt per hog	Cost per cwt	Cost per hog	Total Cost	Value per cwt	Value per hog	Total Value	Return per Hog	Total Return	Net Income Adjusted to year 2002 dollars
1981	3400	2.43	29.09	70.72	240,441.97	58.10	141.36	480,679.19	70.66	240,237.22	$ 475,452.98
1982	3400	2.43	30.51	74.14	252,084.40	54.67	132.85	451,683.54	58.71	199,599.14	$ 372,102.44
1983	3400	2.43	30.51	74.27	252,516.54	47.11	114.57	389,690.21	40.40	137,373.67	$ 246,127.57
1984	3400	2.44	31.56	76.99	261,772.68	48.35	117.89	400,837.62	40.90	139,064.93	$ 240,767.13
1985	3400	2.45	30.51	74.75	254,159.17	44.42	108.83	370,016.60	34.08	115,859.43	$ 193,799.22
1986	3400	2.46	30.16	74.29	252,570.92	50.85	124.77	424,210.63	50.48	171,639.71	$ 281,733.43
1987	3400	2.48	30.87	76.60	260,067.94	51.02	126.44	429,911.53	49.95	169,823.59	$ 269,937.18
1988	3400	2.49	32.29	80.44	273,508.60	43.57	108.56	369,110.52	28.12	95,600.92	$ 145,381.28
1989	3400	2.49	34.06	84.72	288,055.10	44.34	110.30	375,005.55	25.57	86,950.45	$ 126,148.28
1990	3400	2.50	35.12	87.78	298,450.05	55.42	138.50	470,912.98	50.72	172,462.93	$ 237,383.94
1991	3400	2.52	35.48	89.46	304,176.78	49.60	125.07	425,253.87	36.61	121,075.08	$ 159,922.23
1992	3400	2.53	35.83	90.66	308,235.84	42.45	107.40	365,154.90	16.74	56,919.06	$ 72,984.60
1993	3400	2.54	36.90	93.81	318,959.50	48.62	123.62	420,295.59	29.80	101,336.09	$ 126,161.68
1994	3400	2.56	37.61	96.15	326,904.74	41.83	106.95	363,614.25	10.80	36,709.51	$ 44,581.68
1995	3400	2.57	38.67	99.19	337,252.45	43.52	111.93	378,537.92	12.44	42,285.47	$ 49,915.73
1996	3400	2.54	40.80	103.63	352,348.80	54.33	138.00	469,193.68	34.37	116,845.08	$ 133,873.42
1997	3400	2.56	41.86	107.28	364,743.13	56.14	143.86	489,119.75	35.58	124,376.62	$ 139,410.30
1998	3400	2.57	40.80	104.69	355,932.40	35.02	89.86	305,508.64	(14.83)	(50,423.76)	$ (55,651.74)
1999	3400	2.59	40.80	105.64	359,169.20	31.45	81.51	277,123.62	(24.13)	(82,045.51)	$ (88,595.37)
2000	3400	2.62	42.57	111.54	379,248.42	45.13	118.24	402,018.04	6.70	22,769.62	$ 23,787.78
2001	3400	2.65	43.64	115.64	393,180.73	47.32	125.40	426,353.20	9.76	33,172.47	$ 33,686.94
2002	3400	2.65	43.99	116.58	396,377.32	36.70	94.61	321,657.00	(21.98)	(74,720.32)	$ (74,720.32)
										TOTAL:	$ 3,155,210.38

Lost Profits from Hogs

Farrow to Finish
(continued)

SOURCES:

Cwt per Hog

Livestock Slaughter, National Agricultural Statistics Service, United States Department of Agriculture.
<http://usda.mannlib.cornell.edu/data-sets/livestock/94008/averageliveweight.xls>
<http://usda.mannlib.cornell.edu/reports/nass/livestock/pls-bban/lsan0301.txt>
<http://usda.mannlib.cornell.edu/reports/nass/livestock/pls-bban/lsan0302.txt>
<http://usda.mannlib.cornell.edu/reports/nass/livestock/pls-bban/lsan0303.txt>

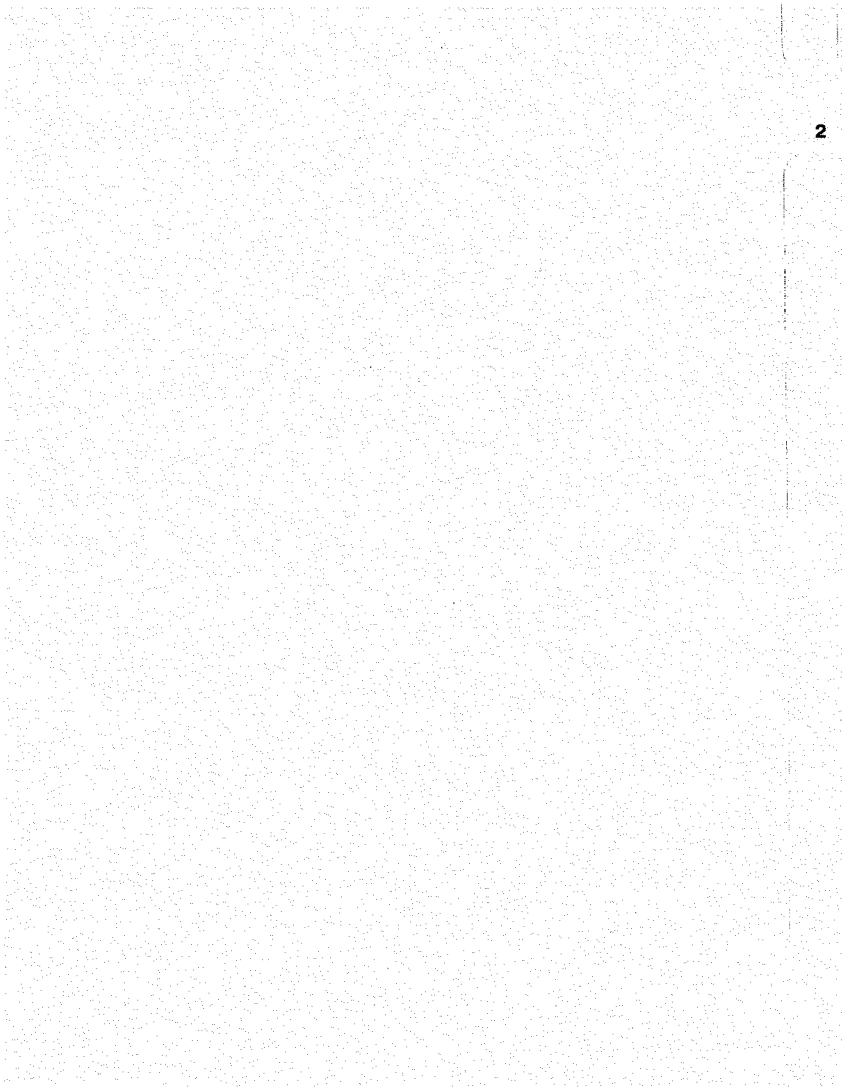
Cost per Cwt

See Exhibit E.

Value per Cwt

U.S. Farrow to Finish Costs and Returns Reports, Economic Research Service, United States Department of Agriculture.
<http://www.ers.usda.gov/data/costsandreturns/data/recent/FFin/R-USFfin.xls>
< http://www.ers.usda.gov/data/FarmIncome/xls/DATA/Appendix/FFinish/US9297.xls >
<http://www.ers.usda.gov/data/FarmIncome/xls/DATA/Appendix/FFINISH/Us8291.xls>

Note: Because I was unable to find Value of Production for 1981, I estimated the the value for that year by adjusting the 1982 number using the Prices Received by Farmers Index (Source: <http://usda.mannlib.cornell.edu/data-sets/crops/86017/nc07693.wk1>).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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PHILIP J. HAYNIE, II AND
JUDITH HAYNIE,
P.O. Box #83
Heathsville, VA 22473

Plaintiffs,

v.

DAN GLICKMAN, Secretary
of the United States Department
of Agriculture, ROSALIND D. GRAY,
Director of the Office of Civil Rights for
the United States Department of
Agriculture, and the UNITED STATES
DEPARTMENT OF AGRICULTURE
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0100

Defendants.

CASE NUMBER 1:00CV02518
JUDGE: Paul L. Friedman
DECK TYPE: Civil General
DATE STAMP: 10/20/2000

JURY TRIAL DEMAND

INTRODUCTION

Plaintiffs, Philip J. Haynie, II and Judith Haynie, are African-American farmers who, like thousands of other African-American farmers in this country, have suffered invidious and systemic racial discrimination at the hands of the United States Department of Agriculture ("USDA"). In an effort to seek redress for this unlawful discrimination, Mr. Haynie, II filed a discrimination complaint against USDA on April 23, 1997. Judith Haynie filed a separate complaint on May 20, 1997. The USDA's Office of Civil Rights ("OCR") consolidated the complaints, and conducted an investigation into Plaintiffs' allegations. Significantly, the OCR



concluded that Plaintiffs had been subjected to unlawful racial discrimination in their efforts to obtain loans and loan servicing from the Farmers Home Administration ("FmHA"). After the finding of discrimination was made, Mr. Haynie II began settlement negotiations with Rosalind Gray, the Director of the OCR, pursuant to the informal resolution process that USDA has established to review discrimination complaints. See 7 C.F.R § 15f (1998). Despite the OCR's determination that Plaintiffs had been subjected to unlawful racial discrimination, and despite a recommendation that the OCR engage in settlement negotiations to address the discriminatory conduct, on July 21, 2000 Ms. Gray terminated Plaintiffs' participation in the USDA's informal resolution process. Remarkably, Ms. Gray did this at the same time she recognized Plaintiffs had been subject to discrimination by USDA. Moreover, the Director of the OCR failed to provide Plaintiffs with an opportunity for a hearing on the record before terminating their participation in USDA's informal resolution process.

It is evident that Defendants arbitrarily and capriciously terminated Plaintiffs' participation in the informal resolution process in an effort to avoid the ramifications of the finding of discrimination that has been made in favor of Plaintiffs. Accordingly, Plaintiffs now bring this lawsuit seeking redress for: (1) the economic losses, pain, humiliation, anxiety, mental distress, damage to credit reputation, and suffering that they have endured because of Defendants' acts of discrimination in denying them access to credit and loan servicing in violation of the Equal Credit Opportunity Act; (2) judicial review of Defendants' decision to terminate Plaintiffs' participation in USDA's informal resolution process, a decision which was both unwarranted by the facts and arbitrary and capricious, in violation of the Administrative Procedure Act; and (3) judicial review of Defendant's failure to provide Plaintiffs with an opportunity for a hearing on the record before terminating Plaintiffs' participation in the informal

resolution process, in violation of the Administrative Procedure Act, 7 § U.S.C.S. 2279, and the Fifth Amendment to the Constitution.

JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. § 1691 et seq., 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 7 U.S.C.S. § 2279, 5 U.S.C. § 706, 28 U.S.C. § 2201, and the Fifth Amendment to the Constitution.

VENUE

2. Venue lies within this judicial district because the Defendant resides in this judicial district, and pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Mr. Haynie, II is an African-American farmer who had a farming operation in Northumberland County, Virginia.

4. Judith Haynie is also African-American. She was formerly married to Mr. Haynie, II. While Plaintiffs were married, they submitted joint applications for loans and requests for loan servicing from FmHA, which were denied because of racial discrimination.

5. Defendant, Dan Glickman, is the Secretary of Agriculture. As such, he is responsible for the administration of the Farm Service Agency ("FSA"), and its predecessor agencies, the FmHA ("Farmers Home Administration") and the ASCS ("Agriculture Stabilization and Conservation Service"). In 1994, the FmHA and ASCS were consolidated into the FSA as part of a department-wide reorganization at USDA. The FSA administers federal farm programs though a three-tiered review system consisting of (1) county offices and committees, (2)

state offices and committees, and (3) the National Appeals Division ("NAD") in Washington, D.C.

6. Defendant, Rosalind D. Gray, is the Director of the Office of Civil Rights at USDA.

7. The USDA is an executive department charged with oversight and regulation of national agricultural issues. The USDA is also comprised of many sub-agencies and departments, including the FSA and its predecessor agencies, the ASCS and the FmHA.

FACTUAL ALLEGATIONS

8. Mr. Philip J. Haynie, II is a fourth generation African-American farmer from the Northern Neck of Virginia. His great-grandfather was the first African-American to own land in Northumberland County, Virginia.

9. The Northern Neck of Virginia is comprised of Northumberland County, Richmond County, Lancaster County, and Westmoreland County. The farm land in the Northern Neck of Virginia is the best land for grain farming in the state of Virginia.

10. On information and belief, when Mr. Haynie, II was a child, there were approximately seventy five (75) African-American farmers in the Northern Neck of Virginia. Now there are fewer than five African-American farmers in that region.

11. Mr. Haynie, II started farming while he was a young boy, and has farmed in the Northern Neck of Virginia his entire life. As Mr. Haynie, II matured, he took on

increasing responsibility on his parents' farming operation. In fact, Mr. Haynie, II lived at home during his last two years of college so that he could devote more time to his parents' farming operation.

12. Judith Haynie is from Suffolk, VA. Judith Haynie received a bachelors degree in microbiology and a masters degree in biology from Virginia State University.

13. Mr. Haynie, II and Judith Haynie were married in 1975. Plaintiffs divorced in 1991. Because many of the acts of discrimination alleged herein occurred while they were still married and operating their farming operation together, Plaintiffs file this lawsuit jointly.

14. Mr. Haynie, II graduated from Virginia State University in 1976 with a bachelors degree in animal science, and immediately started to build his own farming operation.

15. When Mr. Haynie, II first started his own farming operation in the 1970's, he had great dreams of turning his family's small farming operation into a large, thriving farming enterprise. And, in fact, Mr. Haynie, II was very successful in his initial farming endeavors.

16. In 1977, Plaintiffs farmed roughly two hundred (200) acres of land. Plaintiffs grew primarily wheat, soybeans, corn, and barley. Plaintiffs also ran a pig feeding operation.

17. In 1977, there was a major drought in the Northern Neck of Virginia. As a result, Plaintiffs jointly applied for four (4) emergency loans from the FmHA. The emergency loans were approved. However, the emergency loans were only available to Plaintiffs through a supervised bank account. Plaintiffs were required

to submit invoices directly to the County Supervisor before they could receive any disbursements from the loans.

18. On information and belief, white farmers in the Northern Neck of Virginia were not required to have supervised bank accounts. Plaintiffs were subjected to this disparate treatment solely because they are African-Americans.

19. On information and belief, many FmHA offices throughout the country imposed the supervised bank account requirement on African-American farmers, while allowing white farmers unsupervised use of their loan proceeds.

20. In 1979, Plaintiffs made their first application for a farm ownership loan. They sought the loan to acquire an old 180-acre dairy farm which was situated on valuable land in Northumberland county. The $200,000 farm ownership loan was approved in May 1979.

21. After acquiring the dairy farm, Plaintiffs began to receive telephone calls from individuals who made racist and disparaging comments about Plaintiffs and their family. Also at this time, Plaintiffs discovered gunshot holes in some of their farming equipment.

22. On information and belief, white farmers in the Northern Neck of Virginia were responsible for the racist comments made to Plaintiffs and for the damage that was done to Plaintiffs' farming equipment.

23. On or about February 11, 1980, a fire totally destroyed the barn on Plaintiffs' dairy farm and damaged adjoining buildings.

24. Upon information and belief, the fire was started by white individuals in the community who were unhappy about the growth and relative success of Plaintiffs' farming operation.

25. On information and belief, in 1980, Plaintiffs received two emergency loans (totaling $152,000). The loans from FmHA were made to assist Plaintiffs with repairing the equipment that had been damaged in the fire, and for disaster assistance resulting from a drought that occurred in 1980. In 1980, Plaintiffs also received an operating loan of $34,000.

26. By 1982, Plaintiffs' farming operation was roughly 2,000 acres, and covered land in three counties in the Northern Neck of Virginia. Except for 210 acres, all of the land farmed by Plaintiffs was leased from individuals.

27. On information and belief, white farmers in the Northern Neck of Virginia were upset that African-American farmers like the Plaintiffs had managed to expand into such a large farming operation.

28. On information and belief, the animosity exhibited by white farmers toward the Plaintiffs was shared by, and impacted the decisions of the FmHA County and State Committees. Thus, State and County Committee members engaged in conduct, motivated by racial animus, to thwart Plaintiffs' efforts to expand their farming operation.

29. By in or around 1982, Plaintiffs had received over $1 million dollars in loans from FmHA. Most of the loans that Plaintiffs had received were emergency economic loans. Significantly, in and around 1982, Plaintiffs had received only one operating loan for $34,000.

30. On information and belief, in the early to mid 1980's, farmers were entitled to receive up to $200,000 in operating loans from FmHA. Since Plaintiffs had only one $34,000 operating loan, they had not exhausted their entitlement to operating loans from the FmHA.

31. Because Plaintiffs had not exhausted their entitlement to operating loans from FmHA, they were eligible to participate in the farm operating loan program. In fact, the OCR report documents Plaintiffs' eligibility for loans. Accordingly, Defendants' decision to terminate Plaintiffs' participation in the informal resolution process on the grounds that there was no evidence that they were "eligible" for the program was not warranted by the facts, and was arbitrary and capricious.

32. Despite the fact that Plaintiffs had only $34,000 in operating loans, in or around 1982, Plaintiff was advised by a FmHA county supervisor, Mr. Manley Chadwick, that he was no longer eligible for loans from FmHA. Mr. Chadwick advised Mr. Haynie, II that Plaintiffs' farming operation had grown too large to qualify as a "family farm." Mr. Manley Chadwick further advised Mr. Haynie that he had upset the "wrong people" in the community, and that in order to protect his job as county supervisor, he had to deny Plaintiffs additional loans.

33. On information and belief, Mr. Manley Chadwick, an African-American, was instructed or pressured by his white superiors at the district and state levels of FmHA to deny Plaintiffs additional loans.

34. During the course of its investigation into Plaintiffs' complaints, the OCR specifically addressed Mr. Haynie II's allegation that the county supervisor

advised him that he did not qualify as a "family farm." Significantly, the OCR investigation produced a telephone record, dated August 17, 1982, from Jeanne W. Jennings, a Farmer Programs Division Employee of FmHA, which supports Plaintiffs' contention.

35. As reflected in the report made by OCR documenting the discrimination suffered by Plaintiffs (the "OCR Report"), the August 17, 1982 telephone record states in part:

> **Haynie has been told that his operation is too big and that he probably will not be eligible for any more loans from this agency. The people in the community are talking about Haynie and the County Supervisor says he should be watched.** See OCR Report at 4-5 (emphasis added).

36. This memorandum, discovered during the course of OCR's own investigation, corroborates Mr. Haynie's contention that he was told that he did not quality for loans from the FmHA.

37. Under FmHA regulations, the County Supervisor did not have the authority to deny a loan to Plaintiffs on the grounds that they did not qualify as a "family farm." Instead, that determination was supposed to be made by the County Committee. See 7 C.F.R § 1910.4(7)(b) (1982).

38. On information and belief, the Northumberland County Committee never decided that Plaintiffs' farming operation did not qualify as a "family farm." See OCR Report at 5. Thus, it was not proper or lawful for Mr. Haynie, II to be disqualified from consideration for additional loans from FmHA.

39. Moreover, Plaintiffs met the qualifications for "family farm" as defined in the FmHA regulations in effect in 1982. See 7 C.F.R. § 1941.4(d) (1982).

40. Furthermore, FmHA regulations in force at the time specifically provided that "no oral or written statement may be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA prohibited basis." See 7 C.F.R. § 1910.3 (1982). Thus, Defendants should not have tried to discourage Plaintiffs from applying for additional assistance.

41. On information and belief, Plaintiffs were the only African-Americans in the Virginia who had loan accounts in excess of $1 million dollars.

42. According to the OCR Report, and on information and belief, no white individuals in Virginia who had loan accounts in excess of $1 million dollars were denied additional loans on the ground that they did not qualify as "family farms." See OCR Report at 5.

43. Plaintiffs suffered intentional racial discrimination by being told that they were disqualified from additional financial assistance from the FmHA.

44. Moreover, in the OCR Report, USDA acknowledged that racial discrimination caused Plaintiffs to stop applying for loans from FmHA. See OCR Report at 6.

45. Indeed, OCR's own investigation confirmed that racial animus motivated the conduct of County and State Committee officials in the Northern Neck of Virginia and that this animus directly impacted Plaintiffs' farming operations. For example, the OCR Report states that there was "a most decided racially charged atmosphere in the Northern Neck area of Virginia." See OCR Report at 10.

46. The OCR Report also states that Mr. Gregory Mitchell, an African-American farmer who previously served on the Virginia State County Committee, advised the OCR investigators that "black farmers in the Northern Neck Region of

Virginia have had a very difficult time, and that an attitude in the community doesn't want black farmers to succeed, and claimed that subtle discrimination was a part of everyday life." See OCR Report at 10-11.

47. The OCR Report also confirms that the County Committee employees contributed to the "racially charged" atmosphere in the Northern Neck of Virginia.

48. For example, in or around 1985, a group of white farmers in the Northern Neck of Virginia submitted a petition to the USDA questioning the amount of financial assistance that had been received by Plaintiffs and Gatewood Roane, another successful African-American farmer. The petition demanded that USDA launch an investigation into loan assistance that had been provided to Plaintiffs and Mr. Roane. Significantly, the petition was signed by Mr. Baldwin, a County Committeeman, who is white.

49. The Office of Inspector General ("OIG") at USDA investigated the allegations made in the petition and determined that there was no merit to the allegations. The OIG also determined that Gatewood Roane had not received any assistance from USDA. See OCR Report at 10. Thus, it is evident that the allegations made against Plaintiffs and Mr. Roane were wholly without merit, and that the petition was designed solely to harass and intimidate Plaintiffs.

50. Not only was the atmosphere "racially charged" for all black farmers, there is evidence that Mr. Haynie, II and his family, in particular, were singled out for adverse treatment because of their race.

51. Plaintiffs' son, Philip J. Haynie, III (or P.J. Haynie) filed a discrimination complaint with the OCR in 1998. In its Program Complaint Final Decision ("P.J. Haynie's Final Decision"), the OCR states in pertinent part:

> "Mr. Weston had implied to me on several occasions that he would do anything that he could to stop P.J. in obtaining any loans. This was brought on by the ongoing situation that legacy had with Mr. Haynie (father). Anyone associated with Mr. Haynie had a very difficult time in ever obtaining any benefits from FSA's (legacy) program."

See P.J. Haynie's Final Decision at 6. Mr. Weston was white and the second in command at the Virginia state FSA office.

52. Moreover, in P.J. Haynie's Final Decision, the OCR found that "the racial animus in the community toward the father had contaminated the decision-making process, within the County Office, for the complainant [P.J. Haynie]." See P.J. Haynie's Final Decision at 6.

53. Furthermore, as stated in P.J. Haynie's Final Decision, Mr. John Price, the County Supervisor, who was white, admitted that while he was meeting with Mr. Haynie, II and P.J. Haynie, he had a loaded gun in his desk drawer. Plaintiff and his son saw the gun when Mr. Price opened his drawer to remove some papers. Mr. Price's possession of the gun violated federal law prohibiting federal employees from carrying guns into the workplace.

54. On information and belief, Mr. Price purposefully brought the gun to work so that he could intimidate Plaintiff and his son. Mr. Price's goal was achieved -- Mr. Haynie, II and his son were very intimidated by the fact that Mr. Price had a gun in his office.

55. On information and belief, Mr. Price has told individuals in the Northern Neck of Virginia that he wanted "to get" Mr. Haynie, II.

56. In P.J. Haynie's Final Decision, Mr. Price also admitted that he disclosed, without authority or consent from Mr. Haynie, II, Mr. Haynie II's personal financial information. Mr. Price also admitted that he warned P.J. Haynie not to get involved in farming so that he would not end up like his father. See P.J. Haynie's Final Decision at 11-12.

57. Mr. Price's animosity toward Mr. Haynie, II was shared by others at FSA. On information and belief, Mr. John Shlusser, a white district director, intentionally failed to turn over documents to the state FSA office in an effort to thwart Plaintiffs' ability to receive loans and/or loan servicing.

58. Thus, OCR has admitted, both in the course of the investigation into Plaintiffs' complaints and in the investigation of P.J. Haynie's complaint, that racial animosity impacted decisions made by the State and County FmHA committees in matters affecting Plaintiffs' farming operations.

59. In light of these admissions by the OCR, particularly OCR's own finding that Plaintiffs had been subjected to intentional racial discrimination by being denied loans and loan servicing, the Defendants' decision to terminate Plaintiffs' participation in the informal resolution process was not warranted by the facts and was arbitrary and capricious.

60. Because Plaintiffs were advised that they were not eligible for any further loans from USDA, and because they believed that County Committee officials made

decisions based on race rather than pertinent criteria, they turned to the private sector to obtain financing to continue their farming operation.

61. Plaintiffs had difficulty securing loans from private institutions because the USDA held a security interest in their collateral, and USDA refused to subordinate that security interest in an effort to make it more difficult for Plaintiffs to secure loans from private sources.

62. Plaintiffs managed to obtain some loans from private banks, but because of the high interest rates attached to these private loans and the fact that most of their collateral was pledged to the government, the cash drain of debt servicing increased significantly.

63. To prevent foreclosure of their dairy farm – the only significant parcel of land owned by Plaintiffs -- Plaintiffs were forced to sell roughly fifty-four (54) acres of their dairy farm (the land that was sold included two houses and a grain tank) to pay off some of the first deed of trust on one of their private loans. Because Plaintiffs faced imminent foreclosure on the property, they were forced to sell the land for only $125,000 -- a much deflated value.

64. In or around 1983, a class action was filed by a group of farmers against Secretary of Agriculture Block alleging numerous violations of FmHA procedures and regulations. During the pendency of the lawsuit, the Court entered an injunction prohibiting FmHA from foreclosing on any property owned by farmers who held loans with FmHA. As a result of the injunction, FmHA did not take any steps to foreclose on Plaintiffs' property from 1983 until in or around 1988.

65. In or around 1989, after the injunction was lifted, Plaintiffs requested loan servicing from USDA.

66. As part of their request for loan servicing, Plaintiffs requested that USDA facilitate a Meeting of Creditors. On information and belief, on or about May 2, 1989, Plaintiffs formally requested a Meeting of Creditors. On information or belief, USDA did not convene the Meeting of Creditors requested by Plaintiffs until January 19, 1990.

67. Ms. Gail Grant was appointed by USDA to serve as the Mediator to help negotiate a settlement between Plaintiffs and their creditors. Ms. Grant developed a feasibility plan that required Plaintiffs' non-secured debt creditors to accept a reduction of 25% on the amount of debt they held.

68. On information and belief, Plaintiffs' creditors accepted the feasibility plan proposed by Ms. Grant.

69. On information and belief, Plaintiffs were given sixty days, until May 11, 1990, to obtain and submit signed feasibility plans to the FmHA office in Warsaw.

70. On information and belief, several of Plaintiffs' unsecured creditors returned the signed feasibility plans to the Warsaw FmHA office in a timely manner.

71. Despite the fact that creditors returned signed feasibility plans, Ms. Grant terminated the mediation.

72. On information and belief, the mediator purposely overlooked the submission of the creditors' signed feasibility plans as a means of terminating the mediation, and thereby delaying loan servicing on Plaintiffs' account.

73. On information and belief, on July 22, 1991, more than one year after the mediator ended the mediation session, FmHA wrote to Plaintiffs asking them to provide information necessary to process their request for primary and/or preservation loan servicing.

74. At this time, Plaintiffs were in the midst of getting their divorce and were not living together. As a result, during this time frame, Mr. Haynie, II did not receive notices from FmHA in a timely manner.

75. On or about November 29 1991, Plaintiffs were informed that FmHA was not able to provide loan servicing on their account.

76. On or about January 2, 1992, Plaintiffs were sent a letter notifying them of USDA's intent to accelerate or continue acceleration of their loans.

77. On or about January 13, 1992, Plaintiffs requested an administrative appeal of USDA's decision to accelerate their loans.

78. On or about April 9, 1992, a hearing was held on Plaintiffs' administrative appeal. The appeal was reviewed by Mr. Vernon Orell, who is white. Mr. Haynie, II was not represented by counsel at that hearing. Mr. Orell denied Plaintiffs' appeal.

79. The OCR Report reveals that during the time period that Plaintiffs were requesting loan servicing, the county committee had ten other cases in which borrowers were sent primary and preservation notices. Five of the borrowers were white and five of the borrowers were black. Of the five white borrowers, four out of five (or 80%) had their primary loan servicing approved. Of the five black borrowers, only one (or 20%) request was approved, while three were denied, and one was still pending. See OCR Report at 11.

80. The OCR Report also reveals that, in contrast with white farmers in the Northern Neck of Virginia, the servicing of Plaintiffs' loans was not handled appropriately or in a timely manner. See OCR Report at 12.

81. The OCR Report also demonstrates that the Conley Brothers, white farmers who farmed roughly 1600-1700 acres received more timely and efficient loan servicing than did Plaintiffs. OCR concluded that **"there is no credible explanation for the differences in Complainant's treatment in terms of his primary loan processing and that of Conley Brothers . . . a white borrower. Furthermore, there appears to be no legitimate reason for the County Executive Director not to have given Complainants the same processing which he gave to Conley Brothers. In the absence of a legitimate reason, we conclude that the County Executive Director's failure to provide comparable loan processing to Complainant was due to Complainant's race."** See OCR Report at 12 (emphasis added).

82. Plaintiffs suffered willful racially-based disparate treatment by FmHA's refusal to timely and appropriately handle their requests for loan servicing.

83. Indeed, the OCR has acknowledged that Plaintiffs suffered unlawful racial discrimination in the manner in which their loan accounts were serviced. See OCR Report at 12.

84. Thus, the OCR Report documents the fact that USDA discriminated against Plaintiffs by intentionally denying them adequate loan servicing because of their race. Despite this finding, the Director of the OCR terminated Plaintiffs' participation in the informal resolution process on the ground that there was no

evidence that they were eligible to participate in the programs for which they claim to have suffered discriminatory treatment. In light of the OCR's own finding of discrimination, the decision of the Director of the OCR is not warranted by the facts and is arbitrary and capricious.

85. As a result of the racial discrimination, Mr. Haynie, II was effectively forced to shut down his farming operation in 1991.

86. Racial discrimination also reduced the size and profitability of Plaintiffs' farming operation during the period that it was active. Because the amount of loans made to Plaintiffs were unjustifiably restricted, Plaintiffs could not expand their farming operation and realize the substantial efficiencies that are enjoyed by larger farming operations. Moreover, Plaintiffs were subjected to untimely disbursement of the limited loans that they did receive, which interfered with the timely planting and harvesting of crops, and which, in turn, had a direct and significant impact on the productivity Plaintiffs could achieve, thus reducing the profitability of their farming operations.

87. Moreover, because of his indebtedness, Mr. Haynie, II was unable to secure loans in his own name. Because he could not get credit on his own, Mr. Haynie, II started farming for Or-Grow, Inc., a company owned by one of his relatives. Or-Grow, Inc. farmed primarily corn, wheat, soybeans, and barley.

88. In or around 1995, Mr. Haynie, II took over control of Or-Grow, Inc. Mr. Haynie, II was advised by Mr. John Price, a white County Supervisor, that because of his personal loan history, he could not obtain any loans from FSA for Or-Grow, Inc. Mr. Haynie, II was not even given a loan application to complete.

89. In or around 1995, USDA began foreclosure proceedings on the remaining 130 acres of the dairy farm that Plaintiffs owned. In or around 1995, the dairy farm was the only significant parcel of land owned by Plaintiffs.

90. Instead of conducting the foreclosure sale at the courthouse, as they had done in cases of white farmers facing foreclosure, FSA attempted to hold the foreclosure sale at Northumberland Middle School, the school attended by Plaintiffs' children. FSA posted notices at the school stating that FSA planned to foreclose on Plaintiffs' property. There was no legitimate basis for FSA to deviate from its normal procedure of conducting foreclosure sales at the courthouse.

91. On information and belief, the FSA intentionally planned to conduct the foreclosure sale at the school attended by the Plaintiffs' children as a means of intimidating and harassing Plaintiffs and their family.

92. Plaintiffs suffered intentional racially-based disparate treatment because of Defendant's decision to try to hold the foreclosure at the school of Plaintiffs' children instead of the courthouse.

93. Plaintiffs and their children were very upset and humiliated by USDA's placement of these notices at their school.

94. To prevent foreclosure of the dairy farm, Mr. Haynie, II filed for personal bankruptcy.

95. In November 1995, Or-Grow, Inc. also filed a petition for bankruptcy. On information and belief, local FSA officials made disparaging remarks about Mr. Haynie, II to the Bankruptcy Trustee of the Or-Grow, Inc. estate, thus causing the

Trustee to pursue an unusually aggressive litigation strategy against Or-Grow, Inc.

96. For example, the Bankruptcy Trustee consolidated Trash Management Services, a company owned by Belinda Haynie (Mr. Haynie II's current wife) into Or-Grow, Inc.

97. Thus, as a result of the Or-Grow, Inc. bankruptcy, Mr. Haynie, II and his wife, were forced to relinquish control of Or-Grow, Inc. and Trash Management Services to the Bankruptcy Trustee. Mr. Haynie, II also sustained substantial damages, including the loss of assets and equipment, and the payment of attorneys' fees incurred during nearly five years of bankruptcy litigation.

98. In many respects the discrimination suffered by Plaintiffs is emblematic of discrimination suffered by black farmers all over this country.

99. Numerous internal reports from USDA, and studies and reports from other individuals and government agencies, confirm that racial discrimination, particularly in USDA's lending programs, have disproportionately affected black farmers.

100. For example, the Civil Rights Action Team ("CRAT"), which was comprised of high ranking officials at USDA issued a report in February 1997 that documented many practices used by FSA which had a discriminatory effect on African-American farmers.

101. CRAT found:

> The minority or limited-resource farmers tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office might claim to have no applications available and ask the farmer to return later. Upon

returning, the farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced. See CRAT at 15.

102. CRAT found systematic mistreatment of minority farmers:

> "If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials." (Emphasis supplied) CRAT at 16.

103. CRAT found insufficient oversight of farm credit to minorities:

> "Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services." CRAT at 16.

104. CRAT found a lack of diversity in FSA program delivery structure:

> "Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversity in its program delivery structure. Federal EEO and Affirmative Employment laws and policies do not govern the FSA non-Federal workforce except by agency regulation." CRAT at 18.

105. CRAT found lower participation rates and lower approval rates for minorities in FSA programs:

> "Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Services (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities. The GAO found that between October 1, 1994 and March 31, 1996, 33 percent of minority applications but only 27 percent of non-minority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of non-minority loans in the direct loan program were disapproved." (Emphasis supplied) CRAT at 21.

106. CRAT uncovered neglect of and bias against minorities by USDA, resulting in a loss for farmers' land and income.

> "The recent Civil Rights listening-sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK observed that minority farmers are not sure which condition "was worse -- being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses. Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination of FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some king of compensation for their losses." CRAT at 30.

107. CRAT found a lack of resources at USDA to ensure fair and equitable (non-discriminatory) program delivery to farmers:

> "The Assistant Secretary for Administration is USDA's senior official responsible for civil rights. Although that position has the responsibility for civil rights policy and compliance, it does not have the authority or resources necessary to ensure that program

are delivered and employees are treated fairly and equitably." CRAT at 46.

108. CRAT found enforcement of civil rights at USDA in program delivery lacking:

> "Another problem with enforcing civil rights in program delivery is fragmentation. Agency civil rights directors have a number of responsibilities. For example, USDA agencies each perform some complaint processing functions. However, the Commission noted that the respective roles of OCRE and the agencies were not clearly defined. The Commission also found that OCRE was providing technical assistance to agencies on civil rights statutes, not proactively, but only when requested." CRAT at 51.

109. The CRAT Report demonstrates that the discriminatory lending practices and policies of FSA and predecessor agencies have had a devastating impact on black farmers like Plaintiffs.

110. Defendants' practices and procedures had a disparate impact on Plaintiffs' farming operations.

111. Because they had been subjected to unlawful racial discrimination, both intentional and indirect, Plaintiffs filed discrimination complaints against USDA. Mr. Haynie, II filed a discrimination complaint on or about April 23, 1997. Judith Haynie filed a discrimination complaint on or about May 20, 1997.

112. The OCR investigated Plaintiffs' discrimination complaints and concluded that Plaintiffs had been subjected to unlawful racial discrimination in being denied loans and loan servicing. See OCR Report at 6, 12.

113. On October 7, 1999, the OCR Statute of Limitations Project advised Mr. Haynie, II that his discrimination complaint met the qualifications for a waiver of the statute of limitations and docketed his complaint as Docket Number 1182.

114. After Plaintiffs received the finding of discrimination in their favor, Mr. Haynie, II began negotiations with Rosalind Gray to reach a settlement regarding Plaintiffs' claims for damages.

115. Despite Defendants' recognition of the impact that its lending practices have had on African-American farmers, and despite the OCR's own finding that Plaintiffs had suffered racial discrimination in being denied loans and loan servicing from the FmHA, Rosalind Gray, Director of the OCR, terminated Plaintiffs' participation in USDA's informal resolution process.

116. On or about July 21 2000, Rosalind Gray sent a letter to Plaintiffs advising them that they were no longer eligible to participate in the informal resolution process at USDA, and that in order to pursue their discrimination complaints, they should either file a lawsuit or request further consideration by an administrative law judge.

117. USDA's informal resolution process was established pursuant to 7 U.S.C.S. § 2279 (1998), a statute that was enacted specifically to toll the statute of limitations under the Equal Credit Opportunity Act so that African-American farmers could bring complaints of discrimination, which otherwise would have been time-barred under relevant anti-discrimination statutes.

118. Pursuant to that statute and the regulations promulgated thereunder, USDA was tasked to investigate discrimination complaints and to reach a decision on the complaint within 180 days of submission of the complaint. See 7 § U.S.C.S. 2279(b)(3); 7 C.F.R. § 15f.

119. Significantly however, Defendants' arbitrary decision to terminate Plaintiffs' participation in the informal resolution process came more than three years after Plaintiffs had filed their complaints. Mr. Haynie, II filed his discrimination complaint with USDA on April 23, 1997. Judith Haynie filed her discrimination complaint against USDA on May 20, 1997.

120. Moreover, the OCR decision came just three months before the statute of limitations on Plaintiffs' claims alleging violations of the Equal Credit Opportunity Act expires. Thus, Defendants' delay in deciding to terminate Plaintiffs' participation in the informal resolution process seriously prejudiced Plaintiffs' ability to gain any relief for the unlawful racial discrimination that even the OCR admits they have suffered.

121. Also, pursuant to 7 U.S.C.S. § 2279(b)(1), Defendants were obligated to provide Plaintiffs an opportunity for a hearing on the record **before** making a determination on the merits of their claim.

122. Despite that statutory command, Defendants failed to provide Plaintiffs an opportunity to challenge OCR's decision on the merits of their claim before Defendants terminated Plaintiffs' participation in the informal resolution process.

123. The OCR's decision to terminate Plaintiffs' participation in the informal resolution process on the grounds of ineligibility, without first affording Plaintiffs an opportunity for a hearing to challenge that decision also violates Plaintiffs' due process rights under the Fifth Amendment because Plaintiffs had a vested property interest in continued participation in the informal resolution process.

124. As Rosalind Gray admitted in her July 21, 2000 letter to Plaintiffs, she "had received a recommendation to initiate settlement discussions in your case based on discriminatory treatment." (emphasis added). And in fact, Plaintiffs had already started negotiating a settlement of their racial discrimination claims with Rosalind Gray. Thus, Ms. Gray led Plaintiffs to believe that the OCR had conceded liability on their racial discrimination claims and that the only issue to be resolved was the amount of damages they would receive.

125. The informal resolution process was, therefore, particularly advantageous to Plaintiffs because they were at stage in the process in which the only issue they needed to prove was damages. Since Rosalind Gray has now, without adequate explanation and acting wholly contrary to the facts, concluded that Plaintiffs are not eligible to participate in the informal resolution process, Plaintiffs are forced to file this lawsuit and proceed to judgment instead of continuing their participation in the informal process.

126. Thus, Plaintiffs had a cognizable property interest in continued participation in the USDA's informal resolution process. By terminating their participation in the informal resolution process before giving Plaintiffs an opportunity to challenge that decision, Defendants violated Plaintiffs' right to due process under the Fifth Amendment to the Constitution.

127. Defendants' decision to terminate Plaintiffs' participation in the informal resolution process was also unwarranted by the facts and arbitrary and capricious.

128. The arbitrary and capricious nature of Defendants' decision is underscored by the fact that Defendant terminated Plaintiffs' participation in the informal resolution

process on the ground that they were not eligible to participate in the informal resolution process despite the OCR's prior conclusion that Plaintiffs have a viable and compensable claim for racial discrimination.

129. For example, in addressing Plaintiffs' claims that they were intentionally misled into believing that they did not qualify for additional loans because, the OCR Report states in part:

> "The Agency claims not to know why Complainant hadn't submitted additional loan applications, beyond Complainant understanding that his operation wasn't a family farm anymore. All the people involved in the decision-making process claim that they didn't have anything to do with Complainant coming to that conclusion. **Given the fact that such testimony is not credible, and the Agency has not articulated a valid non-discriminatory reason for the lack of additional loan applications being submitted by Complainant, we make an inference of discrimination."** See OCR Report at 6 (emphasis added).

130. Similarly, with respect to Plaintiffs' claims that they were subjected to unlawful racial discrimination in being denied timely loan servicing, the OCR found:

> "The case file is filled with credible evidence that there were substantial and serious problems with the loan processing in the county. However, this is not a situation where Complainant, as well as everyone else, was being given comparable treatment. During the very time in question when the office clearly had it within their power to provide timely primary loan servicing, which was given to other parties, Complainant was not receiving same. **There is no credible explanation for the difference in Complainant's treatment in terms of his primary loan processing and that of Conley Brothers, as stated before, a white borrower. Furthermore, there appears to be no legitimate reason for the County Executive Director not to have given Complainants the same processing which he gave Conley Brothers. In the absence of a legitimate reason, we conclude that the County Executive Director's failure to provide comparable loan processing to Complainant was due to complainant's race.** See OCR Report at 12 (emphasis added).

131. Thus, Rosalind Gray totally ignored the finding of discrimination that had been made by her office and the "recommendation" that she had received to initiate settlement discussions to resolve Plaintiffs' racial discrimination complaints.

132. Because Defendants' decision to terminate Plaintiffs' participation in the informal resolution process totally ignored the OCR's finding of discrimination, it was not warranted by the facts and was arbitrary and capricious.

133. Moreover, Rosalind Gray's one-page explanation of the decision to terminate Plaintiffs' participation in the informal resolution process is wholly inadequate to apprise Plaintiffs of the basis for their termination.

134. Furthermore, since their participation in the informal resolution process was terminated, Plaintiffs, through counsel, have requested that Rosalind Gray provide Plaintiffs an opportunity to be heard regarding her decision. Ms. Gray has repeatedly refused to meet with Plaintiffs or Plaintiffs' counsel to explain her abrupt and arbitrary and capricious decision.

135. On October 12, 2000, counsel for Plaintiffs wrote to Rosalind Gray requesting an opportunity to discuss Plaintiffs' complaint. Ms. Gray has not responded to that letter.

136. On information and belief, Defendants tried to persuade Mr. Daniel Temme, one of the investigators who conducted the OCR examination into Plaintiffs' allegations, to change his finding of discrimination. This undue pressure further underscores the fact that Defendants' consideration of Plaintiffs' racial discrimination complaints has lacked even the most rudimentary elements of fairness and due process.

COUNT I
(Violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a))

137. Plaintiffs reallege and incorporate paragraphs 1-136 above.

138. Plaintiffs are African-Americans who jointly ran a farming operation.

139. Plaintiffs applied for and were qualified for loans and loan servicing from the FmHA.

140. Defendants refused to make loans to Plaintiffs or to provide them with loan servicing, despite the fact that they were qualified to receive such loans.

141. During the period of time that Plaintiffs sought loans and loan servicing, white farmers with similar or lesser qualifications received loans and loan servicing from the FmHA.

142. Defendants' acts of denying Plaintiffs credit and failing to timely service Plaintiffs' loan accounts were racially discriminatory and contrary to the requirements of the Equal Credit Opportunity Act.

143. Defendants' lending and loan servicing and procedures had a disproportionate impact on African-American farmers.

144. Pursuant to 7 U.S.C.S. § 2279, Plaintiffs' claims for relief under the Equal Credit Opportunity Act are timely.

145. Plaintiffs pray for money damages in excess of $3 million dollars. Plaintiffs also seek attorneys' fees and costs, as provided under the Equal Credit Opportunity Act, 15 U.S.C. § 1691e.

COUNT II
(Violation of the Administrative Procedure Act, 5 U.S.C. § 706)

146. Plaintiffs incorporate and reallege paragraphs 1-145 above.

147. In or around the fall of 1998, the OCR conducted an investigation of Plaintiffs' complaints of racial discrimination. The OCR determined that Plaintiffs had been subjected to unlawful racial discrimination in being denied loans and loan servicing from the FmHA.

148. Plaintiffs opted to have their discrimination complaints reviewed in accordance with the USDA's informal resolution process. On October 7, 1999, the OCR Statute of Limitations Project advised Mr. Haynie, II that his discrimination complaint met the qualifications for a waiver of the statute of limitations and docketed his complaint as Docket Number 1182.

149. On or about February 9, 2000, the Director of the OCR received a recommendation to initiate settlement discussions in Plaintiffs' cases based on discriminatory treatment.

150. On information and belief, on April 10, 2000, the OCR Director sent written notice to the Civil Rights staff offices indicating that she had agreed to combine Mr. Haynie, II and Judith Haynie's cases for purposes of negotiation because the underlying facts were identical.

151. The OCR Director and Mr. Haynie, II engaged in settlement discussions.

152. Despite initiating settlement discussions, on July 21, 2000, the OCR Director advised Plaintiffs that they were no longer eligible to participate in the informal resolution process.

153. In light of the finding of discrimination made by the OCR after an investigation into Plaintiffs' allegations of racial discrimination, the OCR Director's decision to terminate Plaintiffs' participation in the informal resolution process was unwarranted by the facts and arbitrary and capricious.

154. Moreover, the OCR Director failed to adequately explain her decision to terminate Plaintiffs' participation in the informal resolution process. Despite requests for an opportunity to be heard on her decision, the OCR Director also refused to meet with Plaintiffs or counsel for Plaintiffs to explain or clarify her decision.

155. Furthermore, Plaintiffs were entitled to a hearing to challenge the OCR Director's decision **before** being terminated from the informal resolution process.

156. Plaintiffs pray that Defendants' act of denying them continued participation in the USDA's informal resolution process be reversed as unwarranted by the facts and arbitrary and capricious, in violation of 5 U.S.C. §§ 706(2)(A)(F).

COUNT III
(Declaratory Judgment, 28 U.S.C. § 2201)

157. Plaintiffs incorporate and reallege paragraphs 1-156 above.

158. An actual controversy exists between Plaintiffs and Defendants as to their rights with respect to USDA's lending programs and its procedures for reviewing discrimination complaints.

159. Plaintiffs pray that this Court declare and determine that Defendants' decision to terminate Plaintiffs' participation in the USDA's informal resolution process was unwarranted by the facts and arbitrary and capricious.

COUNT IV
(Violation of 7 U.S.C.S. § 2279 and the Fifth Amendment of the Constitution)

160. Plaintiffs incorporate and reallege paragraphs 1 – 159 above.

161. Plaintiffs opted to have their discrimination complaints considered through the USDA's informal resolution process.

162. Mr. Haynie, II actually began negotiations with the Director of the OCR in an effort to recover damages for the harm that Plaintiffs have suffered as a result of Defendants' discrimination.

163. Defendants failed to provide Plaintiffs with a hearing on the record before making a determination about the merits of their complaint and terminating their participation in the informal resolution process, in violation of 7 U.S.C.S. § 2279(b)(1) and the Fifth Amendment to the Constitution.

164. Plaintiffs pray that this Court declare and determine that Defendants' decision to terminate Plaintiffs' participation in the USDA's informal resolution process was unwarranted by the facts and arbitrary and capricious.

WHEREFORE, Plaintiffs pray for:

(1) an Order declaring that Defendants' decision to terminate Plaintiffs' participation in USDA's informal resolution process was unwarranted by the facts and arbitrary and capricious;

(2) compensatory damages in an amount in excess of $3 million dollars, and pre-judgment interest from the date that Plaintiffs should have received payments to actual date of payment, and post-judgment interest;

(3) damages for pain, suffering, anxiety, humiliation, and damage to credit reputation;

(4) Plaintiffs' reasonable attorneys' fees and costs, as provided for in 15 U.S.C. § 1691e;

(5) priority consideration in USDA's farm programs; and

(6) such other relief as this Court may deem just and appropriate.

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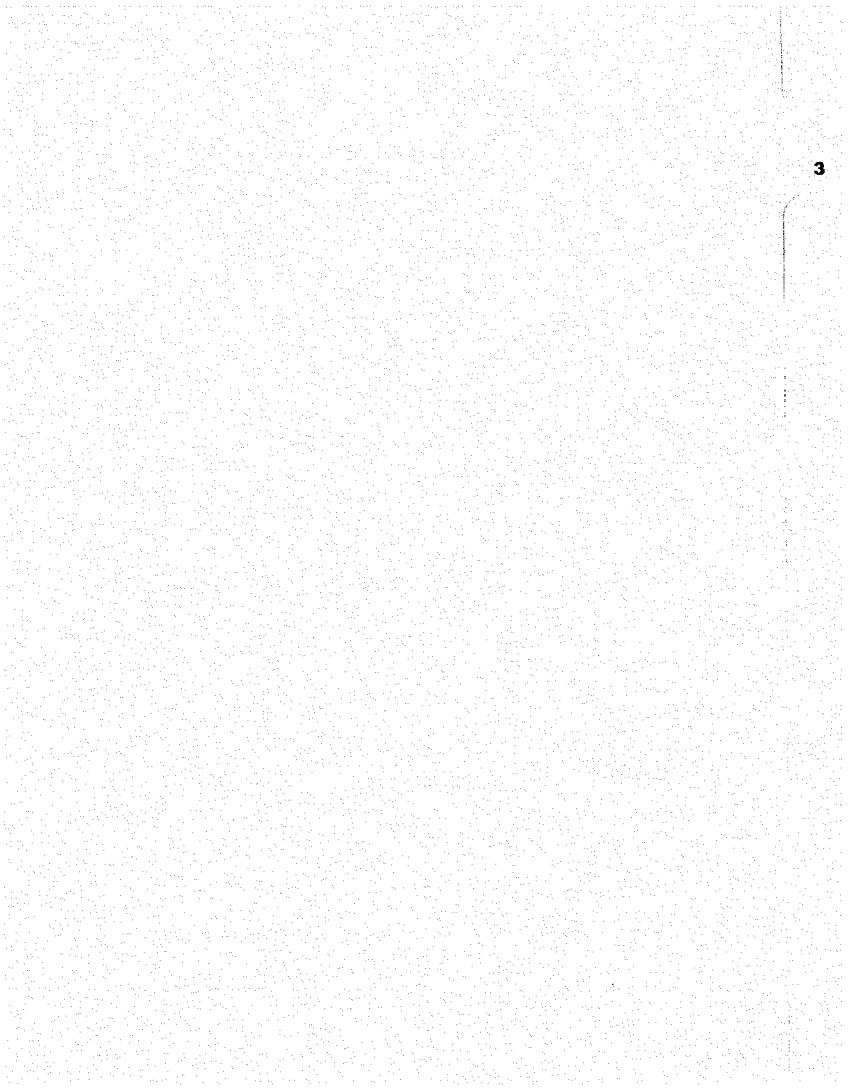

Structural and Financial Characteristics of U.S. Farms, 1993: 18th Annual Family Farm Report to Congress. By Robert A. Hoppe, Robert Green, David Banker, Judith Z. Kalbacher, and Susan E. Bentley. Rural Economy Division, Economic Research Service, U.S. Department of Agriculture. Agriculture Information Bulletin No. 728.

Abstract

In 1993, the 2.1 million farms in the contiguous United States operated an average of 436 acres and produced an average of $73,700 in agricultural products, as measured by gross sales. Characteristics of individual farms—including their level of production—varied widely, however. Most production occurred on relatively few commercial farms. Commercial farms (sales of $50,000 or more) were only 27 percent of U.S. farms, but accounted for about 90 percent of sales. Households with noncommercial farms (sales less than $50,000) relied on off-farm sources for virtually all their income. U.S. farms are diverse, and variation within the industry is hidden by U.S. averages.

Keywords: Farm Costs and Returns Survey, farm structure, farm financial situation, farm operator household income.

Preface

This report is the 18th annual report to the Congress on the status of family farms. These reports have been submitted to Congress in accordance with the Food and Agriculture Act of 1977, as amended. This report is the fourth in the series to provide annual data on the major structural and financial characteristics of U.S. farms using the U.S. Department of Agriculture's Farm Costs and Returns Survey (FCRS).

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October 1996



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Summary

The 2.1 million farms in the contiguous 48 States operated an average of 436 acres and produced an average of $73,700 in agricultural products in 1993. But the characteristics of the farms varied widely.

This report uses statistics from USDA's 1993 Farm Costs and Returns Survey. It presents information on structural characteristics of farm operations, farmland ownership and use, farm finances, characteristics of farm operators, farm operator households' dependence on farming, and linkages between farm operators and their communities.

Nearly three-fourths of U.S. farms were noncommercial (gross farm sales less than $50,000). However, noncommercial farms accounted for only 10 percent of total gross farm sales. Commercial farms (gross sales of $50,000 or more) made up 27 percent of all farms but accounted for 90 percent of gross sales. Just 4 percent of all farms accounted for half of gross sales, while less than 1 percent of farms produced 25 percent of total U.S. output.

Overall, only about 12 percent of farm operator household income came from farming. Households operating noncommercial farms averaged $35,000 in total income, virtually all from off-farm sources. Households running commercial farms averaged higher income ($53,100), half of which came from off-farm sources. Only 8 percent of all farm operator households received income from farming that was near or above the average income for all U.S. households.

Most farm operations were full owners of their land. The 6 percent of farms that rented both land and other assets produced about 23 percent of gross sales. About 3 percent of U.S. farms were corporations in 1993, and that 3 percent produced 18 percent of total gross farm sales. Family corporations accounted for a larger share of total gross farm sales (15 percent) than nonfamily corporations (3 percent).

About 17 percent of all farm operators said they were retired. Although still classified as farm operators, this group accounted for little production.

Structural and Financial Characteristics of U.S. Farms, 1993

18th Annual Family Farm Report to Congress

Robert Hoppe
Robert Green
David Banker
Judith Kalbacher
Susan Bentley

Introduction

This report is the 18th in the series of congressionally mandated Family Farm Reports. It provides detailed information about the major structural and financial characteristics of farms in 1993 that is not available from any other single publication. The series of Family Farm Reports originated with the Food and Agricultural Act of 1977, which required the U.S. Department of Agriculture (USDA) to prepare a report to Congress providing information about the trends in family and nonfamily farm operations and the effects of government programs and Federal laws on the family farm system. Congress has continued to require Family Farm Reports on an annual basis since that time, although the scope and content of the reports have changed.

This report examines farms classified by size and other characteristics. Farms are diverse, ranging from the very small to the very large. Most farms are small, however, because very little production is necessary to be classified as a farm by the USDA (or the Census Bureau). A farm is defined as a place that sells, or normally would sell, at least $1,000 of agricultural products (U.S. Dept. Agr., Nat'l. Agr. Stat. Serv., 1994a, p. 301; U.S. Dept. Comm., Bur. Cen., 1994a, p. vii).

Some operations may also be classified as a farm even if they have less than $1,000 in sales. If an operation does not have $1,000 in sales, a point system assigns values for acres of various crops and head of various livestock species to estimate a normal level of sales (U.S. Dept. Agr., Nat'l. Agr. Stat. Serv., 1993b, p. 1). Point farms have less than $1,000 of sales, but points worth at least $1,000, and are also counted as farms.

The information presented in this report falls into seven basic categories, each with its own section:

- **Structural Characteristics of Farm Operations.** Provides information on the size and types of farms, forms of farm organization, ownership and control of resources, and acreage and sales classes of farms.
- **Farmland Ownership and Use.** Measures the total amount of land operated, and the arrangements under which land is held and operated.
- **Farmland Removed from Production.** Shows how much land is taken out of production to comply with government programs.
- **Farm Finances.** Measures income and wealth of farms.
- **Characteristics of Farm Operators.** Provides information about the people who operate farms.
- **Farm Operator Households' Dependence on Farming.** Provides a sense of the importance of farming to operator households.
- **Farm Operators and Their Communities.** Shows where operators buy goods and services and how satisfied they are with their communities.

The discussion of these topics shows how the Nation's farms are organized to use and control their resources,

as well as the financial and economic results of their activities.

The characteristics of the farm sector in 1993 are discussed in the text and presented in summary tables and figures. The appendix tables contain additional detailed data frequently requested by policymakers and the public. Readers should note that, in some cases, individual estimates reported in the tables do not add exactly to totals due to rounding.

Appendix A contains detailed definitions of terms used in this report, while appendix B provides technical information about the Farm Costs and Returns Survey (FCRS), the source of most of the data used in this report. A brief description of the survey also appears in the box below.

Sources of Data

Most of the information in this report is from the 1993 Farm Costs and Returns Survey (FCRS). The FCRS has been used to prepare the annual Family Farm Report since the 15th report was prepared using data from the 1990 FCRS. The U.S. Department of Agriculture's Economic Research Service (ERS) and National Agricultural Statistics Service (NASS) conduct the FCRS in all States but Alaska and Hawaii. The FCRS is the only national-level data source on farm structure and finances that is available on an annual basis.

The data for 1993 were collected during February and March of 1994 from a representative sample of farm and ranch operations in the contiguous United States. In 1993, the useable sample size was about 8,000 operations.

Average gross cash income and average gross farm sales (or gross sales) are presented together in several of the tables for the first time this year. Gross cash income and gross sales measure different things. Gross sales, used primarily as an indication of farm size, is a measure of what the farm has produced. Unlike gross cash income, gross sales includes the shares of sales and government payments received by both the operation and the landlord(s). It also includes production contractors' share of the value of production.

In contrast, gross cash income is a measure of cash actually received by the farm business during the year and includes only the share received by the operation. More information and detailed definitions of terms used in this report are presented in appendix A.

Survey data are subject to both sampling and nonsampling errors. Both types of errors affect the reliability and validity of estimates from the FCRS. The magnitude of nonsampling error cannot be measured directly. Sampling error, however, can be measured. The relative standard error (RSE) used in this report is a measure of sampling error and data reliability.

The RSE for an estimate is the standard error of the estimate divided by the estimate, expressed as a percentage throughout this report. Because the reliability of estimates is questionable when the RSE exceeds 25 percent, data users should exercise caution when interpreting items with RSE's of this magnitude. See appendix B for a more detailed explanation of this statistic. FCRS estimates noted as different in the text differed from each other at the 95-percent (or higher) level of statistical significance, unless noted otherwise.

Census of agriculture data are used occasionally in this report to provide historical perspective. The FCRS is a relatively new survey, beginning in 1985 when data were collected for the 1984 calendar year. In contrast, the census of agriculture, begun in 1840 (U.S. Dept. Comm., Bur. Cen., 1994a, p. vii), allows one to follow trends over long periods of time.

Structural Characteristics of Farm Operations

Farm structure is variously defined, but discussions of the topic frequently cover:

- Number and size of farms (in terms of sales or acres)
- Specialization in production
- Ownership and control of productive farm resources, including (but not limited to) land
- Legal organization (individual operation, partnership, or corporation)
- Contractual linkages with other farm and nonfarm businesses
- Geographic location of production
- Concentration of production
- Characteristics of farm operators and their households.[1]

Farm structure can be defined as how resources are organized to produce farm products, which includes all the points listed above. This section focuses on the structural characteristics of the farms themselves, or all the points except the last. Separate sections deal with operators and their households.

Number of Farms

U.S. farms numbered 2,063,300 in 1993. This estimate did not differ by a statistically significant amount from the 1992 estimate of 2,090,700 farms reported in the previous Family Farm Report (Kalbacher and Oliveira, 1995).[2] Both numbers, however, are down dramatically from the peak of 6.8 million in 1935 (U.S. Dept. Agr., Stat. Rep. Serv., 1962). Of course, farms were much smaller in 1935, averaging 155 acres (U.S. Dept. Comm., Bur. Cen, 1975, p. 457), compared with 436 acres in 1993. The remaining U.S. farms are diverse, as shown in the rest of this section.

Sales Class

One measure of the size of farms is the level of their gross sales. The sales classes used in this report are:

- Noncommercial farms (less than $50,000 in sales)
- Commercial (at least $50,000 in sales):
  - Small ($50,000 to $99,999 in sales)
  - Lower medium ($100,000 to $249,999 in sales)
  - Upper medium ($250,000 to $499,999 in sales)
  - Large ($500,000 to $999,999 in sales)
  - Superlarge ($1,000,000 or more in sales)

On average, noncommercial farms operated fewer acres, received smaller amounts of gross cash income, and produced a much smaller volume of gross sales than commercial farms (table 1). And, within the commercial category, average gross cash income and average volume of sales increased with sales class.[3]

Although 73 percent of U.S. farms were noncommercial in 1993, they accounted for a very small share of agricultural activity (fig. 1). Noncommercial farms received only 13 percent of gross cash income and accounted for only 10 percent of production, as measured by gross sales. At the other extreme, superlarge farms alone accounted for only 0.7 percent of all farms but received 23 percent of gross cash income and accounted for 26 percent of gross sales.

Most operators of noncommercial farms have an occupation other than farming. Only 29 percent of noncom-

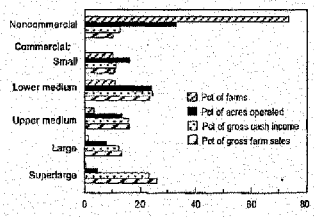
[1]This list was drawn from Penn (1979), Babb (1979), and Stanton (1993a).

[2]ERS-based estimates discussed as different in the text differed from each other at the 95-percent (or higher) level of statistical significance, unless noted otherwise. For more information, see the box on sources of data or appendix B.

[3]Not all the increases in average acres operated were statistically significant.

Figure 1
Distribution, by sales class, of farms, acres operated, gross cash income, and gross farm sales, 1993

Most farms are noncommercial, but commercial farms account for most gross cash income and gross farm sales



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey

Table 1—Farms, acres operated, gross cash income, and gross farm sales, by selected characteristics, 1993

Characteristic	Farms		Mean acres operated		Mean gross cash income		Mean gross farm sales	
	Number	*RSE*[1]	*Acres*	*RSE*[1]	*Dollars*	*RSE*[1]	*Dollars*	*RSE*[1]
All farms	2,063,300	2.3	436	3.7	66,891	3.3	73,694	3.7
Sales class								
Noncommercial	1,514,476	3.1	198	5.4	11,922	3.1	10,225	3.0
Commercial	548,824	2.1	1,094	4.4	226,096	3.0	248,835	3.5
Small	210,478	4.8	697	7.2	76,576	2.1	76,503	3.1
Lower medium	222,645	3.2	972	5.2	155,124	1.4	159,806	1.7
Upper medium	76,300	5.2	1,739	14.7	326,372	2.0	351,421	1.2
Large	30,575	7.3	2,842	13.5	571,882	5.0	669,175	1.5
Superlarge	14,826	6.7	2,941	12.5	2,226,139	8.4	2,682,215	9.8
Acreage class:								
1-49 acres	685,206	6.1	21	4.0	18,295	11.1	22,323	11.4
50-179 acres	629,906	4.4	104	1.5	28,761	6.6	31,248	7.2
180-499 acres	483,737	3.7	302	1.2	71,137	8.2	73,033	8.1
500-999 acres	200,545	4.2	691	0.9	144,301	4.8	171,031	9.1
1,000 or more acres	180,906	3.8	3,005	5.1	283,778	4.5	282,302	4.6
Farm type:								
Cash grains	351,275	3.9	695	3.8	91,047	3.8	95,121	3.9
Tobacco	91,787	13.5	147	10.4	32,932	13.5	34,524	13.9
Cotton	26,414	11.1	832	9.5	223,201	11.1	205,409	11.1
Other field crops	229,686	8.4	267	8.1	41,761	10.0	38,941	10.4
Veg., fruit, or nuts	111,304	11.9	157	15.0	133,525	15.5	123,278	16.4
Nursery or greenhouse	49,868	14.5	60	20.8	114,410	18.0	110,869	18.1
Beef, hogs, or sheep	902,900	3.7	512	5.4	42,673	7.6	47,673	9.3
Poultry	30,576	23.7	97	21.8	99,128	25.5	307,334	23.1
Dairy	140,022	4.9	328	4.1	173,328	4.3	173,829	4.4
Other livestock	79,494	13.1	256	26.3	40,095	23.9	38,649	25.6
Tenure:								
Full owner	1,123,922	3.6	225	5.9	34,714	6.1	41,092	9.5
Part owner	741,573	3.1	730	4.9	111,559	3.7	113,108	3.7
Tenant	197,805	7.4	534	9.2	103,084	7.7	111,171	7.9
Rental arrangements:								
No rentals	1,194,451	3.5	217	6.8	25,774	5.1	32,118	8.8
Land only	660,272	3.3	729	5.5	100,879	3.8	104,520	3.8
Land and other rentals	131,259	4.9	1,058	5.4	259,850	5.2	262,069	5.4
Other rentals only	77,319	13.1	278	16.6	137,636	27.4	132,939	28.1
Legal organization:[2]								
Individual	1,867,741	2.5	362	4.4	48,746	3.0	52,271	3.2
Partnership	125,171	6.9	850	9.5	182,049	7.2	196,001	10.7
Corporation	68,762	9.1	1,672	11.6	399,940	13.1	394,146	13.3
Family corporation	58,357	9.2	1,701	11.7	380,268	14.2	378,278	14.5
Nonfamily corporation	10,405	31.3	1,510	40.8	510,318	36.7	493,141	36.5
Farms, by type of sales:								
Cash sales only	1,837,992	2.5	409	4.3	51,050	4.2	49,987	4.3
Contracts (with or without cash sales)	225,308	4.7	661	5.4	214,432	4.8	267,248	6.4
Production contracts[3]	43,609	10.4	380	12.0	149,167	11.4	484,985	15.4
Marketing contracts[3]	185,736	5.2	730	5.8	235,181	5.1	225,691	5.3

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
[2]This classification excludes cooperative farms. Categories do not sum to all farms.
[3]The categories "production contracts" and "marketing contracts" are not mutually exclusive. Farms may have both types of contracts.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

mercial operators reported farming or hired farm manager as their major occupation. In contrast, about 90 percent of commercial farm operators reported those as their major occupations.

Among noncommercial farms, average gross cash income was larger than average gross sales (table 1). These smaller farms had miscellaneous sources of farm income (such as custom work, grazing fees, tobacco allotment rents, land rents, and sales of forest products) that are included in gross cash income but excluded from gross sales.

Among commercial farms, however, gross sales appeared to be greater than gross cash income, although the difference between the two measures was statistically significant only for the upper medium and large groups. Extensive contracting and share renting can result in lower gross cash income than gross sales. Gross cash income includes only the share of income received by the operation. Gross sales, in contrast, reflects the shares of output accruing to the operation, production contractors, and share landlords.

Commercial farms are more likely than noncommercial farms to share output with production contractors or share landlords. For example, consider production contracts in 1993. Hardly any noncommercial farms had production contracts, compared with 7 percent of all commercial farms and approximately 20 percent of the large and superlarge farms.

Acreage Class

While sales class generally is a better indicator of farm size, acreage class is also used. Sales class unambiguously measures economic activity in dollars, while acreage class simply measures land used, without any indication of the value of what is actually produced. The number of acres necessary to produce a given dollar amount of farm products varies with the characteristics of the land. For example, farms in a fertile area with adequate rainfall require less land to produce a given amount of a particular crop than similar farms in more arid areas.

In addition, farms producing high-value or high-margin products may require relatively little land, compared with other farms. For example, nursery or greenhouse operations averaged $110,900 dollars of gross sales, similar to the $95,100 average for cash grain farms and the $123,300 average for vegetable, fruit, or nut farms. But cash grain farms and vegetable, fruit, and nut farms used an average of 635 acres and 157 acres, respectively, compared with only 60 acres for nursery or greenhouse operations.

Nevertheless, acreage class data show that most farms are small (fig. 2), the same conclusion drawn from sales class data. About 29 percent of all farms had 49 or fewer acres, and another 31 percent had between 50 and 179 acres. These two groups together produced only one-fifth of either gross cash income or gross sales.

Like the superlarge farms discussed earlier, farms with 1,000 or more acres accounted for a disproportionate share of gross cash income and gross sales. Three-fourths of all farms with at least 1,000 acres were located in the Corn Belt, the Northern and Southern Plains, and the Mountain States (app. table 1). See appendix A for the States in each region.

Farm Type

Farm type was determined by the farm production specialty classification that accounted for the largest portion of gross sales from the farm operation. In this report, 10 farm types are used (table 1). For more information about crops or livestock included in each category, see appendix A.

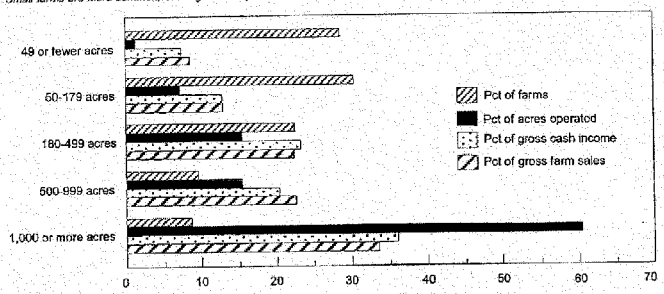
Beef, hogs, or sheep was by far the most common specialization among U.S. farms. Approximately 963,000 farms (47 percent of all farms) specialized in those livestock species. The next largest specialization was cash grain, which included 351,000 farms (17 percent of all farms).

Farms specializing in beef, hogs, or sheep tended to be smaller than cash-grain farms. The average gross sales for beef, hog, or sheep farms was $47,700, compared with $95,100 for cash grain farms. About 86 percent of beef, hog, and sheep farms were noncommercial, compared with 51 percent of cash grain farms.

Farms specializing in beef, hogs, or sheep were also less likely to be operated by farmers reporting farming or hired manager as their major occupation. Sixty-six percent of the operators of cash grain farms reported that farming or hired manager was their major occupation, but only 36 percent of operators of beef, hog, or sheep farms reported those major occupations. The remaining beef, hog, or sheep operators either had another occupation (44 percent) or were retired (20 percent). The beef, hog, or sheep category is largely made up of cattle farms, and cattle farms often have relatively flexible labor requirements (Holcomb, 1982,

Figure 2
Distribution, by acreage class, of farms, acres operated, gross cash income, and gross farm sales, 1993

Small farms are more common, but larger farms produce more



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

pp. 6, 22-23) that can fit well with an off-farm job or retirement.

Nevertheless, beef, hog, and sheep farms averaged 512 acres, which was above the U.S. average. Farms in this category can be land extensive. About 46 percent of farms with at least 1,000 acres specialized in beef, hogs, or sheep. At the other extreme, nearly 50 percent of the farms with 1-49 acres or 50-179 acres also specialized in raising beef, hogs, or sheep.

About 69 percent of poultry farms had production contracts, which accounted for the large difference between their average gross sales ($307,300) and average gross cash income ($99,100). This is because the contract fee that poultry operations receive is typically very small compared with the total value of poultry produced. As explained earlier, gross cash income includes only the operation's share of cash income while gross sales includes both the operation's share and the contractor's share of production.

Tenure

Each farming operation must have access to assets in order to produce crop and livestock products. This access may be obtained through renting rather than outright ownership. Historically, analysts have been most interested in the ownership and rental of land, since it is the principal asset used by farmers. Three tenure classes are used here:

- Full owners, who own all the land they operate
- Part owners, who own some of the land they operate, but also rent additional land
- Tenants, who rent all the land they farm. Operations that own only a small portion of the land they operated (less than 1 percent) are also considered to be tenant operations.

Census of agriculture data show that farm operations rented more acres of land during the Great Depression than currently, but most rentals then were by tenants (U.S. Dept. Agr., Econ. Res. Serv., 1994a, p. 24). In 1935, about 71 percent of rented land was leased to tenants and 29 percent was rented to part owners. By the 1970's, the percentages had reversed.

Land leasing has changed from a way for beginning farmers to enter agriculture to a way of gaining access to additional land (U.S. Dept. Agr., Econ. Res. Serv., 1994a, p. 20). Farm operations now expand by renting land to avoid debt and the risks associated with ownership (Reimund and Gale, 1992, p. 8) and to be able to respond more quickly to changing market conditions.

In 1993, most operations were full owners, but part owners and tenants had larger farms in terms of average acres operated, average gross cash income, and average

gross sales (table 1). The shares of gross cash income and gross sales accounted for by part owners and tenants were disproportionately large relative to their share of farms (fig. 3).

Generating that much income and production required operators to devote most of their working hours to farming. About 61 percent of partly owned and 66 percent of tenant operations had operators who reported farming or hired manager as their major occupation. In contrast, only 32 percent of fully owned operations had operators who reported those occupations.

Tenure differs by sales class (fig. 4), with commercial farms less likely to be full owners. About 66 percent of noncommercial farms were full owners, compared with between 16 and 31 percent for the various commercial classes.

Other Rental Arrangements

Land (or real estate) is not the only asset that farms rent. Among other assets commonly rented are vehicles, machinery, equipment, and livestock. The motivation for renting these assets is the same as for renting land: renting allows operations to control and use additional assets without incurring additional debt or the risks of ownership.

Farms that rented both land and other assets were larger than other farms, whether size was measured as average acreage, average gross cash income, or average gross sales (table 1). With only 6 percent of all farms, this group accounted for about 23 percent of gross sales. Average age of operators in this group was 46 years, or 5-10 years less than the averages for the other groups. Farms renting both land and other assets were most likely to specialize in cash grain (40 percent); beef, hogs, or sheep (23 percent); or dairy (16 percent). They were most concentrated in the Corn Belt (26 percent), Lake States (18 percent), and Northern Plains (18 percent).

Renting was much more common among commercial farms than among noncommercial farms (fig. 5). A particularly large percentage of superlarge farms (9 percent) rented only assets other than land.

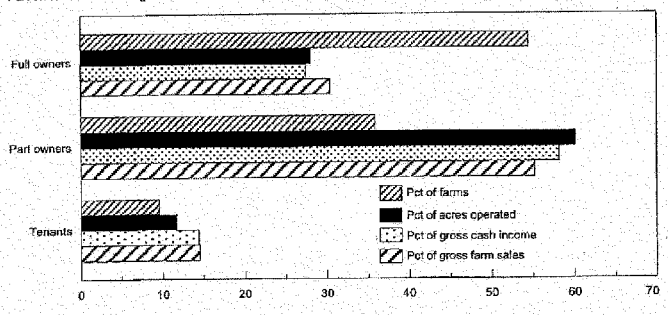
Legal Organization

Farms are classified in the FCRS according to their legal organization using the following categories (U.S. Dept. Agr., Nat'l Agr. Stat. Serv., 1993a, pp. M5114-M5115):

- Individual operations or sole proprietorships. Includes informal partnerships, such as those between spouses.

Figure 3
Distribution, by tenure, of farms, acres operated, gross cash income, and gross farms sales, 1993

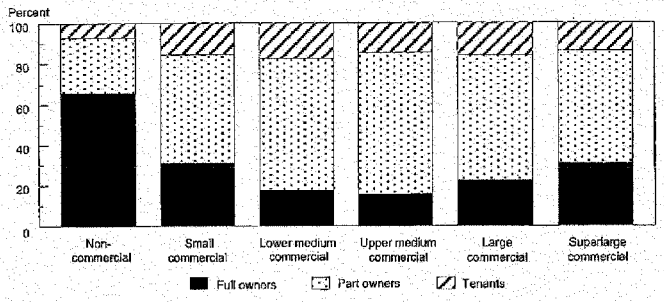
Part owners receive most gross cash income and generate most gross farm sales



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 4
Sales class by tenure, 1993

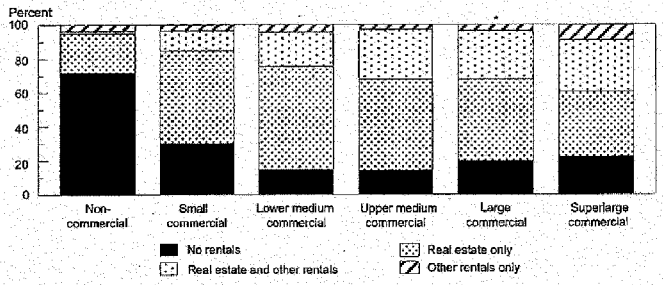
Noncommercial farms are more likely to be full owners



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 5
Sales class by rental arrangements, 1993

Renting is more common among commercial farms



*Relative standard error is greater than 25 percent.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

- Partnerships. Includes only partnerships established legally.
- Corporations:
  - Family corporations. More than 50 percent of the stock is held by people related by blood or marriage.
  - Nonfamily corporations. Corporations other than family corporations.
- Cooperatives. Voluntarily organized associations controlled by their members or patrons.

Because of the small number of cooperative farms (less than 1 percent of all farms), they are not presented separately in the tabulations pertaining to organization in table 1.

U.S. farms are most commonly organized as individual operations. Of the 2.1 million farms, approximately 1.9 million were individual operations in 1993 (table 1). Individual operations were more common among smaller farms. Approximately 94 percent of noncommercial farms were individual operations, compared with 82 percent of commercial farms. Within the commercial farm category, the share of individual operations was highest, 90 percent, for small commercial farms and decreased to 40 percent for superlarge farms.

Farms organized as legal partnerships and corporations are much larger than individual operations in terms of average acres, average gross cash income, and average gross sales. Farms organized as partnerships or corporations also produced a share of agricultural products disproportionate to their numbers. Partnerships made up only 6 percent of U.S. farms, but accounted for 16 percent of gross sales (fig. 6). Similarly, family and nonfamily corporations together were only 3 percent of U.S. farms, but accounted for 18 percent of gross sales.

Corporate farms were not, for the most part, run by large nonfarm businesses. In 1993, 58,400 farms were organized as family corporations, while only 10,400 farms were organized as nonfamily corporations (table 1). Family corporations also were responsible for a larger share of gross sales (15 percent) than nonfamily corporations (3 percent) (fig. 6).

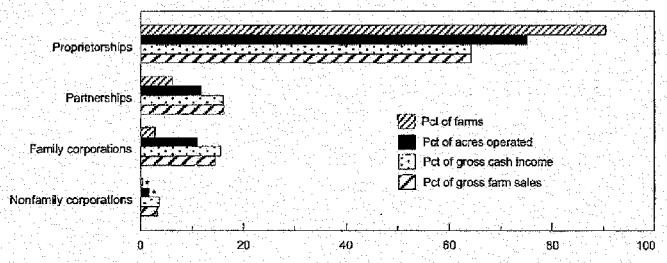
Data from the census of agriculture show that family-owned farms (individual operations, partnerships, and family corporations) are not losing their share of U.S. agriculture to nonfarm corporations (Reimund and Gale, 1992, p. 7; U.S. Dept. Comm., Bur. Cen., 1994a, p. 58). Nonfamily corporations' share of all U.S. farms remained relatively stable between 1978 and 1992. And, nonfamily corporations' share of total farm product sales actually fell slightly after 1978.

Family corporations, however, increased their share of both farms and sales during the 1978-92 period.

Figure 6

Distribution, by legal organization, of farms, acres operated, gross cash income, and gross farm sales, 1993

Partnerships and corporations generate a disproportionate share of gross cash income and gross farm sales



*Relative standard error greater than 25 percent.
Note: Data exclude cooperative farms.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Partnerships' share of farms fell slightly, while their share of sales grew. Shares of both farms and sales decreased only for individual operations.

Contracting

Although nonfamily corporations may not be taking over farming, some important changes have occurred in the way farm production and marketing are conducted. Over the past 40 years, farmers have become less dependent on terminal markets and spot pricing to market their goods, and more reliant on production and marketing contracts (O'Brien, 1994, p. 299). In addition, farm operations have become more vertically integrated.

In a vertically integrated operation, the same firm typically owns several farm-related businesses, such as hatcheries, feed mills, processing plants, and packing facilities. The integrator may also own farms or, more typically, contract with farmers to produce commodities. By the 1990's, contracting or vertical integration had become dominant modes of production and marketing in the broiler, turkey, egg, milk, and specialty crop markets (O'Brien, 1994, p. 302), as well as becoming increasingly common in hog farming (Hurt, 1994).

The increasing use of contracting and vertical integration in the food and fiber system is commonly identified with the industrialization of agriculture.[4] In part, industrialization arose as processors began to produce food products rather than food commodities (Drabenstott, 1994, p. 4). Processors need a steady supply of farm products of known quality and specifications to process (Council on Food, Agricultural and Resource Economics, 1994, p. 7). Contracting and vertical integration help provide these farm products, thereby reducing processor risk.

Contracting can also reduce marketing and production risks for producers. Because marketing contracts set a price in advance for output, they reduce marketing risk. Since production contractors own the commodity produced, make most of the production decisions, and supply most inputs, they assume a substantial part of the risk associated with production, as well as risks associated with marketing. The actual distribution of risk, of course, depends on the terms and conditions of the contract and the bargaining strength of the farmer and the contractor (Hoppe, 1996a).

To examine the prevalence of contracting in 1993, this report uses these categories:

- Cash sales only. Operation produced nothing under contract in 1993.
- Contracts (with or without cash sales). Operation had at least some of its 1993 production under a production or marketing contract.
  - Production contracts. Operation had at least some of its 1993 production under a production contract.
  - Marketing contracts. Operation had at least some of its 1993 production under a marketing contract.

The production contracts and marketing contracts categories are not mutually exclusive. Farms may have both types of contracts.

Most farms (89 percent) had only cash sales in 1993 (fig. 7). The remaining 11 percent of U.S. farms had at least one marketing or production contract, but these farms received 34 percent of gross cash income and accounted for about 40 percent of production, as measured by gross sales.

About 225,000 farms had a production and/or a marketing contract in 1993 (table 1). Regardless of the type of contract (marketing or production), contracting farms had larger sales and gross cash income than farms with only cash sales. But, farms with a production contract averaged only 380 acres per farm, about the same as farms with only cash sales (409 acres). Nearly half (49 percent) of the farms with production contracts were poultry farms, and poultry farms generally do not require large acreages. They averaged only 97 acres, which lowered the average acreage for farms with production contracts.

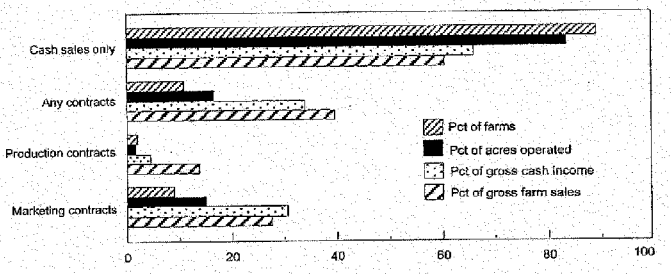
Only 44,000 farms had production contracts in 1993. But, these farms were large, averaging about $485,000 in gross sales, substantially more than their $149,200 gross cash income. Because gross cash income includes only the fee received by the operation, while gross sales includes the full value of the product removed, average gross sales was much larger than average gross cash income.

Marketing contracts were much more common than production contracts; about 186,000 farms had marketing

[4] According to the Council on Food, Agricultural and Resource Economics (1994, p. 1): "Industrialization in agriculture refers to the increasing consolidation of farms and to vertical coordination (contracting and integration) among the stages of the food and fiber system."

Figure 7
Distribution, by contracting arrangements, of farms, acres operated, gross cash income, and gross farm sales, 1993

Farms with contracts generated a disproportionate share of gross cash income and gross farm sales



Note: The categories "production contracts" and "marketing contracts" are not mutually exclusive. Farms may have both types of contracts.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

contracts in 1993. Three commodity specializations accounted for 75 percent of farms with marketing contracts: cash grain (36 percent); vegetables, fruits, or nuts (21 percent); and dairy (18 percent). Farms with marketing contracts had higher average gross cash income, but lower average gross sales, than farms with production contracts. Farms with marketing contracts produced less, on average, than farms with production contracts, but they kept more of the cash from their sales. Under marketing contracts, the farm receives a price reflecting the market value of the commodity (and typically provides the inputs).

Farms organized as individual operations are much less likely to have contracts than farms organized as partnerships or corporations. Only 10 percent of farms organized as an individual operation had a contract in 1993, compared with 20 percent of partnerships and 26 percent of corporations (family and otherwise). But, 10 percent of 1.9 million individual operations is still a substantial number of farms. Of the farms with contracts, 81 percent were individual operations.

Location of U.S. Farms

U.S. farms vary substantially according to their geographic location. For a brief discussion of the geographic units used here, see the box on the next page. This section of the report examines the characteristics of farms by region, metro-nonmetro status, and county economic specialization.

Major Production Regions. The Corn Belt had the largest number of farms in 1993, followed by the Appalachian Region[5] (table 2). Farms, however, were considerably smaller in the Appalachian Region than in the Corn Belt in terms of average acres, average gross cash income, and average gross sales. Farms in the Mountain Region had the largest average acreage, while those in the Pacific Region had the largest gross cash income and gross sales per farm.[6]

Farm production is concentrated in the Corn Belt, Pacific Region, and Northern Plains, which together accounted for about half of total U.S. gross sales (fig. 8). Farms in the various regions specialized in the production of specific commodities. The Corn Belt and Northern Plains contained 44 percent and 20 percent, respectively, of the Nation's cash grain farms

[5] The difference between the Appalachian Region and the Southern Plains in the number of farms was significant at the 90-percent level.

[6] The difference between the Pacific Region and the Northern Plains in average gross sales was significant at the 90-percent level.

Geographic Units

Previous editions of the Family Farm Report used major farming regions to discuss geographic variation in farming. There are 10 regions composed of groups of States with similar agriculture. (See appendix A for the States in each region.)

The current report provides additional information on geographic variation by also examining farming in metropolitan (metro) and nonmetropolitan (nonmetro) areas. Metro areas are defined by the U.S. Office of Management and Budget (OMB) as geographic areas with a large population nucleus (generally at least 50,000 inhabitants), plus adjacent communities that are socially and economically integrated with that nucleus (U.S. Dept. Comm., Cen. Bur., 1993, pp. A8-A9). Metro designations as of 1993, which identified 813 metro counties, are used in this report.

Metro areas are important to agriculture because they are not made up entirely of central cities and their heavily populated suburbs. For example, although Fresno County, California, is classified as metropolitan, it ranked first in the Nation in market value of agricultural products sold in 1992, according to the census of agriculture (U.S. Dept. Comm., Bur. Cen., 1994b, p. 28).

Nonmetro counties are a residual, the part of the Nation lying outside metro areas. Nonmetro counties are diverse, however, and the 2,276 nonmetro counties can be categorized into smaller groups with common characteristics. In this report, nonmetro counties are further sorted into two groups: those adjacent to metro areas (991 counties) and those that are not adjacent (1,285 counties) (Butler and Beale, 1994). One would expect urban influences to be stronger in adjacent counties than in nonadjacent counties.

Nonmetro counties can also be categorized according to their economic specialization. This report uses the ERS typology (Cook and Mizer, 1994), which sorts counties into mutually exclusive groups based on their economic base. The typology identifies six groups of counties:

- Farming-dependent (556 counties)
- Manufacturing-dependent (506 counties)
- Services-dependent (323 counties)
- Government-dependent (244 counties)
- Mining-dependent (146 counties)
- Nonspecialized (484 counties)

Geography is collapsed in some instances to make tables or graphs more readable. Some of the tables and figures use a three-way division of counties: farming-dependent counties, other nonmetro counties, and metro counties.

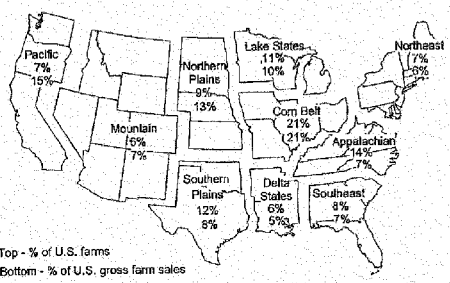
Table 2—Farms, acres operated, gross cash income, and gross farm sales, by selected characteristics, 1993

Characteristic	Farms		Mean acres operated		Mean gross cash income		Mean gross farm sales	
	Number	*RSE*[1]	*Acres*	*RSE*[1]	*Dollars*	*RSE*[1]	*Dollars*	*RSE*[1]
All farms	2,063,300	2.3	436	3.7	68,891	3.3	73,894	3.7
Major farming region:								
Northeast	142,900	6.3	183	5.7	59,411	7.3	61,760	7.5
Lake States	218,000	7.3	266	6.7	74,267	7.5	71,723	8.0
Corn Belt	425,000	4.7	275	4.6	69,736	5.5	75,945	5.5
Northern Plains	167,500	7.7	984	7.5	93,388	7.9	104,952	12.6
Appalachian	299,000	6.1	177	7.9	27,485	6.5	33,695	7.7
Southeast	155,200	6.8	230	6.3	57,129	11.4	65,401	11.0
Delta	114,000	9.5	282	8.7	47,356	9.5	70,118	13.0
Southern Plains	256,000	7.2	635	14.7	42,744	10.4	50,455	17.6
Mountain	116,600	9.1	1,472	11.6	97,977	10.9	98,937	11.7
Pacific	149,000	12.2	400	16.5	170,911	16.0	155,649	16.8
Metro-nonmetro status:								
Metro	639,640	4.7	229	5.6	76,544	7.5	76,696	7.6
Nonmetro	1,423,660	2.9	529	4.4	65,462	3.3	72,344	4.3
Adjacent	742,423	4.4	399	5.0	58,482	5.3	62,368	5.3
Not adjacent	681,237	4.0	737	6.3	73,049	4.3	83,216	6.5
County type:[2]								
Farming-dependent	311,594	6.3	903	7.7	102,119	7.1	107,599	8.9
Manufacturing-dependent	354,795	6.0	242	7.5	46,751	7.2	54,352	7.1
Services-dependent	209,136	7.7	494	8.1	56,576	8.5	66,266	8.7
Government-dependent	106,573	10.9	934	21.4	62,001	13.2	65,776	14.4
Mining-dependent	46,128	18.2	677	20.4	47,810	18.9	46,319	19.9
Nonspecialized	390,821	6.1	379	8.4	55,492	6.4	68,492	9.9

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
[2]This classification excludes 17 counties that could not be categorized due to data suppressions (Cook and Mizer, 1994, p. 30).
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 8
Distribution of farms and gross farm sales by major farming regions, 1993

The Corn Belt, Northern Plains, and Pacific account for nearly half of gross farm sales



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

(app. table 2). And, the Pacific Region had 53 percent of vegetable, fruit, and nut farms.

Other types of farms were more heavily concentrated in other regions. Most tobacco farms (85 percent) operated in the Appalachian Region. Nearly half (45 percent) of the cotton farms were in the Southern Plains, while dairy farms were more concentrated in the Lake States (40 percent) than elsewhere.

Some of these regional specializations are longstanding (Cochrane, 1993, pp. 91-92). For example, the specialization of the Corn Belt and Northern Plains in grain was established by the late 1800's. Also at that time, dairy specialization became established in the Lake States, and the Pacific Region began to specialize in high-value specialty crops.

Metro-Nonmetro. Most farms were located in nonmetro counties (69 percent), and the average acreage operated per farm was higher in nonmetro counties (529 acres) than in metro counties (229 acres) (table 2). Despite the smaller average acreage in metro areas, there were no significant metro-nonmetro differences in gross cash income or gross sales per farm, probably because metro counties tend to produce products of higher value (Ahearn and Banker, 1988; Heimlich and Barnard, 1992). Metro counties contained about 65 percent of the Nation's vegetable, fruit, and nut farms in 1993, as well as 70 percent of all nursery and greenhouse farms.

Farms also varied in their characteristics within nonmetro areas. For example, farms in nonmetro counties that were adjacent to metro areas operated fewer acres, received lower average gross cash income, and had lower average gross sales than farms in nonadjacent counties.

Compared with nonadjacent and metro counties, adjacent counties contained a particularly large portion of the Nation's dairy farms in 1993. About 43 percent of dairy farms were located in adjacent counties, compared with 27 percent in nonadjacent counties and 30 percent in metro counties. Dairy farms in nonmetro counties near metro areas may have an advantage over nonadjacent counties in transporting their highly perishable product to market. At the same time, they may face less competition for land than they would within metro areas.

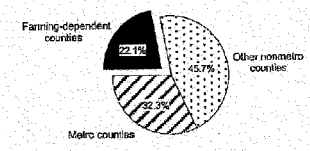
Economic Specialization. Of the 2,276 nonmetro counties, 556 (or 24 percent) depend on farming for at least 20 percent of their earned income. Farms in these farming-dependent counties had higher average gross sales and higher average gross cash income than farms in other nonmetro counties (table 2). However, only 15 percent of all U.S. farms and 24 percent of commercial farms were located in farming-dependent counties. Manufacturing-dependent counties alone had about as many farms as the farming-dependent counties, and nonspecialized counties had more.

In 1950, the Nation had 2,016 farming-dependent counties, approximately 3.6 times the current number. Growing farm productivity over the decades led to declining farm numbers and falling farm employment. At the same time, off-farm employment grew, often in the same communities where farmers lived. As a result, the number of counties depending economically on farming declined (Hoppe, 1994, p. 1). Some formerly farming-dependent counties were also absorbed into expanding metro areas.

But, farming did not disappear from most counties that are no longer farming-dependent (Hoppe, 1994, p. 3). In many of these counties, farming remained significant, although it no longer dominated the economies of the counties. In 1993, 78 percent of gross farm sales came from counties that were not farming dependent (fig. 9). Nonmetro counties (farming-dependent or otherwise), however, accounted for about two-thirds of the sales.

Figure 9
Distribution of gross farm sales in metro, farming-dependent, and other nonmetro counties, 1993

Most farm production occurs outside farming-dependent counties



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Concentration of Production

Concentration of production refers to the increasing share of agricultural output produced by fewer and fewer farms. In farm structure discussions, concentration now is a bigger issue than the declining number of farms (Stanton, 1993b, p. 46). Concentration can be measured by determining the smallest number of farms necessary to produce a particular amount of product. Less than 1 percent of U.S. farms produced 25 percent of total gross sales in 1993 (table 3). Only 4 percent of farms produced half of gross sales. These 4 percent of farms plus 9 percent more accounted for 75 percent of sales.

These FCRS estimates are consistent with the 1992 Census of Agriculture. According to the 1992 Census of Agriculture, 0.3 percent of farms accounted for 25 percent of the market value of sales, 3 percent of farms accounted for 50 percent, and 12 percent of farms accounted for 75 percent (U.S. Dept. Comm., Bur. Cen. 1994a, p. 47). The census data were within a percentage point of the corresponding 1993 FCRS estimates in table 3.[7]

Census of agriculture data show that farm production has become more concentrated over time. For example, 17 percent of U.S. farms produced 50 percent of farm sales in 1900 (Peterson and Brooks, 1993, pp. 3-5) compared with only 3 percent of farms in 1992 (U.S. Dept. Comm., Bur. Cen., 1994a, p. 47). On the other hand, the 17-percent figure for 1900 also indicates that some concentration already existed nearly 100 years ago. Production was not evenly distributed across all farms in 1900.

[7]Three factors help explain the slight differences between the two data sets. First, the data are for different years, 1992 for the census and 1993 for the FCRS. Second, the FCRS is a survey, but the census is a complete census. Third, sales are defined differently in the two data sources.

Table 3—Farms by concentration of gross farm sales, 1993

		Fewest number of farms to account for ...		
Item	All farms	25 percent of gross farm sales	50 percent of gross farm sales	75 percent of gross farm sales
Number of farms	2,063,300	12,800	82,854	273,866
RSE[1]	2.3	7.5	4.7	2.5
Percent of farms	100.0	0.6	4.0	13.3
RSE[1]	0.0	7.9	5.1	3.3

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.

Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Farmland Ownership and Use

As noted earlier in the discussions of tenure and rental arrangements, farm operations do not necessarily own all the land that they use. Acres operated include land that farm operations own themselves, as well as land they rent from others. In addition, operations may rent out some of their land to others.

Acres operated in table 4 is actually a net amount, calculated as: acres owned, plus acres rented in, less acres rented out. The detailed items in table 4 do not sum to total acres operated, however, because the small number of acres rented in free-of-charge, acres rented out free-of-charge, and acres used part of the year and rented out another part of the year are not reported separately. These items are included in total acres operated, however.

Ninety-two percent of U.S. farm operations owned land in 1993, and this owned land accounted for about 63 percent of the land operated. About 38 percent of farms rented land from others. Average acres rented in per reporting farm was 485 acres, which was substantially greater than the 297-acre average of owned land per reporting farm.

Only 15 percent of farms reported renting land for a share of production, compared with 31 percent renting for cash. However, the average amount of land rented per reporting farm for cash rentals (425 acres) and share rentals (384 acres) did not differ by a statistically significant amount. Share-rented acres accounted for a particularly large percentage of land operated in the Corn Belt (26 percent).

About 267,000 farm operations reported renting a total of 66 million acres to others. This land made up only a fraction of the 384 million acres that farms reported renting from others. Nonfarm landlords made up the difference.

Many nonfarm landlords have a connection to farming. There are currently about 2.1 million farms in the United States—a considerable drop from the peak of 6.8 million in 1935. Among the people who have retired, exited farming, or inherited farmland, a number have retained ownership of some or all of their land (Hoppe et al., 1995).

Neither the FCRS nor the regular census of agriculture collects information about the characteristics of landlords. However, the Agricultural Economics and Land Ownership Survey (AELOS) of 1988, a special "follow-on" survey to the 1987 Census of Agriculture, reported selected characteristics of landlords in 1988 (U.S. Dept. Comm., Bur. Cen., 1990).

According to AELOS, 93 percent of the landlords were individuals/families or partnerships. Of these unincorporated landlords, most were retired. Twenty-six percent reported that they had retired from farming or from a farm-related job. Another 26 percent reported that they had retired from a nonfarm-related job. How many of the second group of retirees farmed before taking the nonfarm-related job is unknown. About 12 percent of landlords were still farming or holding a farm-related job. The remaining 36 percent held jobs unrelated to farming. Nearly half of landlords' land was acquired through their families, by inheritance, gift, or purchase (Hoppe et al., 1995).

Table 4—Farms and acres operated, by land ownership and participation in government programs, 1993

Item	Farms reporting		Acres		Acres per reporting farm	
	Number	*RSE*[1]	*1,000*	*RSE*[1]	*Acres*	*RSE*[1]
Acres operated	2,063,300	2.3	930,289	3.3	436	3.7
Owned	1,892,588	2.4	563,181	3.9	297	4.1
Rented in	791,531	2.6	383,858	5.5	485	5.8
Cash	626,652	3.2	267,410	7.8	425	8.0
Share	303,388	3.6	116,447	4.2	384	4.0
Rented out	266,739	6.3	65,674	16.7	246	16.4
Land in government programs	611,218	3.0	59,664	5.3	98	4.8
Set aside	429,467	2.8	18,586	4.7	43	4.3
Conservation Reserve Program	233,097	8.5	35,010	7.9	154	7.2
Other government programs	32,930	12.1	5,068	16.5	155	15.4

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Land Removed from Production

Some land is removed from production in compliance with government programs. Set-aside acres include land removed under annual Federal commodity acreage adjustment programs. Land removed under the Conservation Reserve Program (CRP) has been diverted from production through 10- to 15-year contracts (Young and Shields, 1996, p. 17). Other State and Federal programs remove much less land. Land removed from production totaled 60 million acres (table 4).

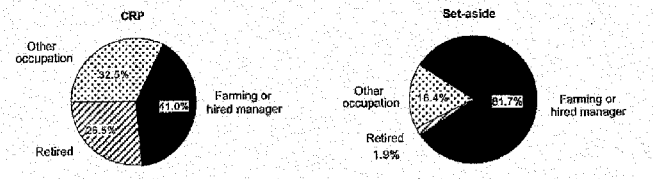
Although fewer farms participated in the CRP than in set-aside programs, average CRP acres per reporting farm were higher. The CRP accounted for 60 percent of the total cropland removed, and most of the rest of the removed acres were in set-aside programs. About 30 percent of all idled land in government programs was located in the Northern Plains (app. table 9).

About 50 percent of set-aside acres were in cash grain farms. These farms grew crops (feed grains, wheat, and rice) targeted by set-aside programs. Another 25 percent of set-aside acres were in beef, hog, and sheep farms, which often raise targeted feed grains as feed for their livestock.

Farms participating in the set-aside programs were more likely to have operators reporting farming or hired manager as their major occupation (fig. 10). Eighty-two percent of the farms participating in set-aside programs had an operator whose major occupation was farming or hired manager. In contrast, only 41 percent of farms participating in the CRP program were run by an operator with those major occupations.

Figure 10
Farms participating in the set-aside and Conservation Reserve Programs, by major occupation of operator, 1993

Farms with operators whose occupation was farming or hired manager accounted for a larger share of participants in the set-aside program



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Farm Finances

Previous versions of the Family Farm Report presented income statement and balance sheet items as averages per reporting farm. The present report, however, uses averages for all farms. This allows interpreting the data as an average income statement and an average balance sheet.[8] *Note also that the estimates presented here differ from the official USDA sector estimates. (See the box.)*

This report also includes "common-size" financial statements. Common-size financial statements are useful when comparing financial data among farms in different sales classes. According to Fraser (1988, p. 125):

> Common size financial statements are a form of financial ratio analysis that allows the comparison of firms with different levels of sales or total assets by introducing a common denominator. A common size balance sheet expresses each item on the balance sheet as a percentage of total assets; and a common size income statement expresses each income statement category as a percentage of net sales [gross cash income for farms) . . .

The Income Statement

An abbreviated income statement appears in table 5. Gross cash income is the total cash income generated by farming operations, through farming and closely related activities. Net cash farm income is calculated by deducting cash expenses from gross farm income. Net farm income is derived from net cash farm income by subtracting noncash expenses, adjusting for inventory change, and adding noncash income. Noncash expenses are depreciation and nonmonetary benefits provided to labor. Noncash income includes the value of agricultural products consumed at home and the imputed rental value of farm dwellings.

Gross cash income averaged $68,900 dollars for all farms in 1993. Net cash farm income and net farm income were considerably less, $11,700 and $10,900 respectively. Income statement items varied considerably by farm size, however. For example, gross cash income ranged from $11,900 for noncommercial farms to $2.2 million for superlarge farms. With very few exceptions, the average for each income and expense item in table 5 increased by a statistically significant amount with each increase in sales class.

Noncommercial farms had particularly low average net cash income (-$800) and net farm income ($1,100). As noted in a later section of this report, households running noncommercial farms and smaller commercial farms depend heavily on off-farm sources of income.

The common-size income statement further down in table 5 provides some insight into differences in the sources of income for farms of different sizes. Farms in the commercial size classes received a greater percentage of their income from crops than noncommercial farms, explained by commercial farms' heavier specialization in crops. About 49 percent of commer-

Caution:

Farm Business Estimates Differ from Farm Sector Estimates

FCRS financial data presented in this report are based on information provided by the sampled operations about their farm (or ranch) businesses. This financial information, which relates strictly to the farm business, differs conceptually from official USDA sector estimates, which include not only farm businesses but also all participants in the sector. For example, the income of farm businesses estimated from the FCRS includes the income of those with ownership interest in the operation---farm operators, partners, and shareholders. In addition to these participants, USDA's sector estimates include others, such as contractors and landlords, who share the risks of production (U.S. Dept. Agr., Econ. Res. Serv., 1993b; Hoppe, 1995). Official sector estimates also use a combination of data sources and cover all 50 States rather than the 48 contiguous States covered by the FCRS. More information about the survey's comparability with other sources of data can be found in appendix B.

[8] Appendix tables dealing with financial data continue to use dollars per reporting farm. The public often requests financial data in that form.

Table 6—Selected farm business financial characteristics by sales class, 1993

Item	Nonecommercial		Small commercial		Lower medium commercial		Upper medium commercial		Large commercial		Superlarge commercial		All farms	
	Estimate	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]
Number of farms	1,644,479	3.1	210,478	4.8	222,949	3.2	70,300	5.2	30,575	7.3	14,825	6.7	2,069,500	2.3
						Dollars per farm								
Gross cash income	11,922	3.1	78,578	2.1	155,124	1.4	326,372	2.0	571,982	5.0	2,226,139	6.4	58,891	3.3
Livestock sales	5,476	3.8	32,826	4.4	84,437	3.5	123,235	5.9	231,956	8.3	1,128,006	15.6	30,062	5.2
Crop sales	2,979	5.0	25,848	4.9	60,882	3.5	144,765	5.2	252,148	7.8	928,283	11.2	26,709	4.1
Government payments	1,245	6.7	7,409	6.7	14,482	4.3	25,902	5.4	28,019	7.4	32,153	9.0	4,761	3.1
Other farm-related income	2,222	8.9	10,892	12.6	15,343	7.4	32,467	10.6	59,761	22.8	137,696	14.2	7,359	5.2
Cash expenses	12,730	2.9	62,864	3.0	139,564	1.8	250,866	2.4	462,697	5.4	1,828,946	11.1	57,192	3.6
Net cash farm income	-808	35.8	13,972	10.9	36,580	4.6	75,566	4.7	109,186	14.4	396,193	11.3	11,799	5.4
Net farm income	1,105	31.4	8,709	21.4	25,700	7.6	50,378	11.5	95,287	16.3	461,603	13.5	10,918	6.6
Farm assets	261,606	3.2	488,497	4.1	655,507	2.8	1,079,544	5.3	1,497,960	5.5	4,013,647	11.1	400,511	2.3
Liabilities	17,359	5.5	74,791	7.1	116,519	5.7	208,389	5.2	318,709	5.8	889,219	12.5	91,154	3.5
Equity	244,247	3.4	413,706	4.9	539,988	3.0	871,155	7.0	1,181,151	6.8	3,123,428	13.2	309,356	2.4
Capital investments	4,337	8.2	11,956	7.1	20,133	5.3	36,237	6.9	62,551	17.1	133,727	15.0	8,688	4.3
						Percent of gross cash income								
Gross cash income	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0
Livestock sales	45.9	3.0	42.9	4.8	54.5	3.4	37.8	5.6	40.6	8.9	50.7	9.9	51.0	3.2
Crop sales	25.0	4.4	33.5	5.0	39.2	3.1	44.4	4.8	44.1	8.5	41.7	11.0	46.8	3.1
Government payments	10.5	6.1	9.7	6.4	9.3	4.2	7.9	5.3	4.9	7.3	1.4	12.2	8.2	3.2
Other farm-related income	18.6	7.4	14.0	11.2	5.9	6.9	10.0	10.3	10.5	21.0	6.2	15.9	10.7	6.0
Cash expenses	106.8	2.4	81.8	2.8	77.1	1.3	76.9	1.3	80.9	3.0	82.2	3.4	83.0	1.0
Net cash farm income	-6.8	37.1	18.3	10.5	22.9	4.5	23.2	4.9	19.1	12.8	17.8	15.8	17.0	5.0
Net farm income	9.3	31.3	11.4	21.8	16.6	7.4	15.4	11.1	16.7	14.3	20.7	12.3	16.9	5.7
						Percent of assets								
Farm assets	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0	100.0	0.0
Liabilities	6.6	5.9	15.3	7.6	17.8	5.1	19.3	6.8	21.1	7.3	22.3	12.5	22.8	3.1
Equity	93.4	0.4	84.7	1.4	82.3	1.1	80.7	1.5	78.9	1.8	77.8	3.7	87.2	0.6
Capital investments	1.7	8.6	2.5	6.4	3.1	5.1	3.4	8.2	4.2	16.3	3.3	17.5	2.4	4.3

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources on page 6.

Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

cial farms specialized in crops, compared with only 39 percent of noncommercial farms.

Government payments were a larger percentage of gross cash income for noncommercial farms, small commercial, and lower medium commercial farms than for farms in the larger commercial classes. Although the average government payment was higher for the larger commercial farms, these farms had enough income from other sources to make government payments a smaller share of total cash income.[9]

About 19 percent of noncommercial farms' gross cash income came from other farm-related income. This item averaged only $2,200 for noncommercial farms, however. Commercial farms had larger amounts of this income, but it accounted for a smaller share of gross cash income.

For all the commercial size classes, cash expenses ran about 80 percent of gross cash income, making net cash income about 20 percent of gross cash income. For noncommercial farms, however, average cash expenses were 7 percent higher than gross cash income, resulting in negative average net cash farm income.

The Balance Sheet

As with income statement items, assets, liabilities, equity, and capital investments per farm increased with each increase in sales class (table 5). For farms in the commercial sales classes, liabilities as a percentage of assets (the debt/asset ratio) were between 15 and 22 percent. Noncommercial farms had much lower debt relative to assets, with a debt/asset ratio of only 7 percent. Capital investments were a smaller percentage of assets, however, for noncommercial than for commercial farms.

Sharing Income and Equity

Readers examining table 5 may be impressed by the large average equity for farms of all sales classes and the large net farm income for farms in the larger sales classes. But, a certain amount of equity is necessary to continue the farm as a business. Maintaining or expanding this equity base may also require capital investment, which must be paid for out of current net income, the sale of assets, or loans. For larger farms, these expenditures can be substantial (table 5). Even after allowing for an equity base and capital investment, not all the farm's equity and net farm income are necessarily available to the farm operator and his or her household for two reasons.

First, some farms (nonfamily corporations, cooperatives, or farms with a hired manager) are not closely held (or legally controlled) by the operator household. These operator households have limited say over the distribution of their farms' net income or equity. Farms not closely held by the operator household are relatively rare, however. Closely held farms accounted for 99 percent of all farms in 1993 and at least 95 percent of farms in each sales class except the superlarge class, where 82 percent of the farms were closely held.

Second, even if the farm is closely held by the operator household, the operator household may share farm income, farm assets, or farm debt with other households. Income, assets, and debt may be shared with partners, relatives who no longer live on the farm, and shareholders in family corporations.

Noncommercial farms best fit the traditional view of farming, where each farm is closely held by a single operator household that receives all the farm's net income and holds all the farm's assets and debts. About 92 percent of noncommercial farms fit this single-household-per-farm view of farming (fig. 11) in 1993. The percentage of single-household farms was less for commercial farms. For example, only 48 percent of superlarge farms were single-household farms. Commercial farms today may require more management, labor, and financial resources than can be provided by a single household.[10] They distribute the returns from farming to more than one household.

Farm Financial Performance

Both net farm income and debt/asset ratios are used to assess financial performance. To get a complete picture of a farm's economic health, however, the two measures must be considered together. Used independently of

[9] Government payments are not adjusted for payment limitations in this report.

[10] The single-household farm described above is based (in part) on who receives shares of farm business income, where farm business income is defined narrowly to exclude shares received by share landlords and contractors. A second definition of single-household farms used by ERS also considers sharing of output with share landlords and contractors. The second definition classifies a farm as single-household if it is closely held, shares income with no other household, has no share landlords, and has no production contracts. This second definition results in substantially fewer single-household farms (74 percent of all farms) than the first definition (90 percent).

each other, they have limitations. For example, if a farm earns enough income to service debt and meet its other financial obligations, then a high debt/asset ratio may be manageable. Similarly, an operation carrying a low debt load may be able to weather periods of low or negative income.

To reflect the range of financial situations, ERS developed a measure of overall financial position of farms based on their combined net income and solvency status (Morehart, Johnson, and Banker, 1992, pp. 34-35):

- Favorable: positive net farm income and debt/asset ratio is no more than 40 percent.
- Marginal income: negative net farm income and debt/asset ratio is no more than 40 percent.
- Marginal solvency: positive net farm income and debt/asset ratio more than 40 percent.
- Vulnerable: negative net farm income and debt/asset ratio more than 40 percent.

Most farms (60 percent) were in a favorable financial position in 1993 (table 6). These farms averaged about $76,200 dollars in gross sales, similar to the average for all farms. Farms in a favorable financial position accounted for about 62 percent of gross sales and 61 percent of gross cash income.

Another 29 percent of farms were in the marginal income category. These farms tended to be smaller operations, averaging only $42,800 in sales. They made 17 percent of farm sales and received 19 percent of gross cash income. No farm can remain in the mar-

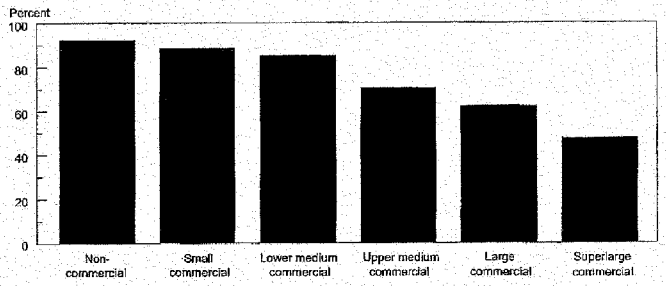
Table 6—Farms, gross cash income, and gross farm sales, by financial position, 1993

Item	Farms		Mean gross cash income		Mean gross farm sales	
	Number	*RSE[1]*	*Dollars*	*RSE[1]*	*Dollars*	*RSE[1]*
All farms	2,063,300	2.3	88,991	3.3	73,694	3.7
Favorable	1,229,371	3.0	70,187	3.7	76,185	4.7
Marginal income	607,108	4.5	43,735	6.1	42,842	6.2
Marginal solvency	123,317	9.3	173,266	14.9	188,247	14.1
Vulnerable	105,505	12.4	76,690	13.2	86,570	14.6

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 11
Single-household farms by sales class, 1993

Single-household farms are more common among smaller size classes



Note: Single-household farms are closely held by the operator household, and the operator household does not share farm income, farm assets, or farm debt with another household.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

ginal income category indefinitely, unless it is subsidized with additional funds, such as off-farm wages. In many cases, a farm will make enough in other years to cover a year of negative returns.

Marginally solvent farms tended to be larger, with average gross sales of $188,200. Only 6 percent of all farms, they accounted for about 15 percent of both gross cash income and gross sales. Even if a farm has high debt, it may still be viable because net farm income is sufficient to meet financial obligations.

Vulnerable farms were relatively rare, accounting for only 5 percent of all farms in 1993. These farms' average sales and average gross cash income were similar to those of farms in the favorable category. Vulnerable farms experience financial stress and may have to undertake drastic actions to reduce debt and generate additional income.

Commercial and noncommercial farms were equally likely to be in a favorable financial position (fig. 12). Compared with commercial farms, however, noncommercial farms were more likely to be in the marginal income category and less likely to be in the marginal solvency category. The difference between noncommercial and commercial farms in the percentage of vulnerable farms was not statistically significant.

As discussed in a later section, households operating noncommercial farms rely heavily on off-farm income. They sustain low income or losses from farming with money earned off the farm. Although noncommercial farms tend to have small positive or even negative net farm income, they also have little debt. Thus, they generally fall into the favorable and marginal income categories.

Commercial farms, however, are more likely to be run as profit-oriented businesses. For example, return on assets and the ratio of sales to assets were higher for commercial than for noncommercial farms (fig. 13).[11] Businesses often incur debts in the production process, even if they have substantial income. Commercial farms, therefore, are more likely than noncommercial farms to be marginally solvent.

Variation by Type of County

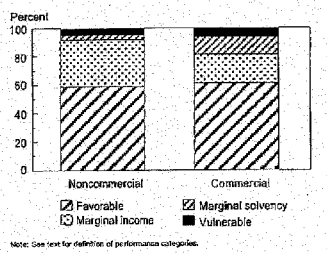
Although this discussion of financial data has focused on variation in finances by size of farm, farm finances also vary with other characteristics, including geographic location. Farm finances in farming-dependent counties are of particular interest whenever farm program changes are under consideration. Policymakers are often concerned about the effects of program changes in areas most dependent on farming.

Average gross cash income in 1993 was highest in farming-dependent counties ($102,100) followed by metro counties ($76,500) and other nonmetro counties

[11] See appendix A for the definition of return on assets.

Figure 12
Financial performance by sales class, 1993

Most farms performed favorably in 1993

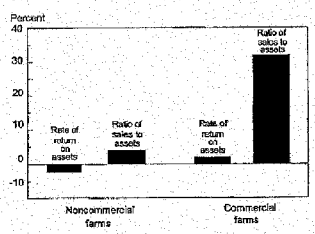


Note: See text for definition of performance categories.

Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 13
Return on assets and ratio of sales to assets, by sales class, 1993

Smaller farms have lower rate of return



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Table 7—Selected farm business financial characteristics by type of county, 1993

Item	Farming-dependent		Other nonmetro		Metro		All farms	
	Estimate	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]	*Estimate*	*RSE*[1]
Number of farms	311,594	6.3	1,112,066	3.3	639,640	4.7	2,063,300	2.3
				Dollars per farm				
Gross cash income	102,119	7.1	55,179	3.8	76,544	7.5	68,881	3.3
Livestock sales	46,029	10.0	25,470	5.0	30,755	13.4	30,062	5.2
Crop sales	32,599	8.0	19,328	5.2	35,673	8.4	28,709	4.1
Government payments	10,803	6.8	4,283	4.7	2,650	7.1	4,761	3.1
Other farm-related income	13,688	12.9	6,098	6.8	6,467	9.4	7,359	5.2
Cash expenses	82,530	7.4	44,476	3.5	65,924	8.4	57,162	3.6
Net cash farm income	19,589	8.3	10,702	7.1	9,520	14.3	11,709	5.4
Net farm income	14,032	11.4	9,691	8.3	11,690	15.0	10,918	6.6
Farm assets	457,983	6.6	350,726	2.8	459,071	4.4	400,511	2.3
Liabilities	73,277	7.2	44,133	4.2	52,585	8.0	51,154	3.5
Equity	384,706	7.1	306,592	3.0	406,486	4.6	349,356	2.4
Capital investments	13,198	7.5	9,008	5.6	9,193	9.9	9,698	4.3

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

($55,200) (table 7). After cash expenses were subtracted, farms in farming-dependent counties also had the highest average net cash income. Average net farm income estimates in the three groups of counties, however, ranged within $4,400 of each other.

Average equity was greater in farming-dependent counties ($384,700) and metro counties ($406,500) than in other nonmetro counties ($306,600). Farms in farming-dependent counties, however, had the highest debt/asset ratio (16 percent).

Average government payments were $10,800 in farming-dependent counties, compared with less than $5,000 in the two other county groups. About 11 percent of gross cash income in farming-dependent counties came from government payments, more than in other nonmetro counties (8 percent) or in metro counties (3 percent). With 15 percent of U.S. farms, farming-dependent counties had 35 percent of set-aside acres and 49 percent of CRP acres.

Farm commodity programs are often believed to have a large effect on local economies. However, program payments made up only 7 percent of gross cash income nationwide in 1993. Government payments are most likely to have an impact in farming-dependent counties, particularly those specializing in covered commodities (Hoppe, 1994, pp. 25). In counties that are not farming-dependent, government programs boost farmers' income, but have less of an impact on the overall economy (Perry and Whittaker, 1994, pp. 4-5).

Characteristics of Farm Operators

The FCRS provides selected information on the people who operate farms. However, this information is collected for only one operator per farm. For farms with more than one operator, such as partnerships, data are collected only for the primary operator.

Major Occupation

Major occupation refers to the occupation at which operators spent 50 percent or more of their work time during the year. The 1993 FCRS used four responses: farm or ranch work, hired manager, something else, and retired.

The FCRS allowed retired as a response for the first time in 1993. It is the only national data source to specifically identify retired farm operators. In previous years, retired operators were most likely to have reported farm or ranch work as their major occupation.

About 45 percent of all farm operators reported farm or ranch work as their major occupation (fig. 14). However, they operated most of the farmland (73 percent), accounted for most of gross sales (82 percent), and received most of gross cash income (82 percent). Hired farm managers ran only about 1 percent of the farms, but their farms tended to be large in terms of average acres operated, average gross cash income, and average gross sales (table 8).

Operators reporting major occupations other than farming accounted for a substantial proportion of all farms (37 percent), but their farms were small in terms of average acres, average gross cash income, and average gross sales. Retired operators accounted for another 17 percent of farms and ran the smallest farms in terms of average gross cash income and average gross sales.

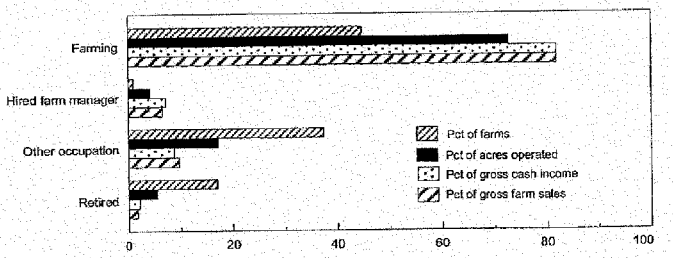
About half of the operators reporting farming or hired manager as their major occupation operated commercial-sized farms (table 9). In contrast, virtually all operators with another occupation and retired operators had noncommercial farms. In fact, 71 percent of operators with another occupation and 84 percent of retired operators reported sales less than $10,000.

Operators with farm or ranch work as their major occupation reported the highest average hours worked onfarm, and two-thirds of these operators reported working at least 2,000 hours per year onfarm, equivalent to a full-time job. Hired managers worked fewer hours onfarm than operators reporting farming as their major occupation, but more hours than operators with another occupation or retired operators.

Figure 14

Distribution, by major occupation of operator, of farms, acres operated, gross cash income, and gross farm sales, 1993

Farm operators reporting farming as their major occupation account for most farming activities



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Table 8—Farms, acres operated, gross cash income, and gross farm sales, by farm operator characteristics, 1993

Characteristic	Farms		Mean acres operated		Mean gross cash income		Mean gross farm sales	
	Number	*RSE*[1]	*Acres*	*RSE*[1]	*Dollars*	*RSE*[1]	*Dollars*	*RSE*[1]
All farms	2,063,300	2.3	436	3.7	68,891	3.3	73,694	3.7
Occupation:								
Farming	922,140	2.4	712	3.5	126,175	2.7	135,047	3.2
Hired farm manager	18,261	21.1	2,077	22.7	556,555	32.5	546,245	33.4
Other occupation	771,245	4.4	201	13.2	16,273	7.0	19,267	14.4
Retired	351,634	7.3	148	9.9	8,721	7.7	7,605	8.1
Age:								
Less than 35 years	182,393	6.9	507	10.7	89,594	8.4	100,244	8.4
35-44 years	399,896	4.8	531	10.3	97,170	5.8	107,666	7.3
45-54 years	489,204	5.9	433	7.0	81,357	8.2	88,901	9.1
55-64 years	438,778	4.9	443	6.5	67,561	6.3	68,678	8.4
65 years or older	561,030	4.9	343	7.6	32,376	7.8	31,766	8.1
Education:								
Less than high school	475,841	5.4	243	6.7	32,061	6.8	34,504	7.5
High school	846,070	3.6	389	4.4	62,761	4.3	66,829	4.3
Some college	420,016	5.8	573	9.1	87,200	8.0	98,561	10.0
College	321,373	5.1	670	9.9	115,656	6.9	119,907	8.4

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix III.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Operators with another occupation worked relatively few hours onfarm, but they all reported an off-farm job. The average number of off-farm hours per reporting operator was 2,330, and 90 percent of the reporting operators worked at least 2,000 hours off-farm.

Retired operators worked the fewest hours on their farms and were least likely to report working off-farm. When they did work off-farm, they worked fewer hours than operators with another occupation and a similar number of hours as operators with farming as their major occupation.

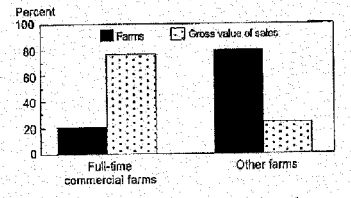
As pointed out above, most gross sales (82 percent) were accounted for by the 45 percent of operators who reported farm or ranch work as their major occupation. However, there was variation within this category in terms of size of farm and hours worked onfarm. Some operators in this category had noncommercial farms, and 20 percent worked off-farm. Sales were actually concentrated among "full-time commercial farms," defined here as farms with sales of $50,000 or more and an operator whose major occupation was farm or ranch work (or hired manager) and who worked at least 2,000 hours per year on the farm. Full-time commercial farms made up only 21 percent of all farms, but accounted for 76 percent of the value of gross sales in 1993 (fig. 15).

Age

Farm operators have a relatively older age structure than other workers, with 72 percent 45 years of age or older and 49 percent age 55 or older (table 8). In comparison, 46 percent of all self-employed workers in nonagricultural industries in 1993 were age 45 or older, and only 22 percent were age 55 or older (U.S. Dept. Labor, 1994, p. 211). About 27 percent of all farm operators

Figure 15
Share of farms and gross farm sales for full-time commercial farms and other farms, 1993

Full-time commercial farms account for 21 percent of farms, but 76 percent of sales



Note: Full-time commercial farms have sales of $50,000 or more and an operator whose major occupation is farming or hired manager and who worked at least 2,000 hours on the farm.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

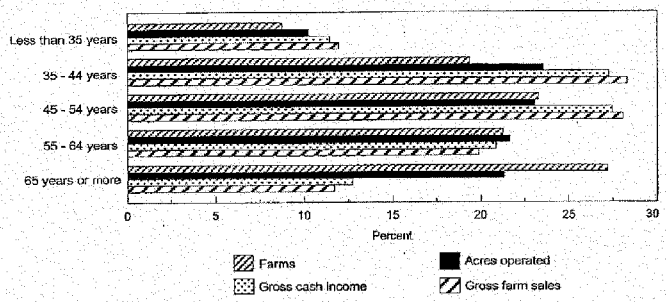
Table 9—Selected characteristics of farm operators by major occupation, 1993

Item	Farming		Hired manager		Other		Retired		All operators	
	Estimate	RSE[1]	Estimate	RSE[1]	Estimate	RSE[1]	Estimate	RSE[1]	Estimate	RSE[1]
Number of operators	922,140	2.4	19,281	21.1	771,245	4.4	351,634	7.3	2,063,300	2.3
Mean age (years)	53	0.7	48	4.0	48	0.9	71	0.3	54	0.6
Percent with commercial farm	52.7	2.4	46.8	21.8	8.3	10.2	1.7	23.5	26.6	2.8
Mean hours worked on farm per year	2,492	1.3	1,582	17.6	895	3.0	665	5.7	1,579	1.5
Percent who worked 2,000 or more hours per year on farm	65.2	2.1	44.1	22.3	6.2	12.7	5.1	24.1	32.7	2.8
Percent who worked off-farm	19.9	6.3	na	na	100.0	1.0	11.5	20.1	45.8	2.9
Mean hours worked off-farm per year per reporting operator	1,382	5.6	na	na	2,327	1.4	1,013	16.2	2,097	1.7
Percent of operators reporting off-farm work who worked 2,000 or more hours per year off-farm	33.9	12.5	na	na	90.2	1.4	17.8	33.9	76.9	2.2

Note: na=not available.
[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources on appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey (Farm Operator Resource version for data on off-farm work; all variables for remaining items).

Figure 18
Distribution, by age of operator, of farms, acres operated, gross cash income, and gross sales, 1993

Young and elderly operators account for the smallest shares of gross cash income and sales



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

were at least 65 years old in 1993, according to the FCRS, compared with only 7 percent of the nonfarm self-employed.

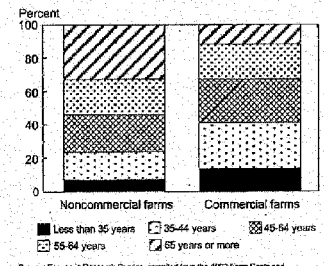
Young operators (less than 35 years of age) account for the smallest share of farms (fig. 16). Young operators and elderly operators (65 years of age or older) accounted for similar shares of gross cash income and gross sales. The elderly, however, controlled a larger share of acres than young operators. The elderly tended to farm on a smaller scale than other operators. They had farms with smaller average acres, smaller average gross sales, and smaller average gross cash income than the other age groups (table 8).

"Elderly" and "retired" are not synonymous, as far as farm operators are concerned. Not all farmers age 65 years and above are retired, and elderly operators who are not retired still work a substantial number of hours on their farms. Nonretired elderly operators numbered 282,000 in 1993, and they worked an average of 1,685 hours per year onfarm. Approximately 21 percent of retired operators were younger than 65, and retired operators worked an average of only 685 hours onfarm per year (Hopps, 1996b, p. 3).

Operators of commercial farms tended to be younger than operators of noncommercial farms. Forty-one percent of commercial farm operators were less than 45 years of age, compared with only 24 percent of operators of noncommercial farms (fig. 17). Conversely, only 12 percent of commercial farm operators were age 65 or older, compared with 33 percent of operators of noncommercial farms.

Figure 17
Age of operators by sales class, 1993

Operators of commercial farms tend to be younger



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Education

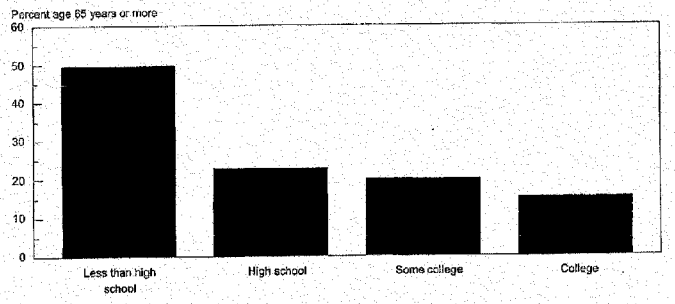
Smaller farms tended to be operated by individuals with lower levels of education. Operators with less than a high school education had the smallest average acres operated, average gross cash income, and average gross sales (table 8). About 85 percent of operators with less than a high school education ran noncommercial farms, compared with about 70 percent of each of the other educational groups. Low educational attainment was closely related to age. About half of operators with less than a high school education were at least 65 years old (fig. 18).

High school graduates accounted for more of the operators (41 percent), acres operated (37 percent), gross cash income (37 percent), and gross sales (37 percent) than any of the other educational groups. College graduates, 16 percent of the total, operated the fewest number of farms. However, college graduates and operators with some college had the largest farms in terms of average acreage, average gross cash income, and average gross sales (table 8).

Education will become even more important in the future for those who want to succeed in farming. In the past, farm operators were less likely to graduate from high school than the U.S. population in general. The gap in high school graduation between farm operators and the U.S. population has largely disappeared, but a smaller percentage of farm operators are college graduates (Bellamy, 1992, p. 37).

Figure 18
Percent of operators age 65 years and more by educational attainment, 1993

Operators with less than a high school education are most likely to be elderly



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Farm Operator Household Dependence on Farming

Farm operator households typically receive income from several sources, and 88 percent of their total household income came from off the farm in 1993. Off-farm income is critical to the financial well-being of many farm households, offsetting some of the low average farm income discussed above. The relative importance of farm and off-farm income, however, varies widely among different types of farm households. This section of the report examines how farm households' income levels and dependence on farming vary by farm and operator characteristics. A brief discussion of FCRS household data appears in the box below.

Level and Sources of Household Income

In 1993, the average income of farm operator households from all sources ($40,200) was similar to the average for all U.S. households ($41,400). However, there was much variation in the level of income among individual farm households, just as there was for all U.S. households. For example, 19 percent of farm operator households reported a household income of less than $10,000 in 1993, as did 14 percent of all U.S. households (fig. 19). At the other extreme, 25 percent of farm operator households reported household income of $50,000 or more. Approximately 29 percent of all U.S. households had incomes in that range.

For most farm operator households, off-farm income was the major source of income. Farm operator households received an average of only $4,800 from farming in 1993, while off-farm sources averaged $35,400 (fig. 20). Off-farm wage and salary jobs were the single most important source of off-farm income, accounting for 46 percent of total farm operator household income during the year. Dependence on off-farm income, however, differed by farm and operator characteristics.

Variation by Farm Characteristics

Sales class of farm. The 1.5 million households associated with noncommercial farming operations pull down the average income from farming (table 10 and fig. 21). Households with noncommercial farms had, on average,

FCRS Household Data

The FCRS collects information about farm operator households, including their farm and off-farm income. Farms not closely held by the operator and members of the operator's household (nonfamily corporations, cooperatives, and farms with a hired manager) are excluded from the household data. Thus, the information presented in this section of the report represents only the households of operators with farms organized as individual operations, partnerships, and family corporations. These households operated 99 percent of all U.S. farms in 1993.

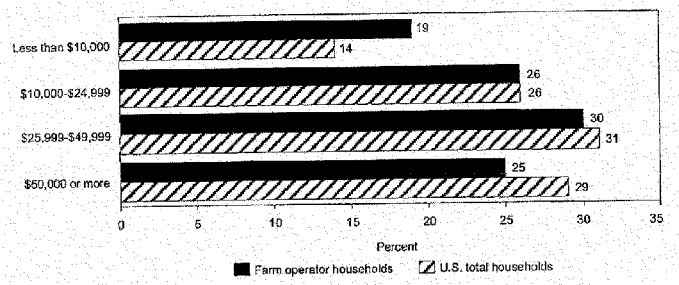
As discussed earlier, the FCRS collects information only for the primary operator in cases where the farm has more than one operator. Similarly, household income data is available only for the households of primary operators. Any other households associated with the farm are excluded.

Farm income received by the household is defined in the FCRS as net cash farm income (less depreciation) adjusted for the share of income received by the operator's household in the case of multiple-household farms. This definition is consistent with the Census Bureau's definition of self-employment income, which allows comparing incomes of farm operator households and other U.S. households.

Total operator household income includes all the income that all household members receive from all sources, both farm and off-farm. Using only farm income would understate the farm household's income for comparison with other households. Off-farm income includes off-farm wages and salaries, the net income of any nonfarm business, interest and dividends, and any other cash off-farm income received by household members. A more detailed discussion of operator household income appears in appendix A.

Figure 19
Distribution of farm operator households and total U.S. households, by total household income category, 1993

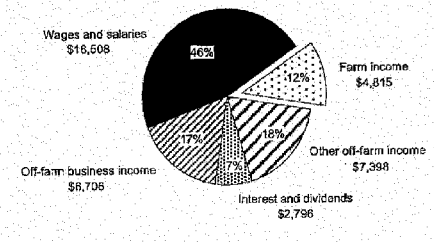
Farm households and households in general have similar income distributions



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

Figure 20
Sources of income for average farm operator household, 1993

Because so many farm households depend on off-farm jobs and income, average farm income accounts for only 12 percent of total household income



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey.

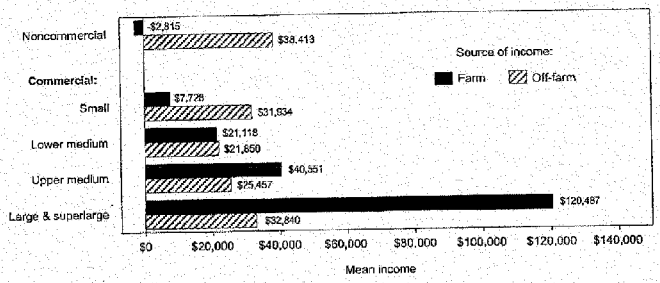
Table 10—Farm operator households and household income, by selected characteristics, 1993

Item	Households		Mean household income		Share from off-farm sources[1]		Percent of U.S. average household income[2]
	Number	*RSE*[3]	*Dollars*	*RSE*[3]	*Percent*	*RSE*[3]	*Percent*
All operator households	2,035,892	2.3	40,223	2.8	88	1.4	97
Sales class of farm:							
Noncommercial	1,498,460	3.1	35,597	3.3	108	1.0	86
Commercial	537,232	2.1	53,124	5.2	51	5.2	128
Small	206,402	4.8	39,662	15.1	81	4.7	96
Lower medium	221,184	3.3	42,988	4.9	61	6.0	104
Upper medium	68,278	5.3	66,008	6.3	39	9.3	159
Large and superlarge[4]	41,368	5.7	153,328	10.3	21	13.1	370
Organization of farm:							
Individual	1,658,231	2.5	36,530	3.1	91	1.3	93
Partnership	124,389	6.9	54,094	7.7	71	5.4	131
Family corporation	52,662	9.3	67,646	13.3	54	13.4	163
Type of farm:[5]							
Cash grains	346,418	3.9	38,682	4.1	74	3.3	93
Other crops	486,986	5.5	46,420	5.1	55	3.9	112
Beef, hogs, or sheep	957,000	3.7	36,958	3.7	100	1.7	89
Dairy	138,486	4.9	40,191	6.7	37	8.9	97
Other livestock	104,911	11.6	46,397	24.7	107	5.1	112
Major farming region:							
Northeast	142,288	6.3	35,388	5.6	95	3.4	85
Lake States	217,029	7.3	35,029	7.3	86	5.9	85
Corn Belt	414,886	4.5	38,586	4.5	82	2.7	93
Northern Plains	186,829	7.8	36,373	8.3	74	5.5	88
Appalachian	297,925	5.2	38,609	11.7	97	1.9	93
Southeast	153,015	7.0	48,972	12.8	95	4.8	118
Delta	113,563	9.5	34,853	11.8	100	7.3	84
Southern Plains	249,758	7.3	43,313	7.5	96	3.7	105
Mountain	114,844	9.3	39,977	7.7	84	4.9	98
Pacific	145,973	12.4	57,664	8.3	77	7.6	139
Operator's occupation:							
Farming	919,044	2.4	36,117	3.4	61	3.3	87
Other occupation	769,237	4.4	51,322	4.7	107	1.0	124
Retired	347,410	7.3	26,507	7.6	101	1.7	64
Operator's age:							
Less than 35 years	180,401	7.0	33,085	8.0	77	6.6	80
35-44 years	394,137	4.8	41,934	4.1	81	3.6	101
45-54 years	471,456	5.1	52,125	7.0	91	2.5	126
55-64 years	433,343	5.0	45,390	4.9	87	2.7	110
65 years or older	556,352	5.0	27,214	5.2	96	2.1	66
Operator's education:							
Less than high school	472,721	5.4	24,548	6.3	92	3.6	59
High school	840,573	3.6	36,819	3.1	96	2.0	89
Some college	412,779	5.9	47,833	7.5	86	2.9	115
College	309,618	5.1	63,250	6.2	80	3.1	153

[1]Income from off-farm sources can be more than 100 percent of total household income if farm income is negative.
[2]Mean household income divided by U.S. mean household income ($41,426) from the Current Population Survey (U.S. Dept. Comm., Bur. Cen., 1995).
[3]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
[4]The large and superlarge categories were combined due to sample size considerations.
[5]Five categories were used rather than ten due to sample size considerations.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information.

Figure 21
Mean income by source for farm operator households, by farm size category, 1993

On average, households with small farms are very dependent on off-farm income, while households with large farms depend more on farm income



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey

negative farm income, and off-farm income accounted for 108 percent of total income. These generally were not low-income households, because their average household income was 86 percent of U.S. average household income in 1993.

For households with commercial operations, farm income made an important positive contribution to total household income, accounting for half of total household income. The average income of $53,100 for commercial farm households in 1993 was significantly higher than the average of $35,600 for noncommercial farm households, and the average of $41,400 for U.S. households overall.

Among households with commercial farms, dependence on off-farm income decreased as farm size increased. Households running large and superlarge farms had the highest average household income at $153,300, and only 21 percent of their household income was from off-farm sources. Households with farms in the upper medium category had the next highest average household income, with farm income the dominant source. Most of the apparent differences in average household income among farms in the smaller commercial and noncommercial size categories were not statistically significant.

Organization of farm. About 91 percent of farm operator households were associated with farms legally organized as individual proprietorships. Households associated with partnerships (6 percent) or family corporations (3 percent), however, had significantly higher average household income, reflecting differences in farm size (table 10). Average household income for both of these groups also exceeded the U.S. average for 1993.

Households in all three groups had, on average, similar amounts of off-farm income. But, off-farm income represented only 54 percent of total household income for operator households with family corporations, and only 71 percent for operator households with partnerships, compared with 91 percent for households with individual proprietorships.

Type of farm. Average household income did not vary significantly among the different farm types, except that households with farms in the "other crop" category had higher average household income than households with beef, hog, or sheep farms (table 10). However, dependence on off-farm income varied among farm types,[12]

[12] Percent of income from off-farm sources did not differ by a statistically significant amount between beef, hog, or sheep farms and other livestock farms

because different types of farms have different labor and management requirements.

Households with dairy farms, for example, were the least dependent on off-farm income. Dairy farms are labor-intensive, limiting the hours that operators and other household members can devote to off-farm jobs (fig. 22). In 1993, dairy farms had the highest average hours worked by both operators and their spouses.

Other commodity specializations require less labor. For example, almost half of farm operator households had beef, hog, or sheep farms, which are generally less labor intensive. On average, off-farm income accounted for all of these households' income in 1993 (table 10). As mentioned earlier, the beef, hog, or sheep category is largely made up of cattle farms, which often have relatively flexible labor requirements that fit well with an off-farm job or retirement.

Region. Farm operator households in every region relied heavily on off-farm income. Differences in average farm operator household income among the 10 major farming regions were not significantly different, with the exception of the comparatively high average for the Pacific Region (table 10).[13] The average income of $57,600 for farm households in the Pacific Region was also significantly higher than the average for operator households overall.

Variation by Operator Characteristics

Operator's occupation. Approximately 45 percent of operators reported farm or ranch work as their major occupation in 1993 (table 10). Their average household income was lower than the average for farm households overall, and their share of income from off-farm sources was lower.

The comparatively low average household income for operators reporting farm or ranch work as their major occupation resulted more from low off-farm income than from low farm income. Average income from farming for these households was $13,900, while operators reporting they were retired or had another occupation lost money farming. However, income from off-farm sources offset negative farm income for those two groups. As a result, more than 100 percent of their household income came from off-farm sources.

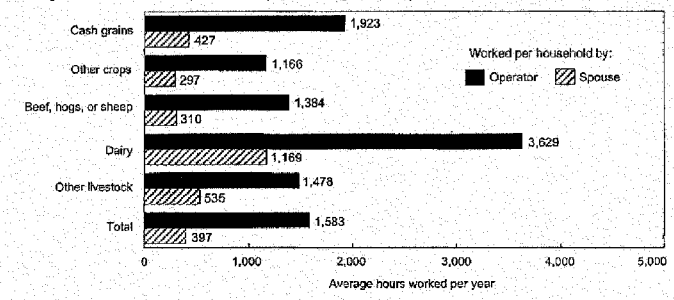
Among the occupational categories, operators in the "other occupation" category had the highest average household income. This was the only occupational category for which average household income exceeded the average for all U.S. households.

[13]The difference between the Pacific Region and the Southern Plains was significant at the 90-percent level.

Figure 22

Average hours worked per year onfarm by farm operators and their spouses, by type of farm, 1993

Average hours worked for both operators and spouses was highest on dairy farms



Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey, Farm Operator Resource version.

Operator's age. As with all U.S. households, the average income of farm operator households varied with householder age (table 10). Average income for farm households, however, was similar to the corresponding average for U.S. households with heads the same age. For example, farm households with an operator at least 65 years old had an average household income of $27,200, which was similar to the $26,000 average for all U.S. households with a householder the same age.

Farm operators, were, on average, older (54 years) than the average householder (48 years), reflecting the higher percentage of operators over the age of 65. Twenty-seven percent of operators were 65 years old or older in 1993, compared with only 21 percent of all U.S. householders. Because farm operators do not generally have a required retirement age, older operators often choose to reduce their farming activities and farm on a smaller scale, thus delaying full retirement. This is reflected in the composition of these households' income, 96 percent of which came from nonfarm sources.

Operator's education. Average household income tends to increase with the level of education attained by the household head. Households of farm operators who reported some college or a college education had average income above that of all operator households, while those with high school or less had below-average incomes (table 10). These differences related mostly to differences in average off-farm income, which increased consistently with education.

Only 15 percent of the farm operators reported obtaining a 4-year college degree, compared with 24 percent of all U.S. householders. Their average household income, however, was comparable to that of similarly educated U.S. householders.

Farm Dependency Categories

To summarize the variation that exists in farm households' dependence on farming, farm operator households were grouped into categories based on the ratio of their farm income to total household income. Six categories of farm operator households were created: five with positive household income and a sixth with negative household income (table 11).

Based on this classification, most households were not heavily dependent on farm income and the largest number of households were classified in the lowest farm dependency category, with positive household income and a loss from farming. These households had an average household income of $38,500 in 1993.

Households most dependent on farm income, those with 75 percent or more of their income from farming, accounted for only 11 percent of farm households. These households had the highest average household income, $68,600.

Households with negative household income accounted for 7 percent of the households, and their average household income was -$28,400. The farms operated by these households were generally larger than average in terms of average gross cash income and average acres operated (app. tables 19 and 20). Large farms can have a bad year.

Table 11—Farm operator households and household income, by farm dependency category, 1993

Farm dependency category	Households		Mean household income		Percent of U.S. average household income[1]
	Number	*RSE[2]*	*Dollars*	*RSE[2]*	*Percent*
All operator households	2,035,592	2.3	40,223	2.8	97
Positive household income and:					
Loss from farming	981,229	4.0	38,460	4.1	93
0-24 percent from farming	400,130	5.4	49,574	7.0	120
25-49 percent from farming	156,635	6.1	44,617	5.5	108
50-74 percent from farming	112,684	6.8	50,248	4.4	121
75 percent or more from farming	231,340	4.6	68,611	4.5	166
Negative household income	151,674	7.0	-28,383	8.6	nc

Note: nc=not computed.
[1]Mean household income divided by U.S. mean household income ($41,428).
[2]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information.

Economic Satisfaction

In the 1993 survey, farm operators were asked about their levels of satisfaction with four components of their income and their overall standard of living:

- Farming/ranching as a source of income
- Off-farm work as a source of income
- Other off-farm income, such as pensions, Social Security, investment income, etc.
- Standard of living (housing, car, furniture, recreation, etc.).

Responses were coded on a scale of 1 to 5:
1 = Very satisfied
2 = Somewhat satisfied
3 = Undecided
4 = Somewhat dissatisfied
5 = Very dissatisfied.

The average total score for all farm operators was 2.3, indicating that farmers were slightly less than "somewhat satisfied" (table 12). At the U.S. level, farm operators expressed the highest levels of satisfaction with their standard of living, with an average score of 1.7. Of those responding, 48 percent indicated that they were very satisfied, and 39 percent indicated that they were somewhat satisfied with their standard of living (fig. 23).

The highest levels of dissatisfaction were expressed with farming/ranching as a source of income, with an average score of 2.8 (table 12) and with more than one-third of the respondents indicating that they were either very or somewhat dissatisfied (fig. 23). The next highest levels of dissatisfaction were with off-farm work and other off-farm income as a source of income, which received average scores of 2.2 and 2.5, respectively (table 12). But, only a small share of respondents expressed dissatisfaction with either component (fig. 23).

Farm operators in the highest farm dependency and negative household income categories expressed higher than average levels of overall dissatisfaction with their overall economic situation (table 12). Farmers in the negative household income category expressed significantly higher levels of dissatisfaction than average with off-farm work as a source of income and with their overall standard of living. Farmers in the highest dependency categories reported above-average levels of satisfaction with farming as a source of income. But, they were significantly more dissatisfied with off-farm work as a source of income.

Making a Living Farming

The majority of farm operator households do not make enough farm income to rely on it alone for a comfortable living. However, some operator households receive farm income near or above the average household income for all U.S. households. Examining the characteristics of these operator households gives an idea of the types of farms that can provide an income equal to the average for all U.S. households, without reliance on off-farm jobs or income (table 13).

Three groups were defined according to whether the household's income from farming alone in 1993 was below, about equal to, or above the average U.S. household income for the year. "About equal to the U.S. average" was defined as $35,000 to $49,999. This income range was selected because it was consistent with published Census Bureau income categories, and because it included the U.S. average household income of $41,400 for 1993.

In 1993, there were approximately 64,000 farm operator households (3.1 percent of all farm operator households) whose farm income alone was about equal to the average U.S. total household income. These farm operator households' average total household income was almost $60,000, because they received substantial amounts of off-farm income in addition to their large farm income. An additional 5 percent of farm operator households had income in excess of $49,999.

Farm operator households in the two groups with farm income more than $35,000 were associated with medium- to large-size commercial farms. These farms were more likely to be partnerships or family corporations than the farms of households with less than $35,000 in farm income. Farm operator households with farm income in excess of $35,000 were also more likely to operate cash grain and dairy farms, and less likely to operate beef, hog, or sheep farms.

There also were regional differences among the three groups. Farm operator households with farm income about equal to the U.S. average household income were more likely to be located in the Lake States than households in the other two groups. Farm operator households with farm income below the U.S. average household income were more likely than households in the other two groups to be in the Appalachian Region, while those with farm income above the U.S. average were more likely than households in the other two groups to be in the Pacific Region.

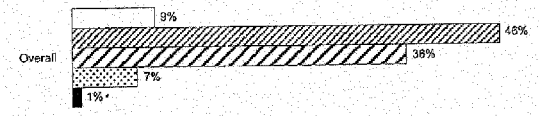
Table 12—Operator satisfaction with household economic situation, by farm dependency category, 1993

Farm dependency category	Farming as source of income		Off-farm job as source of income		Other off-farm income		Standard of living		Total score	
	Average score[1]	RSE[2]	Average score[1]	RSE[2]	Average score[1]	RSE[2]	Average score[1]	RSE[2]	Average score[1]	RSE[2]
All operator households	2.9	1.5	2.2	1.4	2.5	1.2	1.7	1.7	2.3	0.9
Positive household income and:										
Loss from farming	3.0	2.0	2.0	2.3	2.5	1.8	1.7	2.4	2.3	1.4
0-24 percent from farming	2.6	3.2	2.2	3.2	2.4	2.9	1.7	3.5	2.3	2.1
25-49 percent from farming	2.4	5.9	2.6	4.3	2.8	3.6	1.7	7.1	2.3	3.8
50-74 percent from farming	2.4	5.7	2.6	3.9	2.4	4.7	2.0	10.5	2.3	3.5
75 percent or more from farming	2.3	4.2	2.7	2.4	2.8	2.4	1.9	9.4	2.4	2.1
Negative household income	2.9	5.8	2.5	4.5	2.6	3.9	2.1	6.1	2.6	3.8

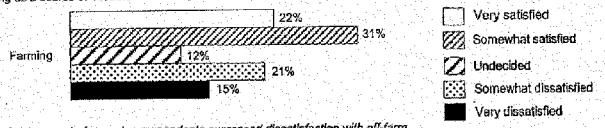
[1]Computed as the average of scores ranging from 1 (very satisfied) to 5 (very dissatisfied).
[2]The relative standard error (RSE) provides the amount of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information. Only the Farm Operator Resource version collected information on operator satisfaction.

Figure 23
Levels of satisfaction with income components, 1993

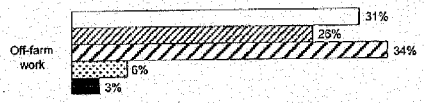
The largest share of respondents to all four questions relating to satisfaction with their income components was, overall, somewhat satisfied



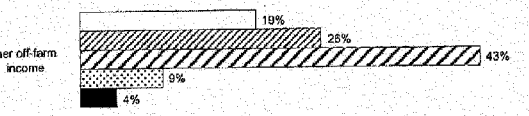
More than one-third of respondents expressed that they were either very or somewhat dissatisfied with farming as a source of income



Only about one out of every ten respondents expressed dissatisfaction with off-farm work as a source of income



Dissatisfaction with other off-farm income, such as pensions, Social Security, and investments was also comparatively low



Satisfaction with standard of living, considering such items as housing, car, furniture, and recreation, was expressed by most respondents



*Relative standard error is greater than 25 percent.

Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey, Farm Operator Resource version.

Table 13—Household income and selected characteristics, for farm operator households receiving farm income below, about equal to, or above the average income for all U.S. households, 1993[1]

Item	Farm income to the household					
	Below U.S. average		About equal to U.S. average ($35,000 - $49,999)		Above U.S. average	
	Estimate	*RSE[2]*	*Estimate*	*RSE[2]*	*Estimate*	*RSE[2]*
Number of operator households	1,887,742	2.6	83,979	6.9	103,971	4.9
Percent of operator households	91.7	2.6	3.1	6.9	5.1	4.9
			Dollars per household			
Operator household income	33,203	3.5	59,601	3.0	154,403	3.7
Farm income	-3,280	10.4	41,384	0.7	127,726	4.0
Off-farm income	36,483	3.2	18,217	9.8	26,677	9.6
			Percent of households			
Households with off-farm income	96.6	0.3	87.6	2.4	81.1	2.4
Sales class of farm:						
Noncommercial	79.6	3.1	d	na	d	na
Commercial	20.4	2.9	d	na	d	na
Small	9.8	5.2	d	na	d	na
Lower medium	8.0	4.3	49.8	8.9	37.6	8.4
Upper medium	1.7	7.7	14.0	15.1	26.9	8.9
Large and superlarge[3]	0.8	11.3	4.8	21.1	22.3	6.6
Organization of farm:						
Individual	92.5	2.7	82.3	7.9	75.3	5.6
Partnership	5.5	8.1	10.5	16.2	13.9	12.0
Family corporation	1.9	12.0	7.2	21.2	10.8	17.0
Type of farm:[4]						
Cash grains	15.7	4.6	36.0	12.3	30.2	8.8
Other crops	23.9	5.9	15.6	16.3	30.2	10.0
Beef, hogs, or sheep	49.3	3.9	23.3	15.4	21.3	12.6
Dairy	5.8	6.1	21.8	14.4	16.0	7.9
Other livestock	5.4	12.1	3.5	25.1	2.3	26.9
Major farming region:						
Northeast	7.2	6.8	4.8	19.4	5.0	13.2
Lake States	10.6	7.9	17.5	19.0	8.4	13.9
Corn Belt	20.0	5.4	28.7	14.4	23.5	10.0
Northern Plains	8.8	8.9	18.7	16.2	10.5	12.6
Appalachian	15.3	6.4	7.3	21.9	6.3	13.7
Southeast	7.7	7.4	3.8	23.8	7.3	23.3
Delta	5.7	10.2	3.2	31.2	4.9	15.4
Southern Plains	12.8	7.8	6.4	25.5	9.5	17.4
Mountain	5.5	10.4	6.6	23.5	8.1	13.8
Pacific	6.7	14.2	4.9	30.6	16.4	16.0

Note: d=Data insufficient for disclosure. In some categories with sufficient data, estimates are not provided to prevent disclosure in categories with insufficient data. na=not applicable.

[1]In this table, farm operator households are classified by their farm income relative to U.S. mean household income ($41,429) from the Current Population Survey (U.S. Dept. Comm., Bur. Cen., 1995). See text for more detail.

[2]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.

[3]The large and superlarge categories were combined due to sample size considerations.

[4]Five categories were used rather than ten because of sample size considerations.

Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information.

Farm Operators and Their Communities

One linkage between operator households and their communities is the income received by farm households from off-farm sources, just discussed above. Another linkage is farm and operator household purchases. This section examines the distance that members of operator households travel when they make purchases. Later, operators' satisfaction with their communities is examined.

Distance to Sources of Purchases

The long-term decline in farm numbers and expansion of farm size may have affected local purchases by farms and farm households in two ways. First, with fewer farms and fewer farm households, total spending in local communities may have declined, if no other industries expanded as the number of farms declined. Second, larger farms and their households may trade with more distant suppliers.

The 1993 FCRS addressed the second point by collecting data on where farm operators purchased various items. In particular, the FCRS asked farm operators how many miles it was between their house and where they bought:

- Household supplies (groceries, clothes, supplies for the home, etc.)
- Durables (cars, trucks, furniture, and household appliances)
- Farm machinery (excludes trucks, but includes implements)
- Farm supplies (seed, feed, chemicals, parts, fuels, and other farm-related goods and services, excluding farm machinery).

The FCRS data suggest that operators generally do not travel particularly long distances to make purchases. Fears that large numbers of farm operators bypass local suppliers may be exaggerated, at least according to the FCRS.

At the U.S. level, the average distances to sources of household supplies (12 miles) and farm supplies (13 miles) were less than the average distances to sources of durables (20 miles) and farm machinery (21 miles) (table 14). Many smaller towns have stores where operators can buy household and farm supplies. Farm operators may have to go farther to find towns selling the more expensive (and less frequently purchased) durables and farm machinery. Regardless of type of purchase, however, most purchases are made fairly close to home.

The same pattern—smaller distances for household and farm supplies and longer distances for durables and farm machinery—generally prevailed when operators were categorized by various characteristics. However, some differences between the average for farm supplies and the averages for durables and farm machinery were significant only at the 90-percent level. And, some differences for operators with a corporation or a partnership were not significant at either the 95-percent or the 90-percent levels.

Retired operators tended to spend closer to home. They traveled shorter distances to buy household supplies and farm machinery than operators reporting farming or another major occupation. Retired operators also traveled shorter distances to buy farm supplies than operators reporting farming as their major occupation.

At the other extreme, operators reporting farming as their major occupation traveled greater distances than the two other occupation groups for all four categories of purchases. Half of the differences between operators reporting farming as their major occupation and the other occupational groups were significant only at the 90-percent level, however.

Operators of commercial farms traveled greater distances than operators of noncommercial farms, on average, for all four categories of purchases. Average distance did not vary by organization for any purchase category. On the other hand, nonfamily corporations were excluded from table 14, and they may have purchased more from distant suppliers.

Operators traveled longer distances for household supplies and durables in nonmetro then in metro areas. The longer distances in nonmetro areas may reflect the lower population densities in nonmetro areas (22 persons per square mile) compared with metro areas (291 persons per square mile)[14] Low population densities indicate less dense settlement patterns and greater distances to suppliers. Metro-nonmetro distance differences for purchases of farm machinery and farm supplies were not statistically significant, however.

[14]Population densities are from the 1990 Census of Population.

Table 14—Distance to sources of purchases, by selected farm, farm operator, and county characteristics, 1993

Item	Distance to main sources of:							
	Household supplies		Durables		Farm machinery		Farm supplies	
	Mean miles	*RSE*[1]	*Mean miles*	*RSE*[1]	*Mean miles*	*RSE*[1]	*Mean miles*	*RSE*[1]
All farms and operators	12	2.7	20	2.7	21	3.2	13	3.4
Major occupation:								
Farming	14	4.3	21	3.8	23	4.5	14	3.9
Other occupation	11	3.7	13	4.2	21	5.0	13	6.7
Retired	9	6.2	18	7.6	18	7.2	12	7.9
Farm size category:								
Noncommercial	11	3.0	19	3.2	19	3.6	13	4.3
Commercial	14	5.5	23	4.8	26	5.9	15	5.1
Farm organization:								
Individual	12	2.8	20	2.9	21	3.4	13	3.7
Partnership	13	12.3	18	9.3	20	10.5	13	7.5
Family corporation	10	12.2	18	14.2	20	14.4	13	14.8
Metro-nonmetro status:								
Metro	10	3.6	16	4.0	20	5.1	13	4.4
Nonmetro	13	3.5	22	3.3	22	4.0	14	4.5
Adjacent	12	4.8	21	4.5	19	5.4	12	5.1
Not adjacent	14	5.1	23	4.9	24	5.7	15	7.3
County type:								
Farming-dependent	14	5.3	26	7.3	23	9.4	14	9.3
Other nonmetro	13	3.8	21	3.8	21	4.4	13	5.2
Metro	10	3.6	16	4.0	20	5.1	13	4.4

[1]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information. Only the Farm Operator Resource version collected information on distance to sources of purchases.

As expected, nonmetro operators traveled longer distances for all four types of purchases in nonadjacent counties than in adjacent counties. (Adjacent-nonadjacent differences for durables and farm supplies were significant only at the 90-percent level.) Nonmetro counties adjacent to metro areas are closer to suppliers in metro areas. In addition, adjacent counties have a higher population density (35 persons per square mile) than nonadjacent counties (15 persons per square mile).

Population density was much less in farming-dependent counties (8 persons per square mile) than in other nonmetro counties (27 persons per square mile). Nevertheless, the only statistically significant difference between farming-dependent and other nonmetro counties was for durables.

Community Satisfaction

During the 1993 FCRS, operators were asked about their satisfaction with different aspects of their communities. Specifically, operators were asked questions about their satisfaction with:

- Their community as a place to live
- Their housing
- Their involvement with farming/ranching
- Off-farm job opportunities.

As with the questions about economic satisfaction, responses were coded on a scale of 1 to 5 with 1 being "very satisfied" and 5 being "very dissatisfied." Results are presented by operator household dependence on farming (table 15), to be consistent with the information presented earlier for economic satisfaction. In addition, satisfaction is also presented by metro-nonmetro status and county type, to see if satisfaction differs by type of community.

Farm operators generally were satisfied with their communities. About 33 percent of all operators were "very satisfied" and another 56 percent were "somewhat satisfied" with their communities overall (fig. 24). Operators

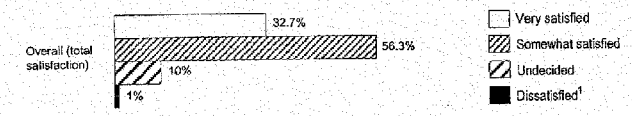
Table 15—Community satisfaction of farm operators, by dependency on farming and county characteristics, 1993

Item	Community as a place to live		Housing		Involvement in farming		Off farm job opportunities		Total satisfaction	
	Average score[1]	*RSE*[2]	*Average score*[1]	*RSE*[2]	*Average score*[1]	*RSE*[2]	*Average score*[1]	*RSE*[2]	*Average score*[1]	*RSE*[2]
All farm operators	1.3	1.7	1.4	1.8	1.7	1.8	2.3	1.4	1.7	1.0
Farm operator household farm dependency category:										
Positive household income and:										
Loss from farming	1.3	2.6	1.4	2.1	1.7	2.3	2.1	2.3	1.6	1.5
0-24 percent from farming	1.3	3.9	1.5	5.4	1.8	4.7	2.3	3.4	1.7	2.8
25-49 percent from farming	1.3	5.2	1.3	4.3	1.9	7.3	2.5	5.4	1.8	4.1
50-74 percent from farming	1.4	6.3	1.3	4.8	1.4	5.9	2.5	4.8	1.7	3.7
75 percent or more from farming	1.2	3.1	1.4	8.3	1.4	3.4	2.8	2.6	1.7	2.2
Negative household income	1.4	4.5	1.5	6.2	1.6	6.7	2.7	4.2	1.8	3.4
Metro-nonmetro status:										
Metro	1.4	2.9	1.4	2.6	1.7	3.3	2.2	2.8	1.7	2.0
Nonmetro	1.3	2.0	1.4	2.3	1.6	2.2	2.3	1.8	1.7	1.2
Adjacent	1.3	2.6	1.4	2.3	1.6	2.6	2.3	2.5	1.7	1.5
Not adjacent	1.3	3.2	1.4	4.2	1.7	3.4	2.4	2.4	1.7	1.9
County type:										
Farming-dependent	1.3	3.9	1.5	6.5	1.7	5.6	2.6	3.3	1.8	2.8
Other nonmetro	1.3	2.3	1.4	2.3	1.6	2.3	2.2	1.9	1.6	1.3
Metro	1.4	2.9	1.4	2.6	1.7	3.3	2.2	2.8	1.7	2.0

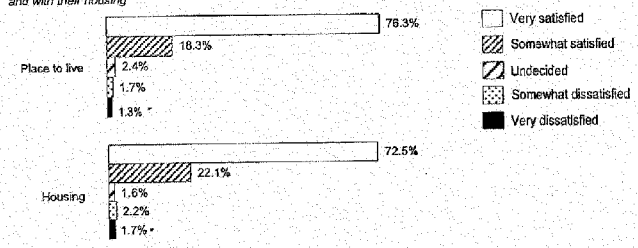
[1]Computed as the average of scores ranging from 1 (very satisfied) to 5 (very dissatisfied).
[2]The relative standard error (RSE) provides the means of evaluating the survey results. A smaller RSE indicates greater reliability of the estimate. For more information, see the box on data sources or appendix B.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey. Data are from the farm operator household subset of the FCRS. See text for more information. Only the Farm Operator Resource version collected information on operator satisfaction.

Figure 24
Levels of operator satisfaction with the community, 1993

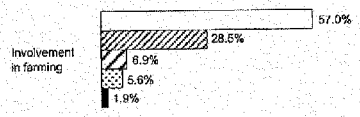
Most farm operators were very satisfied or somewhat satisfied with their communities overall



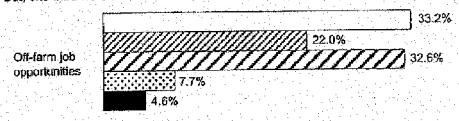
About three-fourths of operators were very satisfied with their communities as places to live and with their housing



About 86 percent of farm operators were very satisfied or somewhat satisfied with their involvement in farming



Most operators were very satisfied or somewhat satisfied with off-farm job opportunities. But, one-third were undecided



*Relative standard error is greater than 25 percent.
"Somewhat dissatisfied" and "very dissatisfied" were collapsed into one category due to sample size considerations.
Source: Economic Research Service, compiled from the 1993 Farm Costs and Returns Survey, Farm Operator Resource version.

were actually more satisfied with their communities than with their economic situation. The average total score for economic satisfaction was 2.3 (table 12), which is between "somewhat satisfied" and "undecided," while the average total score for community satisfaction was 1.7 (table 15), which falls between "very satisfied" and "somewhat satisfied."

At the U.S. level, farmers were more satisfied with their community as a place to live (average score of 1.3) and with their housing (average score of 1.4) than with their involvement in farming (average score of 1.7). Still, over half (57 percent) of operators were "very satisfied" with their involvement in farming (fig. 24). Operators were also more satisfied with their involvement with farming (table 15) than with farming as a source of income (table 12).

U.S. operators were least satisfied with off-farm job opportunities (average score of 2.3), regardless of dependence on farm income and location (table 15). The relatively high score for off-farm job opportunities resulted more from a large percentage answering "undecided" rather than large percentages expressing dissatisfaction (fig. 24).

Only three statistically significant patterns appeared in the variation of the components of satisfaction by farm dependency or location (table 15). First, the two groups receiving at least 50 percent of their income from farming were slightly more satisfied with their involvement with farming than were the other dependency categories.[15] This seems reasonable, since these groups were the most involved in farming, as far as the origin of their income was concerned. Second, operators with either a loss from farming or between 0 and 24 percent of total household income from farming were more satisfied with off-farm job opportunities than were the other income dependency categories. (Some of these differences were significant only at the 90-percent level.) Operators in these dependency categories were the most likely to have a nonfarm major occupation. Third, operators in farming-dependent counties were less satisfied with off-farm job opportunities than were their counterparts in other nonmetro counties or in metro counties.

[15]The difference between the 50 to 74 percent and negative income categories was not statistically significant, however.

Discussion and Implications

The information presented above has four major implications important to understanding farms and farm operator households today and in the future:

- U.S. farms are diverse, and much variation within the industry is hidden by U.S. averages.
- Production of farm products is more concentrated than in the past, but concentration is not entirely a recent development.
- The share of operators at least 65 years old is large, but finding replacement farmers may not be as severe a problem as suggested by operator age statistics.
- Farm operator households, on average, depend heavily on off-farm income, but dependence on off-farm income varies by farm and operator characteristics.

U.S. Versus Group Averages

One should be cautious when using broad descriptions of farm businesses based on U.S. averages, which can hide much variation among various groups of farms. For example, U.S. farms averaged $73,700 in gross sales in 1993. But, the averages for farms run by operators reporting farming or hired manager as their major occupation ($135,000 and $546,300, respectively) were much more than the averages for farms run by operators reporting another occupation or retired ($19,300 and $7,600, respectively) (table 8). Operators reporting farming or hired manager as their major occupation also accounted for 88 percent of U.S. gross sales (fig. 14).

Using U.S. averages makes sense for some purposes. When following trends in farm size, for example, examining changes in U.S. average gross sales (or average acres) over time is reasonable. For other purposes, however, focusing on a particular group may be more appropriate.

Which group should be the focus depends on the topic under consideration. Farm policy discussions, for example, may focus on the farms that produce the bulk of farm output, such as farms whose operators report farming as their major occupation, commercial farms, or full-time commercial farms. This does not mean that smaller farms should be ignored. Separate information for other groups of farms can also be presented.

Concentration and Industrialization

In farm structure discussions, concentration of production is now a bigger issue than the declining number of farms (Stanton, 1993b). Compared with earlier years, farm production has become much more concentrated. As shown by census of agriculture data, 17 percent of U.S. farms produced 50 percent of farm sales in 1900 (Peterson and Brooks, 1993, pp. 3-5), compared with only 3 percent of farms in 1992 (U.S. Dept. Comm., Bur. Cen., 1994a, p. 47). The FCRS and census of agriculture are consistent with each other regarding the current level of concentration, measured as smallest share of farms necessary to account for 25 percent, 50 percent, and 75 percent of agricultural production.

Industrialization of agriculture is one facet of the increasing concentration in farming, and the FCRS provides current data about one aspect of industrialization: contracting. Farms with contracts produce a disproportionately large share of U.S. agricultural output. Farms with production or marketing contracts accounted for 40 percent of gross sales in 1993, which is disproportionately large, considering their 11-percent share of farms (fig. 7).

The industrialization of agriculture, including the increasing use of contracts, is likely to continue. Among the possible positive effects of industrialized farming are more efficient production, less dependence on government assistance, and greater global competitiveness. Possible adverse effects include further depopulation of rural areas still dependent on farming, damage to the environment (especially in the case of livestock production), reduction in the family farm's independence, abuses of market power, and the disappearance of open market price signals (Drabenstott, 1994; Erin and Smith, 1994; Hamilton, 1994; Council on Food, Agricultural and Resource Economics, 1994). In addition, teaching and research institutions serving agriculture may need to adapt in order to survive as the number of farms declines (Stanber, 1994).

The ultimate effects of concentration and industrialization will be clearer in the future. In the meantime, examining historical data and reviewing changes in other industries help keep discussions of present or future concentration in perspective. The 17 percent of U.S. farms that produced 50 percent of U.S. production in 1900 indicates that some concentration already existed nearly 100 years ago. In addition, farming is still much less concentrated than other industries. As pointed out by Stanton (1993b, p. 66):

> The current policy debate about farm structure in part relates to how rapidly the largest farm units will come to dominate production and marketing of key commodities within commercial agriculture. It is important to remember that the competitive structure of agriculture, characterized by many thousands of farms, stands in stark contrast to most industries in the United States, including those that sell inputs to farmers on one side and those that buy farm products on the other. Structural change, so important in farming, is still modest when compared to the changes in farm machinery, meat packing, or the grain trade.

Elderly Operators and Their Replacements

Some analysts express concern over the high percentage of operators over age 65 (table 8) and worry about replacement farmers. Eventual replacements for operators currently reporting farming as their major occupation are particularly important, since these farmers account for most of gross sales (fig. 14).

Some replacements could come from the pool of operators with a major occupation other than farming. Switching their major occupation to farming would only be a temporary solution to the shortage of younger farmers, however, for operators reporting a nonfarm occupation could hardly be described as young. Their average age was 48 years in 1993, only 5 years younger than that of operators reporting farming as their major occupation (table 9). In any event, few operators with a nonfarm major occupation are likely to switch occupations, because these operators currently have adequate income from off-farm sources (table 10). Few are likely to be interested in a greater commitment to farming.

The traditional pool of replacement farmers has been young people raised on farms (Gale, 1994, pp. 6-7). Beginning full-time farmers are generally limited to people raised on farms, because much of the knowledge necessary to farm can be gained by growing up on a farm. The pool of people raised on farms has declined because of off-farm migration and declining number of children born to farm women during recent decades. Nevertheless, finding replacement operators may not be a real problem, according to Gale (RDP, p. 22):

> Although farm production will likely continue to grow at a modest pace, fewer farm operators will be needed to produce any given amount of food and fiber. The large number of farmers who are 65 or over can be adequately replaced with a smaller number of new young farmers, because older farmers generally have smaller farms and produce less than younger farmers.

Gale concluded that the number of farms will continue to drop modestly and gradually without large increases in agricultural prices (1994, p. 34). Relatively stable demand for food and growing productivity will keep agricultural prices low and continue to force some producers out.

Finding replacements may be less of a problem than suggested by operator age statistics. Retired farm operators do not need to be replaced as they leave farming. They already have left farming. These operators classify themselves as retired and account for very little production (fig. 14), but they still are counted as farmers because of the $1,000 cutoff. Any replacement of these operators by younger operators has already happened.

In addition, U.S. farm statistics undercount the number of young operators. Information is collected about only one operator per farm. At least some replacement farmers are currently working alongside older operators.

Operator Household Income

Most operator households rely heavily on off-farm income (table 11). About 48 percent of operator households had positive household income in 1993 but a loss from farming. Another 20 percent had positive household income but received less than 25 percent of their total household income from farming. Off-farm income allows many farm operator households to maintain an adequate total income and remain in farming.

Depending on off-farm income means that operator households have an interest in the nonfarm economy. The health of the local economy, nonfarm job growth, and the level of nonfarm wages are vital to many operator households. The status of retirement programs and returns on investments are also important to retired operators.

Dependence on off-farm income, however, varies with farm and operator characteristics. Households that depend the least on off-farm income have: larger commercial farms, operators reporting farming as their major occupation, farms organized as family corporations, and dairy farms (table 10). For these households, commodity prices and other factors affecting farm business income are important. Farm programs may also be

important to these households, if their farm businesses produce commodities covered by the programs.

The current farm definition—a place that sells (or normally would sell) at least $1,000 of agricultural products—ensures that most farm households receive little (or negative) farm income. Only 8 percent of operator households have farms that generate $35,000 in household income, an amount similar to or above the average total income for all U.S. households (table 13).

The small number of farms producing $35,000 or more in household income may help explain why farm operators express relatively low satisfaction with farming as a source of income (table 12). Nevertheless, farm operators apparently got more from farming than just income. Regardless of their dependence on farm income, operators expressed more satisfaction with their involvement with farming (table 15) than with farming as a source of income (table 12).[16]

[16]The difference between satisfaction with involvement in farming and satisfaction with farming as a source of income was significant only at the 90-percent level for operators receiving 25 to 49 percent of their income from farming.

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Appendix A: Definitions of Terms

Farm

Farm: Any establishment from which $1,000 or more of agricultural products were sold or would normally be sold during the year under consideration.

Point farm: If an operation did not have $1,000 in agricultural sales, points were assigned for acres of various crops and head of various livestock species to estimate a normal level of sales. Point farms had less than $1,000 of sales, but points worth $1,000, and were counted as farms. Both the Farm Costs and Returns Survey (FCRS) and census of agriculture use the point system.

Land in Farms

Total acres operated: Agricultural land owned, plus land rented in, less land rented out, plus land both used and rented out. Rentals may be for cash, for a share of production, or free-of-charge.

Owned: Total acres owned by the farm operation.

Rented in for cash or shares: Acreage rented from others during the year for cash or for a share of crop or livestock production. Excludes land rented in on an animal-unit-month (AUM) basis.

Rented in free-of-charge: Acreage provided to an operation without charge. Because of the small amount of acreage involved, this category does not appear separately in the tables, but the acreage is added when calculating total acres operated.

Rented out for cash or shares: Acreage provided to other farm operations for cash or for a share of crop or livestock production.

Rented out free-of-charge: Acreage provided to other farm operations without charge. Because of the small amount of acreage involved, this category does not appear separately in the tables, but the acreage is deducted when calculating total acres operated.

Used and rented out: Acreage used for crops or livestock during a part of the year and rented to another operation for crop or livestock production during another part of the year. Because of the small amount of acreage involved, this category does not appear separately in the tables, but the acreage is added when calculating total acres operated.

Cropland Removed from Production

Land diverted from production in compliance with government agricultural programs including:

Set-aside: Land idled from production under annual commodity acreage adjustment programs and devoted to conservation uses. Includes acres set aside during the year through the Acreage Reduction Program (ARP) or 0/85-92 Program.

Conservation Reserve Program (CRP): Highly erodible cropland taken out of production under 10- to 15-year contracts and planted in protective cover crops or reforested for conservation purposes.

All other Federal or State programs.

(Land in summer fallow was excluded from land removed from production.)

Geographic Units

Major Farming Regions:

Northeast: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont.

Lake States: Michigan, Minnesota, Wisconsin.

Corn Belt: Illinois, Indiana, Iowa, Missouri, Ohio.

Northern Plains: Kansas, Nebraska, North Dakota, South Dakota.

Appalachian: Kentucky, North Carolina, Tennessee, Virginia, West Virginia.

Southeast: Alabama, Florida, Georgia, South Carolina.

Delta: Arkansas, Louisiana, Mississippi.

Southern Plains: Oklahoma, Texas.

Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming.

Pacific: California, Oregon, Washington.

(Alaska and Hawaii are not covered by the FCRS and are excluded from this report.)

Metro-nonmetro counties:

Metro counties: Counties in Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget. Each MSA is a county or group of contiguous counties that contains either: (1) at least one central city with a population of at least 50,000 or (2) an urbanized area of at least 50,000 with a total population of at least 100,000. Additional counties may be included in the MSA if they have strong ties to the MSA. This report uses the MSA's designated as of 1993.

Urbanized area: An urbanized area consists of one or more central places and adjacent densely settled areas that together have a minimum population of 50,000. "Densely settled" is defined here as at least 1,000 persons per square mile.

Nonmetro counties: Counties outside MSA's. (See "metro counties," defined above.) Nonmetro counties are frequently categorized into two groups, adjacent and not adjacent.

Adjacent counties: Nonmetro counties that are physically adjacent to one or more MSA and have at least 2 percent of their employed labor force commuting to the central counties of the MSA.

Not adjacent counties: Nonmetro counties that do not meet the criteria to be adjacent counties.

Economic specialization: The Economic Research Service (ERS) categorized nonmetro counties according to their economic specialization. The typology identifies six mutually exclusive groups of counties:[1]

Farming-dependent counties: Farming accounted for at least 20 percent of earned income over the 3 years from 1987 to 1989.

Manufacturing-dependent counties: Manufacturing accounted for at least 30 percent of earned income over the 3 years from 1987 to 1989.

Services-dependent counties: Services accounted for at least of 50 percent of earned income over the 3 years from 1987 to 1989.

Government-dependent counties: Government employment accounted for at least 25 percent of earned income over the 3 years from 1987 to 1989.

Mining-dependent counties: Mining accounted for at least 15 percent of earned income over the 3 years from 1987 to 1989.

Nonspecialized counties: Counties not classified as a specialized economic type.

[1]The classification excludes 17 nonmetro counties that could not be categorized due to data suppression.

Gross Farm Sales

Gross farm sales (or gross sales): Gross farm sales is used primarily as an indication of farm size. It is a measure of what the farm produces, measured in dollars, regardless of who has a claim on that production. Gross sales is calculated as the operation's crop and livestock sales plus the shares of production received by any share landlords and production contractors the operation may have. Gross sales also includes all government payments received by the operation and share landlord(s).

Farm Structural Characteristics

Sales class: Based on gross sales. Two major classes, noncommercial and commercial, were constructed. The commercial class was divided further into five additional classes.

Noncommercial farms: Farms with gross sales of less than $50,000 during the year.

Commercial farms: Farms with gross sales of $50,000 or more during the year.

Small: Farms with gross sales of $50,000 to $99,999 during the year.

Lower medium: Farms with gross sales of $100,000 to $249,999 during the year.

Upper medium: Farms with gross sales of $250,000 to $499,999 during the year.

Large: Farms with gross sales of $500,000 to $999,999 during the year.

Superlarge: Farms with gross sales of $1,000,000 or more during the year.

Acreage class: Based on acres operated. Five classes were constructed: 49 or fewer acres, 50-179 acres, 180-499 acres, 500-999 acres, and 1,000 or more acres.

Type of farm: Farm operators were asked to identify the farm production specialty classification that represented the largest portion of gross sales from their farm operation. Possible responses included the following:

Cash grains: Largest portion of gross sales from corn, soybeans, other grains (such as wheat, oats, barley, rye, and sorghum), dry edible beans and peas, and/or rice.

Tobacco: Largest portion of gross sales from tobacco.

Cotton: Largest portion of gross sales from cotton and cottonseed.

Other field crops: Largest portion of gross sales from peanuts, Irish potatoes, sunflowers, sweet potatoes, sugarcane, broomcorn, popcorn, sugar beets, mint, hops, seed crops, hay, silage, forage, and/or any remaining field crops. Also includes farms entirely in the CRP.

Vegetables, fruits, or nuts: Largest portion of gross sales from vegetables, fruits, tree nuts, and/or berries.

Nursery or greenhouse: Largest portion of gross sales from nursery and/or greenhouse products. Also includes farms entirely in Christmas trees.

Beef, hogs, or sheep: Largest portion of gross sales from cattle (except dairy breeding stock), hogs, pigs, sheep, goats, wool, mohair, and/or lambs.

Poultry: Largest portion of gross sales from broilers, other chickens, turkeys, other poultry, and/or eggs.

Dairy: Largest portion of gross sales from milk and dairy products.

Other livestock: Largest portion of gross sales from mules, horses, foals and ponies, fur-bearing animals, bees and honey, fish, minnows, or any remaining livestock.

Tenure: Based on questions about owned and operated farmland. Defined as acres owned as a percentage of land operated. Tenure groupings include: full-owner operations (own all of the land operated), part-owner operations (own at least 1 percent of the land operated and rent the rest), and tenant operations (own less than 1 percent of the land operated).

Rental arrangements: Based on questions about rental of land (for cash or a share of production), vehicles, machinery, equipment, and livestock. Rental arrangement categories include: no rentals, land rentals only, land and other rentals, other rentals only (no land rented).

Farm organization: Respondents were asked to identify their farm operation as an individual operation (sole proprietorship), a legal partnership, a family-held corporation, a nonfamily corporation, or a cooperative. (For more details, see the text.) Cooperatives were dropped from the tabulations pertaining to farm organization, due to sample size considerations.

Type of sales: These categories were based on whether the farm produced commodities to satisfy production or marketing contracts in 1993. If a farm produced nothing under contract in 1993, it was assumed to have only cash sales. The two major type-of-sales categories were: farms with cash sales only and farms with contracts (with or without cash sales). Farms with contracts were further categorized as to whether they had production or marketing contracts. The last two categories were not mutually exclusive, because a farm may have both types of contracts. (See "contract," defined below.)

Contract: An agreement, especially a legally binding agreement, between two or more parties to do something. In the FCRS, a contract must be agreed to prior to harvest or storage to be counted as a contract. Farms frequently enter into two types of contracts:

Production contract: Under a production contract, the contractor arranges to have the farm produce a specific quality and quantity of a commodity. The contractor usually owns the commodity being produced and makes most of the production decisions. The farm provides a service and supplies a small portion of the inputs. The farm receives a service fee that does not reflect the full market value of the

commodity, because the farm does not own the commodity.

Marketing contract: Under a marketing contract, the contractor buys a known quantity and quality of a commodity from a farm for a negotiated price. The farm has a buyer and price before the commodity is produced. The contractor does not own the commodity until delivery, and has little influence over production decisions. The farm owns the commodity while it is being produced, makes most of the production decisions, supplies most of the inputs, and receives a price reflecting the value of the commodity.

Financial Characteristics

Financial measures are based on information provided by farm and ranch operations about their farm businesses. Estimates relate strictly to the farm business (operators, partners, and shareholders) and do not include other participants in the farm sector (such as share landlords and contractors).

Gross cash farm income (or gross cash income): The sum of four components:

Livestock sales: Gross value of all livestock items sold from the farm or ranch, net of marketing charges. Includes sales of livestock and livestock products under marketing contracts. Payments received in the current year for livestock items produced in previous years are included.

Crop sales: Gross value of all crop items sold from the farm or ranch. Includes sales of crops under marketing contracts. Also includes net Commodity Credit Corporation (CCC) loans (value of crops placed under CCC loans during the year less the value of CCC loans repaid). Payments received in the current year for crops produced in previous years are included.

Government farm payments: Gross value of direct payments by the Federal Government (excluding wool and unshorn lamb wool payments) received during the calendar year.

Other farm income: Income from custom work, machine hire, livestock grazing, farmland rental, contract production fees, timber sales, outdoor recreation, hedging profits or losses, tobacco allotment leases, road tax refunds, and any other farm-related income.

Cash expenses: Includes variable expenses for livestock purchases, feed, veterinary services and supplies, other livestock-related expenses, seed and plants, fertilizer and chemicals, labor, fuels and oils, repairs and maintenance, machine-hire and custom work, utilities, and other variable expenses, as well as fixed expenses including real estate and property taxes, interest, insurance, and rent and lease payments.

Net cash farm income: Gross cash income (as defined above) less cash expenses. Represents income available to those who have a stake in the farm business (operators, partners, and shareholders) for living expenses, principal payment, reinvestment in the farm, or other obligations.

Net farm income: Net cash farm income minus depreciation and other nonmoney expenses plus the value of inventory change and nonmoney income. Reflects the return (or loss to) unpaid labor, unpaid management, and equity capital.

Farm Business Assets and Liabilities:

Farm assets: The estimated market value of all capital assets owned by the farm operation on December 31 of the reporting year.

Farm liabilities: Total amount of debt owed by the farm or ranch on December 31 of the reporting year. Includes outstanding principal plus unpaid interest owed to any banks, individuals, co-ops, merchants, or Federal agencies.

Equity: The difference between farm assets and farm liabilities.

Capital investments: Total operator capital expenditures for the reporting year.

Financial position: Farms were classified into one of four categories based on their combined income and solvency status, as defined in the text.

Return on assets: Net farm income plus interest expenses minus estimated charges for unpaid labor and management provided by the operator, divided by total assets. Return on assets shows the rate of return received by the operation for both debt and equity capital invested in the farm.

Operator Characteristics

Operator: The person who runs a farm, making the day-to-day decisions. Information is collected for only one operator per farm. For farms with more than one operator, data are collected only for the primary operator.

Operator age: Farm operators were asked to provide their age. Five age categories were constructed: less than 35 years, 35-44 years, 45-54 years, 55-64 years, and 65 years or older.

Operator education: Operators were asked to provide the highest grade they had completed in school. Four categories were constructed: less than high school, high school, some college, and college.

Operator occupation: Farm operators were asked to identify their major occupation as farm or ranch work, hired manager, something else, or retired.

Farm Operator Households

Farm operator households: The households of operators with farms organized as individual operations, partnerships, and family corporations. Farm operator households exclude households associated with farms organized as nonfamily corporations or cooperatives, as well as households where the operator was a hired manager. For farms with more than one operator, information was obtained only for the households of the primary operator. (See "operator," defined above.)

Farm operator household income: The farm income that accrues to the farm operator's household plus all sources of off-farm income accruing to the household in the reporting year. Both farm income and off-farm income may be negative.

Farm operator household farm income: Net income of the farm operated (defined in the next sentence) times the percent received by the household, plus net income received by the household from other farm businesses, plus wages and salaries paid to the operator and household members by the farm business. The net income of the farm operated is calculated as the net cash income of the farm business, excluding income the business receives from renting out farmland and including farm labor expenses paid to household members as expenses, less depreciation.

Farm operator household off-farm income: Includes off-farm wages and salaries of all household members, plus the net income of any nonfarm businesses, interest and dividends, and all other cash off-farm income of household members.

Farm operator household dependency categories: A ratio is calculated to provide information on the components of farm operator household income and their importance. There are six categories of this ratio based on the value of farm operator household income and farm income, as defined in the text.

Appendix B: The Farm Costs and Returns Survey

The 1993 Farm Costs and Returns Survey (FCRS) provided most of the data for this report. The U.S. Department of Agriculture's (USDA) Economic Research Service (ERS) and National Agricultural Statistics Service (NASS) conduct this survey each year. The FCRS is the most comprehensive national annual data source available on farm financial and operating characteristics. A major advantage of the FCRS over other data sources is that details on expenses, income, assets, debt, and many other items can be disaggregated by farming region, farm size, production specialty, and other characteristics. Such detail is essential for a thorough understanding of farming, because farms are such diverse enterprises.

Both NASS and ERS use FCRS data extensively for production expense summaries, financial analyses, publications, and staff work. NASS annually releases FCRS statistics on farm production expenses (U.S. Dept. of Agr., Nat'l. Agr. Stat. Serv., 1994b), while ERS publishes a detailed summary of financial characteristics of U.S. farms (Morehart et al., 1992). ERS also conducts research on the financial status of farms and presents the findings in USDA publications, professional journals, conference presentations, and other outlets.

Data Reliability and Survey Coverage

Approximately 8,000 farm and ranch operators in the 48 contiguous States provided useable data during February and March of 1994 (U.S. Dept. of Agr., Nat'l. Agr. Stat. Serv., 1994b, pp. 23-24). The sample originated from two sources. The first is a list of known operators of farms stratified by farm size and other attributes. That sample, the list frame, contains larger, more specialized operations. Maintaining a current list for smaller operations is difficult. Thus, an area frame is used to compensate for any incompleteness in the list frame. The area frame sample consists of land segments located within the 48 contiguous States stratified by land use. Rigorous procedures are followed to prevent the inclusion of any one operator in both sample frames.

The FCRS is a probability-based survey, where each respondent represents a number of farms of similar size and type. Thus, the sample data can be expanded by using appropriate weights to represent all farms in the 48 contiguous States. Estimates based on the expanded sample differ from what would have occurred if a complete enumeration had been taken. These differences result from sampling and nonsampling variability (Ford et al., 1986).

A measure of sampling variability is available from survey results. The relative standard error (RSE) is the standard error of the estimate expressed as a percentage of the estimate. The RSE, also called the coefficient of variation (CV) when computed for means, is calculated by dividing the standard error of the estimate by the estimate and multiplying the result by 100. Estimates with an RSE exceeding 25 percent should be used with caution, because an RSE that high raises questions about the reliability of the estimate.

Because of space limitations, RSE's are not published for all items in the appendix tables. However, when RSE's not given in the tables exceed 25 percent, indications of their magnitude are provided. An asterisk (*) precedes estimates with an unpublished RSE greater than 25 percent but no more than 50 percent. Two asterisks (**) precede estimates with an unpublished RSE greater than 50 percent but no more than 75 percent. Estimates with RSE's more than 75 percent (with or without a published RSE) are not printed and are denoted with an "r."

The standard error can also be used to calculate a confidence interval around an estimate. For example, the 95-percent confidence interval for average acres operated for all farms is estimated to be between 404 and 468 acres. The standard error of an estimate can also be used to evaluate the statistical significance of differences between groups. For example, the appropriate t-statistic for a comparison between average acres operated by farms in the Northeast and the Lake States can be constructed by taking the difference between the mean of the two groups and dividing by the square root of the sum of the squared standard errors of the two groups. Or:

$$t = (\text{Acres operated}_{\text{Northeast}} - \text{Acres operated}_{\text{Lake States}}) / (\text{Standard error}^2_{\text{Northeast}} + \text{Standard error}^2_{\text{Lake States}})^{0.5}$$
$$= (183 - 266) / (10.49^2 + 17.68^2)^{0.5} = -4.04$$

Although t-statistics are not published in this report, the text makes comparisons between groups only when estimates are significantly different at the 95-percent level, unless noted otherwise.

Survey data are also influenced by nonsampling errors. Data collection procedures are made uniform and con-

sistent across the Nation by extensively training and supervising data collectors. Efforts are also undertaken to minimize other types of potential nonsampling errors by extensive editing. Questionnaires are edited by hand in State offices and by computerized routines in Washington, DC. The extent of nonsampling errors is not known or directly measurable.

NASS personnel in Washington, DC, combine the data collected in the various States and use the reported information to construct farm size, geographic location, and production specialty variables for each farm operation. NASS is also responsible for constructing survey expansion factors, or weights. ERS provides additional information by constructing additional classification variables and by defining aggregated expense, income, asset, and debt categories. ERS also calculates major financial indicators, such as net farm income and the debt/asset ratio for each farm.

Comparability with Other Sources of Agricultural Data

FCRS estimates, for various reasons, often differ from those based on other agricultural data sources. Therefore, direct comparisons between FCRS estimates published in this report and other available data should be made only with careful consideration to sample design, data collection procedures, and underlying variable definitions.

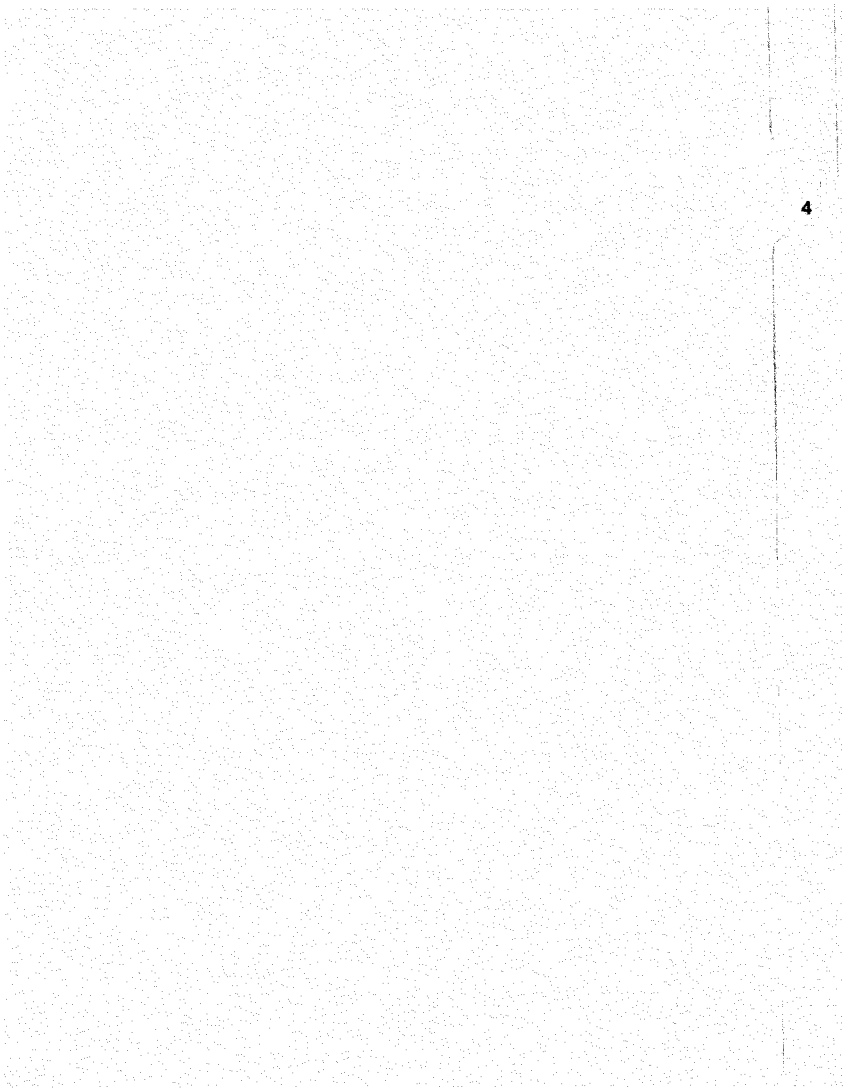
Previous Farm Costs and Returns Survey. The procedures that NASS uses to expand the FCRS sample to create national estimates were rewritten in 1992 to more accurately account for undercoverage and nonresponse. The data for calendar year 1991 were adjusted and resummarized using these new procedures (Dillard, 1993). Earlier estimates from the FCRS did not represent the entire farm population; the number of farms represented in the FCRS was usually between 1.7 and 1.8 million. The new procedures, however, adjust the expanded number of farms to match the official estimates of approximately 2.1 million farms. Estimates since 1991, therefore, are not comparable to those for earlier years.

Census of Agriculture. Both the census of agriculture (U.S. Dept. Comm., Bur. Cen., 1994a) and the FCRS gather economic and physical agricultural data from the same target population: all farms that sold or normally would have sold at least $1,000 worth of agricultural products. Aside from this similarity of purpose, there are several differences that limit comparability of data obtained from these surveys.

The most obvious differences pertain to sample design and data collection procedures. The census of agriculture requires mandatory participation, while the FCRS relies on voluntary response. As a result, the census has a complete enumeration of farms (for most items). The FCRS uses a probability-based, multiframe sampling approach, which provides estimates that are representative of the U.S. population of farms based on a smaller subsample. Questionnaires are mailed to targeted farms and are completed by respondents for the census. FCRS data are collected through personal interviews by trained enumerators. The FCRS is conducted in the 48 contiguous States, while the census includes Alaska and Hawaii. The census of agriculture also includes institutional farms, which are excluded from the FCRS. And, the census of agriculture is conducted every 5 years, while the FCRS is conducted annually.

In many instances, there are also conceptual differences associated with specific pieces of information obtained from these surveys due to the wording of questions asked or the instructions associated with collecting the information. For example, the census obtains a combined estimate of expenses paid by all participants in the farm business, which includes operators, landlords, contractors, and partners. This estimate is subtracted from the estimated total value of products sold to obtain an estimate of the net cash returns to all participants in the business. The FCRS, however, obtains a separate estimate of the cash expenses paid by the farm operator, landlords, and contractors. This allows a separate estimate of the net cash income received by the farm operation to be computed. In other cases, the level of detail may differ between the types of questions asked, which prohibits direct comparisons.

USDA Agricultural Data. Estimates of income, expenses, assets, and debt of the U.S. farm sector reported in Economic Indicators of the Farm Sector (ECIFS) series are not directly comparable with estimates from this report (U.S. Dept. of Agr., Econ. Res. Serv., 1993a; U.S. Dept. of Agr., Econ. Res. Serv., 1994b, Hoppe, 1995). ECIFS estimates represent a combination of several data sources. In many instances, procedures used and assumptions made are dictated by the format of available data. Since the FCRS estimates represent farm operators, these estimates are typically below those of ECIFS, which represent the entire farm sector (farm operators, landlords, contractors, and others). ECIFS estimates also cover all 50 States, compared with the 48 contiguous States covered by the FCRS.



Farm Income and Expenses

OMB No. 1545-0074

1982

16

▶ Attach to Form 1040, Form 1041, or Form 1065.
▶ See Instructions for Schedule F (Form 1040).

WAYNE, II
▶ RIVERVIEW FARMS
Rt. 1 Box 639 REEDVILLE, VA. 22539

Social security number: 227 | 80 | 3008

Employer identification number

Farm Income—Cash Method

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

Sales of Livestock and Other Items You Bought for Resale

a. Description	b. Amount	c. Cost or other basis
1 Livestock ▶ Hogs	231369	85711
2 Other items ▶		
3 Totals	231369	85711
4 Profit or (loss), subtract line 3, column c, from line 3, column b ▶		145658

Sales of Livestock and Produce You Raised and Other Farm Income

Kind	Amount
5 Cattle and calves	
6 Sheep	
7 Swine	
8 Poultry	
9 Dairy products	
10 Eggs	
11 Wool	
12 Cotton	
13 Tobacco	
14 Vegetables	
15 Soybeans	195675
16 Corn	154895
17 Other grains	64868
18 Hay and straw	
19 Fruits and nuts	
20 Machine work	34980
21 a Patronage dividends	
b Less: Nonincome items	
c Net patronage dividends	
22 Per-unit retains	
23 Nonpatronage distributions from exempt cooperatives	
24 Agricultural program payments: a Cash	
b Materials and services	
25 Commodity credit loans under election (or forfeited)	
26 Federal gasoline tax credit	
27 State gasoline tax refund	
28 Crop insurance proceeds	
29 Other (specify) ▶ SCHEDULE ATTACHED	189448
30 Add amounts in column for lines 5 through 29	639846
31 Gross profits* (add lines 4 and 30) ▶	785504

57 Net farm profit or (loss) (subtract line 56 from line 31). If a profit, enter on Form 1040, line 19, and on Schedule SE, Part I, line 2. If a loss, go on to line 58. (Fiduciaries and partnerships, see the instructions.) . . . 57 (34551)

If you have a loss, do you have amounts for which you are not "at risk" in this farm (see instructions)? . . ☐ Yes ☒ No
If you checked "No," enter the loss on Form 1040, line 19, and on Schedule SE, Part I, line 1.

*Use amount on line 31 for optional method of computing net earnings from self- [illegible] rt II, line 4.)

For Paperwork Reduction Act Notice, see Form 1040 instructions.

[redacted]

2516H - 0012

Part II Farm Deductions—Cash and Accrual Method

Do not include personal or living expenses (such as taxes, insurance, repairs, etc., on your home), which do not produce farm income. Reduce the amount of your farm deductions by any reimbursement before entering the deduction below.

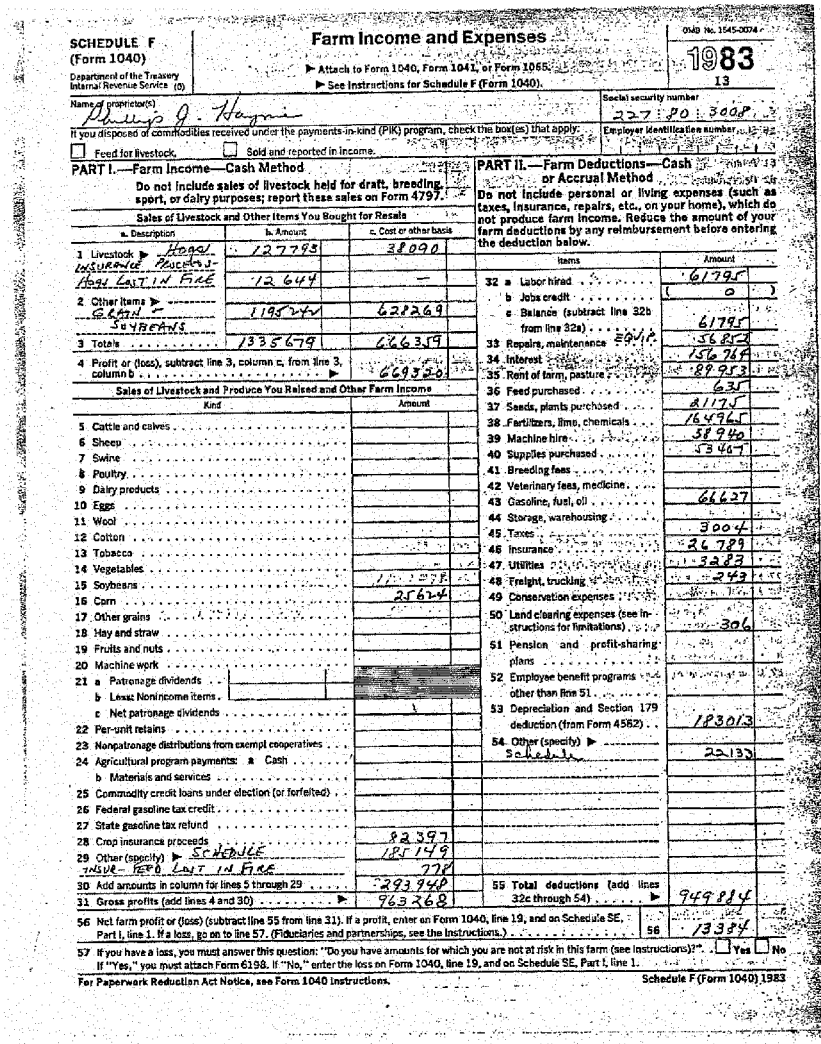
Items	Amount
32 a Labor hired	62731
b Jobs credit	
c Balance (subtract line 32b from line 32a)	62731
33 Repairs, maintenance	104235
34 Interest	121088
35 Rent of farm, pasture	84058
36 Feed purchased	86849
37 Seeds, plants purchased	17009
38 Fertilizers, lime, chemicals	127617
39 Machine hire	6120
40 Supplies purchased	27862
41 Breeding fees	
42 Veterinary fees, medicine	
43 Gasoline, fuel, oil	51928
44 Storage, warehousing	
45 Taxes	2956
46 Insurance	22483
47 Utilities	3773
48 Freight, trucking	6556
49 Conservation expenses	
50 Land clearing expenses	
51 Pension and profit-sharing plans	
52 Employee benefit programs other than line 51	
53 Other (specify) ▶ CONTRACT CANCELLATIONS	1349
DUES/SUBSCRIPTIONS	371
TRAVEL	274
PROFESSIONAL FEES	1934
SCHEDULE ATTACHED	9518
54 Total (add lines 32c through 53)	673747
55 Depreciation, including Section 179 expense deduction (from Form 4562)	137308
56 Total deductions (add lines 54 and 55)	820055

NAME PHILLIP J. HAYNIE 227-80-3008 YEAR 1982

ATTACHMENT TO FORM 1040, SCHEDULE F:

OTHER INCOME	
HAULING INCOME	143242
GRAIN SALES	47206
TOTAL (LINE 29, SCH. F)	189448
OTHER DEDUCTIONS	
OFFICE SUPPLIES	211
STONE	2099
TRUCK LICENSES AND PERMITS	2287
TELEPHONE	2963
TOLLS	2008
TOTAL (LINE 53, SCH. F)	9518
SCHEDULE OF INTEREST EXPENSE	
F.H.A.	102175
EASTVIEW ACRES	3500
BANK OF LANCASTER	4180
ASCS	4283
JOHN DEERE	1420
GMAC	608
BANK OF NORTHUMBERLAND	1755
FEDERAL LAND BANK	3
ASSOCIATES FINANCIAL SVCS.	3157
TOTAL (LINE 38, SCHEDULE F)	121088

2516H - 0013



SCHEDULE F (Form 1040)
Department of the Treasury
Internal Revenue Service (0)

Farm Income and Expenses

▶ Attach to Form 1040, Form 1041, or Form 1065.
▶ See Instructions for Schedule F (Form 1040).

OMB No. 1545-0074
1983
13

Name of proprietor(s): Phillip J. Haynie
Social security number: 227 : 80 : 3008
Employer identification number:

If you disposed of commodities received under the payments-in-kind (PIK) program, check the box(es) that apply:
☐ Feed for livestock. ☐ Sold and reported in income.

PART I.—Farm Income—Cash Method

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

Sales of Livestock and Other Items You Bought for Resale

a. Description	b. Amount	c. Cost or other basis
1 Livestock ▶ Hogs	127793	38090
Insurance Proceeds - Hogs Lost in Fire	12644	—
2 Other items ▶ Grain - Soybeans	1195242	628269
3 Totals	1335679	666359
4 Profit or (loss), subtract line 3, column c, from line 3, column b ▶		669320

Sales of Livestock and Produce You Raised and Other Farm Income

Kind	Amount
5 Cattle and calves	
6 Sheep	
7 Swine	
8 Poultry	
9 Dairy products	
10 Eggs	
11 Wool	
12 Cotton	
13 Tobacco	
14 Vegetables	
15 Soybeans	[illegible]
16 Corn	25624
17 Other grains	
18 Hay and straw	
19 Fruits and nuts	
20 Machine work	
21 a Patronage dividends	
b Less: Nonincome items	
c Net patronage dividends	
22 Per-unit retains	
23 Nonpatronage distributions from exempt cooperatives	
24 Agricultural program payments: a Cash	
b Materials and services	
25 Commodity credit loans under election (or forfeited)	
26 Federal gasoline tax credit	
27 State gasoline tax refund	
28 Crop insurance proceeds	82397
29 Other (specify) ▶ Schedule	185149
Insur - Feed Lost in Fire	778
30 Add amounts in column for lines 5 through 29	293948
31 Gross profits (add lines 4 and 30) ▶	963268

PART II.—Farm Deductions—Cash or Accrual Method

Do not include personal or living expenses (such as taxes, insurance, repairs, etc., on your home), which do not produce farm income. Reduce the amount of your farm deductions by any reimbursement before entering the deduction below.

Items	Amount
32 a Labor hired	61795
b Jobs credit	(0)
c Balance (subtract line 32b from line 32a)	61795
33 Repairs, maintenance Equip.	56852
34 Interest	156764
35 Rent of farm, pasture	89953
36 Feed purchased	635
37 Seeds, plants purchased	21175
38 Fertilizers, lime, chemicals	164965
39 Machine hire	58940
40 Supplies purchased	53407
41 Breeding fees	
42 Veterinary fees, medicine	
43 Gasoline, fuel, oil	66627
44 Storage, warehousing	
45 Taxes	3004
46 Insurance	26789
47 Utilities	3283
48 Freight, trucking	243
49 Conservation expenses	
50 Land clearing expenses (see instructions for limitations)	306
51 Pension and profit-sharing plans	
52 Employee benefit programs other than line 51	
53 Depreciation and Section 179 deduction (from Form 4562)	183013
54 Other (specify) ▶ Schedule	22133
55 Total deductions (add lines 32c through 54) ▶	949884

56 Net farm profit or (loss) (subtract line 55 from line 31). If a profit, enter on Form 1040, line 19, and on Schedule SE, Part I, line 1. If a loss, go on to line 57. (Fiduciaries and partnerships, see the instructions.) 56 13384

57 If you have a loss, you must answer this question: "Do you have amounts for which you are not at risk in this farm (see instructions)?" ☐ Yes ☐ No
If "Yes," you must attach Form 6198. If "No," enter the loss on Form 1040, line 19, and on Schedule SE, Part I, line 1.

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule F (Form 1040) 1983

2516H - 0059

SCHEDULE F (Form 1040)
Department of the Treasury Internal Revenue Service (0)

Farm Income and Expenses

▶ Attach to Form 1040, Form 1041, or Form 1065.
▶ See Instructions for Schedule F (Form 1040).

OMB No. 1545-0074
1984
14

Name of proprietor(s): Phillip J AND Judith S. Haynie
Social security number (SSN): 227:80:3008
Employer ID number (NOT SSN)*

If you disposed of commodities received under the payments-in-kind (PIK) program, check the box(es) that apply:
☐ Feed for livestock. ☐ Sold and reported in income.

Part I Farm Income—Cash Method

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

Sales of Livestock and Other Items You Bought for Resale

a. Description	b. Amount	c. Cost or other basis
1 Livestock ▶ Hogs	62739	28079
2 Other Items ▶		
3 Totals	62739	28079
4 Profit or (loss), subtract line 3, column c, from line 3, column b ▶		34660

Sales of Livestock and Produce You Raised and Other Farm Income

Kind	Amount
5 Cattle and calves	
6 Sheep	
7 Swine	
8 Poultry	
9 Dairy products	
10 Eggs	
11 Wool	
12 Cotton	
13 Tobacco	
14 Vegetables	
15 Soybeans	199699
16 Corn	248956
17 Other grains Wheat + Barley	99734
18 Hay and straw	
19 Fruits and nuts	
20 Machine work	
21 a Patronage dividends	
b Less: Nonincome items	
c Net patronage dividends	
22 Per-unit retains SS Cooperative	236
23 Nonpatronage distributions from exempt cooperatives	2375
24 Agricultural program payments: a Cash CCC	
b Materials and services Subsidy	
25 Commodity credit loans under election (or forfeited)	
26 Federal gasoline tax credit	
27 State gasoline tax refund VA Farm Bureau	120969
28 Crop insurance proceeds	180818
29 Other (specify) ▶ Hauling + Excavating	
30 Add amounts in column for lines 5 through 29	
31 Gross profits (add lines 4 and 30) ▶	879,646

Part II Farm Deductions—Cash or Accrual Method

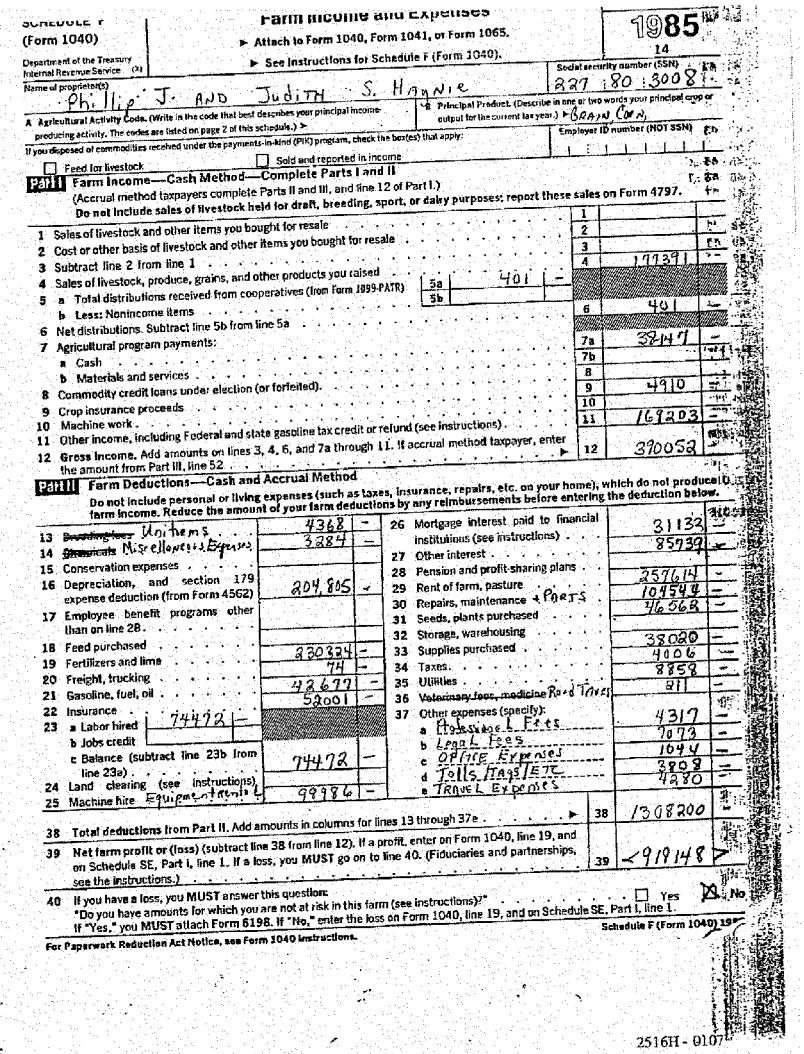
Do not include personal or living expenses (such as taxes, insurance, repairs, etc., on your home), which do not produce farm income. Reduce the amount of your farm deductions by any reimbursement before entering the deduction below.

Items	Amount
32 a Labor hired	89453
b Jobs credit	( )
c Balance (subtract line 32b from line 32a)	
33 Repairs, maintenance	63075
34 Interest	80511
35 Rent of farm, pasture	171685
36 Feed purchased	696
37 Seeds, plants purchased	71443
38 Fertilizers, lime, chemicals	172717
39 Machine hire	53408
40 Supplies purchased	15601
41 Breeding fees	
42 Veterinary fees, medicine	75428
43 Gasoline, fuel, oil	
44 Storage, warehousing	13951
45 Taxes	38016
46 Insurance	80517
47 Utilities	201
48 Freight, trucking	
49 Conservation expenses	
50 Land clearing expenses (see instructions for limitations)	42
51 Pension and profit-sharing plans 62711N	94360
52 Employee benefit programs other than line 51	
53 Depreciation and Section 179 deduction (from Form 4562)	193664
54 Other (specify) ▶	
CONTRACT EMPLOYMENT	5750
Professional Fees	4618
TRAVEL EXPENSES	794
OFFICE SUPPLIES	1711
PARTS FOR Equipment	40004
TOOLS	3393
Miscellaneous	603
Custom Work	1405
UNIFORMS	3496
55 Total deductions (add lines 32c through 54) ▶	1,194321
56 Net farm profit or (loss) (subtract line 55 from line 31). If a profit, enter on Form 1040, line 19, and on Schedule SE, Part I, line 1. If a loss, you MUST go on to line 57. (Fiduciaries and partnerships, see the instructions.) 56	<295,702>

57 If you have a loss, you MUST answer this question: "Do you have amounts for which you are not at risk in this farm (see instructions)?". ☐ Yes ☒ No
If "Yes," you MUST attach Form 6198. If "No," enter the loss on Form 1040, line 19, and on Schedule SE, Part I, line 1.

For Paperwork Reduction Act Notice, see Form 1040 Instructions.
Schedule F (Form 1040) 1984

2516H - 0091



SCHEDULE F (Form 1040)
Department of the Treasury Internal Revenue Service (99)
Name of proprietor(s): Phillip J. AND Judith S. Hannie

Farm Income and Expenses

▶ Attach to Form 1040, Form 1041, or Form 1065.
▶ See Instructions for Schedule F (Form 1040).

1985
14

Social security number (SSN): 227 : 80 : 3008

A Agricultural Activity Code. (Write in the code that best describes your principal income-producing activity. The codes are listed on page 2 of this schedule.) ▶

B Principal Product. (Describe in one or two words your principal crop or output for the current tax year.) ▶ GRAIN CORN

C Employer ID number (NOT SSN)

If you disposed of commodities received under the payments-in-kind (PIK) program, check the box(es) that apply:
☐ Feed for livestock ☐ Sold and reported in income

Part I Farm Income—Cash Method—Complete Parts I and II

(Accrual method taxpayers complete Parts II and III, and line 12 of Part I.)
Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

1	Sales of livestock and other items you bought for resale		1	
2	Cost or other basis of livestock and other items you bought for resale		2	
3	Subtract line 2 from line 1		3	
4	Sales of livestock, produce, grains, and other products you raised		4	177391
5a	Total distributions received from cooperatives (from Form 1099-PATR)	5a 401		
5b	Less: Nonincome items	5b		
6	Net distributions. Subtract line 5b from line 5a		6	401
7a	Agricultural program payments: a Cash		7a	32147
7b	b Materials and services		7b	
8	Commodity credit loans under election (or forfeited)		8	
9	Crop insurance proceeds		9	4910
10	Machine work		10	
11	Other income, including Federal and state gasoline tax credit or refund (see instructions)		11	16203
12	**Gross income.** Add amounts on lines 3, 4, 6, and 7a through 11. If accrual method taxpayer, enter the amount from Part III, line 52 ▶		12	390058

Part II Farm Deductions—Cash and Accrual Method

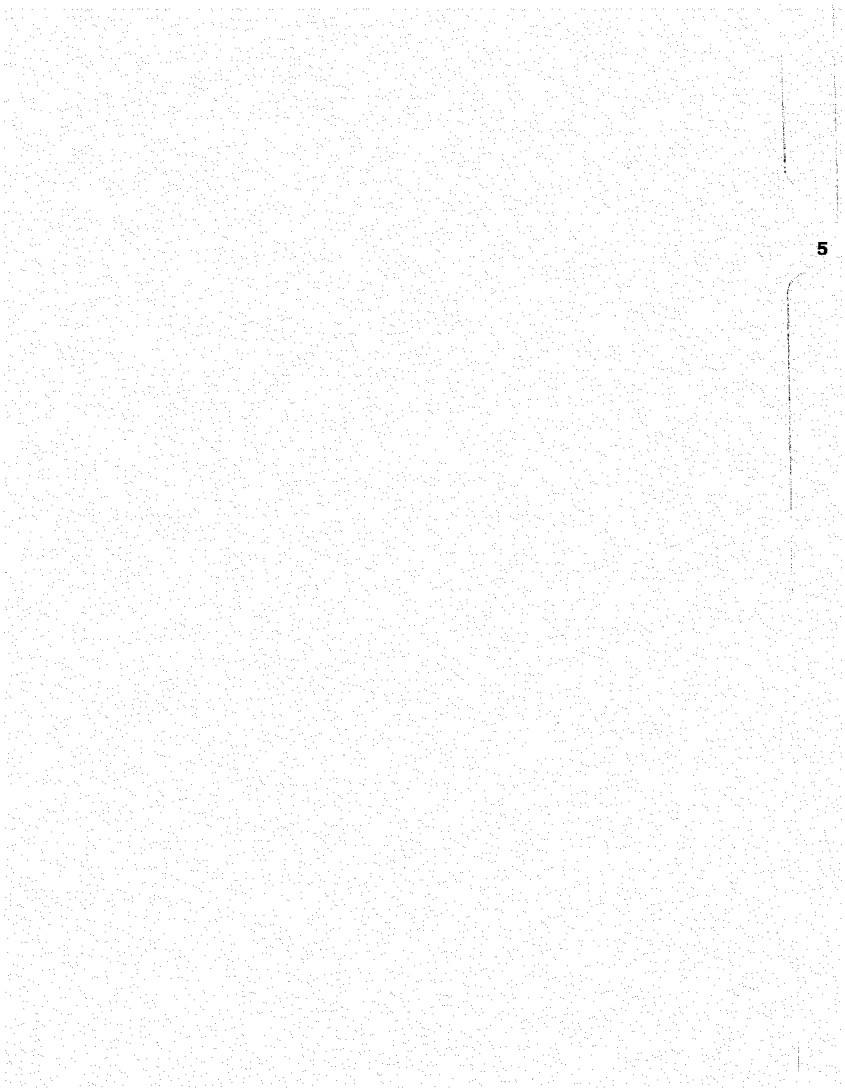
Do not include personal or living expenses (such as taxes, insurance, repairs, etc. on your home), which do not produce farm income. Reduce the amount of your farm deductions by any reimbursements before entering the deduction below.

13	~~Breeding fees~~ Uniforms	4368	26	Mortgage interest paid to financial institutions (see instructions)	31132
14	~~Chemicals~~ Miscellaneous Expense	3284	27	Other interest	85739
15	Conservation expenses		28	Pension and profit-sharing plans	25761
16	Depreciation, and section 179 expense deduction (from Form 4562)	204805	29	Rent of farm, pasture	10454
17	Employee benefit programs other than on line 28		30	Repairs, maintenance + Parts	46568
18	Feed purchased	230324	31	Seeds, plants purchased	
19	Fertilizers and lime	74	32	Storage, warehousing	38020
20	Freight, trucking	42677	33	Supplies purchased	4006
21	Gasoline, fuel, oil	52001	34	Taxes	8858
22	Insurance	74472	35	Utilities	811
23a	Labor hired		36	~~Veterinary fees, medicine~~ Road Taxes	
23b	Jobs credit		37	Other expenses (specify):	
23c	Balance (subtract line 23b from line 23a)	74472	a	Professional Fees	4317
24	Land clearing (see instructions)		b	Legal Fees	1073
25	Machine hire Equipment Rental	99386	c	Office Expenses	1044
			d	Tolls, Tags, Etc	3808
			e	Travel Expenses	4280
38	**Total deductions** from Part II. Add amounts in columns for lines 13 through 37e ▶		38		1308200
39	**Net farm profit or (loss)** (subtract line 38 from line 12). If a profit, enter on Form 1040, line 19, and on Schedule SE, Part I, line 1. If a loss, you **MUST** go on to line 40. (Fiduciaries and partnerships, see the instructions.)		39		-919148

40 If you have a loss, you **MUST** answer this question:
"Do you have amounts for which you are not at risk in this farm (see instructions)?" ☐ Yes ☒ No
If "Yes," you **MUST** attach Form 6198. If "No," enter the loss on Form 1040, line 19, and on Schedule SE, Part I, line 1.

For Paperwork Reduction Act Notice, see Form 1040 instructions. Schedule F (Form 1040) 19

2516H - 0107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GLASSMAN-OLIVER

PRELIMINARY REPORT

DAMAGES TO PHILIP J. HAYNIE, II AND JUDITH S. HAYNIE FROM DISCRIMINATION BY FARMER'S HOME ADMINISTRATION

1981 – 2000

S. MURTHY KAMBHAMPATY
VICE PRESIDENT
GLASSMAN-OLIVER ECONOMIC
CONSULTANTS, INC.
1828 L ST NW, SUITE 405
WASHINGTON, DC 20036



GLASSMAN-OLIVER

1. My name is S. Murthy Kambhampaty and I have been asked by Steptoe & Johnson LLP, counsel for Philip J. Haynie, II, to estimate damages from discrimination in administration of farm lending programs by the USDA.

2. I am a Vice President of Glassman-Oliver Economic Consultants, Inc.; my Curriculum Vitae is attached.

3. In carrying out this task, I have reviewed

- USDA, Office of Civil Rights' finding of discrimination against Philip Haynie, II and Judith S. Haynie ("the Haynies") by USDA, Farmers Home Administration ("FmHA")
- USDA analysis of farm costs and returns
- USDA published data on prices for crops and livestock
- Other USDA documents on U.S. farms and farming
- Budgets for relevant crops prepared by Virginia Cooperative Extension ("VCE")
- Telephone conversations with specialists at USDA and VCE
- Records of Farm and Home plans and other forms filed by Philip Haynie, II
- Tax returns filed by Philip J. Haynie, II
- Other documents, from the records of Philip J. Haynie II, pertaining to the farm and related enterprises
- Interviews with Philip J. Haynie II regarding the Haynies' farm and related enterprises
- Complaint filed by Philip J. Haynie, II And Judith Haynie, Plaintiffs, v. Dan Glickman, Secretary of the United States Department of Agriculture, Rosalind D. Gray, Director of the Office of Civil Rights for the United States Department of Agriculture, and the United States Department Of Agriculture, Defendants in United States District Court for the District of Columbia.

4. As additional information becomes available to me, I may revise my analysis appropriately.

Damage Estimation Methodology

5. It is my understanding, from the report of the USDA Office of Civil Rights, that FmHA had discriminated against the Haynies by (a) denying them loans for which they were eligible and (b) denying them adequate and timely servicing of their account.

6. It is also my understanding that the discrimination had a three-part effect on the Haynie farm: i) the immediate effect of the denial of timely servicing of the account was to interfere with the Haynies' ability to manage their crops and livestock operations profitably, by delaying critical operations such as plantings, harvests, and fertilizer and pesticide application, and ii) to constrain the growth of the farm by denying additional loans for which the Haynies qualified, and which were important for profitable expansion, and iii) to severely constrain the Haynies' credit when a lien on their property made it impossible to obtain secured commercial debt (i.e., to offer revenues from crop sales as collateral for operating loans from commercial lenders).

7. Accordingly, I estimate damages as the present value of additional income that the Haynies could have earned from their family farm absent FmHA discrimination in each year during the period from 1981 to the present. I calculate these "lost earnings" as the differences during the period 1981 through 2000 between (a) the earnings that farms similar to the Haynies' and unaffected by FmHA discrimination have generated ("but-for earnings") and (b) the earnings that the Haynies were actually able to generate.

8. The Haynie farm was a multi-enterprise farm, where several crops as well as hogs were raised, throughout the relevant period. Therefore, I estimate but-for earnings for each enterprise

separately, and their sum across enterprises as the total but-for earnings. Present value is calculated by discounting using the CPI. [1]

9. For each crop and for hog operations on the Haynie farm, I first estimate per unit (per acre or per head of livestock) earnings based on estimates of the full economic costs, average prices received by Virginia farmers, and appropriate yields. I then applied the per unit net returns to the size of operations on the Haynie farm, by enterprise, to determine but-for earnings.

10. As I find no mitigating income in the tax returns my staff and I have reviewed, I equate damages to the but-for earnings I calculated.

11. My conservative estimate of damages to the Haynies due to discrimination by FmHA equals 11.2 million dollars. [2] My calculations are discussed in greater detail below.

Per Acre Damages

12. For corn, soybean, and wheat, my estimation of the costs of production per acre is based on the USDA report, published in 1990, "How Costs of Production Vary" ("The 1990 USDA Costs Report"). [3] This report finds substantial variation in crop production costs, and therefore reports average crop production costs for three distinct groups of farms as follows: "the 25 percent of producers with the lowest costs of production ('low-cost producers'), (b) the 25 percent with the highest costs ('high-cost producers'), and (c) the 50 percent in the midrange of costs ('mid-cost

[1] Consumer Price Index- All Urban Consumers <http://146.142.4.24/cgi-bin/surveymost?bls>, Bureau of Labor Statistics.

[2] This estimate does not include any prejudgment interest, and is the present value (in 2000 dollars) adjusting for inflation (as measured by the CPI). If inflation is measured using the Implicit Price Deflator for Personal Consumption Expenditures (PCE) the present value is $10.8 million.

[3] Ahearn, Mary et al., "How Costs of Production Vary". United States Department of Agriculture, Economic Research Service, Agriculture Information Bulletin, (No. 599) May 1990.

producers')." The article also reports that only 27 percent of US farms were commercial farms such as Mr. Haynies, and that commercial farms generally have lower costs than do non-commercial ones. Accordingly, I base my estimates of the full economic costs of production on farms similar to the Haynies', but unaffected by discrimination, on the averages for "low-cost farms" as recorded in the above report. [4]

13. Corn production costs per acre for 1987, and soybean and wheat production costs per acre for 1986, are reported in the 1990 USDA costs report. I project these costs for the period 1981 to 2001 based on an appropriate index of the variation in full economic production costs over that period, as reported by USDA. [5]

14. The Haynie farm double-cropped soybeans partly with wheat and the rest with barley. However, because cost of production for low cost producers is only available for single cropped soybeans and wheat, I have used the full single-crop costs to estimate lost earnings from wheat, barley, and soybeans. [6] I am presently investigating whether published crop budgets from USDA and VCE can be used to accurately adjust the economic costs for single cropped soybeans to determine the total costs per acre of a soybean-wheat rotation and a soybean-barley rotation.

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[4] Ahearn et al. "uses standard USDA cost of production accounting. Economic costs are the most inclusive measure, including all inputs, whether owned or rented" (p 2). Examples of reports using standard USDA accounting can be found at < http://www.ers.usda.gov/Data/CostsAndReturns/>. Notably, full economic costs include the replacement cost of capital and also an imputed measure of the costs of unpaid labor.

[5] (1) Prices paid index for 1994-2000 from Farm Inputs, Indexes US, Quarterly by Farm Type. USDA National Agricultural Statistics Service. <http://www.usda.gov/nass/graphics/data/paid.txt>. (2) Prices Paid index for 1981-1993 from Prices Paid and Received Indexes (95917). <http://usda.mannlib.cornell.edu/data-sets/crops/95917/>.

[6] I also note that, as the Ahearn et. al. report does not include statistics for low-cost barley producers, I have had to use average production costs for all barley producers in estimating lost earnings from barley production on they Haynie farm. (*See* U.S. barley production economic costs and returns, 1975-99. USDA Economic Research Service <http://www.ers.usda.gov/Data/CostsAndReturns/car/DATA/History/Barley/Us7599.xls>).

Preliminary indications are that 15 percent cost savings, relative to the sum of per acre costs for soybeans and wheat, are typically observed.

15. I have used crop yields (in bushels per acre) based on the Farm and Home Plans completed by Philip Haynie in 1985. These documents record the Haynies' planned yield per acre, which was unaffected by the discrimination. Moreover, the USDA reports that planned yields are preferable to actual yields as they are "better suited to indicate long-term conditions and trends". [7] I project yields for other years by adjusting the Haynies' 1985 planned yields to reflect national trends, by the following method. First, I calculate the mean of Mr. Haynie's 1985 planned yield and the U.S. average for 1985. I then determine the ratio of the above mean to the U.S. average yield in 1985. Finally, I projected yield by multiplying that year's U.S. average yield by the ratio calculated above.

16. I obtain crop prices from the database maintained online at the Internet site of the USDA's National Agricultural Statistics Service. I use the yearly average Virginia price per bushel of each commodity from 1981 through 1999. [8] I estimate 2000 prices by projecting the 1999 value based on the Price Received Index for U.S. corn. [9]

17. In estimating lost earnings per hog, I have used US average costs and prices for farms in the relevant size class, i.e. 3,000 to 9,999 head, considering the Haynie farm's 3,400 head operation. My projections are based on adjusting costs and values per head from the USDA report giving

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[7] Ali, Mir B., Nora L. Brooks, and Robert G. McElroy. "Characteristics of U.S. Wheat Farming: A Snapshot." Resource Economics Division, Economic Research Service, U.S. Department of Agriculture. Statistical Bulletin No. 968. p18.

[8] Published Estimates Database. USDA National Agricultural Statistics Service. <http://www.nass.usda.gov:81/ipedb/>.

[9] See <http://www.usda.gov/nass/graphics/data/pricecn.txt>.

estimates by size-class (which covers the year 1998) using variation in US average costs and values for the period from 1981 to 1990. For each year, I estimate lost earnings per head as value per head less costs per head. [10]

Acreage and Number of Head

18. It is my understanding that the Haynie farm was expected to continue growing well into the 1990s. In particular, Philip Haynie expected that the farm would have expanded cultivation by at least 500 acres in each of 1986 and 1987, and by 200 acres in each year thereafter until 1995. In other words, the Haynie farm would have doubled in size between 1985 and 1995, from about 2,675 acres to about 5,275 acres. I have assumed that the Haynie farm's size would remain unchanged thereafter.

19. In an effort to be conservative, and to restrict the sources of uncertainty in the analysis, my damage estimates do not reflect the very likely possibility of additional growth beyond 1995. Also, since the Haynie farm actually grew from roughly 1,000 acres of land in 1981 to 2,675 planned acres in 1985,[11] I find the expectation that it would have doubled again in the subsequent 10 years to be very reasonable.

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[10] (1) U.S. farrow-to-finish production costs by size of operation, 1998, USDA Economic Research Service. <http://www.ers.usda.gov/Data/CostsAndReturns/car/data/copest99/Farfso.xls>. (2) U.S. Farrow to Finish Costs and Returns Reports. <http://www.ers.usda.gov/Data/CostsAndReturns/car/DATA/Copest99/Hogs99.xls> <http://www.ers.usda.gov/Data/CostsAndReturns/car/DATA/Appendix/FFinish/US9297.xls> <http://www.ers.usda.gov/Data/CostsAndReturns/car/DATA/Appendix/FFINISH/US8291.xls>

[11] The report of the USDA Office of Civil Rights documents that the Haynie farm had grown to The "Farm and Home Plan" filed by Philip Haynie in 1985 shows total acreage for crops to equal 2,675 acres. I take the fact that this Plan was signed by the County loan administrator to indicate that the farm was fully capable of realizing this size in 1985. Unfortunately, I do not have subsequent records showing planned or actual growth of operations.

20. Moreover, it is reasonable to estimate that Philip Haynie had the management abilities necessary for the farm to expand beyond a 5,000-acre size. Considering the farm's diversification into multiple enterprises to address price risk in individual crops and in hogs and the integration of a trucking operation that provided costs savings and price improvement to the farm and additional income in the off-season, Philip Haynie appears to have been an astute farm manager.

21. As documents recording the Haynie farm's activity levels after 1985 are unavailable, I assume that the mix of crops remains fixed at the proportions indicated in the 1985 Farm and Home Plan. This assumption is likely to underestimate the profitability of the farm, because the advantage of multiple crops is, in fact, the ability to adjust activity levels to address price deterioration in certain crops, and exploit price improvements in others, from year to year. However, since the information necessary to determine optimal activity levels by crop is highly specific and is unavailable, I have not attempted such determination. Again, this serves to make my analysis understate damages, giving a conservative estimate thereof.

22. For livestock operations, I assume that activity levels remain constant at 3,400 head until 1990 at which time they cease. Around 1990, hog farming was largely transformed into contract growing for large corporate slaughter and packing operations. This restructuring effectively removed, for farmers, price risk from hog growing operations. Therefore, without considerable additional information on hog growing contracts, it is difficult to determine the profit structure for family-owned hog growing operations during the 1990s. I have, again in the interests of limiting the sources of uncertainty in my analysis, simply assumed that the Haynie farm's hog operations would have ceased altogether in 1990.

23. Appendix B provides a detailed summary of the calculations, showing annual totals for the farm as whole, as well as for individual enterprises. Tables for individual enterprises report the values of the various factors underlying the calculations, as discussed above.

Tests of Assumptions

24. Cost of production. I have tested my projections of cost of production against reported costs of production in other time periods or crops as available. Appendix C shows the comparison of 1991 corn and 1990 soybean costs against data reported by USDA. [12] The table shows the projected values to provide a good approximation of data from later measurements.

25. Returns per acre. A 1996 report by USDA [13] shows that net income for farms comparable to the Haynie farm had, for the US as a whole, average net income of 20.4% of revenues on average, with a 95% confidence interval from 15.7% to 25.7%. My estimate of average returns of the Haynie farm for that year was 21.2%, which is well within the confidence interval reported by USDA, implying that they are consistent with the USDA's own analysis.

Appendix A

[12] Soybeans: Costs of Production, 1990 (94009). <http://usda.mannlib.cornell.edu/data-sets/crops/94009/soybud.wk1>. Corn--State Costs of Production (94018). <http://usda.mannlib.cornell.edu/data-sets/crops/94018/budget.wk1>.

[13] Structural and Financial Characteristics of U.S. Farms, 1993: 18th Annual Farm Report to Congress. By Robert A. Hoppe, Robert Green, David Banker, Judith Kalbacher, and Susan E. Bentley, Rural Economy Division. Agriculture Information Bulletin No. 728. See p. 19, "Table 5—Selected farm business financial characteristics by sales class."

GLASSMAN-OLIVER

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e-mail: Murthy.Kambhampaty@goeci.com

Areas of Specialization

Industrial organization including antitrust policy; microeconomic analysis; applied econometrics and quantitative methods

Education

PhD, Agricultural and Applied Economics, 1994
Dissertation: An Analytic Model of the Food Consumption Behavior of Health-Conscious Individuals.

MA, Economics, 1994 (dual degree with PhD)
MUA, Urban Affairs, 1990
Virginia Polytechnic Institute and State University (Virginia Tech)

BE, Electrical and Electronics Engineering, 1985, Andhra University, India

Recent Employment

Vice President, Glassman-Oliver Economic Consultants, Inc., March 1999 to present
Senior Economist, Glassman-Oliver Economic Consultants, Inc., September 1996 to March 1999
Consultant, Apogee Research, Incorporated, July and August 1996
Research Associate, Virginia Tech, March 1996 to May 1996 and September 1994 to December 1995

Expert Testimony

TelCentral Communications, Inc. vs. MCI Telecommunications Corp., J.A.M.S./Endispute Case No. 976110010

Select Journal Articles and Research Reports

Driscoll, P. J. , S. M. Kambhampaty, and W. D. Purcell. "Nonparametric Tests of Profit Maximization Under Oligopoly with Application to the U.S. Beef Packing Industry." *American Journal of Agricultural Economics*, August 1997.

Kambhampaty, S. M., L. Shabman, P. Driscoll, and M. Tang. 1996. AThe Effect of Development Controls on Land Prices: The Green Line of Virginia Beach, Virginia.@ Blacksburg, Virginia: Agricultural and Applied Economics, Working Paper 96LSK01.

Kambhampaty, S. M., P. J. Driscoll, W. D. Purcell, and E. B. Peterson. *Effects of Concentration on Prices Paid for Cattle*. Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, GIPSA-RR 96-4, June 1996.

Zipper, C. E., and S. Murthy Kambhampaty. 1996. AEffects of Virginia Coalfield Employment Enhancement Tax Credit Legislation.@ Blacksburg, Virginia: Virginia Center for Coal and Energy Research (March).

Batie, S. S., D. B. Taylor, P. L. Diebel, and S. M. Kambhampaty. 1993. AAn Economic Analysis of Low-Input Agriculture as a Groundwater Protection Strategy.@ Blacksburg, Virginia: Department of Agricultural and Applied Economics, Virginia Tech (March). Research funded under grant #14-08-0001-G1724 of the United States Geological Service.

Membership in Professional Organizations

Member, American Economic Association
Member, American Statistical Association
Member, Institute of Electrical and Electronics Engineers
Associate Member, American Bar Association, Antitrust Section
Associate Member, Sigma Xi, The Scientific Research Society

Appendix B

GLASSMAN-OLIVER

Lost Earnings

All Enterprises

Year	Total Revenue	Total Cost	Net Income	Present Value of Net Income Adjusted (2000)
1981	$ 868,814.75	$ 606,958.00	$ 261,856.74	$ 496,059
1982	$ 866,895.71	$ 624,923.72	$ 241,771.99	$ 431,431
1983	$ 678,512.68	$ 534,275.44	$ 142,237.24	$ 245,916
1984	$ 1,042,597.38	$ 758,019.37	$ 284,578.01	$ 471,649
1985	$ 1,558,293.97	$ 979,885.58	$ 578,408.40	$ 925,668
1986	$ 1,356,716.97	$ 1,089,390.27	$ 267,326.70	$ 420,015
1987	$ 1,698,555.62	$ 1,218,128.82	$ 480,425.81	$ 728,251
1988	$ 1,712,927.23	$ 1,289,871.92	$ 423,055.31	$ 615,808
1989	$ 1,952,984.58	$ 1,433,820.25	$ 519,164.33	$ 720,969
1990	$ 2,170,556.79	$ 1,513,125.71	$ 657,431.08	$ 866,179
1991	$ 1,641,956.22	$ 1,300,485.54	$ 341,470.67	$ 431,727
1992	$ 1,901,564.31	$ 1,370,499.52	$ 531,064.78	$ 651,813
1993	$ 1,854,405.35	$ 1,461,265.53	$ 393,139.82	$ 468,503
1994	$ 2,164,348.02	$ 1,564,089.05	$ 600,258.96	$ 697,467
1995	$ 2,495,024.98	$ 1,694,023.13	$ 801,001.85	$ 905,069
1996	$ 2,855,970.09	$ 1,797,366.02	$ 1,058,604.06	$ 1,161,833
1997	$ 2,418,744.47	$ 1,821,725.79	$ 597,018.68	$ 640,540
1998	$ 2,039,223.48	$ 1,766,110.42	$ 273,113.07	$ 288,528
1999	$ 1,793,688.10	$ 1,771,612.19	$ 22,075.91	$ 22,818
2000	$ 1,881,413.05	$ 1,884,044.13	$ (2,631.08)	$ (2,631)
			Total	**$ 11,187,613**

NOTE: Present value was calculated by discounting for inflation, as measured by the CPI.

GLASSMAN-OLIVER

Lost Earnings from Crops

BARLEY

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return
1981	474	80.25	2.10	168.52	79,878.01	146.57	69,474.18	21.95	10,403.83
1982	474	87.60	1.90	166.44	78,890.79	148.21	70,251.54	18.23	8,639.25
1983	50	80.09	2.05	164.19	8,209.64	146.04	7,302.00	18.15	907.64
1984	500	81.63	2.35	191.82	95,909.89	145.55	72,775.00	46.27	23,134.89
1985	1000	105.00	1.70	178.50	178,500.00	128.90	128,900.00	49.60	49,600.00
1986	1187	77.80	1.50	116.70	138,507.48	135.23	160,506.64	(18.53)	(21,999.15)
1987	1374	80.25	1.35	108.33	148,832.22	131.24	180,301.68	(22.91)	(31,469.47)
1988	1449	58.19	1.95	113.48	164,385.86	135.30	195,995.33	(21.82)	(31,609.46)
1989	1523	74.43	2.10	156.30	238,099.09	157.43	239,823.27	(1.13)	(1,724.19)
1990	1598	85.91	2.10	180.42	288,331.99	156.24	249,691.96	24.18	38,640.03
1991	1673	84.54	1.70	143.71	240,411.69	160.95	269,252.80	(17.24)	(28,841.11)
1992	1748	95.71	1.90	181.86	317,826.27	161.59	282,404.95	20.27	35,421.31
1993	1822	90.20	1.80	162.36	295,894.55	160.73	292,919.16	1.63	2,975.39
1994	1897	86.07	1.80	154.92	293,913.42	171.00	324,420.56	(16.08)	(30,507.14)
1995	1972	87.60	1.75	153.30	302,295.09	187.14	369,033.08	(33.84)	(66,737.99)
1996	1972	89.59	2.90	259.81	512,331.29	202.56	399,440.75	57.25	112,890.54
1997	1972	88.98	2.10	186.85	368,481.78	196.42	387,332.90	(9.57)	(18,871.12)
1998	1972	91.89	1.40	128.64	253,674.20	186.71	368,185.14	(68.07)	(114,510.94)
1999	1972	90.66	1.30	117.86	232,413.89	189.50	373,686.92	(71.64)	(141,273.03)
2000	1972	93.57	1.31	122.70	241,955.35	199.39	393,183.62	(76.69)	(151,228.28)

GLASSMAN-OLIVER

Lost Earnings from Crops

CORN

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return
1981	284	142	2.70	383.73	108,980.48	208.19	59,124.75	175.55	49,855.72
1982	284	148	2.50	369.34	104,892.27	218.34	62,008.89	151.00	42,883.38
1983	550	106	3.70	391.62	215,389.23	218.34	120,087.63	173.28	95,301.60
1984	1015	139	2.90	403.83	409,889.86	225.96	229,347.07	177.87	180,542.79
1985	1275	190	2.40	456.00	581,400.00	218.34	278,384.97	237.66	303,015.03
1986	1513	156	1.70	264.91	400,887.11	215.80	326,577.45	49.10	74,309.66
1987	1752	156	2.05	320.52	561,426.79	220.86	386,901.25	99.64	174,525.54
1988	1847	110	2.90	320.19	591,378.02	231.04	426,713.75	89.15	164,664.27
1989	1942	152	2.60	394.63	766,488.75	243.73	473,393.60	150.90	293,095.15
1990	2038	155	2.51	388.18	790,957.78	251.35	512,147.26	136.83	278,810.52
1991	2133	142	2.60	368.50	785,997.78	253.89	541,522.59	114.62	244,475.20
1992	2228	172	2.25	386.14	860,428.92	256.42	571,381.97	129.72	289,046.95
1993	2324	131	2.65	348.27	809,235.78	264.04	613,523.92	84.23	195,711.86
1994	2419	181	2.40	434.12	1,050,112.02	268.12	650,976.71	165.01	399,135.31
1995	2514	148	3.35	496.23	1,247,637.00	276.73	695,780.90	219.49	551,856.10
1996	2514	166	3.20	530.80	1,334,575.37	291.97	734,080.76	238.84	600,494.60
1997	2514	165	2.69	444.80	1,118,346.73	299.56	753,230.70	145.22	365,116.03
1998	2514	175	2.24	392.90	987,858.78	291.97	734,080.76	100.94	253,778.01
1999	2514	175	2.10	368.70	921,983.15	291.97	734,080.76	74.73	187,902.39
2000	2514	179	2.12	379.01	952,923.36	307.20	772,380.63	71.81	180,542.73

GLASSMAN-OLIVER

Lost Earnings from Crops

SOYBEANS

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Total Return	Margin
1981	806	37	6.10	226.42	182,491.65	142.00	114,448.02	68,043.63	37.3%
1982	806	39	5.70	221.41	178,456.38	148.92	120,030.85	58,425.53	32.7%
1983	150	32	7.85	253.62	38,042.92	148.92	22,338.26	15,704.67	41.3%
1984	565	35	5.95	206.17	116,488.58	154.12	87,075.87	29,412.71	25.2%
1985	1400	50	5.15	257.50	360,500.00	148.92	208,490.31	152,009.69	42.2%
1986	1662	41	4.90	201.21	334,348.91	147.19	244,583.01	89,765.90	26.8%
1987	1923	42	6.05	252.91	486,438.89	150.65	289,761.20	196,677.69	40.4%
1988	2028	33	7.40	246.38	499,869.75	157.58	319,577.89	180,091.86	36.0%
1989	2133	40	5.70	227.03	484,195.63	166.24	354,537.74	129,657.88	26.8%
1990	2237	42	5.55	233.38	522,154.89	171.43	383,561.44	138,593.45	26.5%
1991	2342	42	5.50	231.95	543,247.46	173.16	405,561.45	137,686.01	25.3%
1992	2447	46	5.50	255.01	623,947.46	174.90	427,923.97	196,023.48	31.4%
1993	2551	40	6.45	259.29	661,557.82	180.09	459,485.28	202,072.55	30.5%
1994	2656	51	5.35	273.13	725,447.59	183.55	487,534.71	237,912.88	32.8%
1995	2761	44	6.85	298.18	823,196.68	188.75	521,089.82	302,106.86	36.7%
1996	2761	46	6.80	315.29	870,432.49	199.14	549,773.67	320,656.82	36.8%
1997	2761	48	6.20	297.41	821,069.94	204.33	564,115.59	256,953.36	31.3%
1998	2761	46	5.30	254.24	701,881.52	199.14	549,773.67	152,107.85	21.7%
1999	2761	45	4.50	203.10	560,701.78	199.14	549,773.67	10,928.11	1.9%
2000	2761	47	4.54	213.26	588,748.04	209.53	578,457.51	10,290.53	1.7%

GLASSMAN-OLIVER

Lost Earnings from Crops

WHEAT

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return
1981	332	40	3.34	134.44	44,632.42	103.12	34,234.98	31.32	10,397.44
1982	332	41	3.05	128.32	41,938.52	108.15	35,904.98	18.17	6,033.54
1983	100	46	3.40	156.29	15,628.67	108.15	10,814.75	46.14	4,813.91
1984	65	45	3.35	151.64	9,856.82	111.92	7,274.81	39.72	2,582.01
1985	400	50	2.95	147.50	59,000.00	108.15	43,259.01	39.35	15,740.99
1986	475	40	2.55	102.34	48,587.59	106.89	50,747.78	(4.55)	(2,160.19)
1987	550	44	2.55	112.16	61,634.21	109.41	60,121.66	2.75	1,512.56
1988	579	40	3.45	137.25	79,529.49	114.44	66,308.23	22.82	13,221.25
1989	609	38	3.45	131.62	80,200.57	120.72	73,561.94	10.89	6,638.63
1990	639	46	2.95	135.95	86,903.69	124.50	79,583.98	11.45	7,319.71
1991	669	40	2.70	108.05	72,299.27	125.75	84,148.70	(17.71)	(11,849.43)
1992	699	46	3.10	142.14	99,361.66	127.01	88,788.63	15.12	10,573.04
1993	729	45	2.70	120.33	87,717.20	130.78	95,337.18	(10.45)	(7,619.99)
1994	759	44	2.85	125.02	94,874.98	133.30	101,157.08	(6.28)	(6,282.09)
1995	789	42	3.70	154.54	121,896.21	137.07	108,119.32	17.47	13,776.89
1996	789	42	4.15	175.75	138,630.94	144.62	114,070.85	31.14	24,560.10
1997	789	46	3.05	140.55	110,867.02	148.39	117,046.61	(7.83)	(6,179.58)
1998	789	50	2.41	121.46	95,808.99	144.62	114,070.85	(23.15)	(18,261.86)
1999	789	50	2.00	99.63	78,589.28	144.62	114,070.85	(44.98)	(35,481.56)
2000	789	49	2.02	98.62	77,786.30	152.16	120,022.37	(53.55)	(42,236.07)

GLASSMAN-OLIVER

Lost Earnings from Hogs

Farrow to Finish

	Number of Hogs	cwt per hog	Cost per cwt	Cost per hog	Total Cost	Value per cwt	Value per hog	Total Value	Return per Hog	Total Return	Total Return adjusted for Inflation
1981	3400	2.43	39.89	96.98	329,676.07	54.79	133.19	452,832.19	36.22	123,156.12	$ 233,305.65
1982	3400	2.43	40.76	99.04	336,727.47	55.98	136.03	462,517.75	37.00	125,790.29	$ 224,467.22
1983	3400	2.43	45.16	109.92	373,732.81	48.24	117.42	399,242.23	7.50	25,509.43	$ 44,103.65
1984	3400	2.44	43.61	106.34	361,546.62	49.51	120.72	410,452.23	14.38	48,905.60	$ 81,054.33
1985	3400	2.45	38.52	94.37	320,851.29	45.49	111.44	378,893.97	17.07	58,042.68	$ 92,869.87
1986	3400	2.46	36.55	90.29	306,975.40	51.86	127.76	434,385.87	37.47	127,410.47	$ 200,183.24
1987	3400	2.48	35.73	88.54	301,044.03	52.24	129.48	440,223.51	40.94	139,179.48	$ 210,974.53
1988	3400	2.49	33.20	82.73	281,276.72	44.62	111.17	377,964.11	28.44	96,687.39	$ 140,740.23
1989	3400	2.49	34.59	86.03	292,503.69	45.40	112.94	384,000.54	26.91	91,496.86	$ 127,052.57
1990	3400	2.50	33.91	84.75	288,141.06	56.75	141.83	482,208.43	57.08	194,067.37	$ 255,687.85

TOTAL: $ 1,610,469.15

Appendix C

GLASSMAN-OLIVER

Corn Economic Costs for 1991

	Dollar	Coefficient of Variation	Standard Deviation	25th Percentile*
Colorado	381.27	5.19	19.79	367.92
Illinois	299.93	2.69	8.07	294.49
Indiana	307.57	5.72	17.59	295.70
Iowa	286.58	3.00	8.60	280.78
Michigan	271.97	3.02	8.21	266.43
Minnesota	268.62	4.44	11.93	260.58
Nebraska	346.13	6.35	21.98	331.31
Ohio	266.70	5.55	14.80	256.72
South Dakota	230.61	19.00	43.82	201.06
Wisconsin	255.20	4.07	10.39	248.19

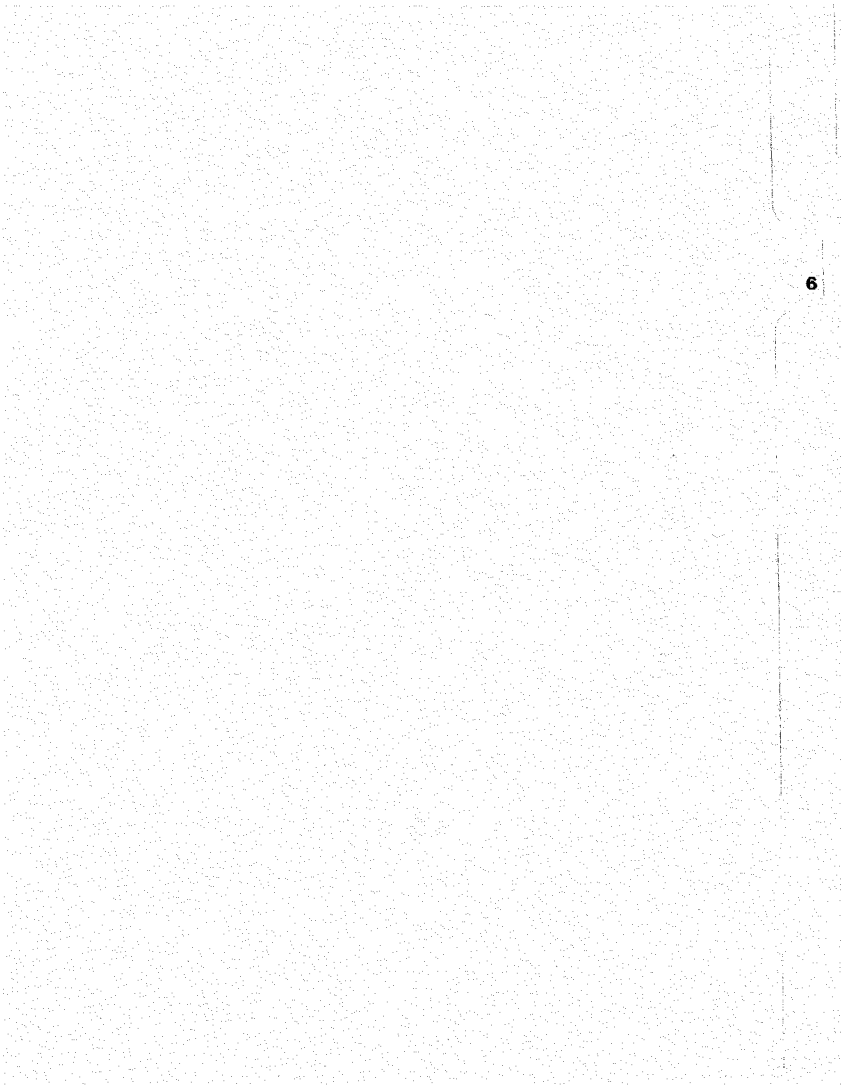
Adjusted Ahearn cost for 1991	253.89

Soybean Economic Costs for 1990

	Dollar	Coefficient of Variation	Standard Deviation	25th Percentile*
Alabama	159.38	10.99	17.52	147.57
Arkansas	172.11	8.14	14.01	162.66
Georgia	156.50	8.54	13.37	147.49
Illinois	201.80	3.79	7.65	196.64
Indiana	213.75	3.65	7.80	208.49
Iowa	202.81	5.98	12.13	194.63
Kansas	156.97	7.97	12.51	148.53
Minnesota	206.09	3.20	6.59	201.64
Mississippi	151.46	4.15	6.29	147.22
Missouri	163.45	3.99	6.52	159.05
Nebraska	257.94	3.52	9.08	251.82
Ohio	216.38	6.66	14.41	206.66
South Carolina	164.86	3.36	5.54	161.12
South Dakota	160.82	7.11	11.43	153.11
AVERAGE	184.59	5.79	10.35	177.62

Adjusted Ahearn cost for 1990	171.43

NOTE: 25th percentiles calculated assuming that costs are characterized by a normal distribution, and using the mean and coeficient of variation reported.



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Characteristics and Production Costs of U.S. Corn Farms

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In this report... The production costs for a bushel of corn ranged from an average of $1.19 per bushel for those farmers in the lowest quartile to $3.67 per bushel for corn farmers in the highest quartile, ranked by production costs per bushel. Producers with high corn production costs per bushel tended to have both lower than average yields and higher than average corn costs per acre. Corn producers in the Heartland and Prairie Gateway had lower corn production costs per bushel than corn producers in the Northern Crescent and Southeast. Part-time farmers and farmers with small corn acreage tended to have high corn production costs per bushel.

Keywords: corn, costs of production, cost variation, corn production practices, farm characteristics.

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Overview

In 1996, corn was the leading U.S. crop in terms of both acreage and production value. Favorable weather conditions in 1996 resulted in an above-average national corn yield of 127.1 bushels per harvested acre. At $2.71 per bushel, the 1996 market-year corn price was above average but down from the previous year (U.S. Dept. of Agriculture, National Agricultural Statistics Service Web site). In 1996, operating and ownership costs for producing corn ranged from an average of $1.19 per planted bushel for 25 percent of the growers with the lowest costs to an average of $3.67 per planted bushel for the 25 percent of growers with the highest costs. Some 79 percent of U.S. corn farmers produced 93 percent of the Nation's corn for less than $2.71 per bushel (fig. 1)[1]. Corn production costs per acre totaled $230.38 in 1996, compared with gross production value of $369.70 per acre for corn, including corn silage. The capital cost for machinery and equipment was the largest component of production costs per acre. Fertilizer expenditures per acre were the second largest cost item, followed by chemical, seed, and fuel expenditures.

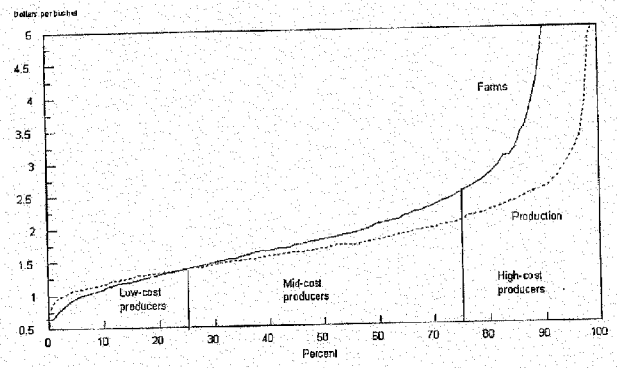
With the passage of the 1996 Federal Agricultural Improvement and Reform (FAIR) Act, the Government removed acreage restrictions on program crops and instituted production flexibility contract payments that are not linked to commodity grain prices (Young and Westcott, 1996). Under the FAIR Act, grain producers face increased risk from low grain prices. Prior to the FAIR Act, deficiency payments rose when grain prices were low, in effect stabilizing farmers' incomes. Unlike deficiency payments, contract payments are fixed under the FAIR Act; thus, farmers' incomes may be more volatile as grain prices fluctuate. Between 1996 and 2000, the marketing-year average corn price dropped from $2.71 to $1.85 per bushel. The decline in grain prices increased the financial pressure on many farmers, prompting government officials to enact emergency assistance programs to aid them. Government officials, researchers, and extension agents need financial information on various categories of farmers to effectively develop and implement programs that help farmers remain financially viable. Studies by Plumley (1991), Purdy (1997), and Sonka (1991) and their colleagues have shown that one factor in determining farm financial success is financial efficiency (see glossary). Farmers who are more successful tend to maintain lower ratios of costs to output, while less successful farmers have higher costs per unit of output.

The objective of this report is to present information about the costs of producing corn in the United States and to examine how these production costs vary among different segments of the farm population. Factors that contribute to the variability in corn production costs per bushel are identified for various categories of farm producers. The categories used in this report are characterized by corn production costs per bushel, region, farm typology, and farm acreage (see glossary). Corn producers are ranked by their corn production costs per bushel to analyze factors associated with low and high production costs. Corn producers in different regions are compared to gain insights into regional variations in production costs. Farm typology is used to examine the relationship between farm types and corn production costs. Characteristics of farms based on planted corn acreage are compared, since farms may vary by acreage. Data in this report are derived from a special corn cost-of-production survey undertaken as part of the 1996 Agricultural Resource Management Study (ARMS) (see glossary). This was the latest survey to collect data on farmers' costs for corn production.

This report uses corn production costs as an indicator of financial success and assesses the characteristics of producers who are likely to be successful corn growers.

[1] Costs exclude storage and marketing costs.

Figure 1
Cumulative distribution of corn farms and corn production by production costs per bushel for 1996



Source: 1996 Agricultural Resource Management Study.

Production costs are the sum of the operating and ownership costs for inputs provided by operators, landlords, and contractors (see glossary).

Operating costs are the sum of costs that vary directly with the amount of corn produced. Ownership costs are costs related to capital items that are consumed during the annual production process, such as farm machinery and equipment.

Production costs are used for this report since farmers must be able to meet their short-term operating costs and, in the longer run, replace assets consumed during the production process in order to maintain viable farming operations. Since ownership costs are fixed in the short term, most farmers can remain in business for several years as long as they can meet their short-term obligations. In the long term, producers wishing to maintain successful farming operations must be able to both meet their operating costs and replace capital assets consumed during the production process.

In the analysis for this report, ERS follows the computational standards recommended by the American Agricultural Economics Association (AAEA) Task Force on Commodity Costs and Returns (AAEA, 1998).

Costs Varied Significantly Among Corn Producers

Corn yields and enterprise size distinguished low-cost producers from mid- and high-cost producers.

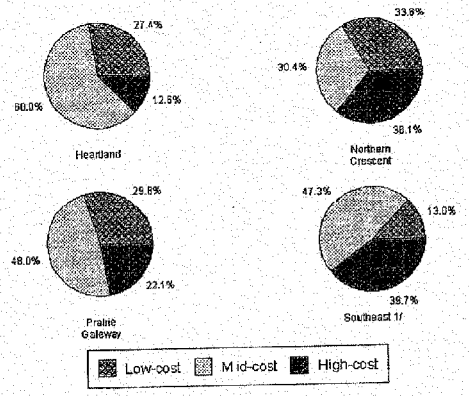
For analysis by cost, corn producers are ranked based on production costs per bushel and grouped into quartiles. Mid-cost producers occupy the two middle quartiles while low- and high-cost producers fall into the end quartiles. Low-cost growers produced 35 percent of total corn production for $1.43 or less per bushel, while high-cost growers produced 8 percent of the corn with production costs exceeding $2.50 per bushel (table 1). High-cost producers averaged $3.67 in costs per bushel in contrast to low-cost producers, who averaged $1.19 per bushel, a difference of $2.48. Among the regions, the Heartland had the smallest percentage of its corn producers in the high-cost category, while the Northern Crescent and Southeast had over one-third of their corn producers in the high-cost category (fig. 2).

Differences in yields and costs per acre determine producers' rank in the cost distribution. As table 1 shows, high-cost producers had yields averaging 72 bushels per acre in 1996 compared with average yields of 154 bushels per acre for low-cost producers. Differences between actual and expected yields indicate the extent that uncontrollable factors, such as weather and pest infestations, may have affected yields. Yields of high-cost producers were nearly 50 bushels below their expected yields in 1996, while the yields of low-cost producers exceeded their expectations by 14 bushels. High-cost producers' expected yield of 120 bushels per acre was significantly less than low-cost producers' expected yield of 140 bushels per acre. Additionally, high-cost farms had production costs averaging nearly $80 per acre higher than low-cost farms. Even if each category of farmers had achieved its expected yields, high-cost producers would still have production costs exceeding those of the low-cost producers by $0.87 per bushel. Thus, despite the lower-than-expected yields of many high-cost producers during 1996, their relative costs and expected yields suggest that many of them are likely to be chronic high-cost growers.

The $80 difference in the production costs per acre between high- and low-cost corn producers stems mostly from four expenditure items: (1) capital recovery of machinery and equipment; (2) fertilizer; (3) fuel, lube, and electricity; and (4) repairs. Capital recovery, an estimate of the annual value of machinery and equipment that is consumed, accounted for nearly 40 percent of the cost difference. The annual machinery and equipment costs per acre for high-cost producers were nearly 65 percent higher than for low-cost producers. On average, low-cost producers had just over 200 corn acres over which to spread their fixed machinery costs in comparison to 134 acres for high-cost producers. The fertilizer expenditures per acre were lowest for producers in the low-cost category. Low-cost producers may have obtained fertilizer at lower prices than high-cost producers, since there were no significant differences in fertilizer use between producers in these categories (table 2). Higher fuel expenditures per acre for high-cost producers may be attributed to their greater percentage of irrigated acreage (table 3) and their higher number of field trips (table 2).

More low-cost producers planted corn after soybeans, while more high-cost producers followed corn with corn. High-cost producers were generally older and less educated than low-cost producers. High-cost corn producers were twice as likely to be 65 years or older than low-cost producers. Also, 35 percent of high-cost producers were retired or had nonfarm occupations, compared to 18 percent of low-cost producers.

Figure 2
Distribution of cost categories, by region, 1996



1/ Southeast includes Eastern Uplands and Southern Seaboard.
Source: 1996 Agricultural Resource Management Study.

Table 1–Corn production costs and returns on 1996 ARMS corn farms, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Percentage of corn farms	25		50		25	
Percentage of corn acres	29	*bc*	54	*ac*	16	*ab*
Percentage of corn production (*bushels*)	35	*bc*	57	*ac*	8	*ab*
Size:						
Total operated acreage per farm	640		613		583	
Planted corn acreage per farm	206	c	212	c	134	ab
Yield in bushels per acre:						
Actual	154	*bc*	135	*ac*	72	*ab*
Expected	140	c	137	c	120	*ab*
Production costs per bushel (*dollars*)						
Actual	1.19	*bc*	1.83	*ac*	3.67	*ab*
Expected	1.31	*bc*	1.79	*ac*	2.18	*ab*
Costs and returns per planted acre (*dollars*):						
Gross value of production	431.57	*bc*	379.52	*ac*	226.01	*ab*
Operating costs	129.55	*bc*	172.41	*a*	175.60	*a*
Seed	25.95		27.29	*c*	25.78	*b*
Fertilizer	37.69	*bc*	50.91	*a*	50.91	*a*
Soil conditioners	0.14	*c*	0.15	*c*	0.21	*ab*
Manure	*0.64		#0.45		#0.99	
Chemicals	23.23	*bc*	29.24	*a*	28.91	*a*
Custom operations	8.88	*bc*	12.65	*a*	*11.12	
Fuel, lube, and electricity	16.81	*bc*	27.33	*a*	28.48	*a*
Repairs	10.80	*bc*	16.80	*ac*	21.34	*ab*
Purchased irrigation water	#0.78		#0.14		0.00	
Interest on operating capital	3.14	*bc*	4.15	*a*	4.22	*a*
Hired labor	1.48	*bc*	*3.32	*a*	3.64	*a*
Ownership costs	53.84	*bc*	73.62	*ac*	86.98	*ab*
Capital recovery: machinery, equipment	48.06	*bc*	66.35	*ac*	78.80	*ab*
Taxes and insurance	5.78	*bc*	7.27	*a*	6.98	*a*
Production costs	183.39	*bc*	246.02	*ac*	262.58	*ab*
Value of production less operating costs	302.02	*bc*	217.11	*ac*	50.42	*ab*
Value of production less production costs	248.19	*bc*	133.49	*ac*	-36.57	*ab*

Coefficient of Variation (CV) = (Standard Error/Estimate)*100.
* indicates that CV is greater than 25 and less than or equal to 50.
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a, b, c indicates that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

Table 2–Production practices on 1996 ARMS corn farms, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Seeding rate per acre (*kernels*)	27,057		27,655		26,637	
Row width (*inches*)	32.4	*c*	31.7		32.4	*a*
Fertilizer use (*percentage of farms*):						
Nitrogen	93		97		90	
Phosphorous	73	*b*	81	*a*	78	
Potassium	82		87		83	
Manure	39	*b*	19	*ac*	33	*b*
Test nitrogen level (*percentage of farms*)	9	*b*	17	*ac*	12	*b*
Use recommended level (*percentage of farms*)	77		63		65	
Fertilizer quantity on reporting farms:						
Nitrogen (*lbs/acre*)	125	*b*	139	*a*	128	
Phosphorous (*lbs/acre*)	68	*b*	80	*a*	74	
Potassium (*lbs/acre*)	54		55		49	
Chemical use (*percentage of farms*):						
Herbicides	93		95		91	
Insecticides	19		26		19	
Chemically treated acres on reporting farms:						
Herbicides (*acre-treatments*)	2.7		2.7		2.6	
Insecticides (*acre-treatments*)	1.0		1.2		1.1	
Custom operations (*percentage of farms*):						
Any custom operation	48	*b*	58	*ac*	40	*b*
Preparation, cultivation, or planting	5		9		6	
Fertilizer/chemical	27	*b*	36	*ac*	20	*b*
Harvest	22		22	*c*	14	*b*
Drying	13	*b*	20	*a*	14	
Total labor hours per acre	2.1	*bc*	2.6	*ac*	3.5	*ab*
Unpaid	1.9	*bc*	2.3	*ac*	3.1	*ab*
Paid	.2	*bc*	.4	*a*	.4	*a*
Farms with paid labor (*percent*)	18		17		14	
Tillage systems (*percentage of farms*):						
Conventional	64		69		69	
Reduced	24	*c*	23	*c*	12	*ab*
Conservation	36		31		31	
No-till	10		12		11	
Machinery:						
Planter width (*rows*)	6.6	*c*	6.8	*c*	5.5	*ab*
Harvester width (*rows*)	4.6	*b*	5.0	*ac*	4.5	*b*
Tractor horsepower (*largest used*)	141	*c*	145	*c*	127	*ab*
Speed of tillage/planting operations (*acres/hr*)	8.3	*c*	7.7	*c*	5.5	*ab*
Speed of harvest operations (*acres/hr*)	5.1	*c*	4.8	*c*	3.2	*ab*
Total trips across field (*number*)	7.7	*bc*	8.2	*a*	8.1	*a*
Tillage and planting trips (*number*)	3.3	*c*	3.5		3.8	*a*
Drying:						
Bushels dried (*percentage*)	47	*b*	62	*a*	54	
Moisture removed (*percentage points*)	2.2	*b*	4.1	*ac*	2.7	*b*

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Table 3--Characteristics of 1996 ARMS corn farms and corn producers, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Corn acreage (*percentage*):						
Dryland	92	*b*	84	*a*	82	
Irrigated	8	*b*	16	*a*	18	
Production value:						
All commodities (*dollars per farm*)	256,004	*c*	222,144	*c*	156,844	*ab*
Corn (*dollars per farm*)	84,366	*c*	87,957	*c*	37,261	*ab*
Percentage of total production	31	*b*	44	*ac*	27	*b*
Corn acres harvested for grain (*percentage*)	95	*c*	97	*c*	90	*ab*
Corn acres harvested for silage (*percentage*)	5	*c*	3	*c*	10	*ab*
Precision agriculture (*percentage of farms*):						
Variable rate technology/soil grid sampling	*6	*bc*	11	*ac*	*2	*ab*
Harvested using yield monitor	*8		6		*3	
Previous crop (*percentage of farms*):						
Soybean	47	*c*	49	*c*	26	*ab*
Corn	21	*bc*	28	*a*	31	*a*
Other	32	*c*	23	*c*	43	*ab*
Commodities per farm (*number*)	3.1		3.0		3.2	
Percentage of corn farms with:						
Corn under contract	18		24	*c*	16	*b*
Cattle	61	*b*	45	*ac*	66	*b*
Hogs	17		20	*c*	11	*b*
Dairy	22		12	*c*	24	*b*
Soybeans	56		67	*c*	49	*b*
Hay	66	*b*	53	*a*	56	
Wheat	17	*bc*	26	*a*	33	*a*
Operator occupation (*percentage*)[1]:						
Farming	82	*c*	81	*c*	65	*ab*
Non-farm	*15		*15		*20	
Retired	#3		#4		#14	
Operator age (*percentage*):						
Less than 50 years	54		48		48	
50 to 64	34		33		26	
65 or more	12	*bc*	18	*a*	25	*a*
Operator education (*percentage*):						
High school or less	56	*c*	55	*c*	71	*ab*
Some college	27		30	*c*	17	*b*
Completed college	17		16		12	
Financial characteristics per farm:						
Net cash income (*dollars*)	64,929	*bc*	41,446	*ac*	24,589	*ab*
Equity (*dollars*)	747,474	*c*	557,132	*c*	473,570	*ab*
Debt-to-asset ratio (*percent*)	11	*bc*	18	*a*	11	*a*
Rate of return on equity (*percentage*)	0	*b*	-3	*a*	-5	
Government payments (*dollars*)	6,573		6,739	*c*	4,803	*c*
Corn crop insurance (*percentage*)	51	*b*	66	*a*	53	

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[1]May not add to 100 since percentages for hired managers are not shown.

Regional Characteristics Affect Production Costs

Differences in yields and production practices influenced regional variations in corn production costs per bushel.

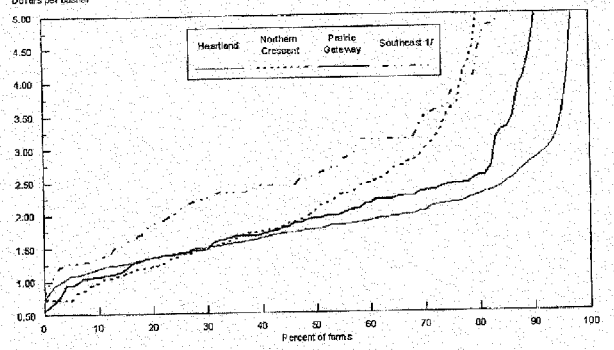
Heartland corn farmers had the lowest average corn production costs at $1.14 per bushel, followed by Prairie Gateway farmers with $1.29 per bushel and Northern Crescent farmers with $1.38 per bushel (table 4). Southeast corn farmers had the highest average production costs, at $1.52 per bushel, despite their lower levels of seed and fertilizer inputs (table 5). In 1996, corn producers in the Heartland and Prairie Gateway had a cost advantage over Northern Crescent and Southeast corn producers (fig. 3). Excluding the marketing and storage costs, over 80 percent of the lowest cost corn producers in the Heartland and Prairie Gateway produced corn for less than the $2.71 per bushel market-year price for 1996, compared with roughly 64 percent of Northern Crescent corn producers and 53 percent of Southeast corn producers.

The Heartland, with just over half of all corn producers and corn acreage, produced just over 70 percent of all U.S. corn. Heartland corn producers had the lowest production cost per bushel in 1996 due to their high average yield of 138 bushels per acre and costs that averaged $226.52 per acre. The Heartland is especially well suited to corn production due to the region's climate and soil types. Temperatures there are moderate and the region's rainfall is sufficient for corn production (Neild and Newman, 1990). Corn accounts for just under 50 percent of the gross value of production on the region's corn farms (table 6). Over 80 percent of corn producers in the Heartland also raise soybeans. Farmers raising both corn and soybeans can frequently use some farm machinery for both crops, allowing them to spread their machinery costs over more acreage. This factor may contribute to the competitiveness of Heartland's corn producers.

In the Prairie Gateway, where nearly 15 percent of U.S. corn is grown, corn producers irrigate 72 percent of the crop due to this region's relatively arid climate. Irrigation raises the production cost per acre significantly due to the expenditures needed to operate, repair, and replace irrigation equipment. The high expected corn yields of the Prairie Gateway producers offset their high production costs per acre, leaving their expected costs per bushel close to the average for the Heartland and Northern Crescent corn producers. The Prairie Gateway has the fewest corn producers, but on average its producers operate much larger farms (1,417 acres) and plant more corn acres per farm (328 acres) than corn producers in other regions. This allows Prairie Gateway's corn growers to spread the ownership costs of irrigation equipment and other machinery over more acreage so that they can be competitive with dryland producers.

Although nearly 25 percent of all corn farmers are located in the Northern Crescent, they produced just 12 percent of the 1996 corn bushels due to their relatively low yields and their small corn enterprises, which averaged 108 acres per farm. In 1996, Northern Crescent corn producers' average yield fell short of their expected yield by 22 bushels per acre. Farmers were asked to report costs on corn acres that were planted with the intention of harvesting the corn for grain. Sixteen percent of corn acreage intended for grain on Northern Crescent's farms was harvested for silage. With nearly three-fourths of Northern Crescent's corn producers raising cattle, and nearly half reporting dairy operations, most of the producers harvesting corn silage probably used the silage as feed. The relatively high percentage of corn acreage harvested for silage in the Northern Crescent significantly raised the region's per bushel production costs, since production costs, including those for silage, are included in the per bushel figures (see glossary).

Figure 9
Regional cumulative distribution of corn farms by production costs per corn bushel for 1996
Dollars per bushel



1/ Southeast includes Eastern Uplands and Southern Seaboard.
Source: 1996 Agricultural Resource Management Study.

Southeast corn producers have the highest expected and actual costs per bushel. Although their production costs per acre are closest to those of the Heartland producers, Southeast corn producers have the lowest average expected corn yield, while their actual yields match those in the Northern Crescent. Southeast corn yields are reduced in part due to heat, the unpredictability of rainfall during the critical tasseling and silking stage of corn production, and the lack of irrigated corn acreage (NCCES, 1995). Inputs on Southeast corn operations tend to be lower compared with other regions, with less seed and fertilizer used and fewer corn farms applying chemicals (table 5). Southeast producers also tend to plant fewer corn acres (66 acres per farm) and use smaller farm machines. Capital recovery costs per acre are higher for this region compared with the Heartland and Northern Crescent because Southeast growers have fewer acres over which to spread their fixed investments. Southeast corn producers are also generally older, less educated, and more likely to work in nonfarm occupations than other corn producers.

Table 4--Corn production costs and returns per acre from 1996 ARMS corn farms, by region

Item	Heartland (*a*)		Northern Crescent (*b*)		Prairie Gateway (*c*)		Southeast[1] (*d*)	
Percentage of corn farms	57	*bcd*	26	*acd*	7	*abd*	11	*abc*
Percentage of corn acres	68	*bcd*	15	*ad*	13	*ad*	3	*abc*
Percentage of corn production (*bushels*)	71	*bcd*	12	*a*	14	*ad*	3	*ac*
Size:								
Total operated acreage per farm	602	*bcd*	368	*ac*	1,417	*abd*	419	*ac*
Planted corn acreage per farm	231	*bcd*	108	*acd*	328	*abd*	66	*abc*
Yield in bushels per acre:								
Actual	138	*bd*	104	*ac*	143	*bd*	104	*ac*
Expected	137	*bcd*	126	*acd*	155	*abd*	111	*abc*
Production costs per bushel:								
Actual	1.14	*bcd*	1.38	*a*	1.29	*a*	1.52	*a*
Expected	1.15	*d*	1.14	*d*	1.19	*d*	1.42	*abc*
Costs and returns per planted acre (*dollars*):								
Gross value of production	385.35	*b*	297.11	*ac*	429.94	*bd*	346.33	*c*
Operating costs	159.69	*bc*	147.70	*acd*	190.06	*abd*	164.34	*bc*
Seed	27.32	*bd*	25.10	*acd*	27.23	*bd*	21.73	*abc*
Fertilizer	49.90	*bcd*	41.43	*ad*	42.33	*ad*	60.67	*abc*
Soil conditioners	0.09	*bcd*	0.43	*acd*	*0.01	*abd*	*0.99	*abc*
Manure	*0.44	*bc*	*2.08	*ad*	D		*0.23	*b*
Chemicals	28.57		26.37		26.50		25.63	
Custom operations	10.75		9.33		*14.28		*10.10	
Fuel, lube, and electricity	22.35	*c*	20.82	*c*	43.17	*abd*	19.09	*c*
Repairs	14.41	*cd*	14.82	*c*	24.12	*abd*	15.85	*ac*
Purchased irrigation water	0.00		0.00		#2.40		D	
Interest on operating capital	3.87	*bc*	3.53	*acd*	4.53	*abd*	3.86	*bc*
Hired labor	1.98	*bcd*	3.79	*ad*	*5.50	*a*	6.79	*ab*
Ownership costs	66.82	*cd*	68.39	*cd*	89.77	*abd*	78.46	*abc*
Capital recovery: machinery, equipment	60.50	*cd*	61.90	*cd*	79.69	*ab*	70.37	*ab*
Taxes and insurance	6.32	*cd*	6.49	*cd*	10.09	*ab*	8.09	*ab*
Production costs	226.52	*bcd*	216.09	*acd*	279.84	*abd*	242.81	*abc*
Value of production less operating costs	225.66	*b*	149.41	*ac*	239.88	*b*	181.98	
Value of production less production costs	158.84	*bd*	81.02	*ac*	150.10	*b*	103.52	*a*

D=Data insufficient for disclosure.
Coefficient of Variation = (Standard Error/Estimate)*100.
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[1] Southeast includes Eastern Uplands and Southern Seaboard.

Table 5–Production practices on 1996 ARMS corn farms, by region

Item	Heartland (*a*)		Northern Crescent (*b*)		Prairie Gateway (*c*)		Southeast[1] (*d*)	
Seeding rate per acre (*kernels*)	27,527	*d*	27,591	*d*	27,264	*d*	24,828	*abc*
Row width (*inches*)	32.0	*d*	31.6	*d*	31.6	*d*	34.4	*abc*
Fertilizer use (*percentage of farms*):								
Nitrogen	96		89		96		94	
Phosphorous	81	*c*	86	*c*	31	*abd*	87	*c*
Potassium	86	*c*	86	*c*	69	*abd*	87	*c*
Manure	20	*bc*	58	*acd*	*7	*abd*	15	*bc*
Test nitrogen level (*percentage of farms*)	14	*bcd*	8	*ac*	41	*abd*	8	*ac*
Use recommended level (*percentage of farms*)	56	*bc*	75	*a*	81	*a*	71	
Fertilizer quantity on reporting farms:								
Nitrogen (*lbs/acre*)	134	*bc*	93	*ac*	159	*abd*	125	*bc*
Phosphorous (*lbs/acre*)	78	*c*	71	*c*	*20	*abd*	73	*c*
Potassium (*lbs/acre*)	60	*c*	52	*c*	36	*abd*	52	*c*
Chemical use (*percentage of farms*):								
Herbicides	97	*bcd*	94	*a*	92	*a*	77	*a*
Insecticides	25	*bcd*	16	*ac*	36	*ab*	15	*ac*
Chemically treated acres on reporting farms:								
Herbicides (*acre-treatments*)	2.7	*bd*	2.4	*a*	2.6		2.0	*ac*
Insecticides (*acre-treatments*)	1.1		1.0	*c*	1.3	*bd*	1.0	*c*
Custom operations (*percentage of farms*):								
Any custom operation	59	*bd*	39	*ac*	65	*bd*	33	*a*
Preparation, cultivation, or planting	9	*bcd*	6	*acd*	*5	*a*	#2	*ab*
Fertilizer/chemical	42	*bcd*	*12	*ac*	22	*ab*	14	*a*
Harvest	20		*13		22		20	
Drying	21	*bcd*	14	*ad*	*12	*ad*	*2	*abc*
Total labor hours per acre	2.5	*bd*	3.5	*ac*	2.4	*bd*	5.1	*ac*
Unpaid	2.4	*bcd*	3.2	*ac*	1.7	*abd*	4.4	*ac*
Paid	.2	*d*	.2	*d*	*.6		.7	*ab*
Farms with paid labor (*percent*)	17	*c*	13	*c*	28	*abd*	*16	*c*
Tillage systems (*percentage of farms*):								
Conventional	67	*c*	73	*c*	56	*abd*	71	*c*
Reduced	27	*bd*	10	*ac*	28	*bd*	*8	*ac*
Conservation	33	*c*	*27	*c*	44	*abd*	29	*c*
No-till	12	*b*	*7	*acd*	*15	*b*	*16	*b*
Machinery:								
Planter width (*rows*)	7.4	*bd*	5.0	*ac*	7.7	*bd*	4.1	*ac*
Harvester width (*rows*)	5.2	*bcd*	3.7	*ac*	6.6	*abd*	3.7	*ac*
Tractor horsepower (*largest used*)	152	*bd*	123	*acd*	165	*bd*	89	*abc*
Speed of tillage/planting operations (*acres/hr*)	8.0	*bcd*	4.9	*ac*	10.2	*abd*	4.2	*ac*
Speed of harvest operations (*acres/hr*)	4.7	*bcd*	2.9	*ac*	7.9	*abd*	2.8	*ac*
Total trips across field (*number*)	8.0		7.9	*c*	8.3	*b*	8.0	
Tillage and planting trips (*number*)	3.3	*bcd*	3.6	*a*	3.8	*a*	4.1	*a*
Drying:								
Bushels dried (*percentage*)	59	*bc*	48	*a*	*25	*ab*	*43	
Moisture removed (*percentage points*)	4.5	*bcd*	2.4	*acd*	*1.1	*ab*	0.8	*ab*

Coefficient of Variation = (Standard Error/Estimate)*100.
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[1] Southeast includes Eastern Uplands and Southern Seaboard.

Table 6--Characteristics of 1996 ARMS corn farms and corn producers, by region

Item	Heartland (*a*)		Northern Crescent (*b*)		Prairie Gateway (*c*)		Southeast[1] (*d*)	
Corn acreage (*percentage*):								
Dryland	95	*cd*	98	*c*	28	*abd*	99	*ac*
Irrigated	5	*cd*	2	*c*	72	*abd*	1	*ac*
Production value:								
All commodities (*dollars per farm*)	216,614	*bd*	183,699	*a*	353,754	*abd*	146,453	*ac*
Corn (*dollars per farm*)	94,596	*bcd*	32,746	*ac*	146,845	*abd*	*18,895	*ac*
Percentage of total production	46	*bd*	22	*ac*	46	*bd*	17	*a*
Corn acres harvested for grain (*percentage*)	99	*bcd*	83	*acd*	99	*abd*	98	*abc*
Corn acres harvested for silage (*percentage*)	1	*b*	16	*a*	D		D	
Precision agriculture (*percentage of farms*):								
Variable rate technology/soil grid sampling	11	*bd*	*2	*ac*	*7	*b*	*2	*a*
Harvested using yield monitor	6	*bd*	*3	*ac*	*15	*bd*	#1	*ac*
Previous crop (*percentage of farms*):								
Soybean	66	*bcd*	14	*a*	20	*a*	18	*a*
Corn	19	*bc*	37	*a*	46	*ad*	29	*c*
Other	15	*bcd*	49	*ac*	35	*ab*	53	*ac*
Commodities per farm (*number*)	3.1		3.3	*d*	3.1		2.6	*b*
Percentage of corn farms with:								
Corn under contract	28	*bd*	8	*ac*	27	*bd*	*8	*ac*
Cattle	45	*bd*	74	*ac*	49	*b*	65	*a*
Hogs	24	*bcd*	9	*a*	*9	*a*	*10	*a*
Dairy	8	*b*	47	*acd*	D		11	*b*
Soybeans	81	*bcd*	36	*a*	34	*a*	*32	*a*
Hay	49	*b*	78	*acd*	55	*b*	52	*b*
Wheat	22	*c*	*28	*c*	49	*abd*	*20	*c*
Operator occupation (*percentage*)[2]:								
Farming	80	*d*	82	*d*	80	*d*	50	*abc*
Non-farm	15		15		13		#21	
Retired	#4		#3		D		#21	
Operator age (*percentage*):								
Less than 50 years	51		50		51		*41	
50 to 64	32		34		34		*22	
65 or more	16		16		*15		*38	
Operator education (*percentage*):								
High school or less	56	*cd*	63	*cd*	45	*abd*	80	*abc*
Some college	28	*d*	*27	*d*	29	*d*	*8	*abc*
Completed college	16	*c*	11	*c*	27	*abd*	*12	*c*
Financial characteristics per farm:								
Net cash income (*dollars*)	43,597	*d*	46,747	*d*	64,792	*d*	#13,553	*abc*
Equity (*dollars*)	587,616	*d*	626,978		656,103	*d*	444,769	*ac*
Debt-to-asset ratio (*percent*)	16	*d*	*12		20	*d*	9	*ac*
Rate of return on equity (*percentage*)	#-1		*-6	*c*	#4	*bd*	#-6	*c*
Government payments (*dollars*)	6,860	*bcd*	3,368	*acd*	15,029	*abd*	*2,050	*abc*
Corn crop insurance (*percentage*)	67	*d*	52	*d*	67	*d*	*25	*abc*

D=Data insufficient for disclosure.
Coefficient of Variation = (Standard Error/Estimate)*100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, b, c, d indicates that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.
[1] Southeast includes Eastern Uplands and Southern Seaboard.
[2] May not add to 100 since percentages for hired managers are not shown.

Corn Production Costs Differ Across Farm Typology

Differences in yields, inputs, and farm and farmer characteristics lead to differences in production costs per bushel among the farm typology classes.

Farm typology classifies farms using the annual value of agricultural sales, farmers' occupation, and farm asset values (see glossary). For corn farms, farm typology and the size of the corn acreage are positively related. As the value of a farm's gross sales increase, the total acreage per farm and corn acreage per farm increase as well (table 7). Small family farms, those with annual sales of $250,000 and under, account for roughly four-fifths of all corn farms and just over half of the corn production. Larger family farms have lower average production costs per bushel than small farms due to higher yields. Large family farms and part-time family farms have significant differences in their expected average production cost per bushel. Very large farms have the highest production costs per acre, but they also have the highest expected and actual yields. Very large farms have the highest average fuel expenditures per acre since a relatively high percentage of their acres was irrigated. The Prairie Gateway has the highest percentage of very large farms (fig. 4).

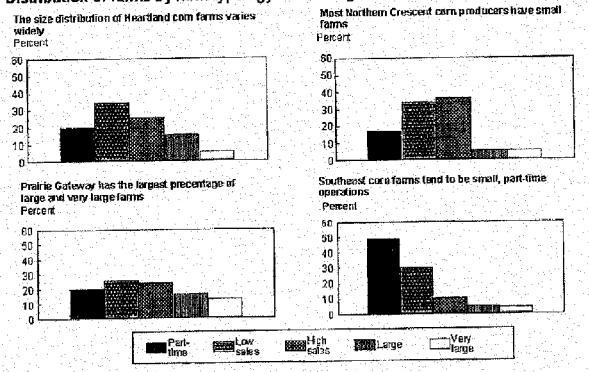
Part-time farmers, with their small corn plots that averaged 67 acres, had corn production costs per acre in the same range as all other farmers. A high percentage of part-time farmers elected to have custom work performed on their corn enterprises, especially custom harvesting (table 8). As a result, part-time farmers had higher custom-work expenditures per acre than farmers who listed farming as their major occupation. All part-time farm operators had either nonfarm occupations or nonfarm businesses or were retired. Many part-time farmers may have found it more economically feasible to contract for custom harvesting than performing the work themselves. Part-time farm operators generally have smaller equipment and lower horsepower tractors than other farmers. Nearly half of all part-time corn farmers are located in the Heartland, and one out of four in the Southeast. Half of all Southeast corn farmers farm part-time.

Operators of the larger corn farms are more likely to use risk management strategies than operators of small farms. Diversification is a risk management strategy used by farmers to mitigate the production and price risk associated with any one commodity. Large corn farms are more diversified than small ones, as shown from the average number of commodities grown per farm (table 9). Larger corn operations are also more likely to insure part of their corn crop to minimize losses if disaster strikes. A higher percentage of larger farm operators produced or sold some of their corn under contract. Marketing contracts generally reduce farmers' exposure to price variations, while production contracts for specialty corn usually provide for premium prices.

Small family farms differ from larger family farms in many characteristics other than size of the farm operation or the corn enterprise. Part-time operators are less likely to use conservation or no-till systems than operators of larger farms. Use of no-till conserves moisture (NCCES, 1995). Seeding rates on small farms are less than those on larger farms. Labor hours per acre for both field operations and overhead are greater on small farms. Smaller machines and lower horsepower tractors contributed to more labor hours expended per acre on small farms, and operators of small farms have less acreage over which to allocate their overhead hours. Operators of small farms are generally older and less well educated than their counterparts on larger farms.

Figure 4

Distribution of farms by farm typology in each region



Source: 1998 Agricultural Resource Management Study.

Table 7—Corn production costs and returns on 1996 ARMS corn farms, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low sales (*b*)		High sales (*c*)		Large (*d*)		Very large (*e*)	
Percentage of corn farms	23	*bde*	33	*acde*	26	*bde*	12	*abce*	6	*abcd*
Percentage of corn acres	8	*bcde*	19	*acd*	27	*ab*	26	*ab*	20	*a*
Percentage of corn production (*bushels*)	7	*bcde*	17	*acd*	25	*ab*	28	*ab*	23	*a*
Size:										
Total operated acreage per farm	281	*bcde*	399	*acde*	566	*abde*	1,239	*abce*	1,938	*abcd*
Planted corn acreage per farm	67	*bcde*	110	*acde*	192	*abde*	411	*abce*	640	*abcd*
Yield in bushels per acre:										
Actual	111	*de*	123	*de*	118	*d*	139	*abc*	138	*ab*
Expected	129	*e*	126	*de*	128	*de*	137	*bc*	145	*abc*
Production cost per bushel (*dollars*):										
Actual	1.49	*bde*	1.23	*ad*	1.30	*d*	1.11	*abc*	1.21	*a*
Expected	1.28	*de*	1.20		1.19		1.12	*a*	1.14	*a*
Costs and returns per planted acre (*dollars*):										
Gross value of production	313.97	*de*	342.94	*de*	336.31	*de*	392.20	*abc*	398.92	*abc*
Operating costs	168.15		153.31	*e*	157.49	*e*	161.77	*e*	177.26	*bcd*
Seed	25.76	*e*	24.38	*cde*	25.67	*be*	27.04	*b*	28.40	*abc*
Fertilizer	50.32		48.85		45.87		45.77		48.33	
Soil conditioners	*0.37	*d*	0.24	*d*	0.25	*d*	0.11	*abc*	*0.21	
Manure	#0.24		*0.15		*0.79		#0.76		#0.37	
Chemicals	26.86	*d*	24.71	*de*	27.15	*d*	32.39	*abc*	28.01	*b*
Custom operations	*21.13	*bcde*	10.39	*a*	9.36	*a*	8.99	*a*	10.36	*a*
Fuel, lube, and electricity	21.16		21.96	*e*	23.47		21.59		29.35	*b*
Repairs	15.84		16.29	*d*	16.94	*d*	13.32	*bce*	16.63	*d*
Purchased irrigation water	D		D		D		D		D	
Interest on operating capital	4.06		3.70	*e*	3.76		3.78		4.08	*b*
Hired labor	#1.20	*d*	1.17	*d*	*2.07		3.73	*ab*	5.52	
Ownership costs	71.12		74.41	*d*	70.85	*d*	65.26	*bc*	70.96	
Capital recovery: machinery, equipment	61.55		66.81	*d*	64.99	*d*	57.76	*bc*	65.13	
Taxes and insurance	9.62	*c*	7.60	*ce*	5.85	*abd*	7.50	*c*	5.83	*b*
Production costs	239.32		227.72	*e*	228.34	*e*	227.03		248.22	*bc*
Value of production less operating costs	145.81	*bde*	189.63	*ade*	178.82	*d*	230.43	*abc*	221.65	*ab*
Value of production less production costs	*74.64	*bde*	115.21	*ade*	107.98	*de*	165.17	*abc*	150.69	*abc*

D=Data insufficient for disclosure.
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[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

Table 8–Production practices on 1996 ARMS corn farms, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low sales (*b*)		High sales(*c*)		Large (*d*)		Very large (*e*)	
Seeding rate per acre (*kernels*)	27,395	*b*	25,845	*acde*	26,898	*be*	27,515	*b*	28,893	*bcd*
Row width (*inches*)	33.8	*de*	33.8	*cde*	32.7	*bde*	30.9	*abc*	30.4	*abc*
Fertilizer use (*percentage of farms*):										
Nitrogen	98	*d*	95	*d*	88		100	*ab*	98	
Phosphorous	89	*bcde*	82	*a*	72	*a*	80	*a*	74	*a*
Potassium	93	*b*	87	*a*	78		91		86	
Manure	14	*bce*	31	*acd*	43	*ade*	21	*bc*	26	*ac*
Test nitrogen level (*percentage of farms*)	11	*e*	*13	*e*	*16		18		26	*ab*
Use recommended level (*percentage of farms*)	77		70		56		*57		66	
Fertilizer quantity on reporting farms:										
Nitrogen (*lbs/acre*)	129	*e*	123	*e*	125		131	*e*	158	*abcd*
Phosphorous (*lbs/acre*)	69		71		69	*e*	68	*e*	88	*cd*
Potassium (*lbs/acre*)	51		52		52		56		52	
Chemical use (*percentage of farms*):										
Herbicides	89		90	*cde*	98	*b*	99	*b*	99	*b*
Insecticides	*14	*e*	22	*cde*	26	*be*	26	*b*	35	*abc*
Chemicals acre-treatments on reporting farms:										
Herbicides (*acre-treatments*)	2.5		2.7		2.7		2.8		2.8	
Insecticides (*acre-treatments*)	1.0	*bd*	1.1	*a*	1.1		1.3	*a*	1.3	
Custom operations (*percentage of farms*):										
Any custom operation	52		47	*e*	48		50		61	*b*
Preparation, cultivation, or planting	*11	*cd*	*6		*4	*a*	#4	*a*	#4	
Fertilizer/chemical	28		28		28		35		28	
Harvest	31	*bde*	17	*cd*	*20		9	*ab*	*15	*a*
Drying	21		14		*12		13		*15	
Total labor hours per acre	3.1	*e*	2.9	*e*	3.0	*e*	2.4		2.1	*abc*
Unpaid	3.0	*de*	2.7	*de*	2.8	*de*	2.0	*abc*	1.5	*abc*
Paid	.1	*de*	.1	*de*	.2	*de*	.4	*abc*	.6	*abc*
Farms with paid labor (*percent*)	*3	*bde*	10	*ade*	17	*ade*	39	*abc*	44	*abc*
Tillage systems (*percentage of farms*):										
Conventional	82	*bcde*	72	*ac*	55	*ab*	66	*a*	56	*a*
Reduced	19	*d*	18	*d*	20	*d*	39	*abc*	*26	
Conservation	18	*bcde*	28	*ac*	45	*ab*	34	*a*	44	*a*
No-till	*8	*e*	9	*e*	11		15		19	*ab*
Machinery:										
Planter width (*rows*)	4.8	*cde*	5.3	*cde*	6.6	*abde*	9.2	*abce*	10.1	*abcd*
Harvester width (*rows*)	4.1	*cde*	4.1	*cde*	5.0	*abde*	5.7	*abce*	6.6	*abcd*
Tractor horsepower (*largest used*)	109	*cde*	122	*cde*	150	*abde*	187	*abce*	207	*abcd*
Speed of tillage/planting operations (*acres/hr*)	3.8	*cde*	5.4	*cd*	8.0	*abd*	9.9	*abc*	8.6	*a*
Speed of harvest operations (*acres/hr*)	3.3	*cde*	3.1	*cde*	4.7	*abe*	5.3	*ab*	5.9	*abc*
Total trips across field (*number*)	8.0	*c*	7.9		8.3	*ae*	8.0		7.6	*c*
Tillage and planting trips (*number*)	4.0	*de*	3.9	*de*	3.7	*de*	3.2	*abc*	3.3	*abc*
Drying:										
Bushels dried (*percentage*)	*30	*bcde*	49	*acd*	60	*ab*	65	*ab*	61	*a*
Moisture removed (*percentage points*)	*1.8	*cde*	2.8	*cde*	4.1	*b*	5.2	*ab*	5.0	*ab*

Coefficient of Variation = (Standard Error/Estimate)*100.
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[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

Table 9–Characteristics of 1996 ARMS corn farms and corn producers, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low sales (*b*)		High sales (*c*)		Large (*d*)		Very large (*e*)	
Corn acreage (*percentage*):										
Dryland	85		88	*e*	87	*e*	90	*e*	74	*bcd*
Irrigated	#15		*12	*e*	*13	*e*	*10	*e*	26	*bcd*
Production value:										
All commodities (*dollars per farm*)	50,459	*bcde*	101,267	*acde*	221,196	*abde*	431,549	*abce*	968,446	*abcd*
Corn (*dollars per farm*)	21,223	*bcde*	36,804	*acde*	70,664	*abde*	177,381	*abce*	280,609	*abcd*
Percentage of total production	39		36	*d*	32	*d*	41	*bc*	35	
Corn acres harvested for grain (*percent*)	97		98		90		98		98	
Corn acres harvested for silage (*percent*)	D		1		9		2		2	
Precision agriculture (*percentage of farms*):										
Variable rate technoil grid sampling	#3		*5	*de*	*6	*de*	*20	*bc*	*16	*bc*
Harvested using yield monitor	D	*de*	*3	*de*	*5	*de*	*17	*abc*	19	*abc*
Previous crop (*percentage of farms*)										
Soybean	42	*d*	38	*d*	*30	*de*	65	*abce*	48	*cd*
Corn	21	*bce*	33	*ad*	32	*ad*	22	*bce*	32	*ad*
Other	36	*d*	29	*d*	38		17	*abe*	20	
Commodities per farm (*number*)	2.4	*bcde*	2.9	*acde*	3.6	*ab*	3.5	*ab*	3.7	*ab*
Percentage of corn farms with:										
Corn under contract	15	*bde*	10	*acde*	26	*bc*	39	*ab*	42	*abc*
Cattle	44	*c*	57	*cd*	68	*abde*	44	*bc*	52	*c*
Hogs	*7	*bcde*	21	*a*	*17	*a*	28	*a*	*16	*a*
Dairy	*2	*bcde*	17	*ac*	32	*abde*	16	*ac*	14	*ac*
Soybeans	51	*de*	50	*de*	63	*de*	48	*abc*	42	*abc*
Hay	46	*bc*	65	*ade*	63	*ade*	48	*bc*	42	*bc*
Wheat	17	*de*	25	*e*	28	*e*	33	*a*	44	*abc*
Operator occupation (percentage)										
Farming	0	*bcde*	100	*a*	100	*a*	100	*a*	100	*a*
Non-farm	73	*bcde*	0	*a*	0	*a*	0	*a*	0	*a*
Retired	37	*bcde*	0	*a*	0	*a*	0	*a*	0	*a*
Operator age (*percentage*):										
Less than 50 years	38	*cd*	37	*cde*	69	*ab*	65	*ab*	54	*b*
50 to 64 years	36		32		27		29		41	
65 or more	*26	*cde*	32	*cde*	*4	*ab*	*6	*ab*	*5	*ab*
Operator education (*percentage*):										
High school or less	57	*bd*	71	*ade*	*59	*d*	39	*abc*	43	*b*
Some college	27	*b*	16	*ade*	28		39	*b*	36	*b*
Completed college	*16		12	*d*	13		21	*b*	*20	
Financial characteristics per farm:										
Net cash income (*dollars*)	7,567	*bcde*	14,570	*acde*	48,008	*abde*	88,595	*abce*	218,805	*abcd*
Equity (*dollars*)	352,453	*cde*	387,405	*cde*	654,879	*abde*	947,963	*abce*	1,355,826	*abcd*
Debt-to-asset ratio (*percent*)	*11	*de*	12	*de*	*14		20	*ab*	22	*ab*
Rate of return on equity (*percentage*)	*-5	*cde*	-9	*cde*	#0	*abde*	*7	*abce*	17	*abcd*
Government payments (*dollars*)	1,896	*bcde*	3,623	*acde*	6,315	*abde*	12,805	*abce*	22,756	*abcd*
Corn crop insurance (*percentage*)	43	*cde*	52	*cde*	72	*ab*	75	*ab*	75	*ab*

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[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

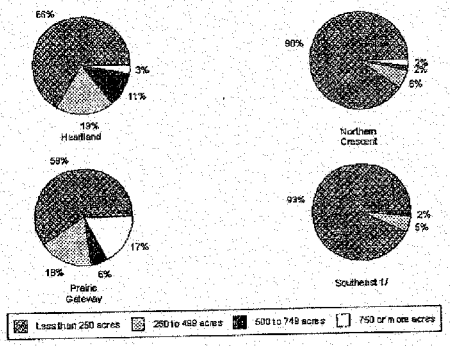
Farm Characteristics and Operating Costs Related to Corn Acreage

Farms with large corn acreage have lower production costs per bushel, due largely to their higher yields, than farms with small corn acreage.

Farms with the smallest corn acreage, those with 250 acres or less of corn, comprise 75 percent of all U.S. corn farms and produce 29 percent of U.S. corn output (table 10). While 90 percent or more of the corn farms in Northern Crescent and Southeast had less than 250 acres of corn in 1996 (fig. 5), nearly half of the farms with the smallest corn acreage are located in the Heartland. At the other extreme, fewer than 4 percent of corn farms planted over 750 acres to corn, yet this 4 percent produced just under 20 percent of U.S. corn. Farms with the largest corn acreage are mainly located in the Heartland and Prairie Gateway. Farms with the largest corn acreage comprise most of Prairie Gateway corn farms, while they constitute a minority of Heartland corn farms.

Production costs per bushel in 1996 generally declined as the corn acreage per farm increased (table 10). Although farms with the smallest corn acreage had the lowest average corn production costs per acre, they had the highest average production costs per bushel due to their low yields in 1996. Had expected conditions prevailed, it appears that production costs per bushel would have been much the same for the farms with less than 750 corn acres. However, unit costs would have been significantly lower for producers with 750 or more corn acres, suggesting a cost advantage for these operators.

Figure 5
Distribution of farms with different sizes of corn acreage, by region, 1996



1/ Southeast includes Eastern Uplands and Southern Seaboard.
Source: 1996 Agricultural Resource Management Study.

Farms with the smallest corn acreage differ from the remaining corn farms in many ways, even though their production cost per acre was nearly the same as for farms with larger corn acreage. These with the smallest corn acreage had the lowest operating cost per acre due to their low per acre costs for seed, fertilizer, and fuel. Fertilizer expenditures per acre were low since a comparatively low percentage of these farmers applied commercial fertilizers to their cornfields, and those who did applied them at lower rates (table 11). A higher percentage of farmers with smallest corn acreage used manure in their cornfields, likely reducing their commercial fertilizer needs. Farmers with the smallest corn acreage were more likely to have cattle or dairy in their production mix, providing a source of manure. Fuel expenditures were lower for farmers with smallest corn acreage since they were less likely to irrigate corn and usually removed less moisture from corn during the drying process. The capital costs of farm machinery and equipment for farms with small corn acreage were nearly equal to those with the larger corn acreage, despite the relatively small acreage over which they could spread their capital costs.

Farms with 250 or more corn acres had different production practices and tended to focus more on corn production than farms with the smallest corn acreage. Half or more of the total value of farm production on farms with the larger corn acreage is derived from corn (table 12). Farms with 250 or more corn acres were more likely to irrigate corn and to make heavier use of inputs such as fertilizers, chemicals, and seed than farms with the smallest corn acreage. Soybeans were more likely to be used as a rotation crop with corn on farms with the larger corn acreage. These farms were also more likely to use conservation tillage, especially a no-till production system, which may reduce the number of trips that an operator makes across a field. Operators of the farms with larger corn acreage have larger machines and more powerful tractors than operators with the smallest corn acreage.

The characteristics of farms with larger corn acreage mirror those found for larger family corn farms under farm typology. Operators of the farms with the larger corn acreage are generally younger and better educated (table 12). They have higher net cash incomes from farming and they are more likely to have insured the corn crop. Debt-to-asset ratios tend to be higher for farms with larger corn acreage.

Table 10–Corn production costs and returns on 1996 ARMS corn farms, by corn-planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Percentage of corn farms	75	*bcd*	14	*acd*	7	*abd*	4	*abc*
Percentage of corn acres	32	*bcd*	27	*acd*	23	*abd*	18	*abc*
Percentage of corn production (*bushels*)	29	*bcd*	27	*ad*	25	*ad*	19	*abc*
Size:								
Total operated acreage per farm	388	*bcd*	944	*acd*	1,409	*abd*	2,255	*abc*
Planted corn acreage per farm	79	*bcd*	341	*acd*	578	*abd*	1,054	*abc*
Yield in bushels per acre:								
Actual	116	*bcd*	131	*ac*	143	*ab*	139	*a*
Expected	126	*bcd*	136	*ad*	139	*a*	147	*ab*
Production costs per bushel (*dollars*):								
Actual	1.28	*cd*	1.22		1.18	*a*	1.14	*a*
Expected	1.18	*d*	1.18	*d*	1.21	*a*	1.07	*abc*
Costs and returns per planted acre (*dollars*):								
Gross value of production	330.90	*bcd*	370.71	*ac*	406.54	*ab*	390.89	*a*
Operating costs	149.75	*bcd*	163.02	*a*	170.49	*a*	162.67	*a*
Seed	25.15	*bcd*	27.23	*a*	27.11	*a*	27.91	*a*
Fertilizer	43.42	*c*	48.04		50.62	*a*	47.48	
Soil conditioners	0.30	*bcd*	0.12	*ad*	0.08	*a*	0.05	*ab*
Manure	0.62	*c*	*1.31	*c*	#0.20	*ab*	0.00	
Chemicals	26.43		27.02		28.90		27.94	
Custom operations	13.19	*bd*	8.78	*ac*	13.80	*b*	*8.47	*a*
Fuel, lube, and electricity	20.35	*bcd*	26.10	*a*	27.19	*a*	25.77	*a*
Repairs	15.20		16.97		15.89		14.96	
Purchased irrigation water	D		D		0.00		#1.43	
Interest on operating capital	3.64	*bc*	3.91	*a*	4.12	*a*	3.87	
Hired labor	1.44	*bcd*	3.40	*a*	2.59	*a*	*4.78	*a*
Ownership costs	69.86		74.89	*d*	68.50		65.00	*b*
Capital recovery: machinery, equipment	62.50	*b*	68.20	*acd*	61.82	*b*	57.89	*b*
Taxes and insurance	7.36		6.69		6.68		7.11	
Production costs	219.62	*b*	237.91	*a*	238.99		227.68	
Value of production less operating costs	181.14	*bcd*	207.70	*ac*	236.05	*ab*	228.22	*a*
Value of production less production costs	111.28	*bcd*	132.81	*acd*	167.55	*ab*	163.22	*ab*

D=Data insufficient for disclosure.
Coefficient of Variation = (Standard Error/Estimate)*100.
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Table 11–Production practices on 1996 ARMS corn farms, by corn-planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Seeding rate per acre (*kernels*)	26,332	*bcd*	27,539	*a*	27,575	*a*	28,283	*a*
Row width (*inches*)	33.4	*bcd*	32.1	*a*	31.5	*a*	30.2	*a*
Fertilizer use (*percentage of farms*):								
Nitrogen	93	*bd*	100	*a*	96		99	*a*
Phosphorous	80	*d*	76		75		66	*a*
Potassium	83	*b*	92	*ac*	84	*b*	89	
Manure	32	*bcd*	17	*ad*	*10	*a*	#5	*ab*
Test nitrogen level (*percentage of farms*)	11	*bd*	24	*a*	*20		32	*a*
Use recommended level (*percentage of farms*)	64		62		73		81	
Fertilizer quantity on reporting farms:								
Nitrogen (*lbs/acre*)	114	*bcd*	130	*acd*	146	*ab*	152	*ab*
Phosphorous (*lbs/acre*)	73	*d*	75		70	*d*	89	*ac*
Potassium (*lbs/acre*)	54		51		55		54	
Chemical use (*percentage of farms*):								
Herbicides	92	*bc*	99	*a*	98	*a*	97	
Insecticides	18	*bcd*	37	*a*	31	*a*	43	*a*
Chemical acre-treatments on reporting farms:								
Herbicides (*acre-treatments*)	2.6	*c*	2.7		2.8	*a*	2.8	
Insecticides (*acre-treatments*)	1.0	*bd*	1.2	*a*	1.1		1.3	*a*
Custom operations (*percentage of farms*):								
Any custom operation	49	*d*	57		59		61	*a*
Preparation, cultivation, or planting	8		*5		D		D	
Fertilizer/chemical	26	*bc*	42	*a*	43	*a*	33	
Harvest	24	*bcd*	8	*a*	*11	*a*	#6	*a*
Drying	17	*d*	15		*22	*d*	*8	*ac*
Total labor hours per acre	3.4	*bcd*	2.6	*ad*	2.3	*ad*	1.8	*abc*
Unpaid	3.2	*bcd*	2.3	*ad*	2.0	*ad*	1.2	*abc*
Paid	.2	*bcd*	.3	*ad*	.4	*a*	.6	*ab*
Farms with paid labor (*percent*)	10	*bcd*	37	*a*	29	*ad*	47	*ac*
Tillage systems (*percentage of farms*):								
Conventional	70	*c*	65		57	*a*	60	
Reduced	16	*bcd*	30	*a*	37	*a*	36	*a*
Conservation	30	*c*	35		43	*a*	40	
No-till	10	*d*	11	*d*	15		20	*ab*
Machinery:								
Planter width (*rows*)	5.4	*bcd*	8.1	*acd*	11.6	*abd*	12.3	*abc*
Harvester width (*rows*)	4.2	*bcd*	5.7	*acd*	6.3	*abd*	7.3	*abc*
Tractor horsepower (*largest used*)	122	*bcd*	175	*acd*	208	*ab*	227	*ab*
Speed of tillage/planting operations (*acres/hr*)	5.0	*bcd*	7.9	*acd*	10.1	*abd*	13.3	*abc*
Speed of harvest operations (*acres/hr*)	3.2	*bcd*	4.2	*acd*	5.7	*abd*	7.9	*abc*
Total trips across field (*number*)	8.0		8.3		7.8		7.9	
Tillage and planting trips (*number*)	3.7	*bcd*	3.4	*a*	3.1	*a*	3.0	*a*
Drying:								
Bushels dried (*percentage*)	44	*bcd*	60	*a*	60	*a*	63	*a*
Moisture removed (*percentage points*)	2.5	*bcd*	5.8	*a*	5.1	*a*	6.1	*a*

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Table 12–Characteristics of 1996 ARMS corn farms and corn producers, by corn-planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Corn acreage (*percentage*):								
Dryland	96	*bcd*	86	*ad*	85	*ad*	71	*abc*
Irrigated	4	*bcd*	14	*ad*	15	*ad*	29	*abc*
Production value:								
All commodities (*dollars per farm*)	127,344	*bcd*	326,987	*acd*	510,957	*abd*	910,781	*abc*
Corn (*dollars per farm*)	27,451	*bcd*	130,795	*acd*	238,120	*abd*	453,403	*abc*
Percentage of total production	31	*bcd*	48	*acd*	54	*ab*	59	*ab*
Corn acres harvested for grain (*percentage*)	91		98	*d*	99		99	*b*
Corn acres harvested for silage (*percentage*)	8		1		1		D	
Precision agriculture (*percentage of farms*):								
Variable rate technology/soil grid sampling	4	*bcd*	*13	*ad*	20	*a*	28	*ab*
Harvested using yield monitor	*2	*bcd*	9	*ad*	*18	*ad*	37	*abc*
Previous crop (*percentage of farms*):								
Soybean	38	*bc*	55	*ac*	71	*abd*	51	*c*
Corn	27	*c*	30	*c*	*16	*abd*	36	*c*
Other	35	*bcd*	16	*a*	13	*a*	13	*a*
Commodities per farm	3.0		3.3		3.3		3.2	
Percentage of corn farms with:								
Corn under contract	11	*bcd*	49	*a*	47	*a*	58	*a*
Cattle	61	*bcd*	40	*a*	*31	*a*	42	*a*
Hogs	16		19		*26		*11	
Dairy	22	*bcd*	*6	*ac*	*2	*ab*	*5	*a*
Soybeans	50	*bcd*	87	*a*	89	*a*	78	*a*
Hay	63	*bcd*	45	*a*	*31	*a*	39	*a*
Wheat	25		24		34		37	
Operator occupation (*percentage*)[1]:								
Farming	70	*bcd*	97	*a*	96	*a*	98	*a*
Non-farm	21	*b*	#3	*a*	D		D	
Retired	*8	*cd*	D		0	*a*	0	*a*
Operator age (*percentage*):								
Less than 50 years	45	*bc*	67	*ad*	64	*a*	50	*b*
50 to 64	32		25		34		38	
65 or more	23	*bcd*	*7	*a*	#2	*abd*	*12	*ac*
Operator education (*percentage*):								
High school or less	65	*bcd*	49	*ac*	32	*ab*	40	*a*
Some college	23	*c*	28		47	*a*	29	
Completed college	12	*bd*	23	*a*	*21		30	*a*
Financial characteristics per farm:								
Net cash income (*dollars*)	25,314	*bcd*	58,435	*acd*	102,539	*abd*	215,559	*abc*
Equity (*dollars*)	463,939	*bcd*	703,944	*acd*	1,070,900	*abd*	1,517,945	*abc*
Debt-to-asset ratio (*percent*)	12	*bcd*	19	*a*	19		22	*a*
Rate of return on equity (*percentage*)	+5	*bcd*	#1	*acd*	11	*ab*	*11	*ab*
Government payments (*dollars*)	3,287	*bcd*	10,729	*acd*	15,553	*abd*	28,374	*abc*
Corn crop insurance (*percentage*)	52	*bcd*	80	*a*	79		86	*a*

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[1]May not add to 100 since percentages for hired managers are not shown.

Glossary

Agricultural Resource Management Study (ARMS) is the source of data compiled for this report. Corn cost and return estimates in this report are derived from the responses of 1,379 corn farmers in 16 States to a survey on corn production practices and costs as part of the 1996 ARMS. The target population for the corn survey was farmers who planted corn with the intention of harvesting the corn for grain. The National Agricultural and Statistics Service (NASS) and the Economic Research Service (ERS) collect production and cost data once every 5-8 years for each commodity on a rotating basis in the ARMS survey. The survey data are weighted to represent all U.S. corn acreage.

Cost categories

- **Low-cost producers** are the 25 percent of U.S. corn producers with the lowest production costs per harvested corn bushel. These corn producers had production costs of $1.43 per bushel or less for corn. The cost per bushel is computed by dividing production costs by the bushels of corn produced.
- **High-cost producers** are the 25 percent of U.S. corn producers with the highest production costs per harvested corn bushel. These corn producers had operating costs of $2.50 or more per bushel.

Corn farms are farms that planted at least one acre of corn in 1996 with the intent of harvesting the corn for grain.

Corn production regions are based on ERS's farm resource regions (fig. 6). These consist of county groupings with similar soils and climates that favor production of selected crops and livestock and lead to use of similar production practices on farms within a region. The Southeast region is the combination of the Eastern Uplands and Southern Seaboard. No corn farms were sampled in the Mississippi Portal or the Basin and Range.

Corn under contract is corn grown under a marketing contract or corn grown under a formal or informal arrangement to produce corn for processors, packers, canners, and integrators.

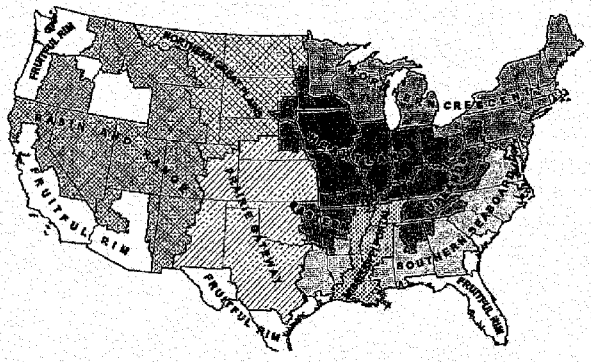
Crop rotation refers to the crops planted in the spring/summer of 1995 prior to the corn crop in 1996, described as follows:

- **Soybeans** are members of the legume family. Legumes are plants with bacteria on their nodules that take nitrogen from the air and convert the nitrogen to a form usable by plants.
- **Corn** is a member of the grass family. Grasses are plants that require nitrogen for growth but cannot generate nitrogen. Therefore, farmers usually supply nitrogen to grasses.
- **Other** includes fields rotated with any other crop other than soybeans or corn, as well as land that was fallowed in the prior crop-growing season or land taken out of the Conservation Reserve Program during 1996.

Farm typology is a way to classify farms based on the size of the farm operation, the operator's occupation, and farm asset levels. The size of the farm operation is based on the annual value of gross sales.

- **Small farms** are family farms with annual gross sales of $250,000 or less. Family farms exclude farms organized as nonfamily corporations or cooperatives and exclude farms operated by hired managers.
  - **Part-time farms** are family farms that generate annual gross sales of less than $250,000 and whose operators report a nonfarm occupation, as well as family farms that generate annual sales totaling less than $100,000 whose operators report retirement as their occupation. All farms that generate less than $100,000 in annual sales and have farm assets valued under $150,000 are also included in the part-time farm definition.

Figure 6
Farm Resource Regions



- **Lower sales** farms are family farms that have annual gross sales of less than $100,000 and farm assets of $150,000 or more, and whose operators report farming as their major occupation.
- **High sales** farms are those family farms with annual gross sales of $100,000 or more but less than $250,000, whose operators report farming as their major occupation.

- **Larger farms** are family farms with gross annual sales of $250,000 or more.
  - **Large farm** operations are defined as farms with annual gross sales of $250,000 or more, but less than $500,000.
  - **Very large farms** are those with annual gross sales of $500,000 or more.
- **Nonfamily farms** are those organized as nonfamily corporations or cooperatives or those operated by hired managers. These farms are excluded from the typology discussion and tables, but are included in all other tables and discussions.

Financial efficiency indicates how well a farm operation is utilizing resources (Boehlje, 1984). There are several measures of financial efficiency. One of the common ones is the ratio of expenses to the gross value of production, or its inverse. The ratio measures the amount of expenditure to generate a dollar of output. Lower values for the ratio indicate a more efficient use of resources than higher values.

Production costs are the sum of operating and ownership costs for all participants in the corn production enterprise, including the operators, landlords, and contractors. Operating costs are costs that vary with the amount of corn acreage

planted. These include the costs for seed, fertilizer, soil conditioners, manure, chemicals, custom operations, fuel, repairs, purchased irrigation water, interest, and hired labor. Ownership costs are costs related to capital items that are consumed during the year in the production process. Ownership costs include the capital recovery costs for farm machinery and equipment, non-real estate property taxes, and insurance. Capital recovery represents the value of farm machinery and equipment consumed in the annual production process. Capital recovery costs are a discretionary expense in any given year. In low-income years, the expenditures may be deferred but ultimately they must be paid if a producer is to maintain a viable farming operation.

The production costs include the costs on acreage that was planted with the intention of harvesting grain. The per acre production costs are divided by the bushels of corn produced. No attempt is made to reduce costs for those farmers who ultimately produced silage rather than corn.

Rate of return on farm equity represents the return earned by the equity in a farm operation as a percent of the value of farm equity. It is computed by subtracting the return to operator and unpaid labor and the return to management from the net farm income earned by the farm operation, dividing the total by the current value of the equity in the farm business, and multiplying by 100.

Tillage systems are defined by the amount of crop residue remaining on the soil from the previous crop.

- **Conventional tillage** leaves less than 30 percent of the previous crop residue covering the soil when corn is planted.
  - **Reduced tillage** leaves between 15 percent and 30 percent of the previous crop residue covering the soil when corn is planted.
- **Conservation tillage** leaves 30 percent or more of the previous crop residue covering the soil when corn is planted.
  - **No-till** means that no tillage operations have occurred prior to planting.

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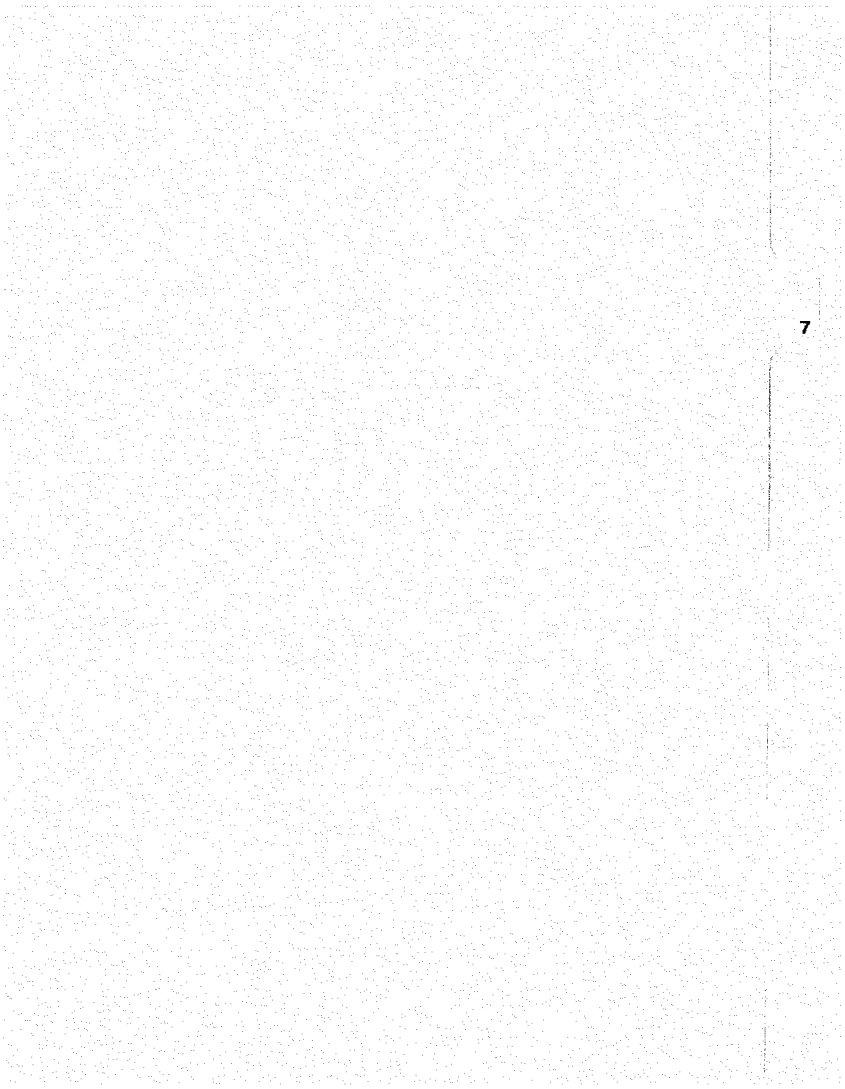
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Characteristics and Production Costs of U.S. Soybean Farms

Linda Foreman and Janet Livezey[1]

In this report... Average soybean production costs ranged from $2.13 per bushel for producers in the lowest cost quartile to $6.00 per bushel for those in the highest cost quartile. Heartland, West, and Northern Crescent producers had lower soybean production costs per bushel than Mississippi Portal and Southeast producers. Producers in higher sales classes and producers with 250 to 750 acres of soybeans had lower production costs than other soybean producers. Off-farm income was an important source of household income for many soybean producers.

Keywords: costs of production, soybeans, cost variation, soybean production practices, farm characteristics.

[1]Agricultural Economists, Resource Economics Division, Economic Research Service, USDA



Overview

In 1997, soybeans were the second leading U.S. crop in terms of harvested acreage (69 million acres) and production value ($17.4 billion). U.S. farmers planted 70 million acres of soybeans that year, about 6 million more acres than in 1996 (U.S. Dept. of Agriculture, National Agricultural Statistics Service website).

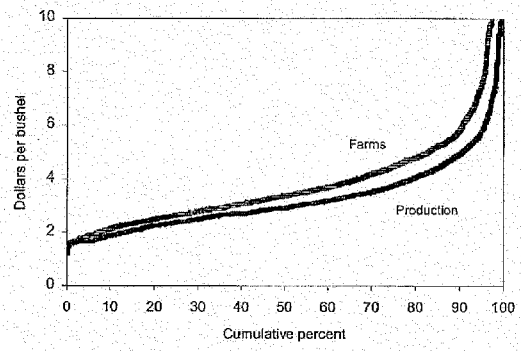
Several factors led to this surge in soybean acreage, including strong soybean prices, the absence of acreage set-aside programs, increased crop rotations with soybeans, and optimum soybean planting conditions. In addition, nearly all supply controls on U.S. field crop production (which were tied to deficiency payments) were eliminated by the 1996 Federal Agriculture Improvement and Reform Act (FAIR). As a result, farmers could increase soybean plantings when market conditions were favorable, since they no longer risked losing future government payments on program crops (such as corn and wheat). Soybean acreage also increased sharply between 1996 and 2001 due partly to low production costs per bushel (see glossary). Widespread adoption of herbicide-tolerant varieties and low-till production practices helped keep soybean production costs low. Even falling market prices did not halt the rise in soybean acreage, since farmers were insulated from declining market prices by loan deficiency payments (Ash, 2001).

In 1997, the production costs for soybeans ranged from an average of $2.13 per planted bushel for the 25 percent of the growers with the lowest costs to an average of $6.00 per planted bushel for the 25 percent of the growers with the highest costs. Favorable weather conditions resulted in a near-record average yield of 39 bushels per acre, reducing the production costs per bushel. U.S. soybean farmers produced 97 percent of the Nation's soybeans for less than the 1997 season-average price of $6.47 per bushel (fig.1). Soybean production costs per acre totaled $137.77 in 1997. The gross production value of soybeans was $278.77 per acre.

This report presents the costs of producing U.S. soybeans and examines how these costs vary among different segments of the farm population. Soybean producers, agricultural producers with at least 1 acre of planted soybeans, are ranked by their production costs per bushel to analyze factors associated with low and high production costs. In addition, producers in different regions are compared to gain insights into regional variations in production costs. Farm typology is used to examine the relationship between farm sizes and soybean production costs. Characteristics and soybean production costs are compared among farms with varying amounts of soybean acreage. Data in this report are derived from a special soybean cost-of-production survey undertaken as part of the 1997 Agricultural Resource Management Survey (ARMS) (see glossary). This was the latest survey to collect data on farmers' costs for soybean production. In the analysis for this report, ERS follows the computational standards recommended by the American Agricultural Economic Association (AAEA) Task Force on Commodity Costs and Returns (AAEA, 1998).

Production costs are the sum of the operating and ownership costs for consumable inputs provided by operators, landlords, and contractors (see glossary). Production costs exclude marketing and storage costs. Operating costs are the sum of costs that vary directly with the amount of soybeans produced. Ownership costs are costs related to capital items consumed during the annual production process, such as farm machinery and equipment. Production costs are used for this report since farmers must be able to meet their short-term operating costs and, in the longer run, replace assets consumed during the production process. Since ownership costs are fixed in the short term, most producers can remain in business for several years as long as they can meet their short-term obligations. In the long-term, producers maintaining successful farming operations must be able to pay their

Figure 1
Cumulative distribution of soybean farms by production costs per bushel, 1997



Source: 1997 Agricultural Resource Management Survey.

operating costs and replace capital assets consumed during the production process.

This report found that low-cost producers had an average production cost of $2.13 per bushel compared with $6.00 per bushel for high-cost producers in 1997. A substantial yield difference of 20 bushels per acre and $77 in soybean production costs per acre existed between the high- and low-cost producers. The $77 difference in the production costs per acre was mainly generated by differences in capital recovery of machinery and equipment, repairs, fertilizer and chemicals, and fuel, lube, and electricity. Low-cost producers had half the machinery costs per acre of high-cost producers.

Regional production practices and growing conditions strongly influenced differences in yields and production costs per bushel among soybean producers. Soybean growers in the North had lower costs per bushel compared with those in the South, with 84 percent of the low-cost producers residing in the Heartland (fig. 2).

Farms with higher annual sales had lower soybean production costs per bushel due to their higher yields rather than lower production costs per acre. Producers with 250 to 750 acres of soybeans had lower production costs per bushel than producers with 750 or more acres due to their higher yields. Producers with 750 or more soybean acres were more likely to double-crop their soybeans with wheat. Double-cropping frequently reduces soybean yields due to later planting.

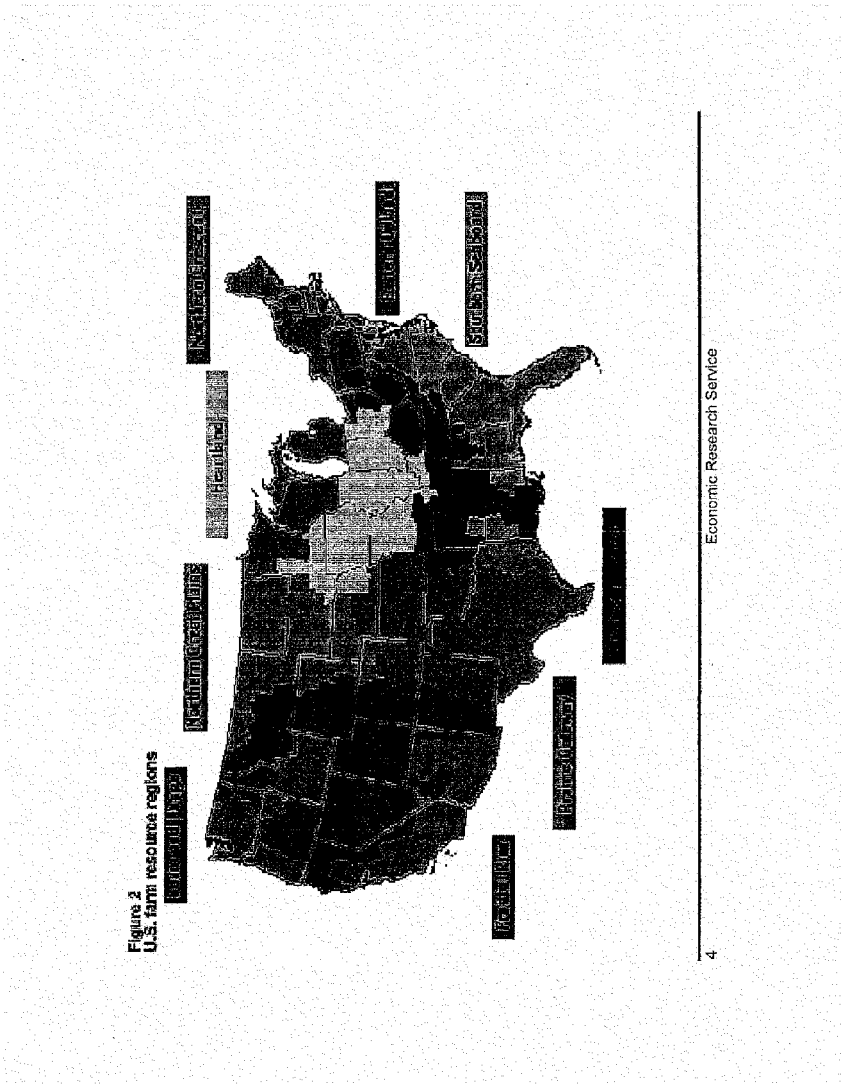


Figure 2
U.S. farm resource regions
Economic Research Service
4

Cost Per Bushel Varies Widely

Wide differences in yields and production costs per acre contributed to a $4.87 difference in the average cost per bushel between low- and high-cost soybean producers.

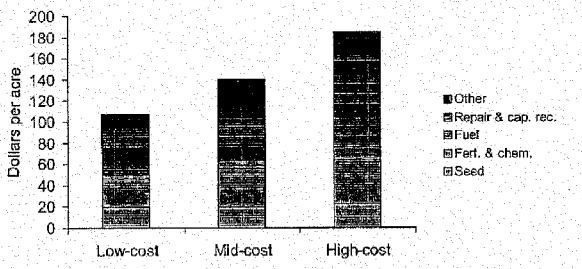
Soybean producers were ranked from lowest to highest based on production costs per bushel and grouped into quartiles. Low- and high-cost producers are in the extreme quartiles while mid-cost producers are those in the two mid quartiles. Low-cost producers raised 37 percent of the soybeans for less than $2.65 per bushel in 1997 using 31 percent of total soybean acreage (table 1 and fig. 1). In contrast, high-cost soybean producers raised 14 percent of the soybeans at a cost of over $4.50 per bushel using 19 percent of the total soybean acreage. Production costs averaged $6.00 per bushel for high-cost producers, more than double the average production costs of $2.13 per bushel for low-cost producers.

Production costs per bushel have two components, costs per acre and yields. Low-cost producers had both lower production costs per acre and higher yields compared to high-cost producers. Low-cost producers averaged $107.28 in production costs per acre compared to $184.68 for high-cost producers, while simultaneously achieving yields of 50 bushels per acre compared to 31 for high-cost producers in 1997. Cost differences between low- and high-cost producers were accentuated by the unusually high yields of low-cost producers and the unexpected low yields of the high-cost producers. Low-cost producers had yields that exceeded their expectations by four bushels per acre compared to high-cost producers, whose yields were five bushels per acre lower than their expected yields. Differences between actual and expected yields provide insight into the effects of unusual events, such as bad weather or insect infestations, on production. However, even if the high- and low-cost producers had achieved their expected yields, their ranking in the cost distribution would be nearly the same, since low-cost producers' expected yields were higher and their production costs were lower than those of high-cost producers.

The 20-bushel difference in the average soybean yields between low- and high-cost producers may be partly attributable to the higher percentage of the high-cost producers who either planted soybeans in the previous year or double-cropped soybeans with wheat. Planting soybeans after soybeans tends to reduce yields in the second year due to pest infestations and diseases (Pepper). Also, plant growth-inhibiting chemicals are released from soybean residue as it decomposes, causing a reduction in soybean yields in the following year. Double-cropping with wheat frequently causes a delay in planting soybeans, and since soybeans are sensitive to the length of day and night, a planting delay until mid-June or later tends to reduce soybean yields as well (Pepper).

The $77 difference in the production costs per acre between low- and high-cost producers was mainly generated by differences in four items: (1) capital recovery of machinery and equipment; (2) repairs; (3) fertilizer and chemicals; and (4) fuel, lube, and electricity (see fig. 3). Capital recovery (the value of farm machinery and equipment consumed during the annual production process) accounts for 46 percent of the difference, with each of the other items accounting for 12 percent or less. High-cost producers' machinery costs per acre were double those of low-cost producers, despite the high-cost producers' use of lower horse-powered tractors and smaller swath machinery. Only 32 percent of high-cost soybean producers used conservation tillage systems compared to 69 percent of the low-cost producers (table 2). Conservation tillage systems decreased the usage of machinery and labor by reducing the trips across a field. The reduced machinery usage led to lower costs per acre for capital recovery, machinery repairs, and fuel. In

Figure 3
Production costs per acre for soybeans by cost category, 1997



Source: 1997 Agricultural Resource Management Survey.

addition, low-cost producers had an average of 281 soybean acres and were able to spread fixed machinery costs over more acreage than high-cost producers who averaged 161 acres of soybeans. On average, fertilizer costs per acre were $8 higher for high-cost producers than for low-cost producers. Not only were high-cost producers more likely to apply fertilizers than low-cost producers, but they also applied more nitrogen per acre (38 pounds versus 14 pounds). Low-cost producers were more likely than high-cost producers to apply fertilizer for the crop planted before soybeans, intending to use the carryover of phosphorus and potassium for soybeans. High-cost producers irrigated 18 percent of their soybean acreage while low-cost producers irrigated less than 1 percent. Irrigation raises the per-acre costs for fuel, electricity, machinery repairs, and machinery ownership since irrigation systems require energy and additional machinery.

Although the total acreage operated per farm did not differ significantly between low- and high-cost producers, high-cost producers had lower average values of annual agricultural production, $151,888 per farm, compared to $301,755 per farm for low-cost producers. The ratio of the value of soybean production to total agricultural production, a measure of the importance of soybeans to the farm operation, was nearly identical for low-, mid-, and high-cost producers. The average value of farm equity for low-cost producers, at $635,944 per farm, was $173,077 higher than that for high-cost producers.

High-cost producers operated farms with lower annual sales, earned less farm income, and had lower total household incomes than low-cost producers (table 3). The principal operator of low-cost soybean enterprises earned more farm income than operators of high-cost enterprises. Farms with low-cost soybean enterprises were more likely to have more than one household receiving income from the farm operation. Fourteen percent of farms with low-cost production had multiple households sharing income from a farm operation compared to 9 percent for high-cost producers. The farm income per household of the principal operator (see glossary) averaged $29,682 for low-cost

enterprises and $14,426 for high-cost enterprises.

The average off-farm income earned by soybean producers and their families was nearly equal for each cost group. Approximately two-thirds of the farm families in each cost category received income from off-farm work. Operators of high-cost soybean farms were more likely to have a non-farm occupation as their principal occupation than operators of low-cost farms. There were no significant differences in operators' educational level or age among the cost categories.

Most low-cost soybean producers, 84 percent, are located in the Heartland, the major soybean production region, while 14 percent are located in the West or Northern Crescent (see fig. 2 for regional map). The West consists of the Northern Great Plains and the Prairie Gateway. High-cost soybean producers are more evenly distributed across regions than the low-cost producers with half or more of the high-cost producers located outside of the Heartland. Only 17 percent of the Heartland producers were high-cost soybean producers in 1997 compared to nearly 65 percent of the Mississippi Portal and Southeast producers.

Table 1–Soybean production costs and returns on 1997 ARMS soybean farms, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Percent of soybean farms	25	*b*	50	*ac*	25	*b*
Percent of soybean acres	31	*bc*	50	*ac*	19	*ab*
Percent of soybean production (*bushels*)	37	*bc*	49	*ac*	14	*ab*
Size:						
Total operated acreage per farm	709		625		533	
Planted soybean acreage per farm	281	*bc*	233	*ac*	161	*ab*
Avg. number of commodities per farm	2.9		2.8		2.8	
Yield in bushels per acre:						
Actual	50.4	*bc*	42.2	*ac*	30.8	*ab*
Expected	46.9	*bc*	41.7	*ac*	35.9	*ab*
Production costs per bushel (*dollars*)						
Actual	2.13	*bc*	3.30	*ac*	6.00	*ab*
Expected	2.29	*bc*	3.35	*ac*	5.15	*ab*
Costs and returns per planted acre (*dollars*):						
Gross value of production	328.13	*bc*	275.13	*ac*	205.36	*ab*
Operating costs	65.53	*bc*	82.72	*ac*	104.61	*ab*
Seed	19.02		19.23	*c*	22.20	*b*
Fertilizer	4.06	*bc*	8.80	*ac*	12.51	*ab*
Soil conditioners	0.09	*c*	0.09	*c*	0.13	*ab*
Manure	0.34	*b*	*1.35	*a*	*0.46	
Chemicals	22.77	*bc*	27.66	*a*	29.02	*a*
Custom operations	6.13	*b*	5.76	*a*	*5.61	
Fuel, lube, and electricity	4.39	*bc*	6.96	*ac*	12.22	*ab*
Repairs	6.15	*bc*	9.24	*ac*	15.29	*ab*
Purchased irrigation water	0.00		0.00		#0.18	
Interest on operating capital	1.61	*bc*	2.62	*a*	2.50	*a*
Hired labor	0.96	*bc*	*1.59	*a*	4.49	*a*
Ownership costs	41.75	*bc*	56.71	*ac*	80.06	*ab*
Capital recovery of mach. and equip.	36.43	*bc*	49.45	*ac*	72.20	*ab*
Taxes and insurance	5.32	*bc*	7.26	*a*	7.87	*a*
Production costs	107.28	*bc*	139.43	*ac*	184.68	*ab*
Value of production less operating costs	262.60	*bc*	192.41	*ac*	100.75	*ab*
Value of production less production costs	220.85	*bc*	135.70	*ac*	20.68	*ab*

Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, *b*, and *c* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

Table 2--Production practices on 1997 ARMS soybean farms, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Seed:						
Drilled *(percentage of farms)*	57	*c*	54	*c*	48	*ab*
Rows *(percentage of farms)*	42	*c*	45	*c*	50	*ab*
Planting width for drilled *(inches)*	8.3		8.6		8.3	
Planting width for rows *(inches)*	25.0		26.8		27.5	
Seeding rate *(lbs/acre)*	65	*bc*	69	*a*	69	*a*
Herbicide-resistant variety *(percentage of farms)*	14		10		10	
May plant date *(percentage of farms)*	82	*c*	78	*c*	63	*ab*
June plant date *(percentage of farms)*	8	*bc*	15	*ac*	30	*ab*
July plant date *(percentage of farms)*	*3		3		5	
Fertilizer use *(percentage of farms)*:						
Nitrogen	9	*bc*	25	*ac*	34	*ab*
Phosphorous	15	*bc*	35	*ac*	45	*ab*
Potassium	12	*bc*	32	*ac*	42	*ab*
Manure	10		12		12	
Fertilizer quantity on reporting farms:						
Nitrogen *(lbs/acre)*	*14	*c*	24	*c*	38	*ab*
Phosphorous *(lbs/acre)*	82		87		84	
Potassium *(lbs/acre)*	45		50		51	
Farms using fertilizer from previous year *(percentage)*	48	*bc*	37	*a*	32	*a*
Chemical use:						
Herbicides *(percentage of farms)*	97	*bc*	97	*a*	93	*a*
Herbicides *(acre-treatments)*	2.6		2.9		3.0	
Custom operations *(percentage of farms)*:						
Any custom operation	34		40		42	
Preparation, cultivation, or planting	14	*b*	8	*a*	9	
Fertilizer/chemical	*9	*c*	14	*a*	18	
Harvest	20		21		21	
Total labor hours per acre	1.1	*bc*	1.6	*ac*	2.2	*ab*
Unpaid	1.0	*bc*	1.4	*ac*	1.6	*ab*
Paid	0.1	*bc*	0.2	*ac*	0.6	*ab*
Farms with paid labor *(percent)*	16		17		21	
Tillage systems *(percentage of farms)*:						
Conventional	31	*bc*	57	*ac*	68	*ab*
Reduced	18	*bc*	28	*a*	26	*a*
Conservation	69	*bc*	43	*ac*	32	*ab*
No-till	32	*bc*	21	*ac*	14	*ab*
Machinery:						
Planter width *(feet)*	14.0		14.9	*c*	13.4	*b*
Harvester width *(feet)*	14.9	*c*	14.4	*c*	12.8	*ab*
Tractor horsepower *(largest used)*	157	*c*	156	*c*	141	*ab*
Speed of tillage/planting operations *(acres/hr)*	10.3	*bc*	8.8	*ac*	7.8	*ab*
Speed of harvest operations *(acres/hr)*	8.5	*bc*	6.5	*ac*	5.4	*ab*
Total trips across field *(number)*	6.1	*bc*	7.1	*ac*	7.4	*ab*
Tillage and planting trips *(number)*	2.7	*bc*	3.4	*ac*	3.8	*ab*

D=Data insufficient for disclosure.
Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* Indicates that CV is greater than 25 and less than or equal to 50.
# Indicates that CV is greater than 50.
a, b, and *c* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

Table 3–Characteristics of 1997 ARMS soybean farms and soybean producers, by cost group

Item	Low (*a*)		Mid (*b*)		High (*c*)	
Soybean acreage (*percentage*):						
Dry land	100	*bc*	97	*ac*	82	*ab*
Irrigated	0	*bc*	3	*ac*	18	*ab*
Production value:						
All commodities (*dollars per farm*)	301,755	*bc*	213,919	*ac*	151,888	*ab*
Soybeans (*dollars per farm*)	88,536	*bc*	65,645	*ac*	37,313	*ab*
Percentage of total production	38		39		37	
Previous crop (*percentage of farms*):						
Soybeans	*7	*bc*	13	*ac*	24	*ab*
Corn	83	*bc*	73	*ac*	53	*ab*
Other	10	*c*	14	*c*	23	*ab*
Percentage of farms double-cropped w/wheat	*1.9	*bc*	4.1	*ac*	9.5	*ab*
Percent of soybean farms with:						
Cattle	46	*bc*	40	*a*	41	*a*
Hogs	23	*bc*	14	*a*	*10	*a*
Dairy	*5		8	*c*	6	*b*
Corn	91	*c*	87	*c*	73	*ab*
Wheat	23	*c*	28	*c*	37	*ab*
Cotton	#1	*bc*	*3	*a*	*3	*a*
Rice	D		1	*c*	5	*b*
Soybeans under contract	18	*c*	13		9	*a*
Operator occupation[1] (*percentage*):						
Farming	75	*c*	71	*c*	57	*ab*
Non-farm	19	*c*	24	*c*	30	*ab*
Retired	#5		5	*c*	11	*b*
Operator age (*percentage*):						
Less than 50 years	51		50		43	
50 to 64 years	29		34		33	
65 years or more	19		16		24	
Operator education (*percentage*):						
High school	47		50		48	
Some college	33		30		27	
Completed college	14		13		13	
Financial characteristics per farm:						
Farm equity	635,944	*c*	542,631	*c*	462,867	*ab*
Government payments	10,828	*bc*	9,040	*a*	7,705	*a*
Farms sharing farm income (*percentage*)	14.0	*c*	13.5	*c*	8.7	*ab*
Debt-to-asset ratio (*percent*)	18.8	*c*	17.1	*c*	14.0	*ab*
Return to equity (*percentage*)	#0.3		*-1.4		*-3.6	
Financial characteristics per farm household:						
Total household income	61,269	*c*	65,882	*c*	48,174	*ab*
Farm income	29,682	*c*	28,046	*c*	14,428	*ab*
Off-farm income	31,587		37,836		33,746	
Percentage with off-farm wage or business inc.	67		70		64	

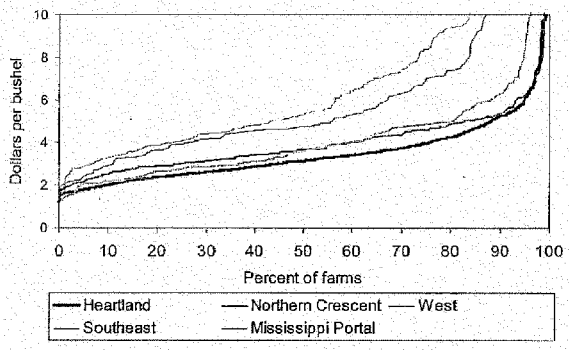
D=Data insufficient for disclosure.
Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, *b*, and *c* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.
[1] May not add to 100, since percentages for hired managers are not shown.

Region

Favorable yields and lower production costs per acre continue to make the Heartland the low-cost region for soybean production. Production costs per bushel were lower in the Heartland, West, and Northern Crescent than the Mississippi Portal and Southeast.

The Heartland's soybean producers, with production costs totaling $2.92 per bushel, had the lowest average production costs followed by producers in the West and Northern Crescent with costs of $3.55 per bushel and $3.44 per bushel respectively (fig. 2 and fig. 4). The West consists of the Northern Great Plains and the Prairie Gateway, and the Southeast consists of the Eastern Uplands and the Southern Seaboard. Higher cost producers were found in the Mississippi Portal (with production costs of $5.05 per bushel) and in the Southeast (with costs of $4.55 per bushel). Lower yields averaging 32 bushels or less in the Mississippi Portal and Southeast were the chief cause of their high production costs per bushel. Actual yields were less than the expected yields for both regions in 1997 due to their hot and dry summer weather. However, even if the Mississippi Portal and Southeast producers achieved their expected yields, their production costs per bushel would still have exceeded those

Figure 4
Cumulative distribution of soybean farms by region and by operating and ownership costs per bushel, 1997



West includes Northern Great Plains and Prairie Gateway.
Southeast includes Eastern Uplands and Southern Seaboard.
Source: 1997 Agricultural Resource Management Survey.

in the other regions due chiefly to lower expected yields (table 4). Soybean producers in these regions are more likely to double-crop soybeans with wheat, which results in a later soybean planting date and reduced soybean yields. If Southeast producers' yields had equaled their expected yields, they would have had lower production costs per bushel than Mississippi Portal producers.

In 1997, Heartland producers realized better yields and lower production costs per acre than producers in other regions. The Heartland is especially suited for soybean production due to the region's climate, soil, topography, and efficient transportation system. The Mississippi River allows barges to move large quantities of harvested commodities to major Gulf ports for export. Heartland producers are more likely than producers in most other regions to employ a conservation tillage system on their soybean operation (table 5). Conservation tillage frequently reduces the number of trips across a field, saving labor expenditures per acre. Heartland soybean producers farmed an average of 232 acres of soybeans per farm, more acres than producers in most other regions. Soybeans accounted for nearly one-third of the annual gross value of production for Heartland soybean producers (table 6). Heartland producers are more likely to simultaneously raise corn and to rotate their soybeans with corn.

For producers in the West (the Northern Great Plains and Prairie Gateway), soybean production costs per bushel averaged $3.55 in 1997. Their soybean production costs per bushel were about equal to producers in the Heartland and Northern Crescent but lower than those in the Mississippi Portal and Southeast. However, their average soybean production cost per acre was not significantly different from the other regions. West producers operated 10 percent of all U.S. soybean farms, controlled 8 percent of the soybean acreage, and produced 7 percent of the soybeans. Although the soybean producers in the West had large farms that averaged 1,020 acres, only 188 acres on average were used for soybeans. West producers were most likely to rotate their soybeans with a crop other than corn. They were also the producers most likely to raise wheat in addition to soybeans. Producers in the West irrigated 16 percent of their soybean acreage, second only to Mississippi Portal producers. Although soybean producers in the West had more farm acreage than most, the value of their agricultural production ($204,501 per farm) was below those in the Mississippi Portal and Southeast.

Northern Crescent producers raised soybeans at an average cost of $3.44 per bushel, higher than the average for Heartland producers, but lower than the average for Mississippi Portal and Southeast producers. Soybean production costs per acre for Northern Crescent producers were higher than those in the Heartland and about the same as those in the other regions. The Northern Crescent producers obtained an average soybean yield of 43 bushels per acre in 1997, the second highest regional yield. The Northern Crescent had 13 percent of the U.S. soybean producers and 7 percent of the soybean acreage and production. Northern Crescent soybean producers had the smallest total acreage per farm and smallest soybean acreage per farm. They tied with those in the Mississippi Portal and the Southeast for the highest average labor hours expended per acre of soybeans. Northern Crescent producers were more likely to simultaneously operate dairy enterprises. Conventional tillage was used on soybeans by 69 percent of the Northern Crescent producers, the second highest rate among the regions. Northern Crescent producers, with their smaller-than-average farms, tended to use smaller machinery on their soybean enterprises. Just over 40 percent of the Northern Crescent producers hired custom harvesters for their soybeans.

Mississippi Portal soybean producers represented only 5 percent of all U.S. soybean producers, but they produced 9 percent of the crop using 12 percent of the soybean acreage. Producers in this region on average had the

largest farms and the largest soybean enterprises, when size is measured by acreage. On average, they planted 523 acres of soybeans per farm, half their farm acreage. With production costs averaging $5.05 per bushel, Mississippi Portal producers were high-cost producers due primarily to their lower soybean yields. In comparison to other regional producers, they were more likely to plant soybeans following soybeans, a practice that results in lower yields. Mississippi Portal producers were also the most likely to plant in June or later, and delayed planting reduces soybean yields. Nearly one out of four Mississippi Portal producers double-cropped soybeans following winter wheat. While double-cropping frequently delays soybean plantings, it also allows producers to spread their fixed costs over two crops and receive a second income from their wheat acreage. Producers in southern latitudes are more likely to double-crop due to their longer growing seasons. Mississippi Portal producers were the most likely to use conventional tillage systems and to hire labor for their soybean operations. They were also more likely to irrigate their soybean acreage and to use larger machinery in their soybean enterprises.

Southeast soybean producers (those in the Eastern Uplands and Southern Seaboard) also constituted just 5 percent of all U.S. soybean producers and accounted for 3 percent of both soybean acreage and production. Southeast producers had relatively high production costs of $4.55 per bushel. While their production costs per acre were not significantly different from those in most other regions, Southeast producers' expected yields were lower. A hot and dry summer in the Southeast in 1997 reduced soybean yields from producers' expected values. Southeast soybean producers were less likely to use herbicides than producers in other regions, and they generally planted soybeans later than producers in the northern regions. More than a quarter of the Southeast's soybean acreage was double-cropped with wheat, and on average Southeast producers used smaller farm machinery on their soybeans.

Soybeans accounted for just 10 percent of the gross value of agricultural commodities of Southeast producers, the smallest percent for all regions.

Table 4–Soybean production costs and returns per acre from 1997 ARMS soybean farms, by region

Item	Heartland (*a*)		West[1] (*b*)		Northern Crescent (*c*)		Mississippi Portal (*d*)		Southeast[2] (*e*)	
Percent of soybean farms	68	*bcde*	10	*acde*	13	*abde*	5	*abce*	5	*abcd*
Percent of soybean acres	70	*bcde*	8	*acde*	7	*ade*	12	*abce*	3	*abc*
Percent of soybean production (*bushels*)	74	*bcde*	7	*acde*	7	*ade*	9	*abce*	3	*abc*
Size:										
Total operated acreage per farm	581	*bcd*	1,020	*ace*	112	*abde*	1,069	*ace*	539	*bcd*
Planted soybean acreage per farm	232	*bcde*	188	*acd*	119	*abde*	523	*abce*	158	*acd*
Avg. number of commodities per farm	2.8	*cde*	2.8		3.1	*ad*	2.5	*ace*	3.1	*ad*
Yield in bushels per acre:										
Actual	45	*bcde*	40	*ade*	43	*ade*	31	*abc*	32	*abc*
Expected	44	*bde*	39	*acde*	43	*abde*	33	*abce*	36	*abcd*
Production costs per bushel:										
Actual	2.92	*bcde*	3.55	*ade*	3.44	*ade*	5.05	*abc*	4.55	*abc*
Expected	2.98	*bcde*	3.63	*ade*	3.42	*ade*	4.80	*abce*	4.10	*abcd*
Costs and returns per planted acre (*dollars*):										
Gross value of production	294.52	*bcde*	254.61	*acde*	277.66	*abde*	219.25	*abc*	223.04	*abc*
Operating costs	78.91	*de*	80.52	*e*	90.03		88.31	*a*	92.50	*ab*
Seed	19.59		20.06		22.81		18.72		18.82	
Fertilizer	7.20	*ce*	4.83	*ce*	13.31	*abe*	*7.58	*e*	22.37	*abcd*
Soil conditioners	0.09	*bcde*	*0.02	*acde*	0.17	*abde*	0.05	*abce*	*0.60	*abcd*
Manure	*1.00	*bde*	#0.15	*ac*	*2.00	*bde*	#0.07	*ab*	#0.22	*ac*
Chemicals	26.85		23.47		25.70		26.13		25.23	
Custom operations	5.94		6.44		5.89		5.03		* 5.29	
Fuel, lube, and electricity	6.42	*bd*	9.41	*ace*	7.15	*bd*	10.08	*ace*	6.35	*bd*
Repairs	8.64	*bd*	11.21	*ace*	9.01	*bd*	13.15	*ace*	8.61	*bd*
Purchased irrigation water	0.00		#0.61		0.00		0.00		0.00	
Interest on operating capital	1.94	*e*	1.95	*e*	2.20		2.07		2.23	*ab*
Hired labor	1.25	*de*	*2.36	*d*	*1.78	*d*	5.44	*abce*	*3.09	*ad*
Ownership costs	53.40	*bd*	61.86	*ad*	56.54	*abd*	70.30	*abce*	55.02	*d*
Capital recovery of mach. and equip.	46.56	*bd*	53.68	*ad*	49.67	*d*	64.56	*abc*	49.86	*d*
Taxes and insurance	6.84	*de*	8.18	*de*	6.92	*e*	5.74	*ab*	5.16	*abc*
Production costs	132.31	*cde*	142.37		146.57	*a*	158.61	*a*	147.52	*a*
Value of production less operating costs	215.61	*bcde*	174.09	*ade*	187.62	*ade*	130.94	*abc*	130.54	*abc*
Value of production less production costs	162.21	*de*	112.24	*d*	131.09	*d*	60.64	*abc*	75.51	*a*

Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
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# indicates that CV is greater than 50.
a, *b*, *c*, *d*, and *e* indicate that estimates are significantly different from indicated group at the 90 percent or better level using the t-statistic.
[1] West includes Northern Great Plains and Prairie Gateway.
[2] Southeast includes Eastern Uplands and Southern Seaboard.

Table 5–Production practices on 1997 ARMS soybean farms, by region

Item	Heartland (*a*)		West[1] (*b*)		Northern Crescent (*c*)		Mississippi Portal (*d*)		Southeast[2] (*e*)	
Seed:										
Drilled (*percentage of farms*)	53	*bcd*	40	*ac*	73	*abde*	37	*ace*	56	*cd*
Rows (*percentage of farms*)	46	*bcd*	60	*ace*	26	*abde*	59	*ace*	43	*bcd*
Planting width for drilled (*inches*)	8.5	*c*	8.4		7.6	*ad*	9.0	*c*	8.6	
Planting width for rows (*inches*)	26.2	*b*	28.7	*ad*	25.2		25.9	*b*	28.7	
Seeding rate (*lbs/acre*)	69	*bcd*	65	*acd*	77	*abde*	59	*abce*	67	*cd*
Herbicide-resistant variety (*percentage of farms*)	10	*de*	12	*e*	*8	*de*	19	*ac*	21	*abc*
May plant date (*percentage of farms*)	80	*bde*	72	*ade*	76	*de*	41	*abc*	50	*abc*
June plant date (*percentage of farms*)	12	*bcde*	23	*ade*	19	*ade*	48	*abc*	36	*abc*
July plant date (*percentage of farms*)	*3	*de*	1	*de*	D		*7	*abe*	13	*abd*
Fertilizer use (*percentage of farms*):										
Nitrogen	17	*bce*	32	*ade*	44	*ad*	19	*bce*	46	*abd*
Phosphorous	28	*bcde*	9	*acde*	61	*ab*	47	*abe*	62	*abd*
Potassium	23	*cde*	30	*cde*	49	*ab*	44	*ab*	59	*ab*
Manure	11	*bcd*	3	*ace*	25	*bde*	#1	*ace*	11	*bcd*
Fertilizer quantity on reporting farms:										
Nitrogen (*lbs/acre*)	25	*e*	20	*e*	*16	*e*	*33		50	*abc*
Phosphorous (*lbs/acre*)	91	*d*	D		83	*de*	66	*abc*	84	*c*
Potassium (*lbs/acre*)	53	*bc*	36	*ade*	35	*ade*	52	*bc*	51	*bc*
Farms using fertilizer from prev. yr. (*percentage*)	44	*bcde*	25	*ae*	24	*ae*	26	*a*	35	*abc*
Chemical use:										
Herbicides (*percentage of farms*)	97	*e*	93	*e*	98	*e*	95	*e*	84	*abcd*
Herbicides (*acre-treatments*)	2.8	*e*	2.6	*d*	2.8		3.0	*be*	2.5	*ad*
Custom operations (*percentage of farms*):										
Any custom operation	36	*c*	40	*c*	54	*abe*	43		40	*c*
Preparation, cultivation, or planting	11	*d*	11	*d*	#8		#2	*ab*	D	
Fertilizer/chemical	14	*bd*	9	*ade*	*12	*d*	26	*abc*	*24	*b*
Harvest	17	*bc*	26	*acd*	41	*abde*	15	*bc*	16	*c*
Total labor hours per acre	1.4	*cde*	1.5	*cde*	2.0	*ab*	1.9	*ab*	2.0	*ab*
Unpaid	1.3	*cde*	1.3	*cde*	1.8	*abd*	1.0	*abce*	1.6	*abd*
Paid	0.1	*de*	*0.2	*d*	0.2	*de*	0.	*abc*	0.4	*c*
Farms with paid labor (*percent*)	15	*de*	19	*d*	16	*de*	54	*abce*	26	*cd*
Tillage systems (*percentage of farms*):										
Conventional	48	*cde*	52	*cde*	59	*abde*	84	*abce*	56	*abcd*
Reduced	26	*e*	31	*cd*	*19	*b*	25	*be*	*14	*ad*
Conservation	52	*cde*	48	*cd*	31	*abde*	16	*abce*	44	*acd*
No-till	24	*bcde*	13	*acd*	17	*abde*	9	*abce*	34	*acd*
Machinery:										
Planter width (*feet*)	14	*bcde*	17	*ace*	12	*abd*	17	*ace*	11	*abd*
Harvester width (*feet*)	15	*cde*	14	*cde*	9	*abd*	17	*abce*	11	*abd*
Tractor horsepower (*largest used*)	156	*cde*	150	*de*	136	*ad*	183	*abce*	123	*abd*
Speed of tillage/planting operations (*acres/hr*)	9.0	*cde*	8.9	*cde*	6.5	*abd*	11.0	*abce*	6.1	*abd*
Speed of harvest operations (*acres/hr*)	7.0	*ce*	6.8	*ce*	5.4	*abd*	6.5	*ce*	5.0	*abd*
Total trips across field (*number*)	6.9	*bd*	6.3	*acd*	7.2	*bde*	8.1	*abce*	6.5	*cd*
Tillage and planting trips (*number*)	3.2	*bcd*	3.6	*ade*	3.5	*ade*	4.4	*abce*	2.9	*bcd*

D=Data insufficient for disclosure.
Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, b, c, d, and *e* indicate that estimates are significantly different from indicated group at the 90 percent or better level using the t-statistic.
[1] West includes Northern Great Plains and Prairie Gateway.
[2] Southeast includes Eastern Uplands and Southern Seaboard.

Table 6–Characteristics of 1997 ARMS soybean farms and soybean producers, by region

Item	Heartland *(a)*		West[1] *(b)*		Northern Crescent *(c)*		Mississippi Portal *(d)*		Southeast[2] *(e)*	
Soybean acreage *(percentage)*:										
Dry land	98	*bde*	84	*ace*	98	*bd*	79	*ace*	100	*abd*
Irrigated	*2	*bde*	16	*ace*	#2	*bd*	21	*ace*	0	*abd*
Production value:										
All commodities *(dollars per farm)*	212,171	*cde*	204,501	*d*	160,586	*de*	374,257	*abc*	315,609	*ac*
Soybeans *(dollars per farm)*	68,816	*bcde*	49,349	*acde*	32,924	*abd*	123,973	*abce*	31,435	*abd*
Percentage of total production	32	*bce*	24	*de*	21	*ade*	33	*bce*	10	*abcd*
Previous crop *(percentage of farms)*:										
Soybeans	12	*cde*	16	*cd*	*5	*abde*	59	*abce*	27	*acd*
Corn	80	*bde*	37	acde	76	*bde*	13	*abce*	50	*abcd*
Other	8	*bcde*	47	*acde*	19	*abd*	29	*abc*	23	*ab*
Percentage of farms double-cropped w/wheat	2.5	*bde*	*5.8	*ade*	D		25.6	*ab*	25.7	*ab*
Percent of soybean farms with:										
Cattle	40	*bd*	56	*ad*	50	*d*	17	*abce*	47	*d*
Hogs	18	*bcd*	*7	*a*	*10	*a*	#4	*a*	*11	
Dairy	4	*bcde*	*2	*ace*	29	*abde*	D	*acd*	10	*abc*
Corn	92	*bde*	57	*acd*	85	*bde*	32	*abce*	66	*acd*
Wheat	23	*bcde*	59	*acde*	37	*ab*	36	*ab*	42	*ab*
Cotton	#1	*bde*	0	*ade*	D		24	*abe*	*11	*abd*
Rice	#0	*d*	0	*d*	D		37	*abe*	0	*d*
Soybeans under contract	13	*de*	12	*d*	11	*d*	27	*e*	8	*ad*
Operator occupation[3] *(percentage)*:										
Farming	69	*d*	69	*d*	59	*d*	79	*abc*	68	
Non-farm	25	*d*	25	*d*	26	*d*	10	*abce*	22	
Retired	5	*c*	#5		*14	*a*	*9		*7	
Operator age *(percentage)*:										
Less than 50 years	47	*b*	59	*ae*	51		54	*be*	41	
50 to 64 years	34	*b*	24	*ae*	28	*e*	28	*e*	41	*bcd*
65 years or more	19		*17		22		18		18	
Operator education *(percentage)*:										
High school	50	*e*	44		51		42		41	*a*
Some college	30	*d*	37	*d*	30		21	*ab*	28	
Completed college	13	*d*	*15		*10	*d*	22	*ab*	*16	
Financial characteristics per farm:										
Farm equity *(dollars)*	544,631	*e*	575,174	*e*	490,257	*de*	612,474	*c*	542,745	*abc*
Government payments *(dollars)*	8,436	*cde*	10,415	*cde*	5,762	*abd*	27,567	*abe*	6,011	*abd*
Farms sharing farm income *(percentage)*	11	*d*	12	*d*	17		21	*ab*	16	
Debt-to-asset ratio *(percent)*	17.4		16.4		16.7		16.0		13.6	
Return to equity *(percentage)*	#-1.5	*e*	#-5.3	*e*	*-6.8	*de*	#7.2	*c*	#6.8	*abc*
Financial characteristics per household:										
Total household income *(dollars)*	58,710	*d*	58,506	*d*	52,694	*d*	104,334	*abce*	56,125	*d*
Farm income	24,289	*cd*	*24,539	*d*	*11,845	*d*	69,944	*abce*	*19,517	*d*
Off-farm income	34,421		33,967		40,849		34,390		36,608	
Percentage with off-farm wage, business inc.	70	*de*	72	*de*	63		53	*ab*	53	*ab*

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# indicates that CV is greater than 50.
a, b, c, d, and *e* indicate that estimates are significantly different from indicated group at the 90 percent or better level using the t-statistic.
[1] West includes Northern Great Plains and Prairie Gateway.
[2] Southeast includes Eastern Uplands and Southern Seaboard.
[3] May not add to 100, since percentages for hired managers are not shown.

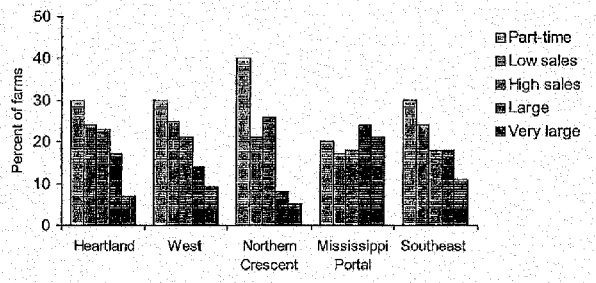
Farm Typology

Farms with higher sales have lower production costs per bushel due primarily to their higher yields rather than lower production costs per acre.

ERS's farm typology classifies farms based on the annual value of agricultural sales, farmers' occupation, and farm asset values (see glossary). Soybean acreage and total farm acreage were positively correlated with a farm's annual value of gross sales. In the United States, part-time farms composed 31 percent of the soybean enterprises while producing 11 percent of soybeans using 12 percent of the soybean acreage in 1997 (table 7). Part-time farm operations were generally smaller, averaging 89 acres of soybeans and 239 acres per farm. At the opposite extreme, very large farms comprised 8 percent of soybean farms and produced 23 percent of soybeans using 22 percent of the soybean acreage. Very large farms averaged 649 acres of soybeans and 1,833 total acres. A high percentage of the soybean farms in the Northern Crescent consisted of part-time or low-sales operations (fig. 5). In contrast, a relatively high percentage of the Mississippi Portal farms were classified as large or very large farm operations.

Part-time and low-sales farms are distinguishable from high-sales and larger farms. Part-time and low-sales farms experienced higher production costs per bushel, due mainly to lower average yields than high-sales and larger farms. Soybean production costs per bushel averaged $3.60 for part-time farm operations and $3.54 for low-sales operations, exceeding the costs of producers with high-sales and larger farms that ranged from $3.02 to $3.29 per bushel (table 7). Part-time and low-sales farms obtained average yields of 38 to 40 bushels in contrast to yields of 43 to 45 bushels for high-sales and larger farms.

Figure 5
Distribution of soybean farms by region and farm typology, 1997



West includes Northern Great Plains and Prairie Gateway.
Southeast includes Eastern Uplands and Southern Seaboard.
Source: 1997 Agricultural Resource Management Survey.

Soybean producers with high-sales and larger farms were more likely to use conservation tillage systems than soybean producers with part-time and low-sales farm operations (table 8). Conservation tillage often helps to retain soil moisture, which may enhance soybean yields and increase the need for herbicides to prevent or reduce problem weeds (Jasa). Conservation tillage also reduces farm machinery usage and the hours of field work.

High-sales and larger farms expended significantly fewer labor hours per acre of soybeans than part-time and low-sales farms while using more hired labor. Operators of high-sales and larger farms also used tractors with higher horsepower and farm machinery with wider swaths in their soybean enterprises, reducing their fieldwork hours. Although operators of larger farms were more likely to hire labor, they were less likely to use custom labor than operators of part-time and low-sales farms.

Soybean producers in the part-time and low-sales classes had low farm incomes and depended less on farm income as a source of household income than other soybean producers. Households operating part-time farms received an average of $1,537 from farm income and $50,590 from off-farm sources in 1997 (table 9). By definition, the vast majority of part-time producers were either retired or had nonfarm occupations with 21 percent listing retirement as their principal occupation. Farm families with low-sales farm operations received an average of $800 from farm income and $28,332 from off-farm sources for the lowest total household income among the farm typology groups, $29,131. By definition, farm operators of low-sales farms listed farming as their principal occupation, yet 31 percent of these operators were at least 65 years old. Households operating high-sales and larger farms received more income from farm sources than off-farm sources, yet these farms also had considerable off-farm incomes. High-sales farms had total household incomes averaging $44,180 with farm income contributing an average of $24,713 in 1997. Only households of soybean farms with low and high sales had an average household income beneath the U.S. average household income of $49,692 in 1997. Average household income for larger soybean farms exceeded $90,832 in 1997 with the farm-income component alone exceeding the average U.S. household income.

Table 7–Soybean production costs and returns on 1997 ARMS soybean farms, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low-sales (*b*)		High-sales (*c*)		Large (*d*)		Very large (*e*)	
Percent of soybean farms	31	*bcde*	23	*ade*	22	*ade*	16	*abce*	8	*abcd*
Percent of soybean acres	12	*cde*	12	*cde*	24	*abd*	30	*abce*	22	*abc*
Percent of soybean production (*bushels*)	11	*cde*	10	*cde*	24	*abd*	32	*abce*	23	*abd*
Size:										
Total operated acreage per farm	239	*bcde*	380	*acde*	650	*abde*	1,039	*abce*	1,833	*abcd*
Planted soybean acreage per farm	89	*bcde*	114	*acde*	232	*abde*	413	*abce*	649	*abcd*
Avg. number of commodities per farm	2.4	*bcde*	2.8	*acde*	3.1	*ab*	3.2	*ab*	3.1	*ab*
Yield in bushels per acre:										
Actual	40	*bcde*	38	*ade*	43	*a*	45	*ab*	43	*ab*
Expected	40	*cde*	39	*cde*	42	*abd*	44	*abe*	43	*ab*
Production cost per bushel (*dollars*):										
Actual	3.60	*cd*	3.54	*cd*	3.14	*ab*	3.02	*ab*	3.29	
Expected	3.61	*cd*	3.45	*cd*	3.18	*ab*	3.08	*ab*	3.31	
Costs and returns per planted acre (*dollars*):										
Gross value of production	261.12	*bcde*	243.77	*acde*	277.28	*abd*	294.09	*abe*	281.91	*ab*
Operating costs	86.36	*bc*	75.51	*ade*	78.03	*a*	82.85	*b*	83.64	*b*
Seed	19.68	*b*	17.11	*ade*	18.18		19.67	*b*	19.99	*b*
Fertilizer	8.95		5.44	*de*	6.66		8.84	*b*	8.50	*b*
Soil conditioners	0.23	*be*	0.15	*a*	0.16		0.16		0.13	*a*
Manure	*0.33	*c*	*0.52		*0.81	*a*	#1.51		*1.19	
Chemicals	27.98	*bce*	25.87	*a*	27.86	*a*	26.79		25.62	*a*
Custom operations	9.68		7.45		4.85		5.68		4.36	
Fuel, lube, and electricity	7.17		6.77		6.92		7.13		7.59	
Repairs	9.35		9.49		9.51		8.83		10.05	
Purchased irrigation water	D		0.00		#0.08		D		D	
Interest on operating capital	2.13	*bc*	1.86	*a*	#1.92	*a*	2.01		1.98	
Hired labor	*0.83	*de*	0.87	*de*	1.08	*de*	2.21	*abce*	4.19	*abc*
Ownership costs	57.03		58.05		55.79		53.19		57.30	
Capital recovery of mach. and equip.	48.60		49.00		48.74		48.04		51.73	
Taxes and insurance	8.43	*cde*	9.05	*cde*	7.05	*abde*	5.15	*abc*	5.57	*abc*
Production costs	143.39	*bc*	133.56	*a*	133.82	*a*	136.04		140.94	
Value of production less operating costs	174.76	*cde*	168.26	*cde*	199.25	*ab*	211.24	*ab*	198.27	*ab*
Value of production less production costs	117.73	*cde*	110.21	*cde*	143.46	*ab*	158.05	*ab*	140.97	*ab*

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Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
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# indicates that CV is greater than 50.
a, b, c, d, and *e* indicate estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.
[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

Table 8–Production practices on 1997 ARMS soybean farms, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low-sales (*b*)		High-sales(*c*)		Large (*d*)		Very large (*e*)	
Seed:										
Drilled (*percentage of farms*)	59	*bc*	46	*a*	52	*a*	52		49	
Rows (*percentage of farms*)	39	*bc*	53	*a*	48	*a*	48		50	
Planting width for drilled (*inches*)	7.7	*bcde*	8.6	*a*	8.9	*a*	8.6	*a*	8.8	*a*
Planting width for rows (*inches*)	27.9	*de*	29.6	*de*	29.0	*de*	23.5	*abc*	25.3	*abc*
Seeding rate (*lbs/acre*)	76	*bcde*	64	*a*	68	*a*	67	*a*	66	*a*
Herbicide resistant variety (*percentage of farms*)	10	*e*	7	*de*	8	*e*	#16	*b* 22	*abc*	
May plant date (*percentage of farms*)	74		68	*c*	80	*b*	79		73	
June plant date (*percentage of farms*)	18	*d*	24	*cd*	15	*b*	10	*ab*	17	
July plant date (*percentage of farms*)	#5	*cde*	#5	*cde*	#2	*ab*	#1	*ab*	#2	*ab*
Fertilizer use (*percentage of farms*):										
Nitrogen	29	*ce*	21		22	*a*	#23		20	*a*
Phosphorous	39	*bc*	26	*ad*	29	*ad*	39	*bc*	33	
Potassium	34	*bc*	24	*a*	27	*a*	33		28	
Manure	9		9	*e*	11		#13		14	*b*
Fertilizer quantity on reporting farms:										
Nitrogen (*lbs/acre*)	16	*cd*	#22		26	*a*	26	*a*	#29	
Phosphorous (*lbs/acre*)	78		91		75	*d*	96	*c*	75	
Potassium (*lbs/acre*)	44		55		47		56	*e*	41	*d*
Farms using fertilizer from prev. yr. (*percentage*)	30	*bcde*	38	*a*	46	*a*	5	*a*	43	*a*
Chemical use:										
Herbicides (*percentage of farms*)	96	*d*	93	*cde*	99	*b*	99	*ab*	98	*b*
Herbicides (*acre-treatments*)	2.8		2.6	*de*	2.8		3.0	*b*	2.9	*b*
Custom operations (*percentage of farms*):										
Any custom operation	46	*ce*	40	*c*	30	*abd*	39	*c*	34	*a*
Preparation, cultivation, or planting	19	*bcde*	9	*ace*	5	*ab*	#5	*a*	#3	*ab*
Fertilizer/chemical	11	*d*	10	*de*	13	*d*	26	*abc*	18	*b*
Harvest	30	*cde*	28	*cde*	11	*ab*	9	*ab*	#11	*ab*
Total labor hours per acre	1.7	*de*	1.8	*cde*	1.6	*be*	1.5	*ab*	1.4	*abc*
Unpaid	1.6	*de*	1.7	*cde*	1.5	*bde*	1.2	*abce*	0.9	*abcd*
Paid	#0.1	*de*	0.1	*de*	0.1	*de*	0.2	*abce*	.5	*abcd*
Farms with paid labor (*percent*)	7	*cde*	9	*cde*	17	*abde*	36	*abce*	58	*abcd*
Tillage systems (*percentage of farms*):										
Conventional	63	*cde*	59	*ce*	45	*ab*	50	*a*	41	*ab*
Reduced	24		26		24		26		17	
Conservation	37	*cde*	41	*ce*	55	*ab*	50	*a*	59	*ab*
No-till	21		17		24		27		19	
Machinery:										
Planter width (*feet*)	15	*cde*	16	*cde*	18	*abde*	21	*abc*	22	*abc*
Harvester width (*feet*)	17	*bcde*	16	*acde*	18	*abde*	20	*abce*	22	*abcd*
Tractor horsepower (*largest used*)	131	*cde*	137	*cde*	168	*abde*	184	*abce*	209	*abcd*
Speed of tillage/planting operations (*acres/hr*)	6.4	*cde*	6.9	*cde*	8.6	*abde*	10.5	*abce*	11.6	*abcd*
Speed of harvest operations (*acres/hr*)	5.4	*cde*	5.4	*cde*	6.8	*abe*	7.4	*abe*	8.5	*abcd*
Total trips across field (*number*)	7.1		6.8		7.0		7.1		6.9	
Tillage and planting trips (*number*)	3.4		3.5		3.3		3.2		3.2	

Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.

# indicates that CV is greater than 25 and less than or equal to 50.

a, b, c, d, and *e* indicate estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

Table 9–Characteristics of 1997 ARMS soybean farms and soybean producers, by farm typology

Item	Small family farms						Larger family farms			
	Part-time[1] (*a*)		Low-sales (*b*)		High sales (*c*)		Large (*d*)		Very large (*e*)	
Soybean acreage (*percentage*):										
Dry land	93	*cde*	97	*e*	96	*ae*	95	*a*	90	*bc*
Irrigated	*2		#3		*4		*5		*10	
Production value:										
All commodities (*dollars per farm*)	53,998	*bcde*	78,232	*acde*	218,340	*abde*	389,514	*abce*	914,768	*abcd*
Soybean (*dollars per farm*)	22,994	*bcde*	27,308	*acde*	66,906	*abde*	122,306	*abce*	191,381	*abcd*
Percentage of total production	42	*bcde*	35	*ae*	31	*ae*	32	*a*	29	*abc*
Previous crop (*percentage of farms*):										
Soybean	20	*c*	14	*c*	8	*abe*	15		16	*c*
Corn	65	*cd*	67	*c*	81	*abe*	77	*ae*	63	*cd*
Other	15	*d*	19	*cd*	11	*be*	8	*abe*	21	*cd*
Percentage of farms double-cropped w/wheat	*2.8	*be*	8.0	*acd*	*4.0	*b*	*3.9	*b*	*7.5	*a*
Percent of soybean farms with:										
Cattle	27	*bcd*	55	*ae*	50	*ae*	43	*a*	34	*bc*
Hogs	*6	*cde*	11	*cde*	20	*ab*	28	*ab*	25	*ab*
Dairy	*1	*bcde*	*5	*acd*	14	*abe*	12	*abe*	*5	*acd*
Corn	77	*cd*	80	*cd*	93	*abe*	92	*abe*	81	*cd*
Wheat	27	*e*	27	*e*	30	*e*	31	*e*	41	*abcd*
Cotton	#1	*de*	*0	*de*	*2	*e*	*3	*abe*	*14	*abcd*
Rice	*1	*bde*	D	*acde*	*1	*bde*	*4	*abce*	8	*abcd*
Soybeans under contract	*5	*cde*	8	*cde*	15	*abde*	27	*abc*	26	*abc*
Operator occupation (*percentage*):										
Farming	#0	*bcde*	100	*ade*	100	*ade*	96	*abc*	97	*abc*
Non-farm	79	*bcde*	0	*ade*	0	*ade*	*2	*abc*	*2	*abc*
Retired	21	*bcde*	0	*a*	0	*a*	#2	*a*	#1	*a*
Operator age (*percentage*):										
Less than 50 years	45	*ce*	39	*cde*	55	*ab*	54	*b*	61	*ab*
50 to 64 years	32		30		36	*e*	35	*e*	25	*cd*
65 years or more	23	*cd*	31	*cde*	9	*ab*	*10	*ab*	*14	*b*
Operator education (*percentage*):										
High school	45	*c*	53		56	*a*	41		48	
Some college	29		25		30		36		33	
Completed college	17	*bc*	9	*ae*	9	*ae*	14		17	*bc*
Financial characteristics per farm:										
Farm equity (*dollars*)	286,987	*bcde*	372,604	*acde*	566,432	*abde*	786,316	*abce*	1,451,910	*abcd*
Government payments (*dollars*)	3,076	*cde*	3,533	*cde*	9,291	*abde*	16,454	*abce*	33,098	*abcd*
Farms sharing farm income (*percentage*)	*9	*de*	7	*cde*	13	*be*	16	*abe*	34	*abcd*
Debt-to-asset ratio (*percent*)	13	*cde*	12	*cde*	17	*abe*	19	*ab*	21	*abc*
Return to equity (*percentage*)	-6.4	*cde*	-8.6	*cde*	#-0.1	*abde*	9.5	*abc*	*10.8	*abc*
Financial characteristics per household:										
Total household income (*dollars*)	52,127	*bde*	29,131	*acde*	44,180	*bde*	90,832	*abce*	169,130	*abcd*
Farm income (*dollars*)	#1,537	*cde*	#800	*cde*	24,713	*abde*	55,971	*abce*	127,180	*abcd*
Off-farm income (*dollars*)	50,590	*bcd*	28,332	*ace*	19,467	*abde*	34,862	*ac*	41,950	*bc*
Percentage off-farm wage, business inc.	83	*bcde*	61	*ade*	62	*ade*	71	*abc*	49	*abc*

Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, b, c, d, and *e* indicate estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.
[1] Part-time farms consist of retirement and residential/lifestyle farms plus farms with assets of $150,000 or less that generate less than $100,000 in annual sales. See glossary.

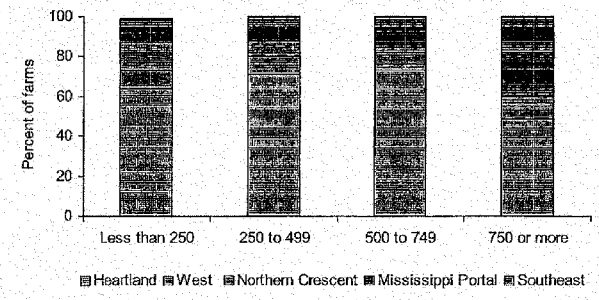
Farm and Operator Characteristics Vary by the Size of the Soybean Enterprise

Soybean production costs per acre, costs per bushel, and the size of the soybean enterprise were not strongly linked. Differences in regional costs were more important than size differences.

In 1997, those who planted 250 to 750 acres of soybeans had lower production costs per bushel than those planting less than 250 acres of soybeans (table 10). The average yields of soybean producers with 250 to 750 acres were higher than all other producers. Many operations with 250 to 750 acres of soybeans were located in the Heartland, where production costs per bushel were lowest and yields were higher (fig. 6). Producers with 750 or more acres of soybeans were more likely to be in the Southeast or the Mississippi Portal, where average soybean yields are lower due in part to their later planting dates. Southeast and Mississippi Portal soybean producers were more likely to double-crop soybeans following winter wheat (table 12). Double-cropping soybeans with wheat may reduce soybean yields due to the later soybean planting date. However, the double cropping allows producers to receive more income and spread the fixed costs of land and machinery over two crops rather than one. Production costs per acre and production costs per expected bushel did not vary significantly with the amount of planted soybean acreage.

Nearly 75 percent of all soybean producers planted less than 250 acres (table 10). These producers accounted for 30 percent of total U.S. soybean production and planted 31 percent of the soybean acreage. Those planting 250 to 499 acres of soybeans accounted for 16 percent of the soybean producers and nearly 25 percent of the soybean acreage and production. Those planting 500 or more acres comprised only 12 percent of the producers, yet they controlled 45 percent of the soybean acreage and produced 45 percent of the soybeans.

Figure 6
Distribution of soybean farms by planted soybean acreage and region, 1997



Southeast includes Eastern Uplands and Southern Seaboard.
West includes Northern Great Plains and Prairie Gateway.
Source: 1997 Agricultural Resource Management Survey.

Farms with larger soybean enterprises had a greater percentage of their total acreage devoted to soybean production. The percentage of acres devoted to soybeans ranged from 25 percent for farms with small soybean enterprises to 53 percent for farms with very large soybean enterprises. For farms with larger soybean enterprises, soybeans also accounted for a greater percentage of the farm's total agricultural commodity production. Soybeans were 21 percent of total production for small soybean enterprises and 39 percent for very large enterprises (table 12). This increased specialization in soybean production may have made risk management more important to operators with the larger soybean enterprises. More than 33 percent of the farms with 500 or more acres of soybeans had some soybeans under a production or marketing contract in contrast to less than 18 percent of farms with fewer soybean acres. Production contracts often provide for premium prices for specialty soybean crops, while marketing contracts can reduce producers' exposure to price variations.

Producers with fewer than 250 soybean acres differed substantially from those planting 250 or more soybean acres. Producers with small soybean enterprises used 1.9 hours of labor per acre of soybeans compared to 1.5 hours per acre for those with larger soybean enterprises (table 11). The percentage of farms employing hired labor in their soybean operations rose as the size of the soybean enterprise increased. Farms with small soybean operations had a higher percentage of their labor derived from unpaid family members. A higher percentage of those with small soybean enterprises used conventional tillage practices, which increased the number of labor hours spent in the field. The smaller swath of the farm machinery used in smaller soybean enterprises also contributed to their higher number of labor hours expended per acre.

Farm income averaged $15,521 for those operating small soybean enterprises compared to $114,762 for those with very large enterprises. When off-farm income is added to farm income, producers with small soybean enterprises had an average household income of $50,528, which is close to the 1997 U.S. average household income. In contrast, the average farm family income for those with over 750 acres of soybeans averaged $169,130. Operators of small soybean enterprises had an average debt-to-asset ratio of 14 percent compared to 20 percent for those larger soybean enterprises. The value of farm equity and Government payments was also positively correlated with the soybean acreage.

Table 10–Soybean production costs and returns on 1997 ARMS soybean farms, by soybean planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Percent of soybean farms	72	*bcd*	16	*acd*	7	*abd*	5	*abc*
Percent of soybean acres	31	*bcd*	24	*acd*	18	*abd*	27	*abc*
Percent of soybean production (*bushels*)	30	*bcd*	25	*ae*	20	*abd*	25	*ac*
Size:								
Total operated acreage per farm	372	*bcd*	879	*acd*	1,335	*abd*	2,211	*abc*
Planted soybean acreage per farm	92	*bcd*	347	*acd*	592	*abd*	1,163	*abc*
Avg. number of commodities per farm	2.8		2.8		2.9		2.8	
Yield in bushels per acre:								
Actual	42	*bc*	44	*ad*	46	*ad*	41	*bc*
Expected	42		42		44		41	
Production costs per bushel (*dollars*):								
Actual	3.45	*bc*	3.10	*a*	2.91	*a*	3.35	
Expected	3.43	*b*	3.21	*a*	3.04		3.29	
Costs and returns per planted acre (*dollars*):								
Gross value of production	270.25	*bc*	282.72	*a*	303.55	*ad*	267.99	*c*
Operating costs	82.40		79.79		85.29		70.06	
Seed	18.20	*c*	19.01	*c*	22.45	*ab*	20.23	
Fertilizer	7.21	*c*	7.63	*c*	11.21	*abd*	7.03	*c*
Soil conditioners	0.14	*bd*	0.07	*ac*	0.13	*bd*	0.06	*ac*
Manure	0.84	*c*	#0.63		*0.33	*a*	#1.47	
Chemicals	26.38		26.46		27.49		25.52	
Custom operations	8.27	*bd*	5.64	*ad*	5.95		*3.18	*ab*
Fuel, lube, and electricity	8.12	*bcd*	7.04	*a*	5.89	*a*	6.94	*a*
Repairs	10.06	*c*	9.51	*c*	7.86	*abd*	9.60	*c*
Purchased irrigation water	*0.11	*bc*	0.00	*a*	0.00	*a*	D	
Interest on operating capital	2.03	*d*	1.94		2.08		1.89	*a*
Hired labor	1.04	*bd*	1.84	*ad*	1.90	*d*	*3.08	*abc*
Ownership costs	60.72	*bc*	55.15	*a*	50.00	*ad*	56.88	*c*
Capital recovery of mach. and equip.	51.44	*c*	48.72		44.92	*ad*	51.52	*c*
Taxes and insurance	9.28	*bcd*	6.39	*acd*	5.08	*ab*	5.36	*ab*
Production costs	143.12	*b*	134.90	*a*	135.29		135.94	
Value of production less operating costs	187.84	*b*	202.93	*a*	218.26		188.93	
Value of production less production costs	127.13	*bc*	147.82	*a*	168.26	*a*	132.05	

Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
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a, b, c, and *d* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

Table 11–Production practices on 1997 ARMS soybean farms, by soybean planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Seed:								
Drilled (*percentage of farms*)	52		57		51		58	
Rows (*percentage of farms*)	46		43		49		40	
Planting width for drilled (*inches*)	8.3	*d*	8.4		8.3		8.8	*a*
Planting width for rows (*inches*)	29.8	*bcd*	26.8	*ad*	23.4	*a*	24.0	*ab*
Seeding rate (*lbs/acre*)	67		69		69		67	
Herbicide-resistant variety (*percentage of farms*)	9	*bcd*	14	*a*	25	*a*	16	*a*
May plant date (*percentage of farms*)	77	*d*	72		69		67	*a*
June plant date (*percentage of farms*)	16	*d*	19		*12	*d*	27	*ac*
July plant date (*percentage of farms*)	4	*d*	*2		*2		*1	*a*
Fertilizer use (*percentage of farms*):								
Nitrogen	23		25		20		21	
Phosphorous	32	*c*	31	*c*	48	*abd*	34	*c*
Potassium	29		29		35		30	
Manure	13	*bcd*	*8	*a*	*6	*a*	*5	*a*
Fertilizer quantity on reporting farms:								
Nitrogen (*lbs/acre*)	21		26		17		37	
Phosphorous (*lbs/acre*)	85		86		95		76	
Potassium (*lbs/acre*)	49		55		51		43	
Farms using fertilizer from prev. yr. (*percentage*)	34	*bcd*	50	*a*	52	*a*	49	*a*
Chemical use:								
Herbicides (*percentage of farms*)	95	*bcd*	98	*a*	99	*a*	98	*a*
Herbicides (*acre-treatments*)	2.7	*d*	2.8	*d*	2.7	*d*	3.2	*abc*
Custom operations (*percentage of farms*):								
Any custom operation	42	*bd*	26	*a*	45	*d*	30	*ac*
Preparation, cultivation, or planting	12	*bcd*	*4	*a*	#4	*a*	#2	*a*
Fertilizer/chemical	12	*cd*	*14	*c*	36	*abd*	19	*ac*
Harvest	26	*bcd*	7	*ad*	#5	*a*	*2	*ab*
Total labor hours per acre	1.9	*bcd*	1.5	*ad*	1.3	*a*	1.3	*ab*
Unpaid	1.8	*bcd*	1.3	*acd*	1.0	*abd*	0.9	*abc*
Paid	.1	*bcd*	.2	*ad*	*.3	*a*	.4	*ab*
Farms with paid labor (*percent*)	11	*bcd*	29	*ad*	38	*a*	49	*ab*
Tillage systems (*percentage of farms*):								
Conventional	59	*bcd*	42	*a*	35	*a*	39	*a*
Reduced	27	*cd*	22	*d*	15	*a*	13	*ab*
Conservation	41	*bcd*	58	*a*	65	*a*	61	*a*
No-till	18	*bcd*	29	*a*	*35	*a*	34	*a*
Machinery:								
Planter width (*rows*)	12.9	*bcd*	16.4	*acd*	19.5	*ab*	20.2	*ab*
Harvester width (*rows*)	12.1	*bcd*	17.9	*acd*	20.6	*abd*	22.7	*abc*
Tractor horsepower (*largest used*)	137	*bcd*	175	*acd*	213	*ab*	221	*ab*
Speed of tillage/planting operations (*acres/hr*)	7.0	*bcd*	8.8	*acd*	10.5	*abd*	11.9	*abc*
Speed of harvest operations (*acres/hr*)	5.4	*bcd*	6.8	*acd*	7.6	*ab*	7.9	*ab*
Total trips across field (*number*)	7.0	*bd*	6.7	*a*	6.6		6.6	*a*
Tillage and planting trips (*number*)	3.5	*bcd*	3.1	*ad*	2.9	*a*	2.8	*ab*

D=Data insufficient for disclosure.
Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, b, c, and *d* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.

Table 12--Characteristics of 1997 ARMS soybean farms and soybean producers, by soybean planted acreage

Item	Fewer than 250 (*a*)		250-499 (*b*)		500-749 (*c*)		750 or more (*d*)	
Soybean acreage (*percentage*):								
Dry land	95		95		97		93	
Irrigated	5		*5		#3		*7	
Production value:								
All commodities (*dollars per farm*)	130,059	*bcd*	317,727	*acd*	464,905	*abd*	771,686	*abc*
Soybeans (*dollars per farm*)	26,953	*bcd*	99,261	*acd*	170,757	*abd*	304,345	*abc*
Percentage of total production	21	*bcd*	31	*ad*	37	*a*	39	*ab*
Previous crop (*percentage of farms*):								
Soybeans	12	*d*	15		*25		26	*a*
Corn	71	*d*	74	*d*	61		58	*ab*
Other	17	*b*	11	*a*	*14		16	
Percentage of farms double-cropped w/wheat	4.6	*d*	*4.0	*d*	*4.8	*d*	12.6	*abc*
Percent of soybean farms with:								
Cattle	46	*bcd*	35	*a*	28	*a*	25	*a*
Hogs	14		17		*24		*10	
Dairy	9	*bcd*	*3	*a*	*2	*a*	#2	*a*
Corn	83	*b*	90	*ad*	88		79	*b*
Wheat	28	*d*	30	*d*	35		42	*ab*
Cotton	*2	*d*	*2	*d*	*4		7	*ab*
Rice	*1	*bcd*	2	*ad*	*4	*ad*	14	*abc*
Soybeans under contract	8	*bcd*	18	*acd*	*36	*ab*	35	*ab*
Operator occupation (*percentage*)[1]:								
Farming	60	*bcd*	85	*ad*	91	*a*	95	*ab*
Non-farm	31	*bc*	*11	*a*	D		D	
Retired	9	*bc*	*3	*ac*	D		D	
Operator age (*percentage*):								
Less than 50 years	45	*bd*	57	*a*	57		60	*a*
50 to 64 years	32		36		32		32	
65 years or more	24	*bcd*	*7	*a*	#11	*abd*	*8	*ac*
Operator education (*percentage*):								
High school	50	*bcd*	49	*ac*	36	*ab*	45	*a*
Some college	28	*c*	32		43	*a*	30	
Completed college	13	*bd*	13	*a*	*14		21	*a*
Financial characteristics per farm:								
Farm equity (*dollars*)	421,325	*bcd*	613,100	*acd*	941,012	*abd*	1,459,361	*abc*
Government payments (*dollars*)	5,050	*bcd*	12,418	*acd*	20,085	*abd*	39,193	*abc*
Farms sharing farm income (*percentage*)	11	*cd*	10	*cd*	19	*abd*	39	*abc*
Debt-to-asset ratio (*percent*)	14	*bcd*	20	*a*	20	*a*	21	*a*
Return to equity (*percentage*)	*-3.6	*cd*	#-2.9	*cd*	*11.3	*ab*	*12.0	*ab*
Financial characteristics per farm household:								
Total household income (*dollars*)	50,528	*d*	61,758	*d*	63,514	*d*	191,462	*abc*
Farm income (*dollars*)	15,521	*bd*	33,257	*ad*	* 37,243	*d*	114,762	*abc*
Off-farm income (*dollars*)	35,007	*cd*	28,501	*d*	26,271	*cd*	*76,701	*abc*
Percentage with off-farm wage, business inc.	69	*d*	67		67		58	*a*

D=Data insufficient for disclosure.
Coefficient of Variation (CV) = (Standard Error/Estimate) x 100.
* indicates that CV is greater than 25 and less than or equal to 50.
# indicates that CV is greater than 50.
a, *b*, *c*, and *d* indicate that estimates are significantly different from the indicated group at the 90 percent or better level using the t-statistic.
[1] May not add to 100 since percentages for hired managers are not shown.

Glossary

Agricultural Resource Management Survey (ARMS) is the source of data compiled for this report. Soybeans cost and return estimates in this report are derived from the responses of 1,789 soybean farmers in 17 States to a survey on soybean production practices and costs as part of the 1997 ARMS. The target population for the survey was farmers who planted soybeans with the intention of harvesting the soybeans. The National Agricultural Statistics Service (NASS) and the Economic Research Service (ERS) collect production and cost data once every 5-8 years for each commodity on a rotating basis in the ARMS survey. The survey data are weighted to represent all U.S. soybean planted acreage in the surveyed States. The planted acreage in the surveyed States accounted for 93 percent of all U.S. soybean acreage.

Cost categories

- Low-cost producers are the 25 percent of U.S. soybean producers with the lowest production costs per harvested bushel of soybeans. These producers had production costs of $2.46 per bushel or less for soybeans. The cost per bushel is computed by dividing production costs by the bushels produced.
- High-cost producers are the 25 percent of U.S. soybean producers with the highest production costs per harvested bushel of soybeans. These producers had operating costs of $4.49 or more per bushel.

Crop rotation refers to the crop planted in the spring/summer of 1996 prior to the soybean crop in 1997, described as follows:

- Soybeans are members of the legume family. Legumes are plants with bacteria on their nodules that take nitrogen from the air and convert it to a form usable by plants.
- Corn is a member of the grass family. Grasses are plants that require nitrogen for growth but cannot generate nitrogen. Therefore, farmers usually supply nitrogen to grasses.
- Other includes fields rotated with any other crop except for soybeans or corn, as well as land that was fallowed or left unseeded and uncultivated in the prior growing season, or land taken out of the Conservation Reserve Program during 1997.

ERS's farm typology classifies farms based on the size of the farm operation, the operator's occupation, and farm asset levels. The size of the farm operation is based on the annual value of gross sales.

- Small farms are family farms with annual gross sales of $250,000 or less. Family farms exclude farms organized as nonfamily corporations or cooperatives and exclude farms operated by hired managers.
  - Part-time farms are family farms that generate annual gross sales of less than $250,000 and whose operators report a nonfarm occupation, as well as family farms that generate annual sales totaling less than $100,000 whose operators report retirement as their occupation. All farms that generate less than $100,000 in annual sales, have farm assets valued under $150,000 and have household income under $20,000 are also included in the part-time farm definition.
  - Lower sales farms are family farms that have annual gross sales of less than $100,000 and farm assets of $150,000 or more, and whose operators report farming as their major occupation.
  - High-sales farms are those family farms with annual gross sales of $100,000 or more but less than $250,000, whose operators report farming as their major occupation.

- Larger farms are family farms with gross annual sales of $250,000 or more.
  - Large farm operations are defined as farms with annual gross sales of $250,000 or more, but less than $500,000.
  - Very large farms are those with annual gross sales of $500,000 or more.
- Nonfamily farms are those organized as nonfamily corporations or cooperatives or those operated by hired managers. These farms are excluded from the typology discussion and tables, but are included in all other tables and discussions.

Farm household income averaged $52,562 for all U.S farms and $60,908 for U.S. farm households that raised soybeans in 1997. Data on farm household income is computed from the ARMS data and it is the sum of farm income and off-farm income of farm households. The farm income of farm households excludes the farm income earned by landlords and contractors. It also excludes the farm income generated by farms organized as nonfamily corporations or cooperatives or operated by hired managers. For farms with multiple operators or partners, the farm income, off-farm income, and household income figures used in this report are those for the household of the principal farm operator. Farm income of farm households is computed by taking net cash farm business income and subtracting depreciation, wages paid to the operator, gross farmland rental income, and the farm income received by other households, and then adding back the wages to operators, net income from farmland rental, and the earnings of the operator household from farming activities (ERS, AIS-67). Off-farm income consists of wages, salaries, net income from nonfarm businesses, interest, dividends, transfer payments, Social Security retirement, pensions, other retirement plans, gifts, and other off-farm sources.

Farms using fertilizer from previous year are the farms who responded yes to the following question on the 1997 ARMS soybean phase 2 survey, "Were fertilizers applied to the previous crop on this field with the intention of having the 1997 soybean crop utilize the carryover?" Frequently, farmers will apply sufficient phosphorus and potassium to a non-soybean crop for use by both the non-soybean crop and the soybean crop that follows.

Production costs are the sum of operating and ownership costs for all participants in the soybean production enterprise, including the operators, landlords, and contractors. Operating costs are costs that vary with the amount of soybean acreage planted. These include the costs for seed, fertilizer, soil conditioners, manure, chemicals, custom operations, fuel, repairs, purchased irrigation water, interest, and hired labor. Ownership costs are costs related to capital items that are consumed during the year in the production process. Ownership costs include the capital recovery costs for farm machinery and equipment, non-real estate property taxes, and insurance. Capital recovery represents the value of farm machinery and equipment consumed in the annual production process. Capital recovery costs are a discretionary expense in any given year. In low-income years, these expenditures may be deferred, but ultimately they must be paid if producers are to replace consumable capital assets and remain in production. The marketing and storage costs are excluded from production costs as well as the opportunity costs for land and unpaid labor. Production costs include costs for all acreage that was planted with the intention of harvesting soybeans.

Production regions are based on ERS' farm resource regions (fig. 2). These consist of county groupings with similar soils and climates that favor production of selected crops and livestock and lead to the use of similar production practices on farms within a region. Regions are based on counties that have similar

soil and climatic traits. The West is a combination of the Northern Great Plains and the Prairie Gateway. The Southeast is the combination of the Eastern Uplands and Southern Seaboard. No soybean farms were sampled in the Fruitful Rim or the Basin and Range.

Rate of return on farm equity represents the return earned by the equity in a farm operation as a percent of the value of farm equity. It is computed by subtracting the return to operator and unpaid labor and the return to management from the net farm income earned by the farm operation and dividing the total by the current value of the equity in the farm business and multiplying by 100.

Soybean farms are farms that planted at least one acre of soybeans in 1997 with the intent of harvesting the soybeans.

Soybeans under contract are soybeans grown under a marketing or production contract. These contracts may be formal or informal arrangements made with processors, packers, canners, and integrators.

Tillage systems are defined by the amount of crop residue remaining on the soil from the previous crop.

- Conventional tillage leaves less than 30 percent of the previous crop residue covering the soil when planting another crop.
- Reduced tillage leaves between 15 percent and 30 percent of the previous crop residue covering the soil when planting another crop.
- Conservation tillage leaves 30 percent or more of the previous crop residue covering the soil when planting another crop.
- No-till means that no tillage operations have occurred prior to planting.

U.S. average household income was taken from the Current Population Survey (CPS), U.S. Department of Commerce, Bureau of the Census. In 1997, the average income for all U.S. households was $49,692.

Value of production is computed using soybean prices during the harvest months. The harvest month price is multiplied by the total quantity of harvested soybeans during that month.

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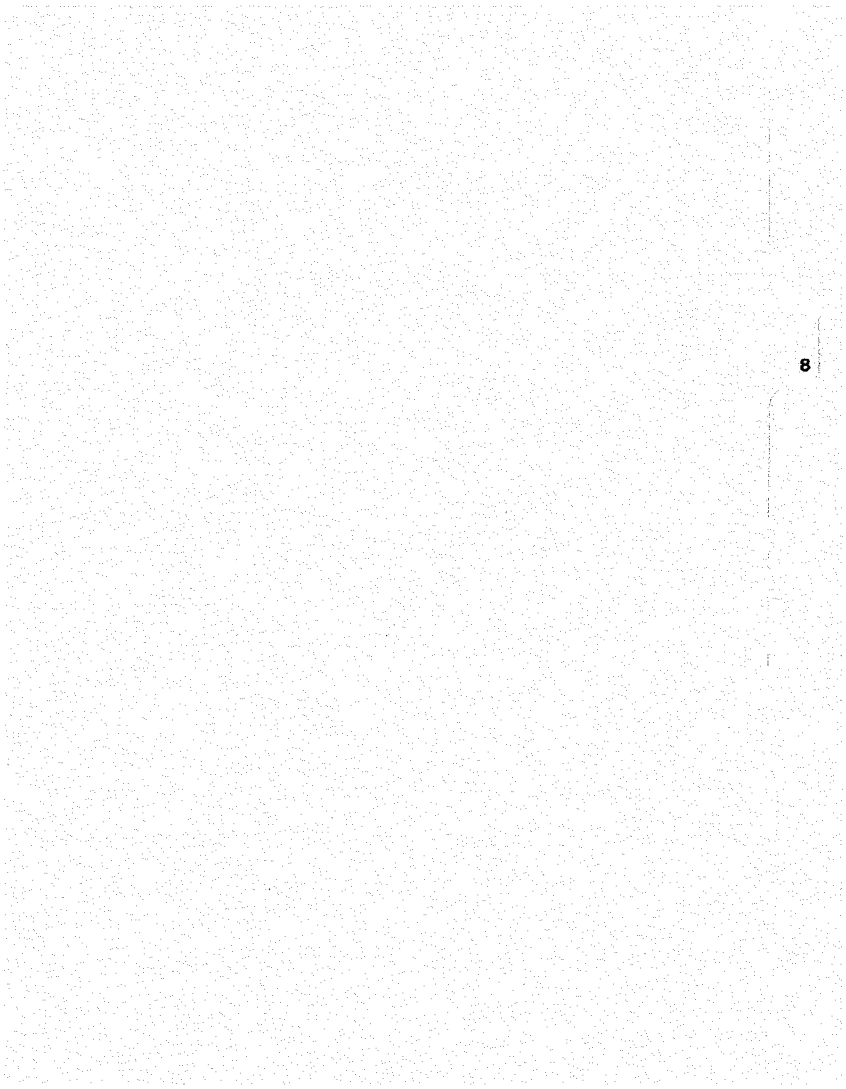


Lost Earnings from All Enterprises

[REVISED 1/12/04]

Year	Total Return From Crops	Total Return From Hogs	Total Return from All Enterprises	Mitigating Income	Net Damages	Total Damages Adjusted to year 2002 dollars
1981	73,849.83	240,237.22	314,087.05		314,087.05	621,609.02
1982	51,246.24	199,599.14	250,845.39		250,845.39	467,638.19
1983	155,229.17	137,373.57	292,602.75		292,602.75	528,506.37
1984	186,124.66	139,064.93	325,189.60		325,189.60	580,371.59
1985	146,199.83	115,859.43	262,059.27		262,059.27	436,145.56
1986	15,806.26	171,639.71	187,445.97		187,445.97	307,676.19
1987	191,175.27	169,823.59	360,998.86		360,998.86	571,687.45
1988	187,347.71	95,600.92	282,948.63	63,237.00	219,711.63	334,117.68
1989	239,058.92	86,950.45	326,007.38	205,406.00	120,601.38	174,969.26
1990	327,023.75	172,462.93	499,486.68	67,117.00	432,369.68	595,128.58
1991	289,552.17	121,075.08	410,627.25	188,371.00	222,256.25	293,567.54
1992	437,687.17	56,919.06	494,606.23	24,337.00	470,269.23	603,003.81
1993	353,978.12	101,336.09	455,314.21		455,314.21	566,858.31
1994	630,202.67	36,709.51	666,912.18		666,912.18	809,564.78
1995	892,529.70	42,285.47	934,815.18		934,815.18	1,103,493.02
1996	1,053,681.18	115,845.08	1,170,526.26	3,301.60	1,167,224.66	1,338,328.34
1997	723,461.39	124,376.62	847,838.01		847,838.01	950,318.12
1998	493,937.32	(50,423.76)	443,513.56		443,513.56	489,497.48
1999	328,661.45	(82,045.51)	246,635.93		246,635.93	266,325.36
2000	242,783.87	22,769.62	265,553.49		265,553.49	277,427.84
2001	290,080.47	33,172.47	323,252.94		323,252.94	328,363.66
2002	601,425.30	(74,720.32)	526,704.97		526,704.97	526,704.97

TOTAL DAMAGES: $ 12,173,311.11

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.



Lost Earnings from Crops

BARLEY

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	474	48	2.10	100.80	47,777.61	107.94	51,162.60	(7.14)	(3,385.00)	(6,699.24)
1982	474	52	1.90	98.55	47,187.12	113.20	53,658.34	(13.65)	(6,471.22)	(12,063.97)
1983	50	48	2.05	98.21	4,910.45	113.20	5,660.16	(14.99)	(749.72)	(1,354.15)
1984	1100	49	2.35	114.73	126,206.94	117.15	128,867.42	(2.42)	(2,660.48)	(4,606.55)
1985	1000	47	1.70	79.26	79,261.48	113.20	113,203.25	(33.94)	(33,941.77)	(56,748.36)
1986	403	47	1.50	69.80	28,129.08	111.89	45,070.43	(42.09)	(16,941.36)	(27,840.77)
1987	465	48	1.35	64.80	30,131.00	114.52	53,251.60	(49.72)	(23,120.60)	(36,614.40)
1988	490	35	1.95	67.88	33,259.04	119.76	58,694.57	(51.91)	(25,435.52)	(38,680.06)
1989	514	45	2.10	93.49	48,052.30	126.37	64,952.34	(32.66)	(16,900.04)	(24,518.68)
1990	584	51	2.10	107.91	63,021.75	130.32	76,104.17	(22.40)	(13,082.42)	(18,007.10)
1991	611	51	1.70	85.96	52,520.00	131.63	80,426.96	(46.67)	(27,906.96)	(36,860.96)
1992	537	57	1.90	108.78	69,289.68	132.95	84,687.88	(24.17)	(15,398.20)	(19,744.38)
1993	664	54	1.80	97.11	64,483.91	136.90	90,899.56	(39.76)	(26,415.67)	(32,887.05)
1994	691	51	1.80	92.66	64,029.83	139.53	96,414.94	(46.87)	(32,385.11)	(38,312.29)
1995	717	52	1.75	91.69	65,742.88	143.48	102,874.11	(51.79)	(37,131.23)	(43,831.42)
1996	717	54	2.90	155.40	111,421.37	151.38	108,536.90	4.02	2,884.47	3,307.30
1997	717	53	2.10	111.76	80,132.75	155.33	111,368.30	(43.56)	(31,235.55)	(35,011.06)
1998	717	55	1.40	76.94	55,168.85	151.38	108,536.90	(74.43)	(53,368.06)	(58,901.31)
1999	717	64	1.31	71.04	50,933.98	151.38	108,536.90	(80.34)	(57,602.92)	(62,201.47)
2000	717	56	1.35	75.56	54,173.84	157.86	113,255.90	(62.40)	(59,082.06)	(61,723.94)
2001	717	53	1.28	68.24	48,926.69	161.91	116,087.30	(93.87)	(67,160.41)	(68,222.24)
2002	717	50	1.40	70.40	50,479.50	163.22	117,031.10	(92.62)	(66,551.60)	(66,551.60)
										$ (749,073.71)

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

CORN

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	284	124	2.70	333.79	94,796.45	208.19	59,124.75	125.60	35,671.70	70,597.78
1982	284	129	2.50	321.27	91,240.33	218.34	62,008.89	102.93	29,231.45	54,494.69
1983	550	92	3.70	340.65	187,355.89	218.34	120,087.63	122.31	67,268.26	121,501.61
1984	1275	121	2.90	351.27	447,872.80	225.96	288,096.07	125.32	159,776.74	276,649.04
1985	1275	134	2.40	321.50	409,907.18	218.34	278,384.97	103.15	131,522.21	219,896.34
1986	1210	136	1.70	230.43	278,817.94	215.80	261,120.78	14.63	17,697.16	29,048.52
1987	1395	136	2.05	278.80	388,926.00	220.86	308,127.60	57.92	80,798.40	127,954.51
1988	1489	96	2.90	279.10	409,995.02	225.38	331,087.69	53.71	78,907.33	119,995.17
1989	1542	133	2.60	344.70	531,533.09	231.80	357,441.46	112.90	174,091.63	252,573.26
1990	2468	135	2.51	339.77	838,557.14	232.90	574,793.25	106.87	263,763.89	363,053.74
1991	2581	124	2.60	323.22	834,232.88	229.04	591,151.01	94.18	243,081.87	321,075.10
1992	2884	151	2.25	339.39	914,325.47	225.06	606,302.00	114.34	308,023.47	394,963.80
1993	2807	116	2.65	306.74	661,012.95	225.28	632,364.97	81.46	228,647.98	284,662.78
1994	2920	150	2.40	388.14	1,115,779.18	223.03	651,246.72	160.11	467,532.46	567,537.72
1995	3032	131	3.35	438.85	1,330,608.22	222.57	674,836.64	216.28	655,771.58	774,103.08
1996	3032	147	3.20	470.40	1,426,252.80	227.98	690,325.76	242.72	735,927.04	843,808.72
1997	3032	147	2.69	394.19	1,195,170.53	233.62	708,334.26	160.57	486,836.27	545,681.26
1998	3032	155	2.24	348.19	1,055,718.83	227.68	690,325.76	120.51	365,393.07	403,277.38
1999	3032	155	2.16	332.71	1,008,777.89	227.68	690,325.76	105.03	318,452.13	343,874.78
2000	3032	158	2.02	319.84	969,741.09	237.58	720,339.92	82.26	249,401.17	260,553.25
2001	3032	160	2.14	342.05	1,037,105.17	243.52	738,348.42	98.53	298,756.74	303,480.17
2002	3032	150	2.75	413.47	1,253,652.08	245.50	744,361.25	167.98	509,300.83	509,300.83
									$	7,188,081.52

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops [REVISED 1/12/04]

DOUBLE CROPPED SOYBEANS

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	806	33	5.10	168.50	159,988.82	146.25	117,880.91	52.24	42,107.91	83,335.67
1982	806	34	5.70	194.11	156,451.14	153.39	123,631.20	40.72	32,819.93	61,184.52
1983	780	28	7.85	222.35	175,663.30	153.39	121,176.98	68.96	54,478.31	98,396.47
1984	1700	30	5.95	180.75	307,277.30	158.74	269,856.90	22.01	37,420.40	64,792.39
1985	1400	37	5.15	189.85	265,795.68	153.39	214,744.02	36.47	51,051.65	85,354.95
1986	1008	36	4.90	176.40	177,811.20	151.61	152,817.64	24.80	24,993.36	41,024.68
1987	1162	37	6.05	221.22	257,066.61	149.39	173,595.13	71.82	83,460.47	132,170.24
1988	1224	29	7.40	215.02	263,179.17	150.22	183,868.55	64.80	79,310.62	120,608.46
1989	1285	35	5.70	197.68	254,015.30	152.10	195,445.40	45.58	58,569.90	84,973.59
1990	1123	37	5.55	202.74	227,671.65	150.28	168,759.69	52.46	58,911.96	81,088.47
1991	1174	37	5.50	201.03	236,014.62	145.15	170,408.95	55.88	65,605.68	86,665.37
1992	1226	40	5.50	220.51	270,346.59	139.90	171,512.81	80.61	98,833.78	126,729.84
1993	1277	35	6.45	223.69	285,656.20	137.14	175,133.73	86.55	110,522.47	137,598.56
1994	1328	44	5.35	235.08	312,191.35	132.74	176,261.77	102.34	135,909.57	164,980.65
1995	1380	37	6.85	256.05	353,349.04	129.26	178,379.02	126.79	174,970.01	208,542.69
1996	1380	40	6.60	270.11	372,755.36	128.74	177,658.34	141.37	195,097.04	223,696.36
1997	1380	41	6.20	254.20	350,796.00	124.26	171,478.24	129.94	179,317.76	200,992.30
1998	1380	41	5.30	217.30	299,874.00	121.10	167,118.63	96.20	132,755.37	146,519.58
1999	1380	39	4.50	173.59	239,555.94	121.10	167,118.63	52.49	72,437.31	78,220.12
2000	1380	40	4.35	174.68	241,061.34	126.37	174,384.66	48.32	66,676.69	69,658.17
2001	1380	42	4.30	179.47	247,672.04	129.52	178,744.27	49.95	68,927.77	70,017.64
2002	1380	40	5.54	221.88	306,201.07	130.58	180,197.48	91.31	126,003.59	126,003.59
										$ 2,490,544.19

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

[REVISED 1/12/04]

EARLY SOYBEANS

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1981	0	33	6.10	198.50	-	162.50	-	35.99	-	-
1982	0	34	5.70	194.11	-	170.43	-	23.68	-	-
1983	640	28	7.85	222.35	142,301.41	170.43	109,076.33	51.91	33,225.08	60,011.96
1984	0	36	6.95	160.76	-	176.38	-	4.37	-	-
1985	100	37	5.15	189.95	18,985.41	170.43	17,043.18	19.42	1,942.23	3,247.28
1986	1057	36	4.90	176.40	186,454.80	168.45	178,061.65	7.95	8,403.15	13,783.13
1987	1218	37	6.05	221.22	269,444.88	165.99	202,180.24	55.23	67,264.64	106,522.08
1988	1283	29	7.40	215.02	275,865.09	166.91	214,146.10	48.11	61,718.99	93,856.69
1989	1347	35	5.70	197.68	266,271.29	169.00	227,639.38	28.68	38,631.90	56,047.41
1990	784	37	5.55	202.74	158,944.41	166.97	130,906.89	35.76	28,037.52	38,591.81
1991	820	37	5.50	201.03	164,848.37	161.28	132,249.99	39.75	32,598.39	43,057.63
1992	855	40	5.50	220.51	188,536.97	155.44	132,901.44	65.07	55,635.53	71,338.79
1993	891	36	6.45	223.89	199,310.63	152.38	135,773.21	71.31	63,537.42	79,102.98
1994	927	44	5.35	235.08	217,922.72	147.49	136,724.57	87.59	81,198.16	98,569.45
1995	963	37	6.65	256.05	246,576.17	143.62	138,308.37	112.43	108,267.80	127,804.32
1996	963	40	6.80	270.11	260,118.43	143.04	137,749.58	127.07	122,368.85	140,306.92
1997	963	41	6.20	254.20	244,794.60	138.07	132,957.77	116.13	111,836.83	126,364.60
1998	963	41	5.30	217.30	209,259.80	134.56	129,577.49	82.74	79,682.41	87,843.96
1999	963	39	4.50	173.59	167,168.38	134.56	129,577.49	39.04	37,590.90	40,591.85
2000	963	40	4.35	174.68	168,218.89	140.41	135,211.29	34.28	33,007.60	34,483.55
2001	963	42	4.30	179.47	172,832.01	143.92	138,591.57	35.56	34,240.44	34,781.79
2002	963	40	5.54	221.86	213,675.09	145.09	139,718.33	76.80	73,956.76	73,956.76
										$ 1,329,360.18

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops

WHEAT

Year	Acres	Yield per Acre	Price (NASS-VA)	Value per Acre	Total Value	Cost Per Acre	Total Cost	Return per acre	Total Return	Net Income Adjusted to year 2002 dollars
1961	332	31	3.34	103.84	34,475.21	105.48	35,019.99	(1.64)	(544.78)	(1,078.18)
1962	332	32	3.05	97.57	32,394.37	110.63	36,728.29	(13.05)	(4,333.92)	(8,079.50)
1963	100	36	3.40	120.72	12,071.98	110.63	11,062.74	10.09	1,009.24	1,822.91
1964	600	35	3.35	117.13	70,279.88	114.49	68,691.88	2.65	1,588.01	2,749.59
1965	400	34	2.95	99.69	39,876.45	110.63	44,250.95	(10.94)	(4,374.49)	(7,313.66)
1966	905	31	2.55	79.05	47,828.25	109.34	66,151.31	(30.29)	(18,326.06)	(30,080.81)
1967	697	34	2.55	86.96	60,612.15	111.68	77,839.50	(24.72)	(17,227.64)	(27,282.16)
1968	734	31	3.45	106.82	78,406.29	116.57	85,559.99	(9.75)	(7,153.70)	(10,878.71)
1969	771	30	3.45	102.82	79,274.30	122.71	94,610.76	(19.89)	(15,336.47)	(22,250.24)
1990	539	36	2.95	106.80	57,456.98	126.28	68,064.18	(19.66)	(10,607.20)	(14,600.12)
1991	564	31	2.70	86.04	47,961.15	127.28	71,787.95	(42.25)	(23,826.80)	(31,471.67)
1992	588	36	3.10	112.28	66,023.08	128.28	75,430.49	(16.00)	(9,407.41)	(12,052.67)
1993	613	35	2.70	95.41	58,486.76	131.81	80,800.84	(36.40)	(22,314.08)	(27,780.65)
1994	638	35	2.85	99.50	63,477.99	134.06	85,530.39	(34.56)	(22,052.41)	(26,759.42)
1995	662	33	3.70	123.44	81,715.87	137.56	91,064.33	(14.12)	(9,348.46)	(11,035.35)
1996	662	34	4.15	140.90	93,274.84	144.82	95,871.05	(3.92)	(2,596.22)	(2,976.80)
1997	662	37	3.05	113.09	74,866.76	148.28	98,160.68	(35.19)	(23,293.92)	(26,109.51)
1998	662	41	2.41	98.09	64,933.59	144.20	95,459.08	(46.11)	(30,525.48)	(33,690.39)
1999	662	40	2.00	80.46	53,283.11	144.20	95,459.08	(63.74)	(42,195.97)	(45,564.55)
2000	662	40	2.00	79.14	52,389.94	150.47	99,609.47	(71.33)	(47,219.53)	(49,330.97)
2001	662	38	2.29	86.73	57,415.64	154.23	102,099.71	(67.50)	(44,684.07)	(45,390.54)
2002	662	33	2.60	93.12	61,645.50	155.48	102,929.78	(62.36)	(41,284.28)	(41,284.28)
										$ (470,467.87)

NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

Lost Earnings from Crops [REVISED 1/12/04]

ALL CROPS

Year	Total Revenue	Total Return	Net Income Adjusted to year 2002 dollars
1981	337,038.09	73,849.83	146,156.04
1982	327,272.96	51,246.24	95,535.74
1983	522,293.02	165,229.17	280,378.80
1984	951,638.92	196,124.66	339,584.47
1985	813,826.19	148,199.83	244,436.34
1986	719,038.26	15,806.25	25,944.76
1987	1,006,170.63	191,176.27	302,750.27
1988	1,060,704.60	187,347.71	284,901.55
1989	1,179,146.26	239,056.92	346,825.33
1990	1,345,651.93	327,023.75	450,126.80
1991	1,335,577.02	289,552.17	382,455.47
1992	1,508,521.79	437,687.17	561,225.39
1993	1,468,550.45	353,978.12	440,696.63
1994	1,776,401.06	530,202.67	765,003.11
1995	2,077,992.18	892,529.70	1,053,583.28
1996	2,263,822.82	1,053,681.18	1,208,140.50
1997	1,945,760.64	723,461.39	810,907.81
1998	1,684,955.17	493,937.32	545,149.22
1999	1,519,699.30	328,681.45	354,920.72
2000	1,485,585.11	242,783.87	253,640.06
2001	1,563,951.74	290,080.47	294,686.72
2002	1,385,653.25	601,425.30	601,425.30
		$	9,788,454.31

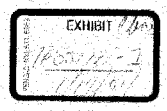
NOTE: Present value was calculated by adjusting for inflation, as measured by the Consumer Price Index.

APPENDIX 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELINDA D. HAYNIE, Plaintiff, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, et al., Defendants.	Civil Action No. 00-2493 (PLF / DAR)
PHILIP J. HAYNIE, II, et al., Plaintiffs, v. ANN VENEMAN, Secretary of the United States Department of Agriculture, et al., Defendants.	Civil Action No. 00-2516 (PLF / DAR)

DECLARATION OF RONALD TROSTLE REGARDING ESTIMATED DAMAGES TO THE HAYNIES' FARMING OPERATIONS IN C.A. 00-2516



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Declaration of Ronald Trostle Regarding
Estimated Damages to the Haynies' Farming Operation in C.A. 00-2516

1. My name is Ronald Trostle. I am an agricultural economist with the Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA). My curriculum vitae is attached as Exhibit A.

2. I have been asked by the U.S. Department of Justice (DOJ) and the ERS to objectively estimate economic damages associated with alleged racial discrimination by USDA in administering farm lending programs in the Civil Action No. 00-2516, brought by Philip J. Haynie, II (individually, "Mr. Haynie") and Judith S. Haynie (individually "Judith Haynie" and collectively with Mr. Haynie, "the Haynies" or "Plaintiffs"). This assignment is considered to be part of my duties as a U.S. government civil servant. My salary is not dependent on either the amount of time I spend on the case or on the outcome of the case.

3. I have served as an expert witness in a number of Pigford vs. Veneman Track B arbitrations. I testified and/or gave depositions in the arbitrations listed in Exhibit B.

I. Summary of Methodology and Findings

4. In this report, two approaches were used to assess the potential economic damages that might be attributed to the alleged discrimination. Each approach has a different objective.

   (1) A Net Income Analysis approach was used to estimate the net income from farming that the Plaintiffs' farm business, without discrimination, might have generated between 1981 and 2002. The analysis produced an estimate of approximately $255,163. This estimate overstates actual economic damages to the extent that the Plaintiffs' debt servicing requirements exceeded those of the average farmer with a farming operation the same size as the Plaintiffs, and to the extent the Plaintiffs' land costs exceeded those of the average farmer represented in USDA's costs of production estimates. Economic damages are calculated by subtracting mitigating

income of $551,770, as assumed by Dr. Kambhampaty, from net returns. The result, a negative $296,607, is the estimate of economic damages.

(2) A Net Worth Analysis approach was used to address a different question: Was the Plaintiffs' farming operation financially viable? That is, given the Plaintiffs' high level of debt, would the net income from farming as computed in the Net Income Analysis, plus beginning net worth and nonfarm income, have been sufficient to cover the debt servicing requirements and family living expenses, on a sustained basis? If not, the farming operation could only continue operating by borrowing even more money. The Net Worth Analysis indicates that the Plaintiffs' farming operation was so highly indebted, even in 1981, that it was not financially viable. Only additional borrowing could postpone insolvency. In such case, any discriminatory acts after 1981 would not merit any economic damages because bankruptcy or involuntary sales of farm assets would be the final result anyway.

(3) The essence of the distinction between the Net Income Analysis approach and the Net Worth Analysis approach is the questions they address. The Net Income Analysis addresses the question: What is the total cumulative net return to farming that the Plaintiffs might have earned without discrimination? The Net Income Analysis assesses the question: Would the stream of annual net returns, as calculated in the Net Income Analysis, been sufficient to sustain the financial viability of the farm business? It is possible that cumulative net farm income could have been some positive number at the end of the period, but that a string of years with low income and/or high debt servicing payments might have caused the farm business to become insolvent before it could benefit from years of higher income and/or lower debt servicing requirements at the end of the period. In other words, the farm business could become insolvent in the short run, and not able to financially sustain itself until more profitable years occurred.

(4) In this particular case, both approaches reach the same conclusion. Under either approach, the Plaintiffs would not be awarded any economic damages.

II. References and Data and Information Sources

5. In the process of conducting my analysis and estimating economic damages, I have reviewed numerous documents, information and data associated with this case or otherwise pertinent to the case. These documents and sources, cited in Exhibit C, include numerous sources of information about the costs and returns to the farming enterprises in which the Plaintiffs were involved (including county-average yields, state-average prices, and regional-average and national-average costs of production), the acreage farmed by the Plaintiffs, the financial condition of the Plaintiffs' farming operation, the depositions of the Plaintiffs, and the estimate of economic damages prepared on November 21, 2003, for the Plaintiffs by Dr. S. Murthy Kambhampaty. As additional information becomes available, I may revise my analysis accordingly.

III. Background

6. The Plaintiffs operated many individual farm tracts and the total number of acres farmed was large by county standards. Acreage reports of the Agricultural Stabilization and Conservation Service (ASCS), the predecessor of the current Farm Service Agency (FSA), indicate that the Plaintiffs operated 1,093 acres of farmland in 1981, and that on that farmland he planted 1,896 acres of crops -- including double cropped soybeans. By 1985, the records show that the Plaintiffs controlled 2,775 acres of land and planted 5,118 acres. Exhibit F of Dr. Kambhampaty's analysis indicates 4,175 acres of crops may have been harvested (or were planned to be harvested) in 1985.

The records also show that, in 1985, the Plaintiffs operated 75 separate farms (i.e., each farm had a distinct ASCS farm number). Exhibits D and E shows that of the 75 farms, half had total planted area of less than 10 acres and more than 2/3 of the farms were less than 20 acres. Thus, although the total acreage was large, the geographical fragmentation of the farmland into small plots would have made it more difficult to manage and carry out field operations; to sign up for, and comply with farm programs; and to interact with all the landowners. However, the overall magnitude of the farming operation would likely have enabled the Plaintiffs to capture some economies of scale in bulk purchasing of inputs such as fertilizer, seed and pesticides.

7. In 1981, there were problems with the financial viability of the Plaintiffs' farming operation. The business was very heavily indebted. On the front page of the Farm and Home Plan dated February 24, 1981,[1] total debt is shown as $1,131,310. This was composed of $519,840 of land debt and $611,470 of nonland debt. Total property owned was $1,136,600. Net worth was shown as $5,469.[2]

There are several telling indicators of the farming operation's lack of financial viability. The calculated debt-to-asset ratio was nearly 100 percent (compared to a national average of 17.8 percent in 1981).[3] The debt-servicing requirements for scheduled interest and principal payments shown on the 1981 Farm and Home Plan were $451,603. The total net cash farm and nonfarm income was $259,900 -- before deducting for family living expenses and paying scheduled principal and interest payments. The 1981 Farm and Home Plan proposes obtaining $450,000 of additional credit to finance family living expenses and capital expenditures of $320,000, and to pay the scheduled interest and principal payments.

The Plaintiffs' net cash income from farming was insufficient to cover debt servicing costs. The only way to stay in business was to borrow even more money. This appears to be how the Plaintiffs were able to continue to expand the size of their farming operation during the first half of the 1980s -- by borrowing more money to cover the shortfall between net cash income and debt servicing requirements. This only served to increase indebtedness and further increase debt servicing requirements.

8. Being able to objectively and accurately quantify the economic consequences of racial discrimination depends on being able to identify the time and nature of the alleged discriminatory act(s). Reading through the deposition of Mr. Haynie and the Declaration of Dr. Kambhampaty, who prepared an estimate of economic damages for the Plaintiffs, it was difficult to discern specific discriminatory acts that could be directly related, in a time dimension, to economic consequences. Thus, the analysis assumes that without discrimination the Plaintiffs would have been able to maintain a larger farm than they actually did.

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[1] Bates stamp. 112516 0295.

[2] Based on the figures for total debt and total property owned stated in the Plan and cited above. I compute net worth as $5,290. In any event, the difference between $5,466 and $5,290 is not material to my analysis.

IV. Methodology

9. The objective is to estimate the economic impact of the alleged discrimination. The economic impact, referred to as "economic damages," is the difference between the economic conditions of the Plaintiffs assuming no discrimination (the "without discrimination" scenario), and the "with discrimination" scenario. Two methodological approaches are used to determine applicable damages.

10. Net Income Analysis: The Net Income Analysis estimates the cumulative net income from farming, between 1981 and 2002, that might have been earned by the Plaintiffs' farm business, if they had not experienced discrimination. A two-step analytical process has been used to estimate this stream of annual net incomes from each crop and hog enterprise. The results of this two-step analysis will be called the "Base Scenario."

    (1) "*Average Farm*": First, net returns from farming are estimated for an "average farmer" with a farming operation in Northumberland County that was the same size as the Plaintiffs. This analysis relies primarily on publicly available information.

    (2) "*Comparable Farm*": In the second step, the stream of revenues and costs generated in step one for the "average farmer" in Northumberland County is adjusted to more accurately represent the economics of a farming operation that was more comparable to that of the Plaintiffs.

11. Net Worth Analysis: This second methodological approach estimates the farming operation's ability to maintain or increase net worth. It addresses the following question: Would the cash flow of annual farm net income plus nonfarm income have been sufficient to cover the debt servicing requirements and family living expenses that were necessary to maintain the financial viability of the operator? If net returns from farming plus nonfarm income are insufficient to cover scheduled interest and principal payments on outstanding debt, plus family living expenses, then the farming operation would not have been economically viable and could not have stayed in business on a sustained basis. If the farm business was not economically viable before discrimination occurred,

[1] Source: Economic Research Service. http://www.ers.usda.gov/data/farmbalancesheet/fbsdmu.htm

then the business would have been financially unsustainable before discrimination occurred and no economic damages would be justified.

12. Economic Modeling: Standard budgeting practices and generally accepted accounting principles are used to simulate average production conditions, by year, using county-average yields, state-average prices, and regional estimates of average production costs, for a farm, located in Northumberland County, that was comparable to the Plaintiffs. Economic costs include variable, fixed, capital replacement, and operating and non-land capital costs of farming in the region. Seventy-five percent of the variable operating costs (approximately those inputs that directly enhance yields, such as seed, fertilizer and chemicals) are adjusted to reflect the ratio of average yields in the county to those of the region. Costs and revenues may be adjusted in "alternative scenarios," i.e., scenarios in which the assumptions differ from those used in the Base Scenario.

13. The Net Income Analysis estimates the cumulative 1981-2002 net farm income that would have been earned by a farm operation comparable to the one assumed for the Plaintiffs. For the "with discrimination" scenario we assume that the cumulative net return from the farm operation either was zero or was equal to mitigating income as presented in Exhibit G of Dr. Kambhampaty's analysis. The Base Scenario presents the assumptions for, and the net returns from, the "without discrimination" scenario. The net returns from each farming enterprise are shown in Exhibit J, which compares the Base Scenario, described in this report, with Dr. Kambhampaty's results on the right.

V. General Assumptions

14. The analysis is based on a number of assumptions:

- The period of analysis used in this case was 1981 to 2002.
- USDA/ERS publishes regional Cost of Production (COP) accounts for individual crops and for hogs.[1] Components of the costs of production include:

[1] Economic Research Service, Commodity Costs and Returns section of the Farm Income and Costs Briefing Room: http://www.ers.usda.gov/Data/CostAndReturns/testpick.htm

A. Variable operating costs, including: seed, fertilizer, chemicals, custom operations, fuel and electricity, repairs, hired labor and other variable cash expenses.

B. Fixed costs, including:

- General farm overhead expenses, such as licenses, building and fence repair costs, and the farm share of utilities, telephone, and motor vehicles.
- Taxes and insurance.
- Land costs, defined as rental payments for renting land.

C. Capital replacement (ownership cost that is equivalent to the principal payment portion of a loan to finance machinery and replacement).

D. Operating capital charges to cover the interest payments on loans to purchase inputs.

E. Nonland capital represents the interest portion of ownership costs associated with machinery and equipment.

- These costs were used in the analysis, with an adjustment to variable costs to reflect differences between county average yields and regional-average yields from the cost of production statistics. In the Base Scenario, 75 percent of the variable costs (representing inputs that directly enhance yields) were adjusted by the ratio of county to regional yields. Since the Northumberland County average yields for wheat and barley were higher than the regional COP yields, this increased the estimated variable costs of production. Conversely, since the county average yield for corn was lower than the regional average, this reduced the variable costs for corn. The county and regional yields for soybeans were almost identical..
- In the Base Scenario it was assumed that the Farmers Home Administration (FmHA) would have extended credit to the Plaintiffs, up to their lending limits ($100,000 for operating loans between 1981 and April 23, 1984; $200,000 thereafter). In addition, in the Net Worth Analysis it was assumed the FmHA would have used emergency loans to finance any shortfall in net farm income below obligations for interest

payments, principal payments, and family living expenses each year – even if the farm business did not appear to be financially viable.

- Average state prices for all crops and the value of hog production per hundred-weight of gain, as published by USDA's National Agricultural Statistical Service (NASS),[5] were assumed in the analysis.

VI. Net Income Analysis Approach: The Base Scenario

15. The Net Income Analysis for the Base Scenario is based on a set of assumptions about the size and nature of the Plaintiffs' farming operation, and on a set of costs and returns data for corn, soybeans, wheat, barley and hogs. The assumptions applied to the data generate an estimate of the net returns from farming that a comparable farm in Northumberland County would have been expected to earn between 1981 and 2002. This Base Scenario can be compared to alternative assumptions and/or alternative sources of data.

Prices

16. The Base Scenario uses annual, state-average prices for the crops produced on the Plaintiffs' farm. In essence, these are the same prices used in Dr. Kambhampaty's analysis. USDA does not publish average market prices for hogs that would be applicable to the Northern Neck area of Virginia. Instead, data on the value of production per hundred weight of gain ($/cwt of gain) from the cost of production estimates are used to estimate the revenue from Plaintiffs' hog operation.[6] The $/cwt of gain data in USDA's regional cost of production statistics are similar to those used by Dr. Kambhampaty, although USDA's regional data average $0.56 per cwt higher.

[5] National Agricultural Statistics Service. "http://www.nass.usda.gov/QuickStats/pqdb"

[6] Economic Research Service. "Hogs," portion of the Commodity Costs and Returns section of the Farm Income and Costs Briefing Room. "http://www.ers.usda.gov/Data/CostsAndReturns/testpick.htm"

Yields

17. In the Base Scenario it was assumed that the Plaintiffs would have used sufficient inputs and management to achieve Northumberland County average yields for all crops each year between 1981 and 2002. Historical yields are published for both planted and harvested acres. The yields used in the Base Scenario are bushels per planted acre.

18. There are five ways in which Dr. Kambhampaty's analysis inappropriately arrives at estimated yields. This is the first of several examples of what I will call "comparing apples and oranges."

(1) It uses yields per harvested acre rather than a lower yield per planted acre (see "Planted vs. Harvested Yields" below).

(2) The analysis is based on national average yields rather than local county yields (see discussion below).

(3) Dr. Kambhampaty then adjusts national average yields by using "expected yields"[1] rather than "actual yields" to arrive at a "benchmark yield." This may either raise or lower the yield estimate for a particular crop in a particular year, but the national average expected yield has little correlation, either in level or year-to-year fluctuations, to Northumberland County's actual yields. Also, use of "expected yields" would not be consistent with the cost of production estimates used in Dr. Kambhampaty's analysis.

(4) The analysis uses average yields for large farms, even though large farms usually achieve somewhat lower yields than do medium or small sized farms (see "Large-Farm Yields" below).

(5) Dr. Kambhampaty's analysis does not acknowledge that double-cropped soybeans generally get lower yields than full-season soybeans (see "Soybean Yields: Full-Season vs. Double-Cropped" below).

19. Planted vs. Harvested Yields: For crops, USDA publishes historical data for production, and planted and harvested acres – from which both yield per planted acre and yield per

[1] Expected yields in the COP data are based on the yields that individual farmers participating in the cost of production surveys at planting time said they expected to obtain when the crop was harvested. They are not highly correlated to the level or variability of actual yields.

harvested acre can be calculated. Yields per planted acre are used by USDA for estimating costs of production. Yields per planted acre, rather than per harvested acre, are used because a farmer incurs costs for every acre that is planted, even if not all those acres are harvested. The producer incurs variable costs for seed bed preparation, seed, fertilizer, and for the cost of the land itself. But not all acres planted are harvested. Reasons for not harvesting crops include: drought, flood, hail loss, insect or disease damage, or using a partially mature crop for pasture or feed rather than harvesting it for grain. The average ratio of harvested-to-planted acres was 90.8 percent between 1981 and 2002 for U.S. total corn, soybean, wheat and barley acreage.[8] The range was between 87.4 percent in 1997 and 93.0 percent in 1988. A 90.8 percent harvested-to-planted ratio means that the yield per harvested acre has been overstated by 10 percent. In Dr. Kambhampaty's Exhibit tables regarding "Estimation of (crop) yields, 1981-2002," the "Average Yield, All US" column shows yields per harvested acre. As will be shown in the cost of production section below, Dr. Kambhampaty's analysis inconsistently used the higher yield per harvested acre to estimate gross revenue, but used cost of production data associated with yield per planted acre. This combination biases the economic damage estimate upward because it increases gross revenue relative to costs of production. Dr. Kambhampaty's inconsistent use of planted and harvested yields is an example of "comparing apples and oranges."

20. National Average Yields vs. Northumberland County Yields. Dr. Kambhampaty's yield estimates are based on national average yields (per harvested acre). This is another "comparison of apples and oranges."

21. Northumberland County's wheat and barley yields were 42 percent and 24 percent higher than national yields, respectively. Conversely, county average corn and soybean yields were 85 and 80 percent of the national average yields. National average yields do not represent the crop productivity conditions that exist in Northumberland County, Virginia. Also, in many years, the national level yields offset above-average yields in one geographical part of the nation against weather- or pest-induced low yields in another part of the country. Thus, the year-to-year variability in national yields, and associated risk, is much less than it is for most localities.

[8] Calculated from NASS statistics. http://www.nass.usda.gov/Charts/pedb/

22. The national average yields are more heavily weighted by those regions that are the largest producers. A majority of the nation's wheat and barley acreage is in the Great Plains states. Because of limited rainfall, these regions use lower seeding rates and apply less fertilizer – and get significantly lower yields. Because the yield potential is lower for this region, land prices are also significantly lower. For corn, using national average yields introduces a different bias. Irrigated corn production in the eastern Great Plains accounts for a large portion of the nation's corn output. Here, yields are very high because farmers use large amounts of variable inputs to capitalize on the large investment in irrigation infrastructure, on low-cost land. These growing conditions and variable and fixed costs of production are very different from those in the Northern Neck of Virginia.

23. Thus, national average yields do not represent either the level (yield potential) or the fluctuations in county yields. The question about using national yields vs. county yields is not one of intentionally introducing bias in the estimate of economic damages; it is a question of using a consistent set of data that most accurately depicts the economic and agronomic conditions of the Plaintiffs.

24. Large Farm Yields: Dr. Kambhampaty's analysis argues that the Plaintiffs operated a large farm and achieved very high yields. The statistics shown in the various "Characteristics and Production Costs" studies referenced by Dr. Kambhampaty show that large farms generally achieve lower yields than do medium and smaller sized farms (Exhibit F). Except for corn, the ERS studies referenced in Exhibit E of Dr. Kambhampaty's report indicate that large farms tend to obtain lower yields than medium or lower middle sized farms. The table in Exhibit F of this report compares the yields on large, medium, and smaller sized farms for the various crops produced by the Plaintiffs. For barley, yields on medium sized farms were 14 to 22 percent higher than on large farms, depending whether one compares statistics for actual yields or for expected yields. Small barley farms also obtained higher yields than did large barley farms. For soybeans, yields on medium and small sized farms were from 2 to 12 percent higher than on large farms. The statistics for corn and wheat are inconclusive regarding which farm size category achieves the higher yields. As discussed in the cost of production section of this report, differences in yields have less to do with farm size than with the region of the nation in which most of the large size category farms are located.

25. Smaller sized farms may obtain higher average yields because the operator has more time to pay attention to optimum fertilizer and herbicide application rates, to pests and diseases needing chemical treatment, and to timing of field operations, including planting and harvesting. The smaller farmer can more effectively manage factors that affect yields.

26. The statistics for large farms generally represent farms in other parts of the nation, and are not correlated to yields in the Northern Neck of Virginia (see Wheat and Barley, and Corn Example discussions below). Thus, arguing that the Plaintiffs achieved very high yields simply because they were large farmers is inconsistent with the data. It is also inconsistent with a large acreage divided up into many small tracts, each requiring special attention in order to achieve even average yields.

27. Soybean Yields: Full-Season vs. Double-Cropped: On average, soybeans have lower yields when planted as a second crop after barley and wheat is harvested in the early summer. "Full-season" soybeans can be planted earlier in the growing season because they do not follow another crop. Thus, they have a longer growing season but still generally mature sooner than double-cropped soybeans, which are more likely to have yields reduced by late summer drought and heat, and by insect pests and diseases which plague the later maturing double-cropped soybeans. This difference between full-season soybeans and double-cropped soybeans has diminished during the 1990s as a result of no-till planting and Roundup-Ready soybean varieties. However, during the 1980s, the difference in yield was significant. The Virginia Cooperative Extension Service estimated the yield reduction for double-cropped soybeans to be 19 percent for the 1987-2002 period. Average double-cropped soybean yields were 36.2 bushels per acre versus 44.8 for full season beans.[9] The North Carolina Extension Service estimated the yield reduction to be 17 percent in 1996: 29 bushels per acre for soybeans double-cropped after wheat, versus 35 bushels for full-season soybeans.[10] For double-cropped soybeans

[9] Virginia Cooperative Extension Service, "Full Season vs. Double Crop Yields in Virginia: Data from the Virginia Soybean Variety Evaluation Tests" (1987-2003)

[10] North Carolina State University, Department of Agricultural and Resource Economics. From crop budgets for full season and double-cropped soybeans: (1) "Soybeans (Coastal Plain), Budget #3-F," Jan 96, and (2) "Wheat and Soybeans, Double-Cropped (Coastal Plain), Budget #4-F," Jan 96

yields, the Base Scenario uses a yield that is conservatively 10 percent below the average for Northumberland County, Virginina.

28. Impact of Different Yield Estimates on the Damage Estimate: If the yields used in Dr. Kambhampaty's analysis are replaced by the average yields per planted acre in Northumberland County, Virginia (which would be consistent with the cost of production estimates used by Dr. Kambhampaty), and lower yields for double-cropped soybeans replace the yield for full-season soybeans, Dr. Kambhampaty's damage estimate is reduced by about $5,689,000. (Exhibit K, line 17)

Farm Acreage

29. Acreage reports from the ASCS document that the Plaintiffs planted 1093 acres in 1981. After 1985, Dr. Kambhampaty assumes that the Plaintiffs would have continued to expand their planted acreage until it reached 5,375 acres in 1995. The Base Scenario uses Dr. Kambhampaty's projections for acreage planted but with considerable reservations. There are several reasons to question such a rapidly continuing expansion in acreage. The Plaintiffs already controlled a large amount of local farmland. To expand acreage further they would have had to pay higher lease rates to bid additional land away from the remaining farmers and land owners. There is evidence that the Plaintiffs were already paying higher than average lease rates. Paying even higher rates would increase their costs of production and lower profits on the additional land. Also, most of the additional land would likely be farther from the center of their farming operations, entailing an increase in costs for travel and transportation costs, and increasing the time and effort necessary to oversee and supervise farming operations on the new tracts that were farther away. Finally, if the Plaintiffs had already obtained better than average quality land that would generate better than average yields, then the additional land would probably be, on average, lower quality with lower than average yields. These factors lead to the conclusion that the aggressive continued expansion in acreage that has been assumed in Dr. Kambhampaty's analysis appears to be overly optimistic, and if it had occurred, would probably have resulted in lower efficiency, increased land costs, and lower profitability.

Costs of Production

30. There is a two-step process used to generate the costs of production estimates used in the Base Scenario. The first step uses USDA's regional costs of production estimates published by the ERS.[11] These data are the most comprehensive estimates of the full economic costs of production, and most accurately reflect the agronomic and economic conditions in the area the Plaintiffs farmed. These data are also consistent with the "yield per planted acre" measure used elsewhere in the Base Scenario. The variable costs in the regional costs of production data are adjusted to reflect the ratio of county yields to yields from the regional costs of production. For example, if county wheat yields are higher than the regional wheat yields, it is assumed more purchased inputs were used to generate the higher yields. Another factor associated with higher yields is the quality and productivity of the land itself. In the wheat example, higher county wheat yields would be associated with higher land prices and rents in the county than in the regional average. However, because there are no pertinent studies of the correlation between land prices (or rents) and yields in the Northern Neck of Virginia, this factor was not accounted for. The first step provides the data for estimating net returns from farming for an "average" Northumberland County farm that was the same size as the Plaintiffs.

31. In the second step, variable costs applicable to the "average" farm were adjusted to reflect the economics of a farm comparable to the Plaintiffs (see discussion on discounts for bulk purchasing below).

32. Dr. Kambhampaty's Analysis: The Plaintiffs' analysis uses a different methodology to estimate the costs of production. Dr. Kambhampaty combines data from different sources that were designed for different purposes, and the way they are used in Dr. Kambhampaty's analysis introduces another set of inconsistencies and biases. This is another example of "comparing apples and oranges."

[11] Economic Research Service, Commodity Costs and Returns section of the Farm Income and Costs Briefing Room. http://www.ers.usda.gov/Data/CostsAndReturns/testpick.htm

(1) Dr. Kambhampaty's analysis is based on national average costs of production rather than regional costs that are more representative of the climate, soils and production methods used in the Northern Neck of Virginia.

(2) Plaintiffs claim that they would have continued to have a large farm had they been able to continue farming, and Dr. Kambhampaty's analysis used costs of production representing large farms. Although the Plaintiffs' total acreage was large by county standards, it was composed of many small individual tracts of land, which would not capture all the economies of scale embodied in the statistics for U.S. average for all large farms, which generally operated fewer but much larger tracts of land. It is likely, however, that the Plaintiffs would have been able to negotiate discounts on bulk purchases of inputs.

(3) Dr. Kambhampaty's costs of production are generated from studies that report estimates for either "low-cost" farms or "large" farms. These large farms often represent farms in other regions of the nation, with different climates, soils, topography, land costs, yields, and production practices and levels of variable inputs.

(4) Data for only one or two years are used as benchmarks from which 21-year time series of costs of production of data are generated.

(5) Dr. Kambhampaty reduces costs of production for double-cropped soybeans but uses a method that understates that portion of the damage estimate (see soybean discussion below).

33. Average Field Size: The national level data for large farms tend to be from areas of the nation where farming is more extensive than in the Northern Neck of Virginia. But the Plaintiffs generally farmed many small tracts of land rather than a few large tracts. Over half the 75 individual tracts that the Plaintiffs farmed (i.e., 75 separate ASCS farm numbers in 1985) were less than 10 acres (Exhibit E). Farming many small tracts reduces efficiency in several ways:

A. Increased expense for machinery operators who have to take down machinery after completing work on one field, move the machinery to another field and set it up to start work on that field.

B. Smaller sized machinery, suitable for working small tracts of land, has lower labor efficiency, i.e., the machinery and the operator paid to do the work do not cover as many acres per hour as would larger scale machinery. However, larger scaled machine is significantly more expensive. Although labor efficiency in the field (measured in acres per hour) is greater with large equipment, a large percentage of the equipment's operational time would have been spent moving from one small tract to another. Regardless of whether the Plaintiffs had small or large scale machinery, the many small tracts would have caused a smaller percentage of time to be spent actually doing the field work than would be the case for the large tract farms which are represented by the national average statistics used in the Plaintiffs' analysis.

C. Finally, having many small tracts makes managing the entire farming operation more difficult. Deciding which field to go to next after a rain, or when crops are maturing or drying out for harvest, means moving from field to field during those critical periods, whereas the large tract farms represented by the national averages are more likely to have larger fields ready to plant or harvest at the same time, resulting in less time spent checking out which field to work on next. Another inefficiency embodied in managing many small farms is the time consuming task of dealing with the ASCS office to sign up for, and certify compliance with, government programs.

34. While the Plaintiffs may have captured some legitimate economies of scale that did reduce their costs of production below those of the average Northumberland County farmer, using national average cost of production data to estimate the Plaintiffs' costs of production is misleading.

35. *Wheat and Barley Example*: The U.S. national average costs of production for large barley and wheat farms reflect a predominance of barley and wheat producers in the Great Plains that farm fewer, but much larger, tracts of land than did the Plaintiffs. These producers can reap economies of scale associated with large-scale equipment (covering many more acres per hour of machinery and operator time). The Great Plains region also receives significantly less rainfall than the Northern Neck of Virginia. Because of limited rainfall, these regions get lower yields and use a lower level of inputs per acre (seeding

and fertilizer). Not only are these variable costs lower than for Northumberland County, but cost of land, a fixed cost, is also significantly lower. Thus, the growing conditions and variable and fixed costs of production for the Great Plains are very different from those in the Northern Neck. Finally, the cost of land in these regions is much lower than in the Northern Neck of Virginia, giving them lower fixed costs of production.

36. Thus, for wheat and barley, the national average "large farms" represent regions of the county with lower yields, lower variable costs and lower land costs of production than exist where the Plaintiffs farmed.[12] Although the Plaintiffs operated a relatively large acreage compared to other Northumberland County farms, deriving their costs of production from the national large-farm category is an inconsistent and misleading use of data sources that biases upward the estimate of economic damages.

37. *Corn Example:* This is another "comparison of apples and oranges" inconsistency in Dr. Kambhampaty's analysis. The cost of production and yield statistics that are shown in the national averages for "large corn farms" used in Dr. Kambhampaty's analysis overwhelmingly reflect irrigated corn production in the Eastern Great Plains. These farms are characterized by multiple ¼ section (160 acres) sprinkler irrigation systems or by flood irrigation. The fields are large. The yields are very high by national standards. Although the land costs are low, the irrigation investment is very large and the variable production costs for seed, fertilizer, pumping irrigation water, and pesticides are well above the national average. Here, use of national average variable costs of production for large corn farms actually results in a slightly lower damage estimate than if the Plaintiffs' analysis had used the regional cost of production estimates. But the point is not whether one source of data gives a higher or lower damage estimate; it is whether the data accurately and consistently describe the Plaintiffs' farming operation. Comparing the Plaintiffs' farming operation to large wheat and barley farms in the limited rainfall, low input use, and low yielding regions of the Great Plains is misleading. Also misleading is comparing the Plaintiffs' farming operation to large Eastern Great Plains farms with a high irrigation investment cost on low cost land, incurring high variable costs for inputs, and achieving near the nation's maximum yields.

38. The costs of production represented in the national average costs for large farms are more of a reflection of geographical differences in climate, soils, production technology, and input use, than they are of the impact of being a relatively large farmer in one's own locality.

39. Soybean Costs of Production: Full-Season vs. Double-Cropped: Because double-cropped soybeans are planted as a second crop on the same land as either wheat or barley, they do not incur a land cost. The annual land cost has already been paid from the first crop. The 1981-2002 average land cost for soybeans in the regional cost of production statistics was $29.10 per acre. This was equal to 17.7 percent of the total costs of production during the same time period. Therefore, the Base Scenario discounts the costs of production of double-cropped soybeans by 17.7 percent. This is a larger percentage reduction in costs (and concomitant increase in economic damages) than the 10 percent assumed in Dr. Kambhampaty's analysis.

40. Some extension agents in the Northern Neck area believe double-cropped soybeans actually have higher variable costs of production because more herbicides and pesticides are used to combat late season insects and weeds. No surveys or published data are available to support this hypothesis and the Base Scenario does not use a higher level of variable costs for double-cropped soybeans.

41. Hog Production Costs: The Base Scenario is based on regional cost of production estimates from USDA. Costs of hog production are measured in dollars per hundred-weight of gain. Dr. Kambhampaty uses a different source of data and comes to a very different estimate of net returns to hog production.

[1] Ali, Mir G. Characteristics and Production Costs of U.S. Wheat Farms. USDA, Economic Research Service, Statistical Bulletin Number 974-5, July 2002. P. 14. Also: Glaze, Darpan. Characteristics and Production Costs of U.S. Wheat Farms. USDA, Economic Research Service, Agriculture Information Bulletin Number 683, Oct. 1993.

42. The following comparison contrasts the differences:

Farrow-to-finish: Net returns per hundred weight of gain per year & total 1981-2002 net returns

	Average	Minimum	Maximum	No. years negative	Total for 1981-2002
	---------- $/cwt gain ----------				Dollars
USDA	-1.23	-11.35	12.34	13	-366,500
Dr. Kambhampaty	10.69	-9.32	29.07	3	1,976,370

43. Nearly all of the difference in net returns is due to different cost estimates. Again, Dr. Kambhampaty's analysis relies on national average costs of production estimates for large-scale producers.

44. One can question the validity of Dr. Kambhampaty's analysis that shows such a large profit over 20 years with the reality of change in Virginia's hog industry. Exhibit G shows that between 1982 and 2002, 95 percent of the hog producers in the state went out of business.[15] If hog production was as profitable as Dr. Kambhampaty's analysis suggests, then why were nearly all hog operations ceasing production? Exhibit G also shows that the number of hogs in Northumberland County declined by 42 percent between 1981 and 1991, the last year that data were collected because of the increasing insignificance of hog production in the county. The decline in the number of hog operations and the number of head of hogs is inconsistent with Dr. Kambhampaty's estimates of the Plaintiffs' high profits.

45. With respect to hogs alone, replacing Dr. Kambhampaty's costs of production estimates with the USDA regional cost of production estimates reduces net returns and the estimate of economic damages by about $2,342,900 (see Exhibit K, line 26).

46. Impact of Different Cost of Production Estimates on the Damage Estimate. If all the crop and hog costs of production estimates used in Dr. Kambhampaty's analysis were replaced by those in USDA's regional cost of production estimates, which would be consistent

[15] National Agricultural Statistics Service (NASS), USDA. Data on the number of hog operations in Virginia. http://www.nass.usda.gov:81/ipedb/

with the yield estimates and more consistent with the farm management profession's budgeting and accounting procedures, then Dr. Kambhampaty's damage estimate would decline by about $5,337,700. (Exhibit J, line 27)

47. Bulk Purchasing Discount: Although the Plaintiffs likely did capture some economies of scale by buying inputs in bulk, using national average statistics for large farms is not using data sources consistently or correctly. In the Base Scenario the Plaintiffs are given a 5 percent discount for bulk purchases of seed, fertilizer, chemicals and fuel. In the Base Scenario, compared to the "average Northumberland County farm" scenario, this bulk purchasing discount would lower costs and raise the damage estimate by about $437,000. (Exhibit J, line 35)

48. Government Farm Programs: It was assumed that the Plaintiffs would have participated in government farm programs throughout the 1981-2002 period. It is undocumented to what extent the Plaintiffs participated in programs such as the Acreage Reduction Program, or would have participated in subsequent programs such as the Production Flexibility Contract Program. The Plaintiffs' analysis states that the Plaintiffs "selectively participated in set-aside programs."[14] The Base Scenario gives the Plaintiffs the benefit of doubt by assuming that they would have participated to the maximum extent possible. Although data were found on the Plaintiffs' planted acreage, data on "Base Acres" for government program purposes were not found. To estimate government payments and the costs of complying with the set-aside provisions, "Base Acres" were estimated by arithmetically working backwards from planted acres using the percentage set-aside requirement for each crop in each year.[15]

49. Payment Limitations: Government farm commodity programs contain payment limitations which put ceilings on payments to farm operations as a means of targeting benefits and reducing commodity program costs. During the early 1980s, the payment limits on deficiency payments were $50,000 per person per crop year.[16] Assuming that the Plaintiffs, in order to maximize government payments, had signed up some of the

[14] Kambhampaty, Nov. 21, 2003, P. 4, paragraph 9.

[15] There are a variety of sources of data on the percent of Base Acres required to be set-aside and program payments rates, by crop, including: Green, Robert, *Program Provisions for Projected Crops*, various commodity reports titled *(commodity) Background for 1995 Farm Legislation*, and various commodity "Yearbooks" published by the URS.

farms in one Plaintiff's name and other farms in the other Plaintiff's name, they would have been entitled to twice the payment limit. In some years, total estimated government payments to the Plaintiffs exceed this $100,000 limit. The Base Scenario constrains government payments to $100,000 in those years. The extent to which total farm payments are reduced by the payment limitations in any year is deducted from total farm receipts, rather than from the net returns to any specific crop. The reductions are shown in the last page of Exhibit J.

VII. Net Worth Analysis Approach

50. The Net Worth Analysis addresses the question of whether the Plaintiffs' farming operation was financially viable. Whereas the Net Income Analysis estimates each year's net income from farming, the Net Worth Analysis estimates the annual cash flow and change in net worth for the Plaintiffs, taking into account net farm income combined with debt servicing requirements, family living expenses and nonfarm income. Cash flow is negative if net farm income plus nonfarm income is not sufficient to cover scheduled principal and interest payments and family living expenses. In a year when cash flow is negative, the deficit must be made up from net worth if it is available. If net worth is insufficient, the farm operator must borrow money to cover the deficit and to be able to continue operating.

51. Farm income could show years of losses being followed by other years with profits, which culminates in a net profit for the entire period. In such a scenario, if negative cash flows cause net worth to turn negative, the farm business becomes insolvent. If, in subsequent years, the farmer borrows more money to cover the deficit and continue operations, but net worth continues to decline, then the business was clearly not financially viable. This scenario describes the Plaintiffs' financial situation in 1981 and 1982.

52. Exhibit H shows data for the Plaintiffs' debt, assets, net worth, debt servicing requirements, and net farm income for various years' Farm and Home Plans. The data

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[9] Glaser, Lowrens S. *Provisions of the Food Security Act of 1985*. USDA, Economic Research Service, Agriculture Information Bulleting Number 498. April 1986. P. 33.

show that the Plaintiffs began with a net worth of $5,469 in 1981, at the same time that they had debt in excess of $1.1 million.[17] This represents a debt-to-asset ratio of close to 100 percent. Furthermore, they were facing scheduled principal and interest payments in excess of $450,000 when estimated farm income was only $102,000. In the 1981 Farm and Home Plan, the Plaintiffs set forth a plan to borrow additional money to cover their financial shortfall, i.e., borrow money to help pay debt servicing requirements and family living expenses. This increases their total debt load as well as debt servicing costs in future years. By 1983, the Plaintiffs' farm business is insolvent – debts exceed assets by $176,750. Although a legible and complete 1982 Farm and Home Plan could not be found, they must have become insolvent in 1982 because their debt repayment requirements would have been much larger than farm income.[18] For most years, the Plaintiffs' estimated cash flow would have been negative, and their net worth declined. Because of the high debt load in 1981, the Plaintiff's business was already not viable. Borrowing additional money to cover cash flow deficits resulted in a spiraling debt load that was not financially sustainable.

53. The Plaintiffs' debt-to-asset ratio also suggests that their farming operation was not financially viable. Their debt to asset ratio was nearly 100 percent in 1981. In contrast, the 1981-2002 average debt-to-asset ratio for all farms in the United States was 16.7.[19] Nationally, the debt-to-asset ratio rose from 15.9 percent in 1978 to 22.2 percent in 1985, before dropping back to below 16 percent by the end of the 1990s. (Exhibit I) The high debt-to-asset ratios of the 1982 to 1986 period (19.1 to 22.2 percent) were associated with the farm sector's economically difficult period that has been called the "farm financial crisis" of the 1980s. The combination of higher interest rates and higher costs of production during this period made farmers with high debt loads vulnerable to becoming insolvent and going bankrupt. The rate of exits from farming increased -- some due to bankruptcy, others through involuntary sales of farmland and other farm assets.

54. There were a number of factors that contributed to the farm financial crisis of the 1980s. Interest rates nearly tripled in the late 1970s and early 1980s, causing costs of production for highly indebted farmers to jump. These costs stayed high until the mid-1980s. Also,

[17] From the Farm and Home Plan dated February 24, 1981.
[18] See Exhibit H.

in the mid-1980s, U.S. exports of grains and oilseed dropped sharply and domestic demand also declined somewhat. Prices for most farm products declined in 1985 and 1986. The combination of higher costs of production and lower farm product prices put a squeeze on farm income. This affected nearly all farmers, regardless of what they produced, what part of the nation they were in, whether they were large or small farmers, or what race they were. The most significant impact was on highly indebted farmers, because they were most affected by higher interest costs and were most vulnerable to insolvency that culminated in involuntary sales of farm assets, or in bankruptcy.

55. The farm financial management profession uses four categories to classify the financial position of farms: (1) favorable, (2) marginal income, (3) marginal solvency, and (4) vulnerable. The definition for the "vulnerable" category is as follows:[20]

> "These businesses have negative income and debt/asset ratios above 0.40. Many of these farms are highly leveraged and demonstrate income deficiencies that diminish the viability of their business operations. They do not generate sufficient income either to meet current expenses or to reduce existing indebtedness. The highly leveraged positions of these farms may have resulted from disproportionate reductions in asset values relative to the amount of outstanding liabilities, increased indebtedness to fund past expansion or cash operating shortfalls, or a combination of these factors. Regardless of the evolution of financial circumstances leading to their current highly leveraged position, some of these farmers may be forced to rely on debt restructuring/forgiveness to continue operating. But even then, cash earnings may not fully service all debt obligations."

56. The Plaintiffs' financial position, as described in the 1981 Farm and Home Plan, puts them in the "Vulnerable" category. Their debt to asset ratio, at nearly 100 percent, was more than double the 0.40 used as the threshold for the "Vulnerable" category. And although net farm income was positive before deducting all debt servicing, it was negative after subtracting scheduled interest and principal payments. The Plaintiffs had to go further in debt to pay debt servicing costs and to continue to stay in business.

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[19] Source: http://www.ers.usda.gov/data/FarmBalanceSheet/fbsdmu.htm
[20] Economic Research Service. Farm Financial Management Briefing Room. http://www.ers.usda.gov/briefing/FarmFinancialMgmt/Class.

57. The conclusion of the Net Worth Analysis is that the Plaintiffs' farming operation was not financially viable, not even in 1981 and 1982. Because of the high debt-to-asset ratio and the high level of debt and debt servicing requirements, the Plaintiffs' farm business was very vulnerable to insolvency when interest rates rose and the agricultural sector's profit margins declined.

VIII. Results of Analysis: Base Scenario

58. Base Scenario: Without Discrimination: This Base Scenario estimates, for each year, the potential net farm income that would have been earned by a farmer in Northumberland County who operated a crop and hog farm operation comparable to that assumed for the Plaintiffs. The Base Scenario is based on county average yields, state average prices, regional costs of production with a 5 percent bulk purchasing discount on variable costs for seed, fertilizer, chemicals and fuels; the acreage assumed by Dr. Kambhampaty; and the benefits and costs of compliance with government programs.

59. Exhibit J shows the commodity-by-commodity and year-by-year estimates of total revenue, total costs, net revenue, and cumulative net revenue that resulted from the Base Scenario analysis. It is compared with the estimates shown in Dr. Kambhampaty's analysis.[21]

60. The first step in estimating total economic damages in the Base Scenario is to estimate the net farm income that an "average farmer" in Northumberland County, producing the same mix of crops and livestock on the same scale of operation as that assumed for the Plaintiffs, would have generated between 1981 and 2002. That analysis concludes that the average farmer would have incurred a total net farm loss of approximately $181,897. (Exhibit K, line 37)

61. In the second step, the "average farm" results are adjusted to make the Base Scenario farming operation more comparable to that of the Plaintiffs. The cumulative net farm income in the Base Scenario is approximately $755,163. (Exhibit J, line 32)

[21] The numbers shown in Exhibit J for Dr. Kambhampaty's analysis are not exactly the same as the original numbers he used in his Exhibit because of possible truncation of numbers in his Exhibits, or rounding in mathematical operations.

IX. Results of Analysis: Alternative Scenario 1: Higher Land Lease Rates

62. One alternative scenario was analyzed. The objective was to examine the sensitivity of the estimate of economic damages to the Plaintiff paying a higher land lease rate than that reflected in USDA's cost of production estimates. Section B, Rental and Lease Information, of the March 16, 1989 Farm and Home Plan[22] shows that the Plaintiffs paid $61 per acre to lease about 760 acres of farmland, and $70 per acre to lease another 52 acres. For 1989, land costs in USDA's cost of production estimates for the Southeast Region range from $16.85 for wheat to $43.45 for corn, and for the crop mix used in the Plaintiffs' analysis the average land cost would have been $31.13, about half the $61 rate shown in the 1989 Farm and Home Plan. It is quite plausible that the Plaintiffs did pay a higher than average lease rate for the area in which they farmed. The Plaintiffs were rapidly expanding the size of their farming operation. When one is already controlling a relatively large amount of farmland but wants to increase acreage even more, one has several alternatives: (1) Pay higher lease rates to bid additional land away from the remaining existing farmers. This will increase costs of production and lower profits on the additional land. (2) Obtain land that is farther from the center of the existing farming operation. This increases the amount of time and the labor and machinery costs of moving machinery from one field to another. It also increases the complexity of managing the entire farming operation. These factors reduce the efficiency and profitability of the overall farming operation. (3) Obtain lower quality farmland that is less productive. This reduces average yields and, once again, the profitability of the overall farming operation. The higher than average lease rates shown in the 1989 Farm and Home Plan are an indication that the above factors were already in play. The Plaintiffs' analysis hypothesizes that the acreage farmed would have continued to expand but with no increase in average land costs or reduction in efficiency or profitability. Given theoretical supply and demand relationships, that hypothesis is economically implausible.

[22] Bates Stamp H25-06-0430

63. Replacing the land costs from USDA's cost of production estimates with the $61.00 per acre cost entered in the 1989 Farm and Home Plan, lowers net returns by more than $3,007,700, to a net loss of about $2,752,500 (Exhibit K, line 45).

X. Conclusions

64. Financial viability: Even in 1981 and 1982, the Plaintiffs' farming operation was not financially viable. The very high level of debt and the associated debt servicing requirements for scheduled principal and interest payments meant the Plaintiffs would not have been able to sustain the business operation in the long-term. The only way to keep the business solvent would have been to supplement the farm's negative cash flow with more nonfarm income or to borrow more money. The latter is the path followed by the Plaintiffs. This only resulted in ever increasing debt levels and debt servicing demands. Even in 1981 and 1982, the unsustainability of the business was apparent.

65. This financial circumstance was not unique to the Plaintiffs. The farm financial crisis of the mid-1980s forced many ambitious farmers, who in the late 1970s and early 1980s tried to expand their farming operations with borrowed money, to be forced out of farming -- either by bankruptcy or involuntary sale of farm assets. These involuntary exits from farming were mostly a result of taking on too much debt, regardless of what the farm produced, the state or region in which the farm was located, the size of the farm, or the race of the farmer.

66. If the Plaintiffs' farming operation had been financially viable in 1981, then the $255,163 shown on line 32 of Exhibit K is the estimate of net returns to farming from 1981 to 2002. When mitigating income of $551,770, as estimated by Dr. Kambhampaty, is subtracted from the cumulative net returns, the resulting estimate of economic damages is a negative $296,607. (Exhibit K, line 41)

67. My analysis began with data for yields and costs of production that represent, as closely as possible, the average farmer in Northumberland County. It uses this data to estimate

cumulative 1981-2002 net returns from farming for a Northumberland County farm with the composition and scale of farming that Dr. Kambhampaty assumed in his analysis. Then, by assuming that the Plaintiffs reaped some economies of scale from being a large farmer by Northumberland County standards, I raise that estimate of net returns, arriving at the estimate shown in the paragraph above. To approximate the same general level of net returns, one could start with Dr. Kambhampaty's much larger estimate of net returns, and adjust it downward for ways in which his selection of data and methods result in a substantial upward bias in net returns. I show, in Exhibit K, how adjusting for data for yields and costs of production that are not representative of farming in Northumberland County reduces his estimated of net returns to a level somewhat similar to my estimate. In summary, the downward adjustments in Dr. Kambhampaty's results are $5,689,016 related to yields (Exhibit K, line 17); and $5,333,682 for adjustments related to all costs of production (Exhibit K, line 27), including $2,342,874 specifically related to hogs (line 26). It is not possible to exactly equilibrate the results of the Kambhampaty and Trostle analyses, but Exhibit K indicates the impact of the most significant differences in the data and methods used.

68. In my professional opinion, a negative $296,607 is a well-founded and conservative estimate of damages attributable to the alleged racial discrimination. This estimate of economic damages would become an even larger number to the extent that the Plaintiffs' actual debt servicing costs exceeded those of the average farmer represented in USDA's costs of production estimates, and as shown in the Alternative Scenario, to the extent the Plaintiffs' land costs exceeded those of the average farmer represented in USDA's costs of production estimates.

Ronald Trostle

Ronald Trostle

December 22, 2003

List of Exhibits

A. Curriculum Vitae
B. References, Sources of Information, and Publications
C. List of Previous Cases
D. Farms Operated by Haynie: Number and Size
E. Farms Operated by Haynie in 1985: Acres Planted, by Farm, by Crop
F. U.S. Average Yields, by Size of Farm, Selected Years
G. Number of Hogs and Hog Operations, Virginia, 1981-2002
H. Net Worth Analysis
I. U.S. Farm Debt-to-Asset Ratio, 1970-2002
J. Base Scenario Analysis: Commodity-by-commodity, 1981-2002
K. Side-by-Side Comparisons of Results of Defendant and Plaintiff Analysis

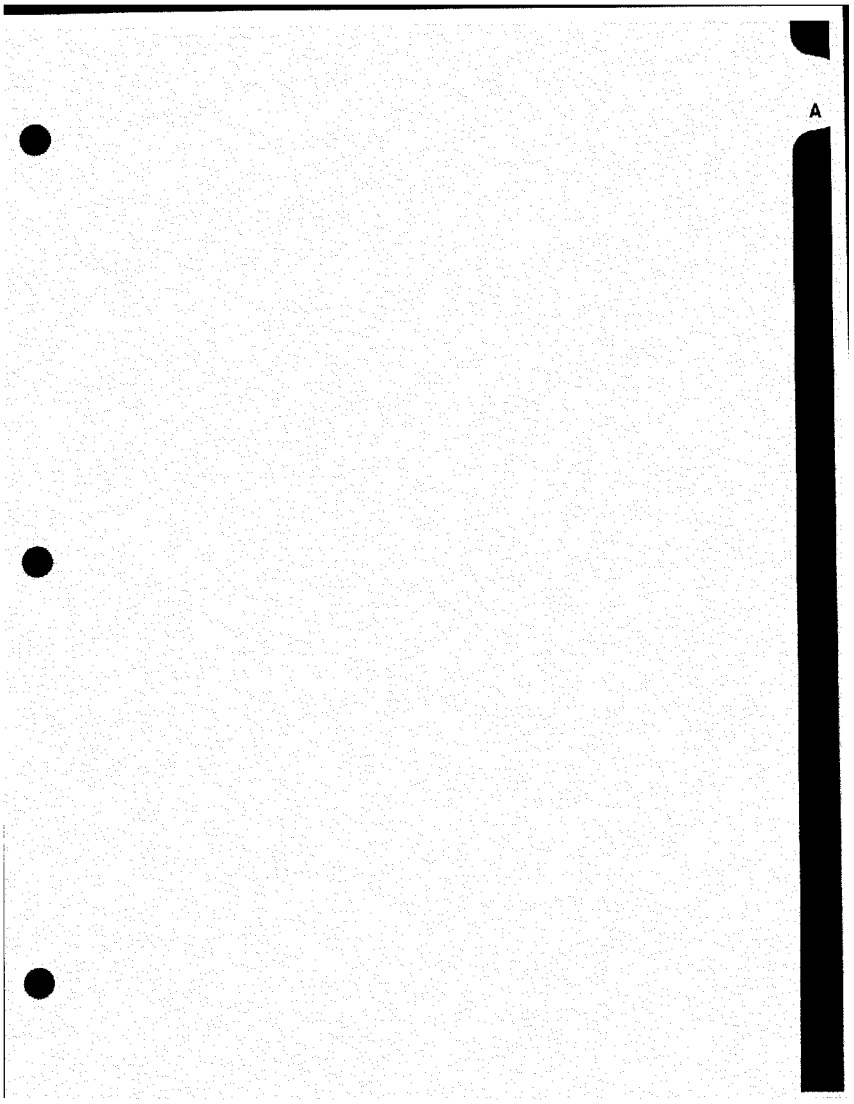
A

Exhibit A

RONALD TROSTLE

EDUCATION:

B.S.,	1963	McPherson College - agriculture & industrial arts.
M.S.,	1969	Kansas State University - agricultural economics.
Ph.D.,	1971	Kansas State University - agricultural economics.

EMPLOYMENT and WORK EXPERIENCE:

June 1980 - Present: Economic Research Service, U.S. Dept. Agriculture:

3/2000 - Present — Senior Economist, Trade & Outlook Branch
Roles include research on instability in U.S. and world agriculture, developing time series models to forecast U.S. agricultural trade, coordinating USDA's annual international baseline projections for world agriculture, serving on various Agency committees, and work on Pigford cases.

8/1999 - 3/2000 — Acting Chief, Trade & Outlook Branch (ATOB)
Responsible for the ATOB program of work which included analyzes of prospects for U.S. and global agriculture, and impacts of policies and shocks on agricultural supply, demand, trade, and prices. ATOB takes the lead analyses of cross-country and cross-commodity issues, and maintains an active program of research and publication on factors affecting U.S. and world agriculture. Branch collaborates develops, maintains, and coordinates use of U.S. agricultural sector and global modeling systems.

Branch staff make projections for, and conduct policy analyses of, the U.S. and global agricultural sector and commodity markets. ATOB develops and maintains databases of U.S. trade, trade programs, global trade, and key agricultural sector variables for Departmental and public use. The Branch also provides macroeconomic data and analysis for agency and Departmental activities and collaborates with other branches on studies involving the impact of macroeconomic developments on agriculture and agricultural trade.

9/1998 - 8/1999 — Senior Economist, Agriculture Trade & Outlook Branch
Specific projects included an analysis of the impact of evolving financial crises and slower global economic growth on U.S. and world agriculture, international chapter for *The U.S. Wheat Industry*, and developing time series models to forecast U.S. agricultural exports and imports.

7/1987 - 9/1998 — Chief, Trade Analysis Branch (TAB), Market & Trade Economics Division
TAB's role was to monitor, analyze, and research factors affecting international agricultural markets, and their implications for U.S. agriculture. The branch provided the interface between ERS's domestic commodity analysts and foreign country/regional analysts, and between ERS and the WAOB, FAS, and other agencies concerned with global food and fiber markets, with U.S. agricultural trade, and with U.S. trade policy and trade program issues.
Selected personal contributions included:

- Represented USDA on the Senate Ag Farm Bill Working Group on International Marketing and Trade. [1995]

- Initiated ERS implementation of 3 special studies:
  1. Competing for World Markets After the Uruguay Round. [1995]
  2. Evaluating U.S. Ag Export Programs (for FAS and OMB's TPCC). [1994]
  3. Long-term Projections for World Food Aid Needs and Availabilities (for State Dept. A.I.D., CIA, and FAS). [1988]
- Coordinated publication of USDA's first *Long-Term World Agricultural Commodity Baseline Projections*. [1994]
- Lead author of chapter on Agricultural Trade Policy for a NCR-151 book on agricultural issues for the 1995 farm bill. [1994]
- Coordinated ERS's analytical support to USDA's negotiators in the Uruguay Round of the GATT. [June 1990 - Nov. 1992]

12/1985 -7/1987 Chief, Western Hemisphere Branch, International Economics Division.
The Western Hemisphere Branch monitored and analyzed factors affecting agricultural markets in the Western Hemisphere and their interaction with U.S. agriculture. Projects undertaken included estimation of price transmission elasticities for major agricultural commodities in selected Western Hemisphere countries, initiation of early work on assessment of a potential Canadian - U.S. Free Trade Agreement (CUSTA), and calculation of producer and consumer subsidy equivalents (PSEs/CSEs) for various countries.

5/1982 -12/1985 Section Leader, Western Europe Situation & Outlook.
Had technical and administrative responsibility for the research, analyses, and advisory functions of a situation and outlook section. The Section was responsible for collecting and analyzing data, and providing forecasts of agricultural commodity supply, use, and trade; prices, costs of production, agricultural and trade policies, monetary conditions, institutions, technological changes, weather, political development and other factors affecting the trade of agricultural commodities in the countries of Western Europe. In addition to recurrent S&O work, the Section carried out several longer term research projects on EC dairy policy and the impacts of CAP reform. Because of the importance and role of West European agriculture, the Section was called upon for an unusually large volume of staff analysis projects concerning European Community agricultural policy and trade issues. I developed one of the first micro-computer based foreign country agricultural sector models used in ERS for baseline projections and for scenario analysis.

6/1980 - 5/1982 Canadian Country Analyst, North America & Oceania Branch
Analyzed factors affecting the Canadian production, consumption, and trade of agricultural commodities. Collected information, created and updated data bases, applied economic theory and used quantitative models to develop short- and long-term commodity and trade forecasts. Disseminated the resulting S&O information through a variety of written and oral reports. Participated in the review, edit, and final preparation of several major S&O reports, including the "Monthly Update," the 10 year Baseline projections, and the "World Food Aid Needs and Availabilities" report.

1971 -1980: U.S. Agency for International Development:

8/1978 -5/1980 Agricultural Economist, USAID/Dominican Republic:
Worked with USAID Mission staff and contractors in developing new foreign economic aid projects, including (1) agricultural sector analysis program in the Ministry of Agriculture, (2) African swine fever eradication program, (3) rural development management training program in an agriculture university, and (4) development of a natural resource management program. I was also responsible

for on-going projects including development of an agricultural sector econometric model of the Dominican Republic, and a monitored remote sensing project.

8/1976 General Development Officer, USAID/Indonesia
-8/1978 Responsible for implementing a $54 million multi-sector, integrated rural development project which involved the coordination and teamwork of 11 government of Indonesia agencies, two Universities, and three foreign donors. The project resettled limited resource farmers in remote, sparsely populated areas to increase their incomes as well as national food production. I coordinated U.S. and non-U.S. Mission personnel assigned specifically to assist in the project. Worked with host country officials of the central, provincial, and local levels of government, and also with contractors and voluntary agencies involved in diversified rural activities associated with the Project.

7/1973 Program Economist, USAID/Indonesia
-8/1976 Developed new foreign aid projects in the fields of agriculture, irrigation, transportation, resettlement, regional planning, and integrated rural development schemes. Participated in writing the detailed project proposal papers for these projects, including computing the economic analyses and justifications for them. Was asked by Mission Director to return to Indonesia for a third 2-year tour of duty to manage the implementation of the integrated rural development program I had helped plan.

9/1971 Agricultural Economist/International Development Intern, USAID/Indonesia
-7/1973 My first 2.5 years with A.I.D. included 5 months in Washington for orientation and Indonesian language training and then working with the Agriculture Division in Jakarta. This work included monitoring changes in Indonesian farming technology as well as seasonal and annual changes in food production, processing and marketing; and fertilizer distribution systems. I worked with the PL-480 program in determining Indonesian food production shortfalls and estimating necessary food imports.

2/1967 Self-employed farmer.
-9/1971 Concurrently with graduate school, I became involved in farming again after purchasing farm land. Produced wheat, grain sorghum, alfalfa; and planted walnut trees. In 1971, I rented the land to another farmer in the community. Over the years, I have participated in decisions about cropping mixes, fertilization, and participation in farm programs. Sunflowers, soybeans, and dry land corn have been added to the cropping rotation. Some of the land has been put in the Conservation Reserve Program (CRP). Grass has been maintained on the CRP land and on other land classified as Wetlands and previously in the Soil Bank Program. I recently constructed a grassed waterway, with cofinancing from the U.S. Natural Resource Conservation Service, to reduce erosion on a portion of the land.

9/1965 Student and then Graduate Research Assistant, Kansas State University.
-9/1971 Conducted research on the use of property taxes to finance local government goods and services (Ph.D. dissertation), and on the introduction of inverted ratio fertilizers in the state of Kansas (Masters thesis).

8/1963 Peace Corps Volunteer, Brazil
-8/1965 Was an agricultural extensionist in a northeast Brazil county office. Duties included: managing distribution of U.S. purebred hogs imported through the "Heifer Project," formulation of balanced rations for hogs and dairy cows utilizing Food For Peace (FFP) grain sorghum; setting up hybrid corn comparative demonstrations, used FFP vegetable seeds to promote rural and urban home gardens and fruit and vegetable consumption, and developed and utilized local leadership in organizing 4-H clubs, a consumer coop, and credit sources.

1957-1963 and 1967-1971 Self-employed farmer, Kansas.
I was a self-employed farmer using rented land and machinery to raise wheat, grain sorghum, castor beans, and hogs between 1957 and 1963 concurrently with high school and college. After buying farm land in 1967, I became a self employed farmer again, between 1967 and 1971, concurrently with graduate school. Previously, before 1957, I helped my father in a relatively large farrow-to-finish hog operation.

AWARDS:

- 2003 (June)-- For developing a comprehensive, widely used, and highly acclaimed web-based synthesis and analysis of the 2002 Farm Bill, anchoring USDA's coverage within 9 days of the bill's passage. USDA Honors Group Award for the Farm Bill Analysis Team (Edwin C. Young, Group Leader). My part was writing the Trade Title "side-by-side" analysis.
- 2003 (Mar)--For partial recognition of the modeling team's successful efforts to meet the shortened baseline schedule. ERS group award to (J. Hansen, R. Schnepf, R. Seeley, R. Stillman, & R. Trostle, Global Ag Markets Branch).
- 2002 (June)--For unselfish performance of duty during a National Security Emergency to ensure the safety and emergency preparedness of the U.S. Department of Agriculture and the United States of America. USDA Honors Group Award.
- 2000 (March)--For leadership as Acting Branch Chief of the Agriculture & Trade Outlook Branch
- 1999 (July)--For providing outstanding guidance and mentorship that have led to the professional development and career advancement of support staff.
- 1995 (July-Nov)--For leadership of the Long-Term Food Aid Needs and Availabilities Study.
- 1991 (June)--USDA Superior Service Award to GATT Analytic Support Group, Ronald Trostle, Group Leader, "For outstanding team effort in providing analytical support for U.S. policy makers and negotiators representing the United States in international GATT negotiations."
- 1991 (April)-- ERS Administrators Distinguished Service Award "For sustained outstanding management of the Commodity Trade Analysis Branch."
- 1989 (Dec.)--ERS "Special Act" Cash Award "For exceptional leadership in directing the successful transition to a new international Harmonized Reporting System and in maintaining the flow of consistent, timely, and accurate U.S. Trade information to the Agency's Outlook and Situation program."
- 1989 (Apr.)--ERS Administrator's Special Merit Award "For initiative and commitment to the principles of equal opportunity leading to outstanding accomplishments in achieving the affirmative action goals of ERS.
- 1988 (Nov.)--USDA/ERS Certificate of Merit Award "For outstanding efforts in providing supervision and guidance for the development of a monthly newsletter to improve USDA's reporting of agricultural trade data and information."
- 1987 (Nov)--ERS Group Cash Award "For important contributions to maintaining and improving the quality of ERS's international situation and outlook program."
- 1985 (Apr.)--ERS Administrator's Special Merit Award for Special Achievement. "For exemplary effort in conducting internationally sensitive and critical analyses leading to a more informed, balanced and effective U.S. position on the European Community's agricultural trade policies and practices."
- 1977--William A. Jump Meritorious Award for exemplary service in Public Administration. "For outstanding performance and administrative leadership in various areas of responsibility associated with the rural development program of the USAID Mission to the Republic of Indonesia, and in demonstrating exceptional dedication to duty and a unique ability to gain the cooperation of his Government of Indonesia counterparts." (The Jump award is an annual government-wide award for public administration.)

FOREIGN LANGUAGES

- Portuguese: State Dept. Foreign Service Institute (FSI) rating of "3" (professional capability) in 1965.

- Indonesian: FSI rating of "3" in 1978.
- Spanish: FSI rating of "3" in 1980.

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"Importance of Trade for U.S. Agriculture." To National Association of Counties, Washington, DC. Feb. 27, 1999.

"The Impact of the Evolving Financial Crises and Slower Global Economic Growth on Agriculture." Theme paper and Powerpoint Slide presentation for OECD *Forum on Agricultural Policies in Non-Member Countries*. Paris, France. Oct. 28, 1998.

"Long-Term Prospects for the World Food Situation." For the U.S. Interagency Working Group for World Food Summit. Washington, DC. Apr. 30, 1996.

"Global vs. Regional Food Security." To a EU-15 sponsored conference on world food security (preparatory to the World Food Summit). Brussels, Belgium. Apr. 1, 1996.

"Long-Term Prospects for World Food Aid Needs and Availabilities." For International Food Aid Donors' Forum and the Global Food Challenge, IFPRI, Washington, DC. Mar. 13, 1996.

"Impact of Higher Grain Prices on World Food Aid Needs and Availabilities Projections." For senior staff of AID, State Dept, and CIA; State Department, Feb. 13, 1996.

"Long-term Prospects for World Food Aid Needs & Availabilities."
- (With Shala Shapouri), for State Dept. and A.I.D. officials. Aug. 4 1995.
- (With Margaret Missiaen), for FAS senior staff. Aug. 15, 1995.
- (With Shala Shapouri), for U.N. FAO Committee on Commodity Problems. Nov. 15, 1995.

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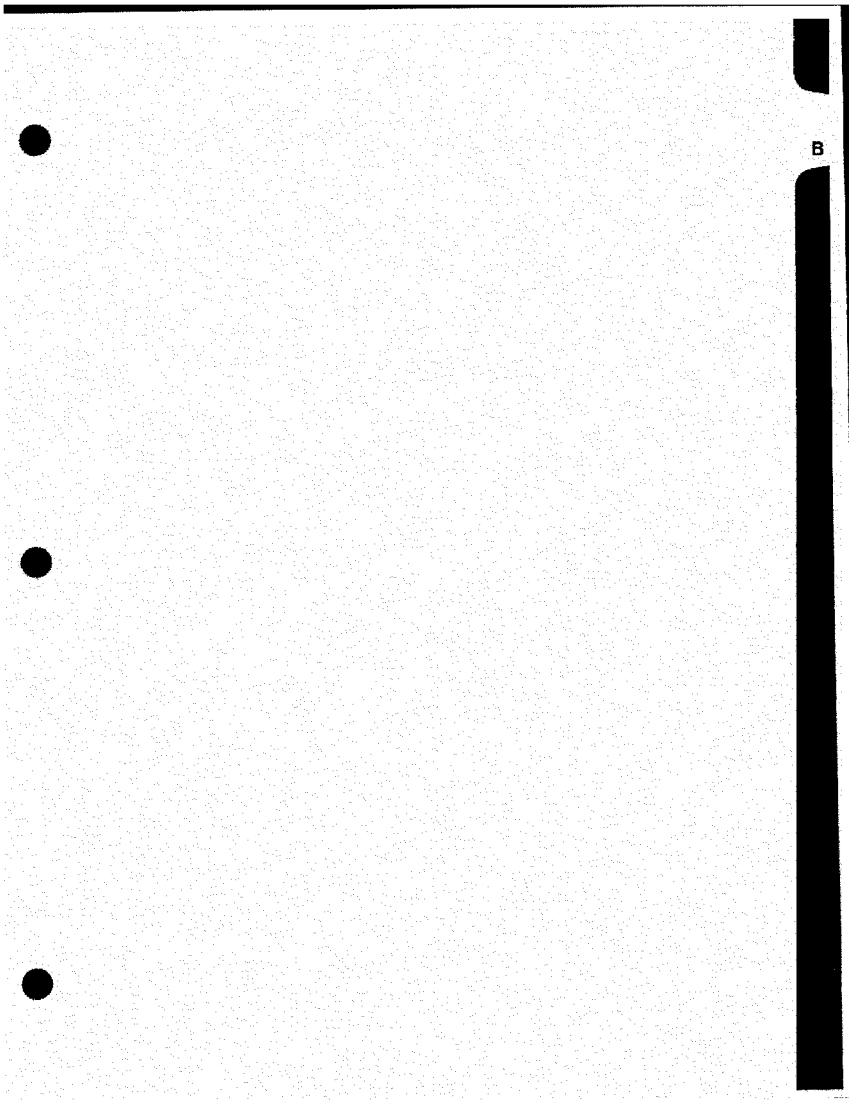
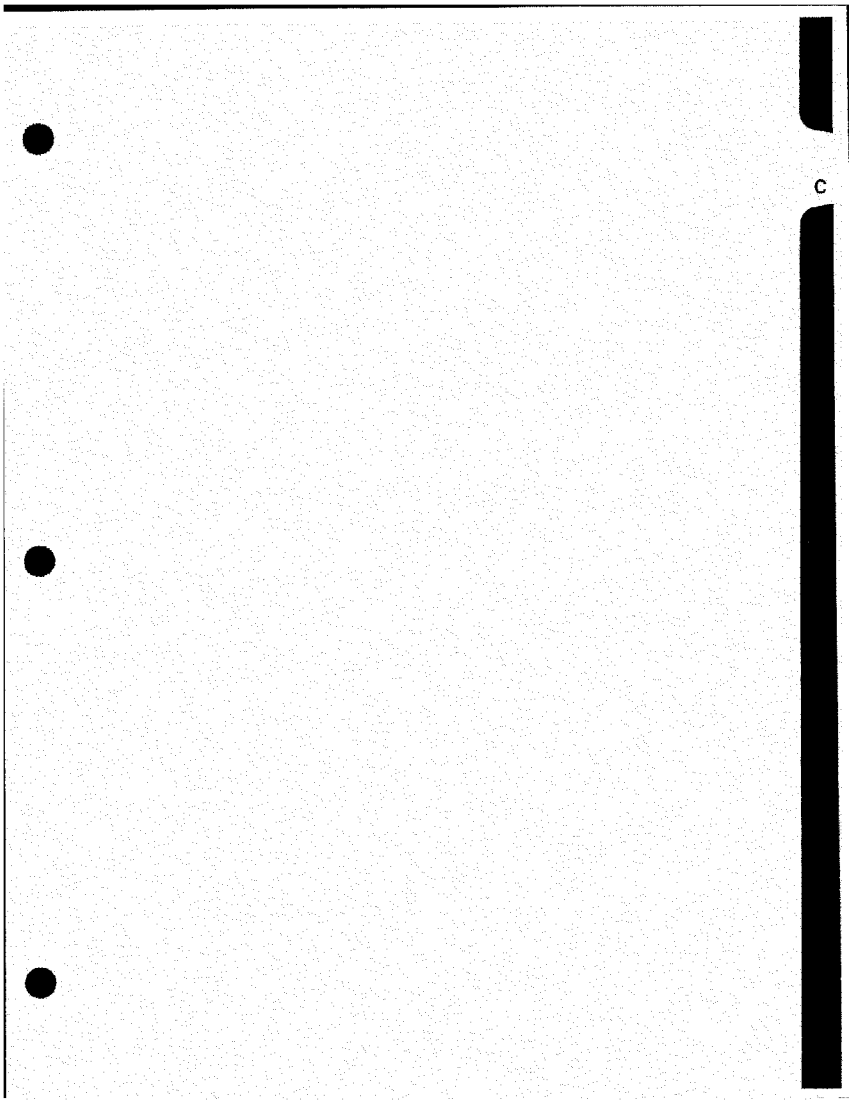

B

Exhibit B

Expert Testimony

Ronald Trostle served as an expert witness in the Pigford Track B cases listed below. Involvement ranged from preparing reports of economic damages, to giving depositions, presenting direct testimony, and being cross examined at arbitration hearings.

Name of Claimant(s)	Involvement	Year
Green & Green	Report, Deposition	2000
McKinnon, Sandy	Report, deposition, direct testimony & cross examined	2000
Stephenson, James	Report, deposition & direct testimony	2001
Meneffe, Alfonsa	Report, deposition & direct testimony	2001
McMillion, Elmo J	Report, deposition, direct testimony & cross examined	2001
Locke, Harrison	Report, direct testimony	2002



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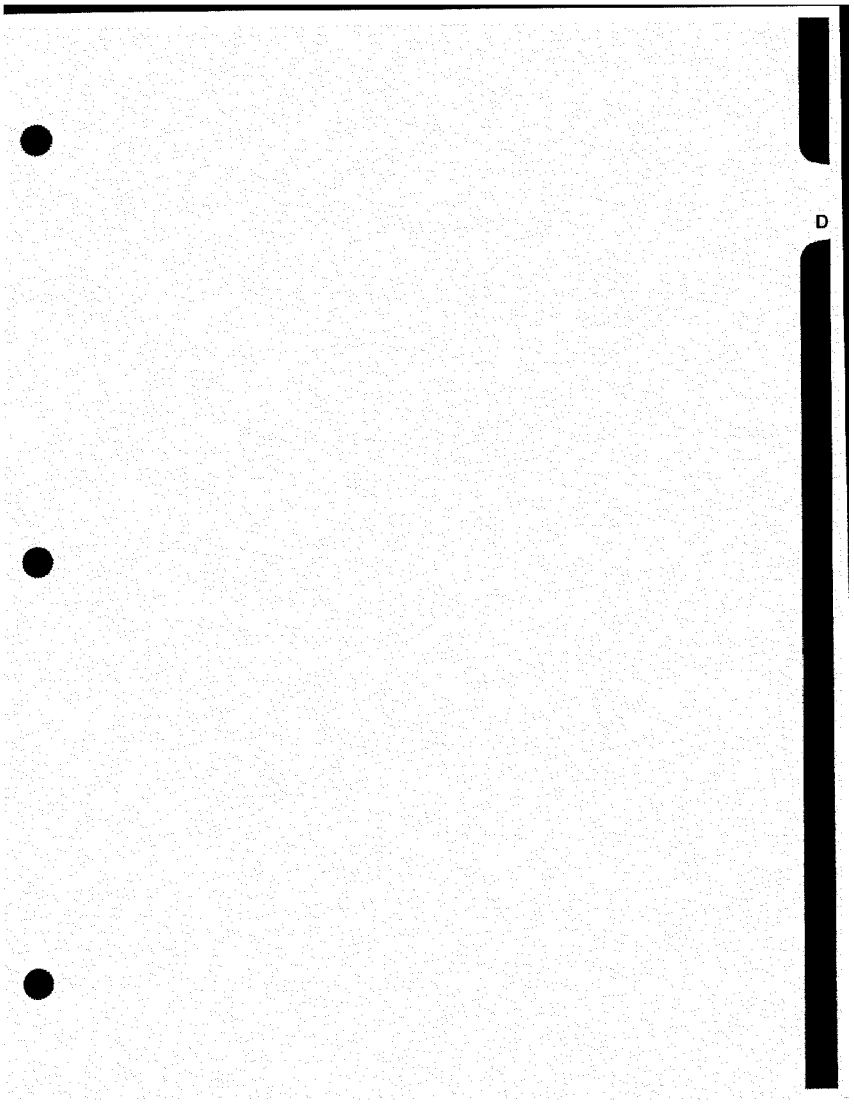
D

Exhibit D

Farms operated by Haynie: number and size 1/ 2/

	1981	1984
Planted acres		
Corn	296.9	950.3
Soybeans		1,408.6
Wheat	326.8	283.3
Barley	469.5	641
Total	1,093.2	3,283.2
Total # farms	57	72
Avg Ac / farm	19.2	45.6
Number of farms with planted acres:		
< 5 ac	21	23
< 10 ac	39	35
< 20 ac	47	53
< 30 ac	51	55
< 50 ac		61
< 100 ac		66
Median acres 3/	7	10

1/ Each farm has an FSA farm number, and an acreage planted report.
2/ Not all planted acres may have been harvested.
3/ Approximately half the farms have fewer acres.

Source: E-mail message from Pete Adamson, FSA, with detailed data for each farm in each year.

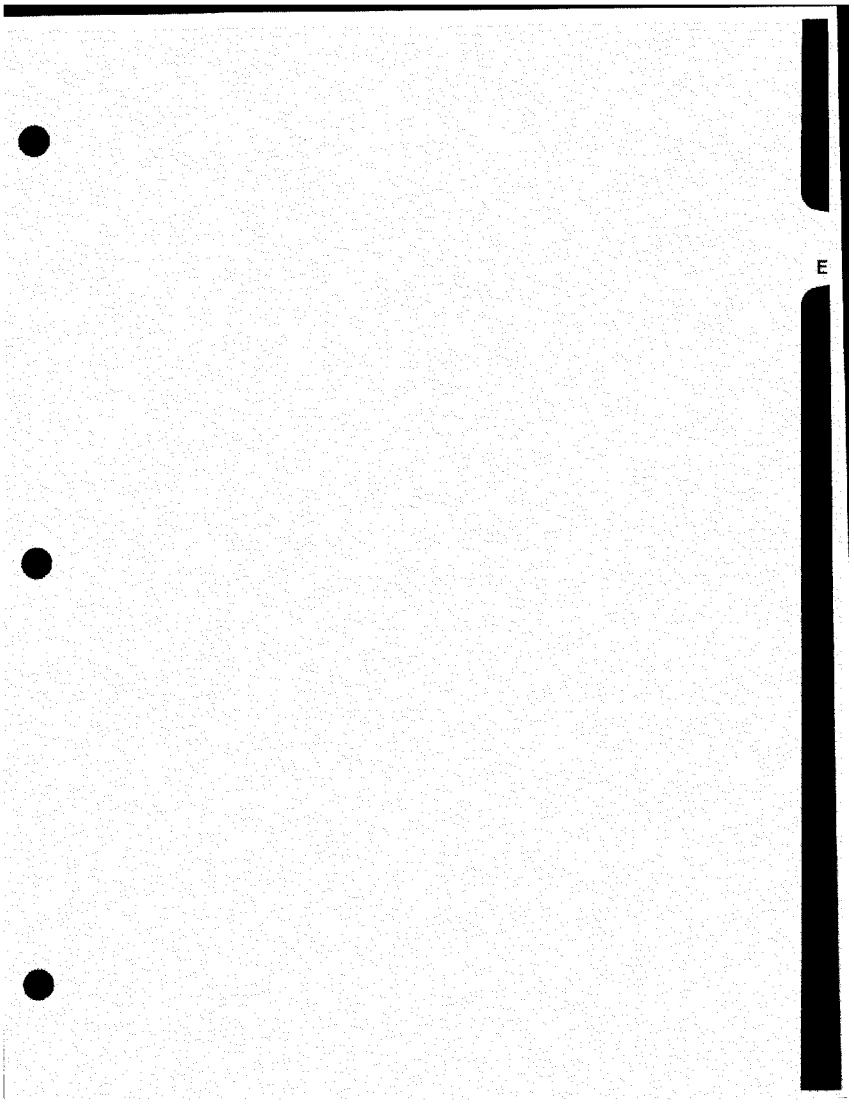
E

Exhibit E

Farms operated by Hawkie in 1985. Acres planted, by farm, by crop 1/ 2/

Farm No.	Wheat	Corn	Barley	Soybeans	Total
		Planted acres			
1	55	216.8	148.4	199.9	624.1
2	419	57.5	77.3	91.9	226.7
3	659	71.6	17.8	41.1	130.5
4	575		49.1	22	71.2
5	563			16.1	39.9	56
6	1151	56	26.2	82.2	203.6	368.1
7	1168	60.9	102.1	86.4	137.2	415.6
8	1300			5.5	5.5	11
9	1512		322.6	187.8	196.6	709.4
10	2019					0
11	2222				4.2	4.2
12	201	46.4	376.2	293.4	505.5	1221.5
13	397				11.5	11.5
14	402				5	5
15	403				3.6	3.6
16	405				7	7
17	407				3.5	3.5
18	428				12.9	12.9
19	429				6.6	6.6
20	454				5.1	5.1
21	513				21.3	21.3
22	518				10.9	10.9
23	568	40.8		28.4	47.2	136.4
24	562	28			26	54
25	565			28.4	28.4	56.8
26	604				8.6	8.6
27	665				5.7	5.7
28	672		12.5		12.5	25
29	696				18.5	18.5
30	741		3.5			3.5
31	772				3.1	3.1
32	877		18.8		14.8	37.6
33	963		3.5		3.5	7
34	1008			34.6	24.5	69.2
35	1058		18		18	36
36	1070			14.4	14.4	28.8
37	1091				11.7	11.7
38	1178	13.1			13.1	26.2
39	1159			5	5	10
40	1759	35			25	60
41	2001	31.9			31.9	63.8
42	2088	14.8			14.8	29.6
43	2089			8.1	8.1	16.2
44	2150		5.5	8.1	5.1	18.1
45	2151				3.6	3.6
46	2153	6		5.7	10.7	21.4
47	2163				4.5	4.5
48	2238				17	17
49	2311	9.5			9.5	19
50	2318				9	9
51	2340			8.6	8.6	18.2
52	2508				5	5
53	2552				2.9	2.9
54	2639				6.1	6.1
55	2821	36.6		9.5	44.1	90.2
56	2825				8.9	8.9
57	2749				9.4	9.4
58	2763				7.5	7.5
59	2768			5.9	5.9	11.8
60	2767		1.8			1.8
61	2769				4.9	4.9
62	2770				2.3	2.3
63	2772				7.1	7.1
64	2773				5.1	5.1
65	2775				3.2	3.2
66	2778				3.8	3.8
67	2780				4	4
68	2784				3.5	3.5
69	2827				5.6	5.6
70	2811				3.1	3.1
71	2839				17.1	17.1
72	2855				2.2	2.2
73	2853				2.9	2.9
74	2859				3.2	3.2
75	3035		7.1			7.1
Total	17,451	667.7	1241.3	1113	2,295.9	5,118.7

1/ Source: Farm Service Agency and Rural Development.

2/ Source: Financial Records from Peter Adamson, FSA, with detailed data for each farm in each year.

All acreage totals and participating farmers agreed by Phillip J. Hyde, II.

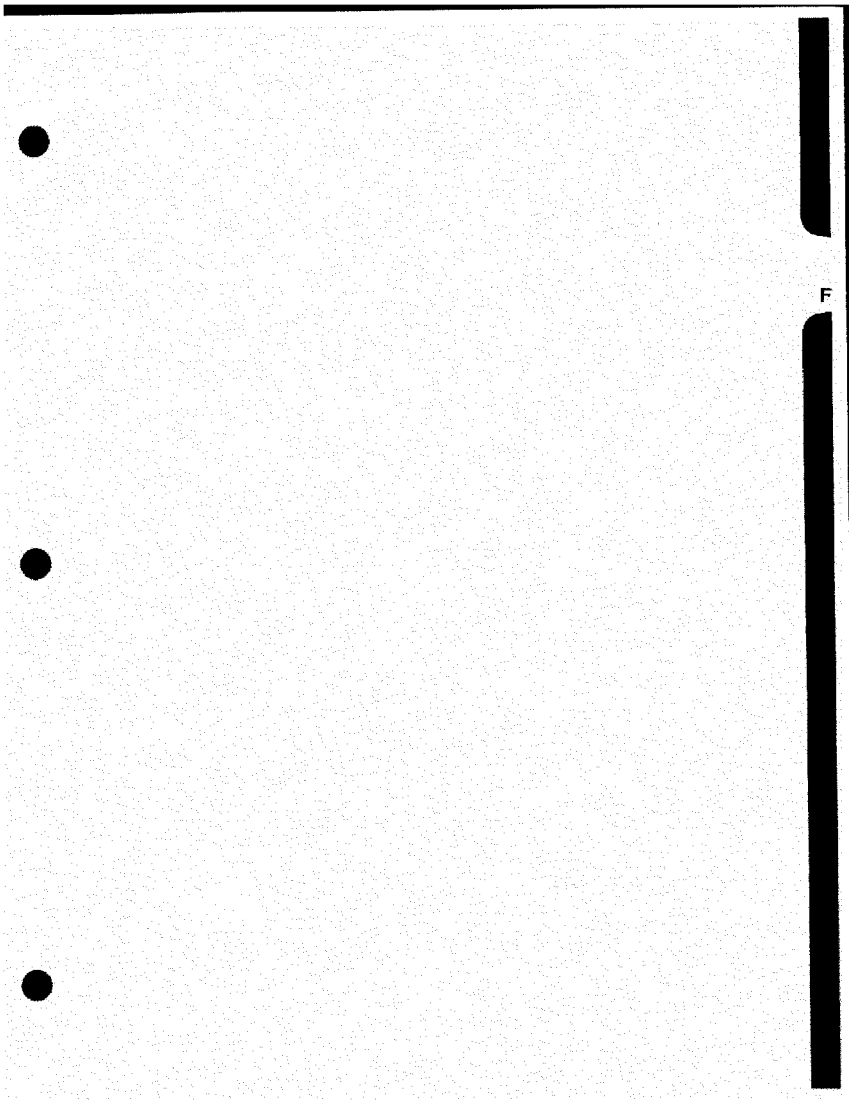

Exhibit F

Yields and costs of production, selected regions and years

Crop	Year of comparison	Size category of farm	Yield		Ratio of yield for selected size category to yield for largest size category		Region most represented by large category
			Actual *	Expected	Actual *	Expected	
Corn 2/							
U.S. national avg **	1996	> 750 ac	139.0	147.0	100%	100%	Irrigated Eastern Plains
U.S. national avg	1996	500-749 ac	143.0	139.0	103%	95%	
U.S. national avg	1996	250-499 ac	131.0	135.0	94%	93%	
Soybeans 3/							
U.S. national avg **	1997	> 750 ac	41.0	41.0	100%	100%	Northern Plains & Delta
U.S. national avg	1997	500-749 ac	46.0	44.0	112%	107%	
U.S. national avg	1997	250-499 ac	44.0	42.0	107%	102%	
Wheat 4/							
U.S. national avg	1998	> 800 ac	42.4	40.1	100%	100%	Northern Great Plains
U.S. national avg **	1998	400-799 ac	40.5	40.7	96%	101%	All Great Plains
U.S. national avg	1998	200-399 ac	39.2	41.4	92%	103%	
U.S. national avg	1998	50-199 ac	43.3	45.0	102%	112%	
Barley 5/							
U.S. national avg **	1992	> 400 ac	53.6	57.3	100%	100%	Northern Great Plains
U.S. national avg	1992	200-399 ac	65.2	65.5	122%	114%	
U.S. national avg	1992	50-199 ac	57.6	60.9	107%	106%	

* Yield per planted acre

** Dr. Kambhampaty assumes the Plaintiffs would have been in this size category.

1/ Foreman, Linda. "Characteristics and Production Costs of U.S. Corn Farms." USDA, Economic Research Service, Statistical Bulletin Number 974, Aug. 2001.
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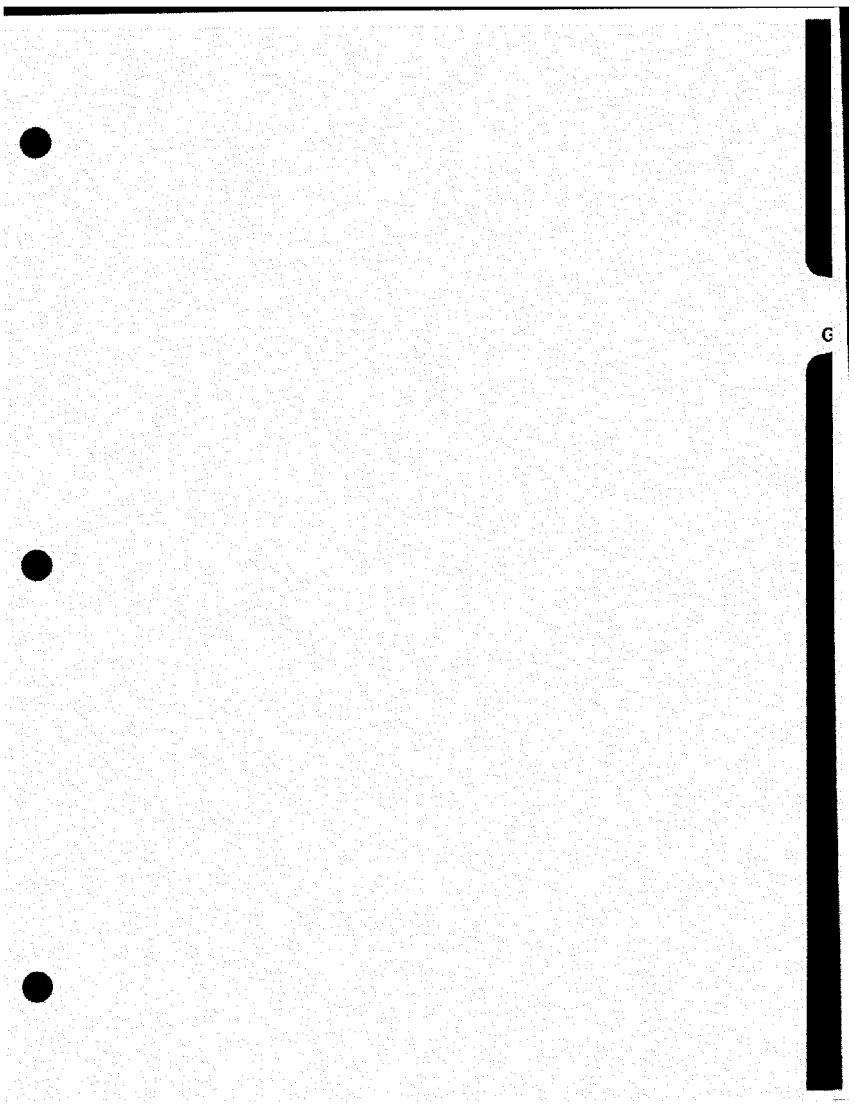

Exhibit G

Number of Hogs and Hog Operations, 1981 - 2002, Virginia

Year	Number of hog operations in Virginia	Number of head of hogs in Northumberland County
1981	na	2,600
1982	21,000	1,800
1983	17,000	1,350
1984	15,000	1,900
1985	14,000	1,700
1986	12,000	1,800
1987	9,000	1,500
1988	8,500	2,000
1989	7,500	1,700
1990	5,500	1,300
1991	3,500	1,500
1992	3,000	na
1993	2,800	na
1994	2,200	na
1995	2,000	na
1996	1,800	na
1997	1,700	na
1998	1,600	na
1999	1,500	na
2000	1,200	na
2001	1,200	na
2002	1,100	na
Percent decline 1982 - 2002	95%	
1981 - 1991		42%

Source: http://www.nass.usda.gov:81/ipedb/

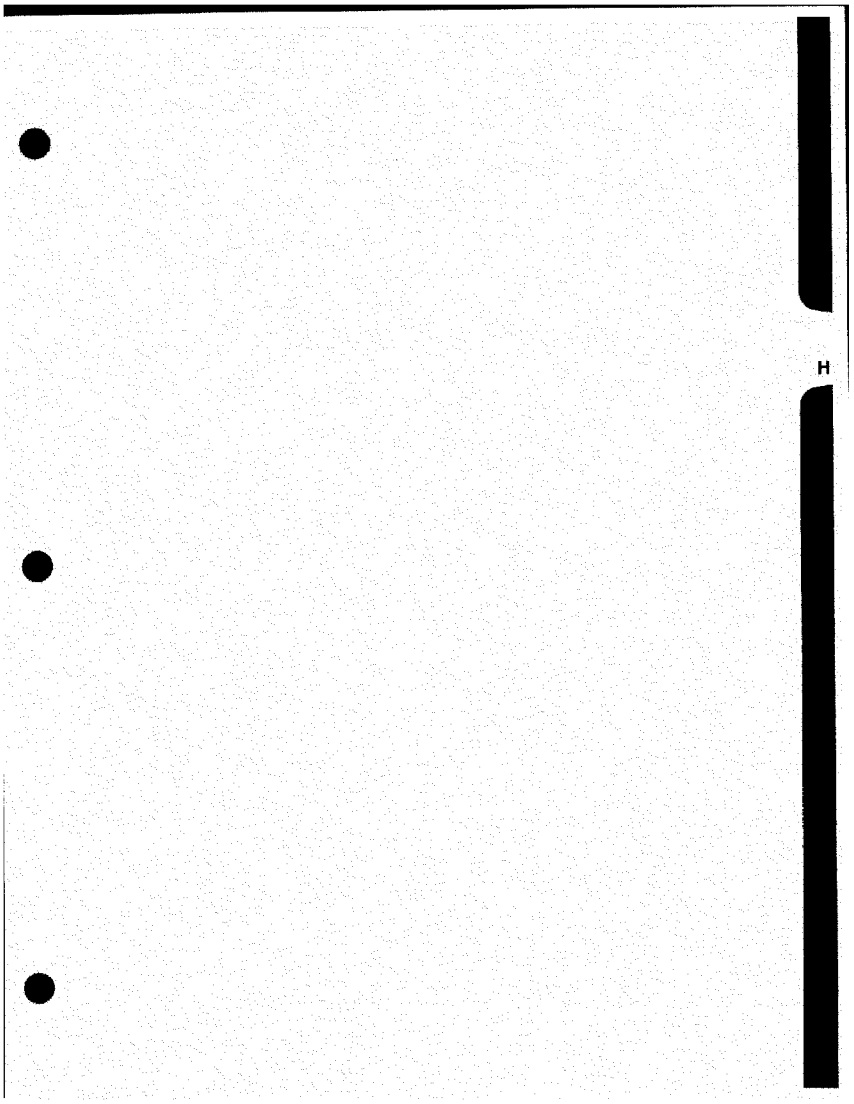
H

Exhibit H

Net Worth Analysis, Plaintiffs' Documented Debt, Assets, Net Worth, Debt-Servicing Requirements and Deliquincies 1/

Year	Debt			Assets		Debt-to asset ratio	Net worth	Debt servicing cost 2/	Deliquencies	Estimated net farm income
	Total	Land	Nonland	Total	Farm					
	dollars	dollars	dollars	dollars	dollars	%	dollars	dollars	dollars	dollars
1981 (a)	1,137,310	519,940	617,470	1,136,600		100%	5,469	451,603		102,234
1982										97,861
1983 (b)	1,528,008	705,680	822,028	1,357,258		113%	-176,750	156,404	176,656	-84,015
1984 (c)	1,551,058			1,453,200			-97,858	581,272		174,902
1985 (d)	1,952,155	662,606	1,289,649	1,489,922			-462,283	840,751		34,669
1986										-52,976
1987										39,215
1988										147,423
1989 (e)	2,912,485			520,300	520,300		-2,392,185	1,777,724		232,973
1990	2,883,497				2,004,817		-2,213,207			363,064
1991										90,953
1992										76,255
1993										-415,610
1994										-33,172
1995										262,928
1996										552,941
1997										-117,503
1998										-514,746
1999										-546,008
2000										-46,873
2001										128,945
2002										-417,466

1/ Selected years and data, subject to availability

2/ Scheduled principal and interest payments.

Sources: Farm and Home Plans dated as follows: (a) 2/24/1981. (b) 8/15/1983.
(c) 11/9/1984 [H-2516-0315a to -0315c].
(d) 3/6/1985 [H2516-0325 to -0328].
(e) 3/16/1989 [H2516-0329 to -0332].

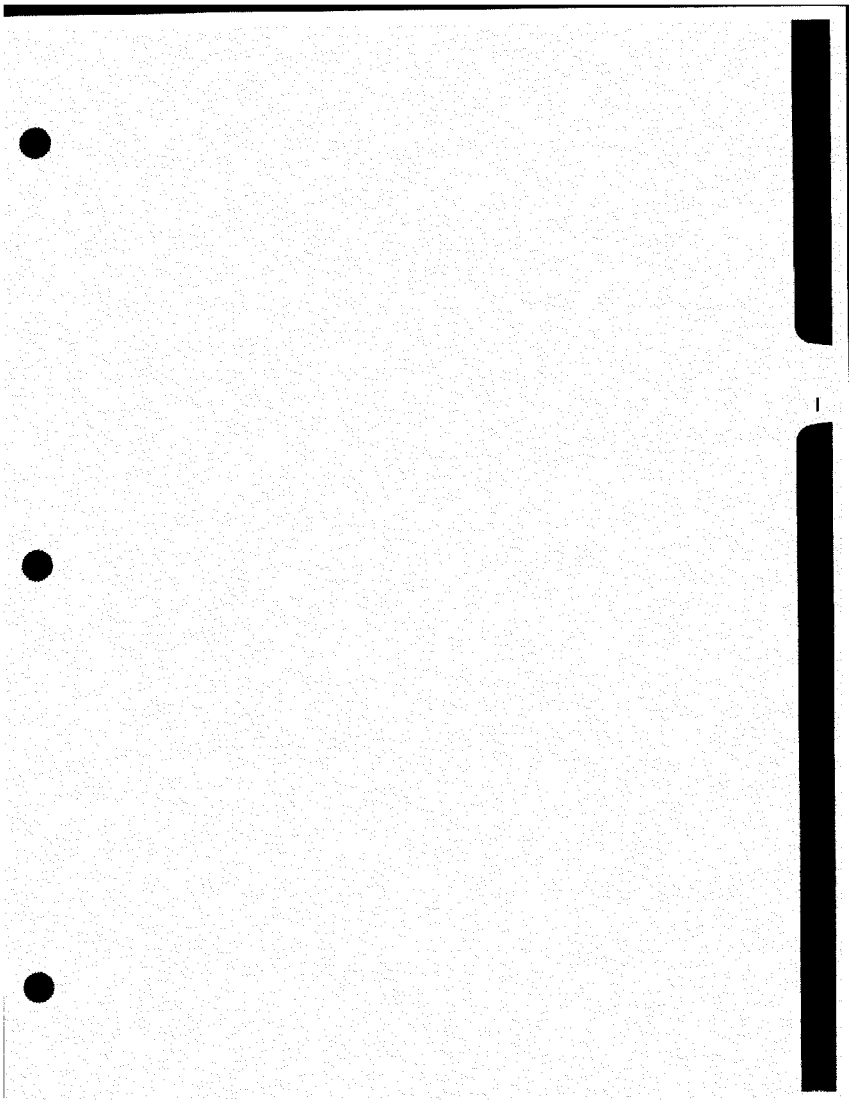

Exhibit I

U.S. farm debt-to-asset ratio, 1970 – 2002

Year	Percent
1970	17.39
1971	17.51
1972	17.09
1973	15.95
1974	16.62
1975	16.35
1976	15.94
1977	16.64
1978	15.93
1979	16.13
1980	16.24
1981	17.81
1982	19.11
1983	19.41
1984	21.03
1985	22.19
1986	20.96
1987	18.31
1988	16.88
1989	16.10
1990	15.60
1991	15.62
1992	15.16
1993	14.77
1994	14.86
1995	14.81
1996	14.81
1997	14.93
1998	15.20
1999	14.73
2000	14.76
2001	14.79
2002	14.82
1981-2002 average	16.67

Source: Economic Research Service. Farm financial ratios indicating solvency and profitability, 1960-2002. http://www.ers.usda.gov/data/FarmBalanceSheet/fasdmu.htm

Haynie Damage Analysis: Exhibit I

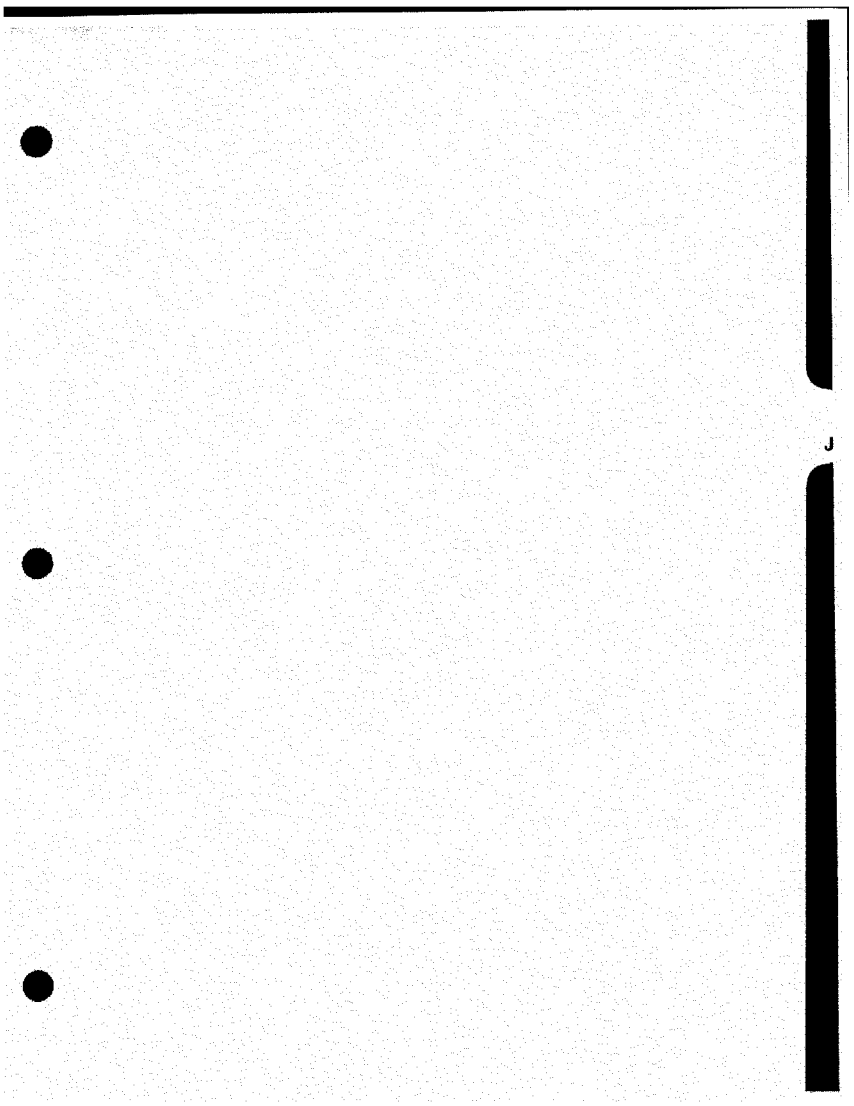

Exhibit J

Base Scenario: Comparable Farm - Without Discrimination

Total Farm, All Commodity Costs and Returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	770,558	668,325	102,234	102,234
1982	776,209	678,347	97,861	200,095
1983	669,354	753,389	-84,035	116,060
1984	1,406,584	1,230,682	174,902	290,962
1985	1,102,396	1,067,727	34,669	325,850
1986	928,275	981,251	-52,976	272,875
1987	1,131,026	1,091,811	39,215	311,890
1988	1,388,509	1,241,086	147,423	459,313
1989	1,617,810	1,384,537	232,973	692,286
1990	1,791,258	1,428,193	363,064	1,056,350
1991	1,620,925	1,529,972	90,953	1,146,303
1992	1,765,003	1,688,748	76,255	1,222,557
1993	1,312,952	1,728,662	-415,610	806,947
1994	1,874,625	1,907,797	-33,172	773,775
1995	2,318,207	2,055,279	262,928	1,036,703
1996	2,678,809	2,125,867	552,941	1,589,644
1997	2,037,243	2,154,748	-117,503	1,472,141
1998	1,474,832	1,939,578	-514,746	957,394
1999	1,430,463	1,976,471	-548,008	411,386
2000	2,047,566	2,094,429	-46,873	364,514
2001	1,999,260	2,128,205	-128,946	235,569
2002	1,649,294	2,066,761	-417,466	-181,897
Average	1,535,907	1,544,175	-8,268	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

Total Farm, All Commodity Costs and Returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	688,723	415,260	273,463	273,463
1982	716,455	628,100	88,355	361,818
1983	923,402	629,061	294,351	656,209
1984	1,325,654	1,003,864	311,939	1,083,188
1985	1,237,485	919,883	317,682	1,385,780
1986	1,146,239	963,534	165,708	1,551,489
1987	1,375,083	1,088,046	288,966	1,856,477
1988	1,436,084	1,160,989	275,095	2,131,572
1989	1,650,212	1,237,425	412,787	2,544,359
1990	1,770,624	1,321,488	449,136	2,993,525
1991	1,700,736	1,352,709	348,036	3,341,561
1992	1,928,403	1,387,567	540,836	3,884,397
1993	1,683,035	1,439,891	393,144	4,277,541
1994	2,156,679	1,481,145	675,534	4,953,075
1995	2,547,189	1,534,284	1,012,926	5,966,000
1996	2,752,457	1,570,338	1,182,119	7,148,120
1997	2,251,762	1,574,132	677,630	7,825,750
1998	1,987,188	1,545,740	416,428	8,242,178
1999	1,921,719	1,565,669	356,050	8,598,228
2000	1,911,996	1,631,196	280,741	8,878,970
2001	1,885,512	1,665,341	220,271	9,099,241
2002	1,885,647	1,279,364	606,343	9,705,584
	1,668,649	1,245,466	441,163	

Base Scenario: Comparable Farm - Without Discrimination

Corn: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	67,478	67,394	84	84
1982	79,629	69,277	10,352	10,436
1983	80,008	127,660	-47,593	-37,157
1984	460,521	324,900	135,621	98,464
1985	348,180	300,735	45,445	143,909
1986	211,710	260,971	-39,261	104,648
1987	327,372	298,097	29,274	133,922
1988	375,980	345,795	30,185	164,107
1989	545,745	402,074	143,671	307,777
1990	837,538	606,273	231,264	539,042
1991	696,550	696,217	-1,668	537,374
1992	931,553	752,960	178,593	715,968
1993	394,194	757,118	-362,923	353,044
1994	941,092	858,486	82,606	435,650
1995	1,259,707	943,956	315,751	751,401
1996	1,387,917	907,509	480,409	1,231,809
1997	1,065,104	934,186	130,918	1,362,727
1998	780,968	866,976	86,908	1,275,819
1999	710,094	890,608	-180,514	1,095,305
2000	1,050,910	961,007	89,912	1,185,216
2001	980,349	935,500	44,849	1,230,066
2002	711,719	896,975	-185,255	1,044,810
Average	647,340	599,849	47,491	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

Corn: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	94,796	59,126	35,670	35,670
1982	91,241	62,009	29,232	64,903
1983	187,356	120,087	67,269	132,172
1984	447,874	288,099	159,775	291,947
1985	409,908	278,384	131,525	423,472
1986	278,818	261,118	17,700	441,172
1987	388,926	308,128	80,798	521,971
1988	409,996	331,083	78,913	600,884
1989	531,532	357,436	174,096	774,980
1990	838,556	574,497	263,758	1,038,739
1991	854,235	591,152	243,083	1,281,821
1992	914,323	606,312	308,011	1,589,832
1993	861,012	632,361	228,651	1,818,483
1994	1,118,776	651,248	467,531	2,286,014
1995	1,330,603	674,832	655,773	2,941,785
1996	1,426,253	690,328	735,927	3,677,712
1997	1,195,167	709,336	485,832	4,164,543
1998	1,055,719	690,320	365,393	4,529,937
1999	1,008,778	690,326	318,452	4,849,389
2000	999,736	750,343	249,396	5,097,786
2001	1,037,406	738,353	298,753	5,396,539
2002	1,253,652	744,356	509,296	5,905,834
	758,360	480,903	288,447	

Base Scenario: Comparable Farm - Without Discrimination

EARLY (SINGLE CROPPED) Soybeans: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	0	0	0	0
1982	0	0	0	0
1983	82,930	90,277	-7,346	-7,346
1984	0	0	0	-7,346
1985	13,798	13,525	271	-7,076
1986	115,704	130,810	-15,106	-22,182
1987	146,536	156,088	-9,552	-31,734
1988	217,126	188,729	28,397	-3,337
1989	259,638	217,278	42,359	39,022
1990	142,809	120,228	22,581	61,603
1991	137,543	135,046	2,497	64,101
1992	144,202	144,789	-587	63,513
1993	117,476	150,909	-33,432	30,081
1994	166,856	169,284	-2,428	27,653
1995	154,061	178,678	-22,617	5,036
1996	211,241	184,803	26,438	31,474
1997	140,838	189,232	-48,394	-16,920
1998	99,758	195,127	-95,369	-112,289
1999	107,825	191,528	-83,703	-195,992
2000	163,373	202,106	-38,733	-234,725
2001	157,354	216,078	-58,724	-293,449
2002	138,310	208,865	-70,545	-363,994
Average	123,517	140,062	-16,545	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

EARLY (SINGLE CROPPED) Soybeans: Farm costs and retur

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	0	0	0	0
1982	0	0	0	0
1983	142,900	109,675	33,225	33,225
1984	0	0	0	33,225
1985	18,985	17,043	1,942	35,167
1986	186,455	178,052	8,403	43,570
1987	289,444	232,005	57,439	101,009
1988	275,963	213,761	62,103	163,112
1989	266,270	227,020	39,250	202,371
1990	150,945	130,296	20,550	240,921
1991	164,850	131,577	33,272	274,194
1992	188,537	132,085	56,480	330,676
1993	189,310	134,710	54,600	385,276
1994	217,923	135,435	82,488	467,764
1995	246,579	126,766	109,814	583,578
1996	250,116	125,937	124,178	711,757
1997	244,796	130,910	113,884	825,641
1998	269,260	127,578	81,682	907,323
1999	167,169	127,578	39,591	946,914
2000	168,220	133,125	35,095	982,008
2001	172,835	136,457	36,378	1,018,384
2002	213,673	137,565	76,108	1,094,492
	171,433	121,683	49,750	

Base Scenario: Comparable Farm - Without Discrimination

DOUBLE-CROPPED Soybeans: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	131,034	90,785	40,250	40,250
1982	129,768	91,447	38,321	78,570
1983	97,249	87,817	9,432	88,002
1984	254,791	191,656	63,135	151,137
1985	183,484	150,720	32,764	183,901
1986	104,823	99,294	5,529	189,430
1987	132,809	120,610	12,199	201,629
1988	196,784	140,298	56,486	256,116
1989	235,303	172,460	62,842	320,958
1990	194,332	141,450	52,882	373,840
1991	187,075	158,662	28,413	402,253
1992	196,435	169,960	26,474	428,727
1993	159,951	174,523	-14,572	414,155
1994	227,082	198,114	28,969	443,123
1995	209,735	205,006	4,729	447,852
1996	287,577	208,532	79,046	526,898
1997	191,733	219,302	27,653	499,239
1998	135,808	228,021	-92,213	407,026
1999	148,790	220,500	-75,710	333,316
2000	222,411	235,299	-13,888	319,428
2001	214,217	252,963	-38,746	280,682
2002	188,290	241,037	-52,746	227,936
Average	180,067	172,706	10,361	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

DOUBLE-CROPPED Soybeans: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	159,991	117,876	42,114	42,114
1982	156,451	123,632	32,819	74,932
1983	175,651	121,178	54,473	129,405
1984	327,473	269,858	57,415	186,821
1985	255,797	214,746	41,051	227,871
1986	177,811	152,923	24,888	252,760
1987	257,056	173,452	83,604	336,364
1988	263,178	183,539	79,639	416,102
1989	254,014	164,895	89,119	485,220
1990	227,672	168,102	59,571	524,791
1991	236,010	169,649	66,457	591,248
1992	276,347	170,414	99,953	691,191
1993	285,655	173,761	111,894	803,085
1994	312,492	174,819	137,573	940,658
1995	353,353	176,378	176,975	1,117,634
1996	372,751	175,315	197,436	1,315,070
1997	350,795	188,843	161,953	1,497,023
1998	299,874	164,551	135,323	1,632,346
1999	239,557	164,551	75,006	1,707,351
2000	241,062	171,700	69,363	1,776,714
2001	247,673	175,991	71,682	1,848,396
2002	306,198	177,427	128,771	1,977,167
	261,835	171,064	89,871	

Base Scenario: Comparable Farm - Without Discrimination

Wheat: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	54,200	56,290	-2,089	-2,089
1982	50,875	54,370	-3,495	-5,585
1983	15,672	16,035	-363	-5,948
1984	121,086	101,233	19,853	13,906
1985	68,264	62,498	5,766	19,671
1986	104,127	86,939	17,188	36,860
1987	126,063	101,509	24,555	61,414
1988	167,366	127,881	39,485	100,899
1989	141,826	129,922	11,904	112,803
1990	111,630	90,511	21,119	133,922
1991	108,970	93,061	15,909	149,831
1992	128,684	101,852	26,832	176,662
1993	124,955	106,155	18,800	195,463
1994	125,209	110,445	14,765	210,227
1995	165,936	121,656	44,280	254,507
1996	161,120	135,491	45,629	300,136
1997	163,319	132,689	30,650	330,786
1998	76,688	154,073	-77,385	253,401
1999	93,829	154,139	-60,310	193,091
2000	104,323	157,258	-52,935	140,157
2001	118,090	159,735	-43,645	96,512
2002	152,586	149,264	3,322	99,833
Average	113,765	109,227	4,538	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

Wheat: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	34,476	35,019	-544	-544
1982	32,394	36,729	-4,335	-4,879
1983	12,072	11,063	1,009	-3,870
1984	70,280	68,694	1,586	-2,285
1985	39,077	44,252	-5,175	-7,460
1986	47,826	66,151	-18,325	-24,955
1987	60,613	77,841	-17,228	-42,219
1988	76,405	85,562	-9,157	-51,376
1989	79,274	94,609	-15,335	-66,705
1990	57,456	68,085	-10,608	-77,314
1991	47,960	71,780	-23,825	-99,139
1992	65,024	75,429	-9,405	-108,544
1993	58,485	80,800	-22,313	-130,857
1994	63,479	85,530	-22,052	-152,909
1995	81,717	91,065	-9,348	-162,257
1996	93,274	95,871	-2,597	-164,854
1997	74,886	98,181	-23,295	-188,149
1998	64,934	95,460	-30,527	-218,676
1999	53,263	65,460	-12,197	-230,873
2000	52,389	99,611	-47,222	-308,095
2001	57,416	102,100	-44,684	-352,779
2002	61,649	102,928	-41,283	-394,062
Average	58,551	76,465	-17,912	

Base Scenario: Comparable Farm - Without Discrimination

Barley: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	61,949	70,024	-8,075	-8,075
1982	60,040	79,421	-19,381	-27,456
1983	6,774	8,504	-1,730	-29,186
1984	173,135	197,425	-24,290	-53,476
1985	119,988	176,177	-56,189	-109,665
1986	49,876	67,135	-17,259	-126,924
1987	62,317	79,155	-16,838	-143,762
1988	70,601	91,869	-21,268	-165,031
1989	68,097	100,896	-32,798	-197,829
1990	89,446	115,111	-25,665	-223,494
1991	116,564	91,813	24,751	-198,742
1992	123,921	96,227	27,694	-171,049
1993	123,921	96,227	27,694	-143,355
1994	123,675	103,194	20,481	-122,874
1995	136,695	117,782	18,913	-103,961
1996	135,337	124,134	11,203	-92,759
1997	81,890	124,213	-42,413	-135,172
1998	81,526	116,082	-34,556	-169,728
1999	97,037	117,086	-20,049	-214,777
2000	98,003	120,865	-32,862	-247,638
2001	86,883	124,421	-58,538	-306,176
2002	100,139	117,968	-17,829	-324,006
Average	91,442	106,169	-14,728	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

Barley: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	47,777	51,164	-3,386	-3,386
1982	47,187	53,657	-6,470	-9,856
1983	4,910	5,660	-750	-10,606
1984	126,207	128,866	-2,658	-13,263
1985	79,261	113,200	-33,939	-47,202
1986	28,129	45,092	-16,962	-64,165
1987	30,131	53,252	-23,121	-87,286
1988	33,259	59,692	-26,433	-112,719
1989	48,053	64,954	-16,901	-129,621
1990	63,022	76,197	-13,086	-142,705
1991	52,620	80,426	-27,806	-170,511
1992	69,290	84,688	-15,399	-186,011
1993	64,483	90,902	-26,418	-212,429
1994	64,030	98,416	-32,386	-244,815
1995	65,743	102,875	-37,133	-281,947
1996	111,421	106,539	2,882	-279,065
1997	80,133	111,372	-31,238	-310,304
1998	55,169	106,539	-53,371	-363,674
1999	50,934	108,539	-57,606	-421,280
2000	54,174	113,221	-59,047	-480,327
2001	48,927	116,089	-67,163	-547,490
2002	50,479	117,029	-66,550	-614,040
Average	57,995	85,875	-27,911	

Base Scenario: Comparable Farm - Without Discrimination

Hogs: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	455,897	383,832	72,065	72,065
1982	455,897	383,832	72,065	144,130
1983	386,682	423,076	-36,415	107,715
1984	396,051	415,469	-19,418	88,298
1985	370,885	364,072	6,613	94,910
1986	421,295	346,102	75,192	170,103
1987	428,177	336,362	91,824	261,927
1988	360,652	346,613	14,138	276,065
1989	397,001	392,006	4,995	281,060
1990	460,785	354,620	106,165	387,225
1991	416,319	353,173	63,146	450,372
1992	359,908	422,960	-63,053	387,319
1993	415,996	443,831	-27,835	359,484
1994	375,926	468,275	-92,349	267,334
1995	392,074	490,202	-98,128	169,206
1996	482,493	568,399	-82,906	86,301
1997	474,529	555,054	-80,425	5,876
1998	333,287	429,298	-96,031	-90,155
1999	307,329	402,610	-95,281	-185,436
2000	435,047	416,894	19,152	-166,283
2001	465,387	439,508	25,859	-140,425
2002	368,568	452,662	-84,054	-234,489
Average	405,502	416,161	-10,659	

Scenario: Plaintiffs' Analysis (Nov. 21, 2003)

Hogs: Farm costs and returns

Year	Revenue	Costs	Net Revenue	Cumulative
		Dollars		
1981	451,684	252,074	199,610	199,610
1982	389,223	252,074	137,149	336,759
1983	401,112	251,988	139,124	475,883
1984	370,019	254,159	115,860	591,753
1985	423,637	252,258	171,378	765,132
1986	420,201	260,296	159,906	925,037
1987	368,564	273,957	95,496	1,020,533
1988	375,382	288,352	87,030	1,115,562
1989	471,070	295,620	172,550	1,288,113
1990	424,973	303,983	120,990	1,409,094
1991	366,155	309,210	56,945	1,466,039
1992	419,682	318,668	101,214	1,567,253
1993	384,088	327,357	56,731	1,623,984
1994	380,278	337,898	42,379	1,666,363
1995	469,194	352,349	116,845	1,783,208
1996	488,643	364,349	124,293	1,907,501
1997	306,005	356,510	-50,506	1,856,996
1998	277,213	359,285	-82,072	1,774,924
1999	402,018	379,214	22,804	1,797,728
2000	426,383	393,196	33,187	1,830,915
2001	321,657	395,360	-74,603	1,756,192
2002	0	0	0	1,756,192
	378,464	299,566	78,898	

Base Scenario: Comparable Farm - Without Discrimination

Other Adjustments (Payment limitations)

Year	Revenue 1/	Costs	Net Revenue	Cumulative
		Dollars		
1981	0	0	0	0
1982	0	0	0	0
1983	0	0	0	0
1984	0	0	0	0
1985	0	0	0	0
1986	-79,260	0	-79,260	-79,260
1987	-92,247	0	-92,247	-171,506
1988	0	0	0	-171,506
1989	0	0	0	-171,506
1990	-45,283	0	-45,283	-216,789
1991	42,096	0	42,096	-258,685
1992	-119,698	0	-119,698	-378,383
1993	23,542	0	23,542	-407,125
1994	-85,214	0	-85,214	-487,339
1995	0	0	0	-487,339
1996	-6,877	0	-6,877	-494,216
1997	60,180	0	-60,180	-554,396
1998	-32,264	0	-32,264	-586,660
1999	-27,441	0	-27,441	-614,121
2000	-17,520	0	-17,520	-631,640
2001	0	0	0	-631,640
2002	-348	0	-348	-631,988
Average	-28,727	0	-28,727	

1/ Reductions in Net returns from government programs due to payment limitations.
Assumes participating as two entities.

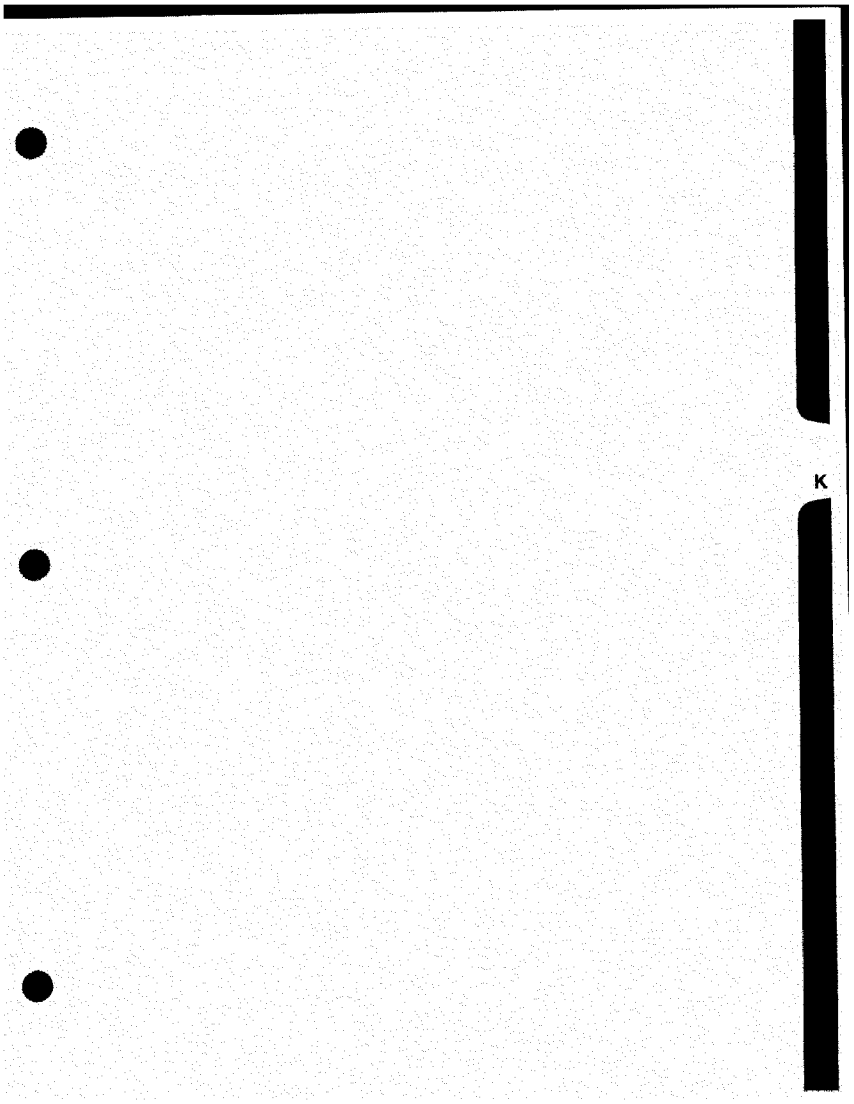
K

Exhibit K

Haynie Case: Side-by-side comparison of Defendant's and Plaintiffs' Analyses 1/

	Defendant's analysis	Plaintiffs' analysis	
1	--	12,228,399 a/	"Total Damages" shown on Exhibit G
2	--	-176,683	Correction for error in addition
3	--	12,051,716	Correct total for column designated as Total Damages Adjusted to year 2002 dollars
4			
5	--	-2,657,158	"Net present value" adjustment to convert annual "Net Damages" to "2002 dollars."
6	--	9,394,548 a/	Total of "Net Damages" unadjusted to net present 2002 value for inflation
7	see below	551,770 a/	Mitigating income
8			
9		9,946,318 a/	Total Return from all Enterprises
10			Yield adjustments: (county-average yields rather than Dr. Kambhampaty's estimates)
11	--	-4,151,860	Overstatement of corn yields
12	--	-1,051,867	Overstatement of full-season soybean yields
13		-1,617,646	Overstatement of double-crop soybean yields (no reduction for double cropping)
14	--	803,894	Understatement of wheat yields
15	--	440,829	Understatement of barley yields
16	--	-212,136	Reduction of double-cropped soybean yields due to double cropping
17	--	-5,669,016 b/	Total adjustments associated with yield estimates
18	--	4,257,301	Total "Net Damages" after adjusting yields
19			
20			Adjustment for costs of production
21	--	-2,299,661	Corn
22	--	-404,338	Full-season soybeans
23		826,295 c/	Double-cropped soybeans
24	--	-672,947	Adjustment for costs of production for wheat
25	--	-444,129	Adjustment for costs of production for barley
26	--	-2,342,874	Adjustment for costs of production for hogs
27		5,337,682 d/	Total adjustments for costs of production for all crops
28			
29	--	-1,080,380	"Total damages" after adjusting for costs of crop production
30		1,561,709	Allowance for total net returns from government commodity programs
31			
32	**256,163** e/	**481,329 1/**	**Northumberland County farm "comparable" to Plaintiffs** -- as assumed in Dr. Kambhampaty's analysis
33			
34			
35	437,060 f/	--	Allowance for discount on bulk purchases of seed, fertilizer, chemicals and fuel
36			
37	**-181,897** g/	--	**"Average Northumberland County Farmer":** Total net returns from a farming operation the size and composition assumed in Dr. Kambhampaty's analysis.
38			
39			Adjustments from line 32, i.e., from Northumberland County farm similar to Plaintiffs
40	-551,770	551,770	Adjustment for mitigating income
41	**-296,607**	**-70,441 1/**	**Base Scenario estimate of economic damages**
42			
43			Impact of Alternative Scenario 1: (compared to line 32)
44	-3,007,723 h/	--	Adjust for Plaintiffs' higher land lease rate ($/b/ac) [3/18/89 FHP]
45	-2,752,560		Adjusted net return after accounting for higher land cost

1/ It is not possible to exactly equilibrate the two columns because of differences in data sources, methodology and factors considered
a/ From Dr. Kambhampaty's Nov. 21, 2002 analysis. b/ See discussion on yields. c/ See costs of production discussion on soybeans.
d/ See general discussion on costs of production. e/ Base Scenario: based on data for average Northumberland County farm modified to reflect Plaintiffs' particular farming operation. f/ See discussion about bulk discount. g/ Based on USDA data on prices, yields and costs of production. h/ See discuss on on higher land lease rates paid by Plaintiffs.

class.htm

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United States Department of Agriculture
The Economics of Food, Farming, Natural Resources, and Rural America

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home > briefing rooms > farm financial management

briefing room
farm financial management

Farm financial classifications

Favorable
Farms and ranches in a favorable financial position have a positive income and a debt/asset ratio less than 0.40. These profitable, low-leverage operations are able to retain earnings, putting them in a position to take advantage of investment and expansion opportunities.

Marginal income
These businesses have negative incomes and a debt/asset ratio of 0.40 or less. These farms generally face an earnings problem which could be overcome with increased borrowing or sales of assets, both of which convert equity to cash. The resulting additional debt service burden or decreased equity base could accelerate cash-flow problems and increase financial risk.

Marginal solvency
Farms in this category generate positive returns, despite higher debt service requirements. While not experiencing earnings difficulties at the present time, these farms are susceptible to economic changes that may erode incomes and prevent them from meeting future cash commitments. At current asset values, equity on these farms may be insufficient to serve as security for additional borrowing to meet short-run cash needs.

Vulnerable
These businesses have negative income and debt/asset ratios above 0.40. Many of these farms are highly leveraged and demonstrate income deficiencies that diminish the viability of their business operations. They do not generate sufficient income either to meet current expenses or to reduce existing indebtedness. The highly leveraged positions of these farms may have resulted from disproportionate reductions in asset values relative to the amount of outstanding liabilities, increased indebtedness to fund past expansion or cash-operating shortfalls, or a combination of these factors. Regardless of the evolution of financial circumstances leading to their current highly leveraged position, some of these farmers may be forced to rely on debt restructuring/forgiveness to continue operating. But even then, cash earnings may not fully service all debt obligations.

for more information, contact: Mitch Morehart or Ashok Mishra
web administration: webadmin@ers.usda.gov
page updated: January 4, 2001

EXHIBIT
Trustee 2
1/14/04

key topics: shortcuts

From: "Pete Adamson" <Pete.Adamson@va.usda.gov>
To: <Brian.Kennedy@usdoj.gov>, <RTROSTLE@ers.usda.gov>, <deborah.mcarthur@usda.gov>, <ron.walkow@usda.gov>
Date: Thu, Nov 6, 2003 2:53 AM
Subject: RE: "duh". Double cropping; Acreage Reports; Program participation; Deposition date???

We got a box of records on Haynie and associated entities from the county office. I had our program technician go through these papers and give me a synopsis of what was contained therein. I have attached it unedited. I'm sure that you will have questions and that is fine but I wanted you to know what we know at this point.

A couple of key issues kept coming to light while discussing this. 1) In 9 years working with insolvent accounts I have never seen an operation survive this long while continually losing equipment to creditors and apparently losing money. 2) If the records we have from the early eighties are any indication of the profitability of "Haynie Farming" then there has to have been a large continual influx of cash into this operation. 3) How does Haynie keep getting people to participate in his farming endeavors if he is not making money (hence they would not make money). 4) with Haynie's reputation in the community (to which Brian can attest) he does not pay his creditors therefore must not be profitable so why/how does he continually farm? It has been said 'if you want to know the truth, follow the money trail'. We've been told IRS attempted to do this but we do not know the outcome. OIG also attempted to do this and the investigator was pulled off the case.

Enough rambling. Let me know of any specifics you need. We'll be in contact with the county to determine what else, if anything, may exist.

Pete

EXHIBIT

1981

FSN	Wheat	Barley	Corn
317	14.9	12.4	9.6
328		81.4	
378		4	
402		8.4	
403		3.8	
406		2.1	
407		3.5	
421	3.4		5.2
426		7.1	
454		3.9	
575			68.2
582			22.7
583	22.9		
604			11.7
665			5.7
710		10	
741	3.5		
772			3.8
877			18.3
1025		16.9	
1058	18		
1131	83.9		
1300		5.9	
1769		27.4	
2019	134.3	150.1	92.6
2092	15.5		
2131		6.5	
2134		6.6	
2181		3	
2183		5.5	
2211	9.6		
2220		5.3	
2240		9.6	
2244		8.6	14.9
2254	11.9		
2300		5.1	
2352			3.2
2621		9.8	24
2749		5.4	4.3
2763		7	
2766	7.1		
2767	1.9		
2769			4.3
2770		2.2	
2772		6.2	
2773		4.7	
2776		3.2	
2779		3.2	
2780		3.4	
2794		4.3	
2827			8.4
2831		3.1	
2838		17.1	
2854		2.2	
2855		2.6	
2915		2	
2923		6	
TOTAL	326.8	457.1	296.9

All acreage reports signed by Phillip Haynie, II

Source: Nov 11, 2003 Excel file named Hayniefarmprogdata.xls, provided by Pete Adamson, FSA.

1983

FSN	Wheat	Barley	Corn	Soybeans	CUA
1196				190.4	109.3

All Acreage Reports Signed by Phillip J. Haynie, II

1984

FSN	Wheat	Barley	Corn	Soybeans	ACR	CUA	Participate	Payment	Penalty	Overpayment
201	16.5	118.5	120.7	223.2	20	78.5				
317	12.4		23	12.4			X		$97.07	
328		82.4		85.8		7.9	X	225.8		
378				4			X			
402				6.2		1.1	X	18.6		
403				3.8						
406				8.7						
407				3.5						
423				12.9						
426				7.1			X			
450				13.1						
484				3.9			X			
513				18.6						
519			2.2	8.7						
539	53.9		41.1	118.1		4.6	X		$218.60	
568	38.9		18.8	41.3	2.6		X	628.63		
575	19.1	49.1	44	68.2			X		$239.95	
582	24.3			24.3						
593		22.9		22.9						
604				11.7			X			
605				5.7			X			
696				15.6						
741		4		4						
677		18.3		18.3						
689		3.6		3.6						
1037			13.9			1.3	X	67.5	$67.33	
1098		13.6	14	3		2.6	X	124.2	$154.30	$124.20
1058			18				X	963.1	$39.81	
1131			32.1	14.2		34.6	X	2161.81		
1160			4.6							
1196		186.6	115.6	185.9						
1300		7.9		7.9			X		$14.39	
1512		26.5	489	77.4		10.6	X	408.24	$2,907.20	103.16
1708		25.7		27.2			X		$71.35	
2001		35.3		35.2						
2019							X	6763.82		
2092			11.5			4.6	X	164.7		
2096		6		6		1.2	X	29.7		
2126	8.1		5.1	8.1			X		$27.13	
2163				4.5						
2206				17						
2211		9.5		9.5						
2218		9		9						
2220				6.5						
2240				9			X			
2244			10.6	15.4	1.2		X	405.49		
2254				9.9		4.3	X	132.3		
2300				4.2		0.9	X	29.7		
2334		7.8		7.8						
2357				3.2						
2621	33.8		8.2	38.8	0.6		X	349.16		
2749				9.9						
2754				1.7						
2763				7			X			
2766		6.2		6.2		0.7	X	87.6		
2767		1.9		1.9						
2769			3.9		1		X	167.91		
2772				6.2						
2776				3.2						
2779				3.2						
2780				4.1						
2784				4.3						
2773				4.9						
2827				3.2						
2830				1.6						
2831				3.1						
2838				17.1			X			
2854				2						
2855				2.6						
2915				2						
3033		7		7						
3048	76.3			76.3						
total	283.3	641	1591.1	1408.6	25.7	156.8		12719.16	$3,237.22	317.36

All Acreage Reports and Participating Contracts Signed by Phillip J. Haynie, II

What copies of checks available indicate payments made to Phillip J. Haynie
yet contracts show name as Phillip J. Haynie, II as receiving all shares?

All correspondence concerning overpayment and penalties addressed to Haynie, II

Source: Nov 11, 2003 Excel file named: HaynieAcreageData.xls, provided by Pete Adamson, FSA

1985

FSN	Wheat	Corn	Barley	Soybeans	ACR	Participate	Payment	Penalty	Overpayment
69		216.6	148.4	158.9	39.9	X	8568.42		
415		87.5	77.8	91.9	8.9	X			
559	71.8	17.6	41.1	150.8	40	X			
575		48.1	28	87.1	10.4	X			
583			98.1	39.9		X			
1101	65	26.3	92.2	203.9	33.7	X			
1198	80.9	162.1	86.4	167.2	28.1	X	4523.06		
1300			5.5	5.5		X			
1312		322.6	187.9	198.9	30.4	X			
2019						X			
2229				4.2		X			
201	46.4	378.2	293.4	503.6	60.9				
297				11.5					
402				8					
403				3.8					
406				7					
407				3.5					
423				12.8					
429				6.8					
454				5.1					
513				21.3					
518				10.9					
568	40.8		26.4	67.2					
582	26			26					
585			28.4	28.4					
604				8.6					
665				5.7					
672		12.8		12.5					
686				19.6					
741		3.6							
772				3.1					
877		16.8		16.8					
963		3.5		3.5					
1008			34.6	34.6					
1058		18		18					
1070			14.4	14.4					
1091				11.7					
1179	13.1			13.1					
1189			5	5					
1766	25			25					
2011	31.9			31.9					
2066	14.8			14.8					
2090			6.1	6.1					
2120		5.9	6.1	5.1	0.1				
2131				3.6					
2163	5		5.7	10.7					
2183				4.5					
2206				17					
2211	9.5			9.5					
2218				9					
2249			8.6	9.6					
2300				5					
2352				2.9					
2629				6.1					
2621	36.5		9.5	14.1					
2625				8.9					
2749				9.9					
2753				7.5					
2768			5.9	5.9					
2787		1.8							
2789				4.9					
2770				2.3					
2772				7.1					
2775				5.1					
2776				3.2					
2778				3.5					
2780				4					
2794				3.5					
2827				8.9					
2831				3.1					
2838				17.1					
2854				2.2					
2855				2.5					
2856				3.2					
3033		7.1							
Total	487.7	1241.5	1113	2295.6	252.6	0	13081.47		

All Acreage Reports and Participating Contracts Signed by Phillip J. Haynie, II

FSN 88 shows Haynie, II to receive 100% on Contract and was paid to him.

FSN 1195 shows Haynie, II to receive 100% on Contract and was paid to him with the exception of a division payment made to Phillip J. Haynie, in the amount of 534.06, and the balance, in the amount of 3988.45 paid to Haynie, II

Source: Nov. 11, 2003 Excel file named Haynieloanpaydata.xls, provided by Pete Adamson, FSA

1986

FSN	Wheat	Corn	Barley	Soybeans	ACR	Participate	Payment	Penalty	Overpayment
88		229.6		125.8	60.2	x			
1196						x			
Total		229.6		125.8	60.2		$0.00		

All Acreage Reports Signed by Phillip J. Haynie, II

Plaintiffs' Exhibit ___

Haynie et al. v. Veneman et al., C.A. No. 00-2516

Equation for Damages Calculation

(MINUEND) – (SUBTRAHEND) = DIFFERENCE

(net returns from farm operation absent discrimination)	-	(net returns from farm operation affected by discrimination)	=	economic damages to farm operation



Payment Limits and Payment Review

Payments received under the wheat, feed grain, Upland cotton, ELS cotton, and rice programs are again limited to $50,000 for all payments per person per year except for disaster payments, which are limited to $100,000 per person per year. The payment limit does not include (1) loans and purchases; (2) compensation for public recreation or resource adjustment, excluding land diversion payments; (3) any gain realized from repaying a marketing loan at a level lower than the announced loan rate; (4) any deficiency payments made as a result of lowering the basic loan rate under the wheat and feed grain programs; (5) any loan deficiency payments; (6) any inventory reduction payments; or (7) any benefits received as a result of any cost reduction actions by the Secretary. As under the 1981 Act, payment limits do not apply to land owned by States or State agencies if the land is farmed primarily to further a public function.

The 1985 Act adds ELS cotton to the provisions in the Agricultural Act of 1938 concerning payments made under the wheat, feed grain, Upland cotton, or rice programs. The facts used to determine such payments are final and not subject to review if they conform to regulations issued by the Secretary or the CCC.

Advance Deficiency and Diversion Payments

The Secretary must make advance deficiency payments available to producers who participate in the 1986 wheat, feed grain, Upland cotton, and rice programs if an acreage limitation or set-aside has been established and it is likely that deficiency payments will be made. Such payments may be made for the 1987-90 crops. The payments must be made as soon as practicable after the producer signs the contract agreeing to participate in the program. Advance payments may not exceed 50 percent of project deficiency payments and may be made in cash, CCC-owned commodities, or any combination thereof. Up to half of the advance payments may be made in commodities or certificates, with the producer choosing which to receive. Certificates must be redeemed within 3 years of issuance, with the CCC paying the storage costs until they are redeemed.

If land diversion payments are made in any crop year, the Secretary may also advance at least 50 percent of those payments to producers.

Advance Recourse Commodity Loans

The Secretary may make advance recourse loans available to producers for commodities with nonrecourse loan programs, if such action is necessary to provide adequate operating credit to producers. The recourse loans may be made under terms and conditions prescribed by the Secretary, except that producers must obtain crop insurance.

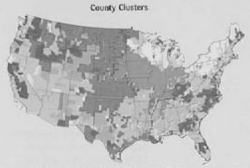
Interest Payment Certificates

The Secretary may provide negotiable certificates to producers who repay their wheat, feed grain, Upland cotton, or rice loans with interest. The amount of the certificate would equal the interest paid, redeemable for any of the those commodities owned by the CCC, subject to availability.

Payment in Commodities

Titles III through VI authorize the Secretary to make payments-in-kind (PIK). Such payments (except marketing certificates for Upland cotton and rice) may be made by

County Clusters



J.E. Sommer and F.X. Hines. *Diversity in U.S. Agriculture: A New Delineation by Farming Characteristics.* AIB-646, ERS, USDA, 1991.

Since the early 1900's, USDA analysts have sought to identify patterns in U.S. farming that might further the understanding of differences in financial performance of farms and the economic well-being of farm households.

The Farm Resource Regions are derived from four sources: a cluster analysis of U.S. farm characteristics (Sommer and Hines), the old Farm Production Regions, USDA's Land Resource Regions, and NASS Crop Reporting Districts.

County clusters, based on commodities produced, have shown that a few commodities tend to dominate farm production in specific geographic areas that cut across State boundaries. The climate, soil, water, and topography in localized geographic areas tend to constrain the types of crops and livestock that will thrive there.

The old Farm Production Regions, in following State boundaries, necessarily group unlike areas together because a single State often encompasses different soils and topography.

USDA Farm Production Regions



USDA Land Resource Regions



USDA, SCS. *Land Resource Regions and Major Land Resource Areas of the United States.* AH-296, 1981.

For example, the old Appalachian Region, comprising Tennessee, Kentucky, North Carolina, Virginia, and West Virginia, contains the Appalachian Mountains, Piedmont, and Coastal Plain areas, all of which have quite different agriculture.

With more and more data available at the county level, geographic representations need no longer be constrained to follow State boundaries. In constructing the new regions, we identified where areas with similar types of farms intersected with areas of similar physiographic, soil, and climatic traits, as reflected in USDA's Land Resource Regions. We then conformed these intersecting areas to follow the boundaries of NASS Crop Reporting Districts, which are aggregates of counties.

The Farm Resource Regions, by more accurately portraying the geographic distribution of U.S. farm production, will help analysts and policymakers better understand economic and resource issues affecting agriculture.

Electronic files linking counties to the Farm Resource Regions are online at the ERS home page, URL http://www.ers.usda.gov/whatsnew/issues/regions/

NASS Crop Reporting Districts



The U.S. Department of Agriculture is an equal opportunity provider and employer

USDA ERS

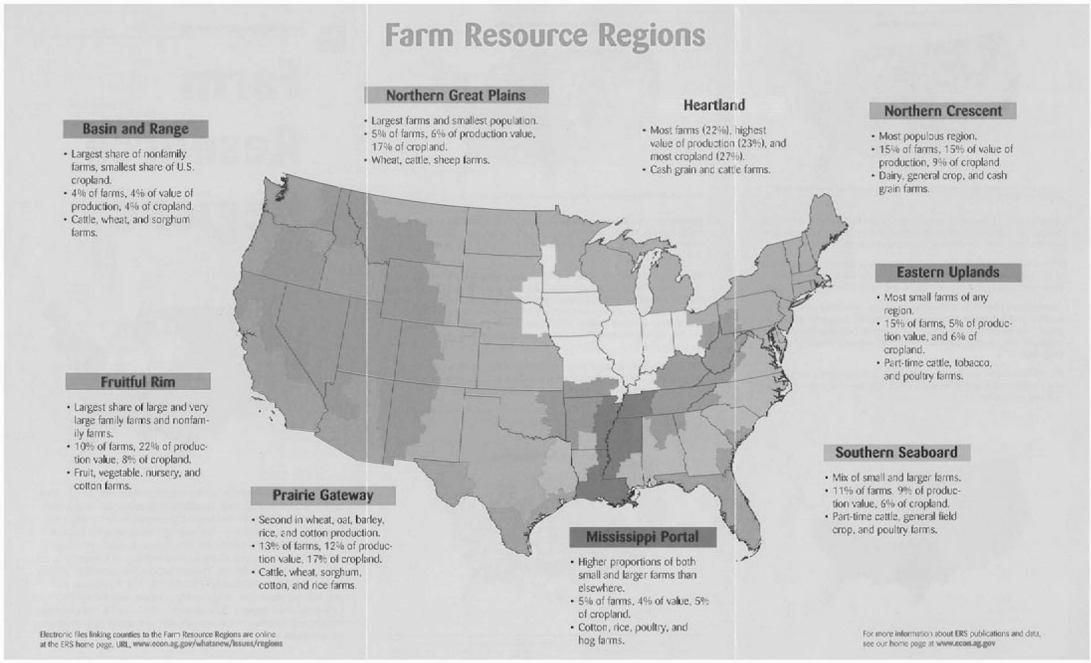
Economic Research Service

EXHIBIT 6A
TROSTLE-6
1/14/09

Farm Resource Regions



USDA's Economic Research Service recently constructed a new set of regions depicting geographic specialization in production of U.S. farm commodities. With more and more data available at the county level, geographic representations need no longer be constrained to follow State boundaries. ERS will use the new regions to display results of its analyses in a broad array of venues from briefings to publications, our Web site, and journal articles. The new regions take advantage of both new capabilities and standards in the resolution of the data we work with and overcome some longstanding problems with the old USDA Farm Production Regions. This pamphlet introduces the Farm Resource Regions, explains their origin and rationale, and serves as a reference for our clients.


Farm Resource Regions
Basin and Range
• Largest share of nonfamily farms, smallest share of U.S. cropland.
• 4% of farms, 4% of value of production, 4% of cropland.
• Cattle, wheat, and sorghum farms.
Northern Great Plains
• Largest farms and smallest population.
• 5% of farms, 6% of production value, 17% of cropland.
• Wheat, cattle, sheep farms.
Heartland
• Most farms (22%), highest value of production (23%), and most cropland (27%).
• Cash grain and cattle farms.
Northern Crescent
• Most populous region.
• 15% of farms, 15% of value of production, 9% of cropland.
• Dairy, general crop, and cash grain farms.
Eastern Uplands
• Most small farms of any region.
• 15% of farms, 5% of production value, and 6% of cropland.
• Part-time cattle, tobacco, and poultry farms.
Fruitful Rim
• Largest share of large and very large family farms and nonfamily farms.
• 10% of farms, 22% of production value, 8% of cropland.
• Fruit, vegetable, nursery, and cotton farms.
Prairie Gateway
• Second in wheat, oat, barley, rice, and cotton production.
• 13% of farms, 12% of production value, 17% of cropland.
• Cattle, wheat, sorghum, cotton, and rice farms.
Mississippi Portal
• Higher proportions of both small and larger farms than elsewhere.
• 5% of farms, 4% of value, 5% of cropland.
• Cotton, rice, poultry, and hog farms.
Southern Seaboard
• Mix of small and larger farms.
• 11% of farms, 9% of production value, 6% of cropland.
• Part-time cattle, general field crop, and poultry farms.
Electronic files linking counties to the Farm Resource Regions are online at the ERS home page, URL, www.econ.ag.gov/whatsnew/issues/regions
For more information about ERS publications and data, see our home page at www.econ.ag.gov

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U.S. DEPARTMENT OF AGRICULTURE

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home > data > costs and returns

data
costs and returns: old regions

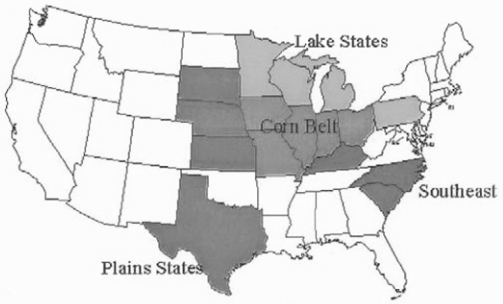
old production regions

Prior to 1995 State boundaries were used to delineate regions for most commodities. States were grouped according to those with similar production practice and resource characteristics. Cost and return accounts for commodities reported under the old format still use these regional definitions.

corn	grain sorghum
oats	barley
wheat	soybeans
rice	peanuts
cotton	tobacco
sugar beets	
milk	hogs
cow-calf	

corn

Corn Production Regions



Lake States: Minnesota, Wisconsin, Michigan and Pennsylvania
Southeast: Kentucky, North Carolina and South Carolina

EXHIBIT Ohio
ROSTICH-7
1/14/04

Corn Belt: Illinois, Indiana, Iowa, Missouri and Ohio
Plains States: Kansas, Nebraska, South Dakota and Texas

top of page

grain sorghum

Grain Sorghum Production Regions



Central Plains: Kansas, Missouri and Nebraska
Southern Plains: Arkansas, Oklahoma and Texas

top of page

oats

Oat Production Regions



Northeast: New York and Pennsylvania
North Central: Illinois, Iowa, Michigan, Minnesota, Ohio and Wisconsin
Northern Plains: Kansas, Nebraska, North Dakota and South Dakota

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barley

Barley Production Regions



Northeast: Maryland, Pennsylvania and Virginia
Northern Plains: Minnesota, Montana, North Dakota, South Dakota and Wyoming
Northwest: Idaho, Oregon and Washington
Southwest: California, Colorado and Utah

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wheat

Wheat Production Regions





North Central: Illinois, Indiana, Missouri, Ohio and Michigan
Southeast: Arkansas, Georgia, and North Carolina
Northern Plains: Minnesota, Montana, North Dakota, and South Dakota
Central and Southern Plains: Colorado, Kansas, Nebraska, Oklahoma and Texas
Pacific: California, Idaho, Oregon and Washington

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soybeans

Soybean Production Regions



Lake States: Michigan, Minnesota and Wisconsin
Corn Belt: Illinois, Indiana, Iowa, Missouri and Ohio
Northern Plains: Kansas, Nebraska and South Dakota,
Southeast: Kentucky, North Carolina and Tennessee
Delta: Arkansas, Louisiana and Mississippi

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rice



Arkansas (Non-Delta): Grand Prairie Counties
California: Sacramento Valley
Gulf Coast: Bayou Prairies of Louisiana and North Gulf Coast of Texas
Mississippi River Delta: River Counties of Arkansas, Louisiana and Mississippi

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peanuts

Peanut Production Regions



Virginia and North Carolina
Southeast: Alabama and Georgia
Southern Plains: Oklahoma and Texas

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cotton

Cotton Production Regions



Southeast: Alabama, Georgia, North Carolina and South Carolina
Delta: Missouri, Arkansas, Louisiana, Mississippi and Tennessee
Southern Plains: Oklahoma and Texas
Southwest: Arizona and California

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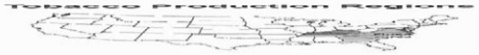
tobacco

Tobacco Production Regions

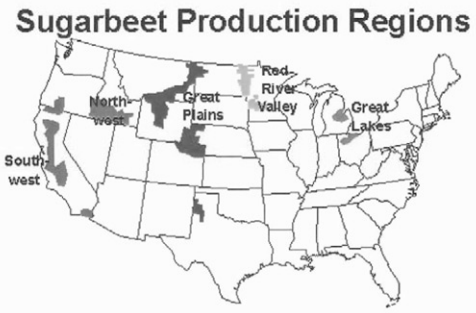




Flue-Cured: Georgia, North Carolina, South Carolina and Virginia
Burly: Kentucky and Tennessee

top of page

sugar beets



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milk





Northeast: New York, Pennsylvania and Vermont
Southeast: Florida and Georgia
Upper Midwest: Michigan, Minnesota and Wisconsin
Corn Belt: Iowa, Missouri and Ohio
Southern Plains: Texas
Pacific: Arizona, California and Washington

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hogs



North: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota and Wisconsin
South: Alabama, Arkansas, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Texas and Virginia

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cow-calf



North Central: Illinois, Iowa and Missouri
Southeast: Florida, Kentucky and Tennessee
Plains: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota and Texas
West: California, Colorado, Idaho, Montana, New Mexico, Oregon and Wyoming

Some regions shown in the time series files may be different than those listed here. For a list of States included in the regions for earlier years, e-mail the commodity contact listed on the costs and returns data page.

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for more information, contact: William McBride
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page updated: November 19, 2001

key topics: Ag Chemicals & Production Technology go
shortcuts: Newsroom go

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SOYBEANS - FULL SEASON CONVENTIONAL TILL

18

35 BUSHEL YIELD — 1 ACRE

ITEM	UNIT	PRICE	QUANTITY	TOTAL	YOUR EST.
PREHARVEST EXPENSES					
SEED SOYBEAN/INOCULANT	UNIT	$17.88	0.66	$11.80	
OTHER SEED/INOCULANT	BU	$0.00	0.00	$0.00	
NITROGEN *	LBS	$0.27	0.00	$0.00	
PHOSPHATE *	LBS	$0.24	35.00	$8.40	
POTASH	LBS	$0.15	60.00	$9.00	
FERTILIZER APPLICATION	ACRE	$6.14	1.00	$6.14	
LIME	TON	$25.00	0.50	$12.50	
CHEMICALS (INSECT. EVERY 4 YR.)					
HERBICIDES	ACRE	$23.72	1.00	$23.72	
INSECTICIDES	ACRE	$5.94	0.25	$1.48	
FUNGICIDES	ACRE	$0.00	1.00	$0.00	
CHEMICAL APPLICATION	ACRE	$6.29	1.00	$6.29	
FUEL,OIL, LUBE	ACRE	$8.33	1.00	$8.33	
REPAIRS	ACRE	$20.79	1.00	$20.79	
PREHARVEST LABOR	HOUR	$7.50	1.21	$9.11	
CASH RENT OR LAND COST	ACRE	$0.00	1.00	$0.00	
CROP INSURANCE					
SCOUTING					
OTHER COSTS					
PRODUCTION INTEREST	A.P.R.	9.00%	117.57	$5.29	
TOTAL PREHARVEST EXPENSES		$3.51	PER BU.	$122.86	
HARVEST EXPENSES					
FUEL, OIL, LUBE	ACRE	$2.40	1.00	$2.40	
REPAIRS	ACRE	$10.19	1.00	$10.19	
HARVEST LABOR	HOUR	$7.50	0.33	$2.48	
HAULING	BU	$0.15	35.00	$5.25	
STORAGE	BU	$0.00	35.00	$0.00	
DRYING	BU		35.00	$0.00	
TOTAL HARVEST EXPENSES		$0.58	PER BU.	$20.32	
TOTAL VARIABLE COST		$4.09	PER BU.	$143.17	
MACHINERY FIXED COSTS (BASED ON NEW EQUIPMENT COST)				$63.49	
OTHER FIXED COSTS					
TOTAL COST		$5.90	PER BU.	$206.66	

CHEMICALS:	TYPE	UNIT	PRICE	QUANT.
MICRO-TECH	H	QT	$6.22	2.00
LOROX 50DF	H	LB	$11.28	1.00
ASANA	I	PT	$16.39	0.36

* NOTE: NITROGEN AND PHOSPHORUS REQUIREMENTS WILL VARY WITH MANURE USE AND/OR RESIDUAL NUTRIENT LEVELS IN THE SOIL.

DEVELOPED BY VIRGINIA COOPERATIVE EXTENSION FARM MGT. STAFF — JAN. 2001

EXHIBIT

SOYBEANS - FULL SEASON CONVENTIONAL TILL					35 BUSHEL YIELD	
MACHINERY TABLE: PREHARVEST:	TRIPS/ ACRE	FUEL	OIL, LUBE	REPAIRS	FIXED COSTS	LABOR HR PER ACRE
110HP 5-16 PLOW	1	$3.66	$0.55	$5.62	$10.36	0.49
110HP 18FT DISC	1	$1.27	$0.19	$1.48	$5.89	0.17
50HP 12FT ST HARROW	1	$0.56	$0.08	$0.66	$1.76	0.22
70HP 4ROW CONV PLANT	1	$1.76	$0.26	$13.03	$11.39	0.34
HARVEST:						
COMBINE - SOYBEANS	1	$2.09	$0.31	$10.19	$34.07	0.33

* FIXED COSTS BASED ON NEW EQUIPMENT PRICES. ACTUAL FIXED COSTS OF OLDER OR USED EQUIPMENT WILL BE LOWER.

SUMMARY OF VARIABLE COSTS

	PER ACRE	PER BUSHEL
SEED	$11.80	$0.34
FERTILIZER	$36.04	$1.03
CHEMICALS	$31.49	$0.90
FUEL/OIL/LUBE	$10.73	$0.31
REPAIRS	$30.98	$0.89
LABOR	$11.59	$0.33
RENT	$0.00	$0.00
INTEREST	$5.29	$0.15
HAUL/STORE/DRY	$5.25	$0.15
OTHER	$0.00	$0.00
	$143.17	$4.09

ESTIMATING PER ACRE RETURNS OVER VARIABLE COSTS
WITH VARYING YIELDS AND PRICES

YIELD PER ACRE	TOTAL VARIABLE COST/ACRE	PRICE PER BUSHEL $4.80	$5.40	$6.00	$6.60	$7.20
24.5	$141.60	($24.00)	($9.30)	$5.40	$20.10	$34.80
29.8	$142.39	$0.41	$18.26	$36.11	$53.96	$71.81
35.0	$143.17	$24.83	$45.83	$66.83	$87.83	$108.83
38.5	$143.70	$41.10	$64.20	$87.30	$110.40	$133.50
42.0	$144.22	$57.38	$82.58	$107.78	$132.98	$158.18

SOYBEANS/RR - FULL SEASON NO-TILL

19

35 BUSHEL YIELD — 1 ACRE

ITEM	UNIT	PRICE	QUANTITY	TOTAL	YOUR EST
PREHARVEST EXPENSES					
SEED SOYBEAN/INOCULANT	UNIT	$25.73	0.66	$16.98	
OTHER SEED/INOCULANT	BU	$0.00	0.00	$0.00	
NITROGEN *	LBS	$0.27	0.00	$0.00	
PHOSPHATE *	LBS	$0.24	35.00	$8.40	
POTASH	LBS	$0.15	60.00	$9.00	
FERTILIZER APPLICATION	ACRE	$6.14	1.00	$6.14	
LIME	TON	$25.00	0.50	$12.50	
CHEMICALS (INSECT: EVERY 4 YR.)					
HERBICIDES	ACRE	$23.51	1.00	$23.51	
INSECTICIDES	ACRE	$5.94	0.25	$1.49	
FUNGICIDES	ACRE	$0.00	1.00	$0.00	
CHEMICAL APPLICATION	ACRE	$6.29	1.00	$6.29	
FUEL,OIL, LUBE	ACRE	$2.38	1.00	$2.38	
REPAIRS	ACRE	$13.86	1.00	$13.86	
PREHARVEST LABOR	HOUR	$7.50	0.62	$4.68	
CASH RENT OR LAND COST	ACRE	$0.00	1.00	$0.00	
CROP INSURANCE					
SCOUTING					
OTHER COSTS					
PRODUCTION INTEREST	A.P.R.	9.00%	105.23	$4.74	
TOTAL PREHARVEST EXPENSES		$3.14	PER BU.	$109.97	
HARVEST EXPENSES					
FUEL, OIL, LUBE	ACRE	$2.40	1.00	$2.40	
REPAIRS	ACRE	$10.19	1.00	$10.19	
HARVEST LABOR	HOUR	$7.50	0.33	$2.48	
HAULING	BU	$0.15	35.00	$5.25	
STORAGE	BU	$0.00	35.00	$0.00	
DRYING	BU		35.00	$0.00	
TOTAL HARVEST EXPENSES		$0.58	PER BU.	$20.32	
TOTAL VARIABLE COST		$3.72	PER BU.	$130.28	
MACHINERY FIXED COSTS (BASED ON NEW EQUIPMENT COST)				$47.44	
OTHER FIXED COSTS					
TOTAL COST		$5.08	PER BU.	$177.72	

CHEMICALS:	TYPE	UNIT	PRICE	QUANT
GRAMAXONE	H	PT	$4.25	1.50
STICKER	H	PT	$2.32	0.50
ROUNDUP	H	QT	$10.65	1.50
ASANA	I	PT	$16.39	0.36

* NOTE: NITROGEN AND PHOSPHORUS REQUIREMENTS WILL VARY WITH MANURE USE AND/OR RESIDUAL NUTRIENT LEVELS IN THE SOIL.

DEVELOPED BY VIRGINIA COOPERATIVE EXTENSION FARM MGT. STAFF JAN. 2001

BARLEY GRAIN, SOYBEANS DOUBLE CROP

23

70 BUSHELS 35 BUSHELS 1 ACRE

ITEM	UNIT	PRICE	QUANTITY	TOTAL	YOUR EST.
PREHARVEST EXPENSES					
BARLEY SEED	UNIT	$6.48	2.00	$12.96	
SOYBEAN SEED/INOCULANT	BU	$17.88	1.25	$22.35	
NITROGEN *	LBS	$0.27	70.00	$18.90	
PHOSPHATE *	LBS	$0.24	75.00	$18.00	
POTASH	LBS	$0.15	90.00	$13.50	
FERTILIZER APPLICATION	ACRE	$6.14	2.00	$12.28	
LIME	TON	$25.00	0.66	$16.50	
CHEMICALS					
HERBICIDES	ACRE	$39.44	1.00	$39.44	
INSECTICIDES	ACRE	$3.67	1.00	$3.67	
FUNGICIDES	ACRE	$0.00	1.00	$0.00	
CHEMICAL APPLICATION	ACRE	$6.29	2.00	$12.58	
FUEL,OIL, LUBE	ACRE	$10.84	1.00	$10.84	
REPAIRS	ACRE	$25.44	1.00	$25.44	
PREHARVEST LABOR	HOUR	$7.50	1.75	$13.10	
CASH RENT OR LAND COST	ACRE	$0.00	1.00	$0.00	
CROP INSURANCE					
SCOUTING					
OTHER COSTS					
PRODUCTION INTEREST	A.P.R.	9.00%	219.56	$9.88	
TOTAL PREHARVEST EXPENSES				$229.44	
HARVEST EXPENSES					
FUEL, OIL, LUBE	ACRE	$4.49	1.00	$4.49	
REPAIRS	ACRE	$19.05	1.00	$19.05	
HARVEST LABOR	HOUR	$7.50	0.62	$4.66	
HAULING	BU	$0.00	105.00	$0.00	
STORAGE	BU	$0.00	105.00	$0.00	
DRYING	BU	$0.00	105.00	$0.00	
TOTAL HARVEST EXPENSES				$28.20	
TOTAL VARIABLE COST				$257.63	
MACHINERY FIXED COSTS (BASED ON NEW EQUIPMENT COST)				$101.15	
OTHER FIXED COSTS					
TOTAL COST				$358.78	

CHEMICALS:	TYPE	UNIT	PRICE	QUANT.
GRAMAXONE	H	PT	$4.25	1.00
STICKER	H	PT	$2.32	0.50
HARMONY EXT.	H	OZ	$12.79	0.50
DUAL 8E	H	PT	$8.93	1.25
COMMAND 3ME	H	PT	$8.23	2.00
SEVIN XLR+	I	PT	$3.67	1.00

* NOTE: NITROGEN AND PHOSPHORUS REQUIREMENTS WILL VARY WITH MANURE USE AND/OR RESIDUAL NUTRIENT LEVELS IN THE SOIL.

DEVELOPED BY VIRGINIA COOPERATIVE EXTENSION FARM MGT. STAFF JAN. 2001

BARLEY GRAIN, SOYBEANS DOUBLE CROP

MACHINERY TABLE: PREHARVEST:	TRIPS/ ACRE	FUEL	OIL, LUBE	REPAIRS	FIXED COSTS	LABOR HR PER ACRE
110HP 5-16 PLOW	1	$3.66	$0.55	$5.62	$10.36	0.49
110HP 18FT DISK	2	$1.27	$0.19	$1.48	$5.89	0.17
70HP 8FT DRILL	1	$1.47	$0.22	$3.83	$5.35	0.42
70HP 4ROW NT PLANTER	1	$1.76	$0.26	$13.03	$11.39	0.50
HARVEST:						
COMBINE - SMALL GRAIN	1	$1.82	$0.27	$8.86	$34.07	0.29
COMBINE - SOYBEANS	1	$2.09	$0.31	$10.19	$34.07	0.33

* FIXED COSTS BASED ON NEW EQUIPMENT PRICES. ACTUAL FIXED COSTS OF OLDER OR USED EQUIPMENT WILL BE LOWER.

SUMMARY OF VARIABLE COSTS

	PER ACRE
SEED	$35.31
FERTILIZER	$79.16
CHEMICALS	$55.69
FUEL,OIL/LUBE	$15.33
REPAIRS	$44.49
LABOR	$17.76
RENT	$0.00
INTEREST	$9.88
HAUL/STORE/DRY	$0.00
OTHER	$0.00
	$257.63

WHEAT GRAIN, SOYBEANS DOUBLE CROP

22.

50 BUSHELS 30 BUSHELS 1 ACRE

ITEM	UNIT	PRICE	QUANTITY	TOTAL	YOUR EST.
PREHARVEST EXPENSES					
WHEAT SEED	UNIT	$10.32	2.00	$20.64	
SOYBEAN SEED/INOCULANT	UNIT	$17.88	1.25	$22.35	
NITROGEN *	LBS	$0.27	70.00	$18.90	
PHOSPHATE *	LBS	$0.24	75.00	$18.00	
POTASH	LBS	$0.15	90.00	$13.50	
FERTILIZER APPLICATION	ACRE	$6.14	2.00	$12.28	
LIME	TON	$25.00	0.66	$16.50	
CHEMICALS					
HERBICIDES	ACRE	$39.43	1.00	$39.43	
INSECTICIDES	ACRE	$0.00	1.00	$0.00	
FUNGICIDES	ACRE	$0.00	1.00	$0.00	
CHEMICAL APPLICATION	ACRE	$6.29	2.00	$12.58	
FUEL,OIL, LUBE	ACRE	$10.84	1.00	$10.84	
REPAIRS	ACRE	$25.44	1.00	$25.44	
PREHARVEST LABOR	HOUR	$7.50	1.75	$13.10	
CASH RENT OR LAND COST	ACRE	$0.00	1.00	$0.00	
CROP INSURANCE					
SCOUTING					
OTHER COSTS					
PRODUCTION INTEREST	A.P.R.	9.00%	223.56	$10.06	
TOTAL PREHARVEST EXPENSES				$233.62	
HARVEST EXPENSES					
FUEL, OIL, LUBE	ACRE	$4.49	1.00	$4.49	
REPAIRS	ACRE	$19.05	1.00	$19.05	
HARVEST LABOR	HOUR	$7.50	0.62	$4.66	
HAULING	BU	$0.00	80.00	$0.00	
STORAGE	BU	$0.00	80.00	$0.00	
DRYING	BU	$0.00	80.00	$0.00	
TOTAL HARVEST EXPENSES				$28.20	
TOTAL VARIABLE COST				$261.82	
MACHINERY FIXED COSTS (BASED ON NEW EQUIPMENT COST)				$101.15	
OTHER FIXED COSTS					
TOTAL COST				$362.97	

CHEMICALS:	TYPE	UNIT	PRICE	QUANT.
GRAMAXONE	H	PT	$4.25	1.00
STICKER	H	PT	$2.32	0.50
HARMONY EXT.	H	OZ	$12.79	0.50
DUAL 8E	H	PT	$8.93	1.25
COMMAND 3ME	H	PT	$8.23	2.00

* NOTE: NITROGEN AND PHOSPHORUS REQUIREMENTS WILL VARY WITH MANURE USE AND/OR RESIDUAL NUTRIENT LEVELS IN THE SOIL.

DEVELOPED BY VIRGINIA COOPERATIVE EXTENSION FARM MGT. STAFF JAN. 2001

WHEAT GRAIN, SOYBEANS DOUBLE CROP

MACHINERY TABLE: PREHARVEST:	TRIPS/ ACRE	FUEL	OIL, LUBE	REPAIRS	FIXED COSTS	LABOR HR PER ACRE
110HP 5-16 PLOW	1	$3.66	$0.55	$5.62	$10.38	0.49
110HP 18FT DISK	2	$1.27	$0.19	$1.48	$5.89	0.17
70HP 8FT DRILL	1	$1.47	$0.22	$3.83	$6.35	0.42
70HP 4ROW NT PLANTER	1	$1.76	$0.26	$13.03	$11.39	0.50
HARVEST:						
COMBINE - SMALL GRAIN	1	$1.82	$0.27	$8.86	$34.07	0.29
COMBINE - SOYBEANS	1	$2.09	$0.31	$10.19	$34.07	0.33

* FIXED COSTS BASED ON NEW EQUIPMENT PRICES. ACTUAL FIXED COSTS OF OLDER OR USED EQUIPMENT WILL BE LOWER.

SUMMARY OF VARIABLE COSTS

	PER ACRE
SEED	$42.99
FERTILIZER	$79.18
CHEMICALS	$62.01
FUEL,OIL/LUBE	$15.33
REPAIRS	$44.49
LABOR	$17.76
RENT	$0.00
INTEREST	$10.06
HAUL/STORE/DRY	$0.00
OTHER	$0.00
	$261.82

Haynie Farm, North Umberland County, VA

COMMODITY SUMMARY - COST OF PRODUCTION COMPARISONS 2/12/03 - Date printed

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	81-02 22-year avg	% of USDA COP
CORN COP $ / ac																								
USDA SE & SS Regions (pt ac	237.00	239.52	227.06	240.73	230.60	199.92	204.09	223.02	254.59	240.55	265.93	276.25	263.39	294.00	311.33	299.31	308.11	285.94	293.74	316.95	308.54	295.84	264.76	100%
Claimant assumption	206.19	218.34	215.34	225.85	218.34	215.6	220.65	225.39	231.8	232.9	229.04	226.06	225.28	223.03	222.57	227.68	233.62	227.68	227.68	237.68	243.52	245.5	226.55	86%
Difference (Claimant minus E	-29.11	-20.18	-8.72	-22.77	-12.26	-15.68	-18.75	-1.58	-22.79	-7.78	-36.89	-51.19	-38.10	-70.97	-88.76	-71.63	-74.49	-68.26	-66.06	-79.37	-65.02	-50.34		
SOYBEAN - EARLY CROP COP $ / ac																								
USDA SE & SS Regions (pt ac	146.47	144.65	141.06	143.41	135.28	123.76	128.15	147.10	161.31	152.35	164.60	169.34	180.87	182.81	183.47	191.90	198.53	202.62	208.89	209.87	224.28	216.88	169.77	100%
Claimant assumption	162.6	170.43	170.43	176.39	170.43	169.45	165.95	158.81	166.32	166.32	180.45	154.45	151.19	146.1	142.02	141.16	135.84	132.48	132.48	136.24	141.7	142.85	154.77	91%
Difference (Claimant minus E	16.03	25.78	29.37	32.97	35.16	44.69	37.10	19.51	7.23	12.97	-4.23	-14.09	-19.16	-36.51	-41.45	-50.74	-60.55	-70.14	-66.41	-71.63	-82.68	-74.03		
SOYBEAN - DOUBLE-CROPPED CROP COP $ / ac																								
USDA SE & SS Regions (pt ac	132.84	118.46	111.16	112.74	107.88	98.51	102.79	114.62	134.21	125.96	135.15	138.63	135.67	140.18	146.55	151.11	165.98	165.23	169.78	171.23	183.31	174.66	136.59	100%
Claimant assumption	140.29	150.09	150.39	155.74	150.39	151.91	148.27	149.95	151.97	149.69	144.42	133	135.07	131.46	127.91	127.04	122.35	119.24	119.24	124.42	127.53	128.57	139.30	102%
Difference (Claimant minus E	33.81	39.03	42.23	45.03	45.73	55.10	45.48	35.33	17.46	23.73	8.27	0.37	-0.60	-17.69	-20.74	-24.07	-35.63	-45.99	-40.54	-46.81	-55.78	-46.09		
WHEAT COP $ / ac																								
USDA SE & SS Regions (pt ac	169.55	166.55	153.71	155.68	146.74	135.14	132.84	159.39	164.12	165.02	150.41	171.05	173.17	173.11	183.77	204.67	200.41	232.74	232.84	237.55	241.29	225.47	180.72	100%
Claimant assumption	105.48	110.93	110.63	114.49	110.63	109.94	111.95	118.57	122.73	128.28	127.28	126.28	131.81	134.06	137.56	144.82	148.28	144.2	144.2	150.47	154.23	155.48	129.06	71%
Difference (Claimant minus E	64.07	55.62	42.68	44.39	35.11	-23.80	-21.16	-42.82	-41.40	-39.64	-32.13	-42.77	-41.35	-39.05	-46.21	-59.85	-52.13	-88.54	-88.64	-87.08	-87.06	-69.99		
BARLEY COP $ / ac																								
USDA SE & SS Regions (pt ac	147.73	163.21	155.60	174.85	172.06	159.85	161.90	176.41	191.62	192.72	200.32	142.66	144.92	149.34	164.27	173.13	173.24	161.96	163.30	158.57	173.53	164.53	167.63	100%
Claimant assumption	107.94	113.2	113.2	117.15	113.2	111.89	114.60	119.76	128.37	130.32	131.63	132.95	136.9	139.53	143.40	151.35	155.33	151.38	151.38	157.91	161.01	163.22	133.84	80%
Difference (Claimant minus E	-39.79	-50.01	-52.60	-57.70	-58.86	-47.96	-47.06	-56.65	-65.75	-62.40	-68.69	-9.60	-8.02	-9.81	-20.79	-21.75	-17.91	-10.52	-11.92	-10.66	-11.92	-1.31		
HOGS COP $ / cwt gain																								
USDA SE & SS Regions	46.08	46.08	51.46	50.28	43.58	41.52	40.04	41.04	42.89	41.87	41.08	49.03	51.53	53.95	56.22	65.60	63.50	49.25	45.83	46.91	48.89	50.35	48.50	100%
Claimant assumption	29.09	30.51	30.51	31.58	30.51	30.15	30.87	30.29	34.06	35.12	35.49	35.03	36.9	37.51	38.87	40.8	41.85	40.8	40.8	42.57	43.64	43.99	36.08	74%
Difference (Claimant minus E	-16.99	-15.57	-20.95	-18.70	-13.37	-11.36	-9.17	-8.75	-8.83	-6.75	-5.68	-13.49	-14.63	-16.34	-17.55	-24.80	-22.04	-8.45	-5.03	-4.34	-5.25	-6.36		

EXHIBIT

Heyns Farm, North Umberland County, VA
COMMODITY SUMMARY - REVENUE COMPARISONS

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	81-02 22-year avg	% of ERS 3-year avg
CORN GROSS REVENUE $/ac																								
USDA SE & SS Regional ac	227.0	210.0	240.9	352.1	288.2	187.5	258.1	246.2	327.8	334.4	255.1	340.5	174.1	322.3	415.6	457.8	391.3	257.3	234.2	346.0	323.3	224.7	295.38	100%
Farm's results	233.5	220.9	303.3	391.2	391.6	286.2	279.3	273.1	344.7	339.8	323.2	339.4	336.7	393.1	456.0	474.4	394.2	346.2	332.7	399.1	362.1	415.6	348.34	120%
Difference (Farm minus R	6.6	10.9	62.3	39.2	85.05	97.65	20.7	26.9	16.9	5.38	67.94	-3.15	172.69	92.95	40.35	12.94	42.93	89.91	98.5	-53.77	18.72	378.74		
SOYBEAN, EARLY CROP GROSS REVENUE $/ac																								
USDA, SE & SS Regional ac	139.40	138.55	151.77	137.46	139.46	122.94	165.23	162.76	182.19	181.74	83.08	131.85	86.00	159.96	218.96	146.25	103.59	111.67	160.65	163.40	142.62	164.91	164.91	100%
Farm's results	194.1	202.34	190.75	148.86	148.86	148.86	215.77	181.88	202.74	255.04	220.47	263.69	232.08	256.05	270.11	254.20	277.30	173.59	174.03	179.47	179.47	221.86	270.28	136%
Difference (Farm minus R	54.7	63.79	38.98	11.4	9.4	25.92	50.54	19.12	20.55	73.3	137.39	131.84	146.08	96.09	51.15	107.95	173.71	61.92	13.38	16.07	36.85	56.95		
SOYBEAN, DOUBLE CROP GROSS REVENUE $/ac																								
USDA, SE & SS Regional ac	98.57	101.57	103.1	98.36	101.36	93.96	114.29	99.0	123.11	119.36	109.95	95.22	128.28	151.06	151.88	208.99	139.84	88.44	106.97	141.17	165.28	196.44	147.97	100%
Farm's results	98.95	104.1	122.94	105.78	115.85	120.49	221.22	215.01	197.84	209.74	221.94	200.01	229.89	259.08	256.35	270.11	254.20	277.30	173.59	174.03	179.47	221.86	210.28	142%
Difference (Farm minus R	0.38	2.53	19.84	7.42	14.49	26.53	106.93	84.24	74.65	89.38	113.99	104.79	101.61	107.02	104.47	61.12	114.36	189.86	67.22	13.92	24.24	25.44		
WHEAT GROSS REVENUE $/ac																								
USDA, SE & SS Regional ac	134.20	131.67	135.66	151.90	153.38	153.38	225.09	230.91	211.05	163.93	141.91	164.98	157.71	183.83	250.26	234.45	216.45	88.16	113.22	151.25	164.13	207.20	150.25	100%
Farm's results	157.1	153.72	141.13	148.84	79.26	86.86	109.84	102.85	106.81	97.33	86.04	112.79	89.41	97.60	123.44	140.93	113.00	28.05	80.45	79.14	85.73	69.12	91.22	83%
Difference (Farm minus R	22.96	21.93	5.47	3.05	73.88	66.48	115.25	128.06	105.76	66.6	55.87	52.19	68.3	86.23	126.82	93.52	103.45	60.11	32.76	72.11	67.4	138.08		
BARLEY GROSS REVENUE $/ac																								
USDA, SE & SS Regional ac	103.7	104.45	104.78	111.75	97.23	144.08	132.40	142.68	116.28	152.00	142.80	152.78	87.11	92.69	145.69	94.06	169.42	70.08	97.76	172.55	107.77	79.89	125.69	122.79	100%
Farm's results	79.26	93.56	93.21	113.73	79.26	98.96	91.53	97.89	93.49	107.91	86.99	106.78	87.11	92.69	81.88	150.42	111.76	76.94	71.04	73.68	68.94	73.91	91.00	74%
Difference (Farm minus R	-23.74	-10.89	-11.57	-2.02	-18.47	-45.12	-40.87	-44.79	-22.79	-44.09	-55.81	-45.99	0.0	-0.0	-63.81	56.36	-57.66	-1.14	-26.72	-98.87	-38.83	-5.98	-34.69	-48%
HOGS GROSS REVENUE $/cwt gdn																								
USDA, SE & SS Regional ($/cwt	55.18	55.18	46.80	47.74	44.59	50.37	50.78	42.80	43.36	54.25	45.59	47.84	48.17	43.16	44.87	56.97	54.82	36.14	34.90	48.05	51.65	53.80	47.33	100%
USDA, SE & SS Regional ($/cwt	53.17	53.17	46.70	46.04	43.85	46.65	49.16	39.24	39.89	49.27	44.16	36.96	43.88	48.03	49.39	51.02	46.34	36.65	32.76	46.24	49.17	37.45	44.35	94%
Farm's results ($/cwt gdn	53.17	54.07	47.14	48.03	44.02	50.68	51.02	45.57	44.34	53.42	49.06	42.45	49.82	54.03	53.83	54.92	56.74	39.02	31.48	45.13	47.32	39.70	48.77	99%
Difference (Farm minus R	0.0	0.91	0.44	0.29	0.18	0.29	0.24	6.27	4.45	0.15	4.91	5.49	1.94	5.89	4.96	2.1	1.94	2.38	-1.42	-0.92	-1.85	1.93	4.42	9%
Difference (Farm minus R	2.08	0.91	0.44	0.29	0.18	0.29	0.24	6.27	4.45	0.15	4.91	5.49	1.94	5.89	4.96	2.1	1.94	2.38	-1.42	-0.92	-1.85	1.93	4.42	9%

Haynie Farm, North Umberland County, VA

COMMODITY SUMMARY - NET RETURNS to Operator (*1982 $'s = Not Inflated)

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	81-02 22-year avg	% of ERS analyses
CORN - ($ / ac)																								
USDA - SE & SS Regions (pr ac	-41.16	-17.80	-92.64	82.64	-15.65	-149.89	-84.94	-27.01	26.69	-37.46	-51.87	16.80	-167.51	-42.31	84.86	81.91	49.91	-114.16	-145.31	-66.26	-42.75	-119.74	-39.02	
Claimant assumption	125.60	102.93	122.31	-25.37	-103.16	14.63	57.02	53.62	112.90	103.67	94.16	114.33	51.46	160.11	216.28	249.22	180.56	120.51	105.03	92.26	95.53	187.97	116.79	???
SOYBEANS - Full Season ($/ac)																								
USDA - SE & SS Regions (pr ac	24.83	24.82	-11.45	14.30	2.71	-14.29	-7.94	22.13	31.45	28.80	3.05	-0.89	-31.02	-2.02	-23.49	27.45	-50.26	-39.03	-88.02	-40.23	-66.98	-73.26	-14.95	
Claimant assumption	36.00	20.66	51.01	4.37	19.42	17.85	56.37	46.40	29.16	36.42	43.56	66.06	72.50	86.98	114.03	128.95	115.26	84.62	41.11	36.44	37.77	79.03	55.61	???
SOYBEANS - Double Cropped ($/ac)																								
USDA - SE & SS Regions (pr ac	40.94	47.54	11.94	37.14	25.40	9.49	10.52	46.15	48.80	47.06	24.20	21.09	-17.41	21.61	2.43	57.28	-20.04	-86.82	-53.41	-10.00	-28.06	-35.22	10.38	
Claimant assumption	62.25	40.72	63.95	22.01	35.46	24.79	71.80	53.09	46.01	53.06	56.82	91.51	87.42	109.58	128.24	143.07	131.85	98.06	54.95	50.20	51.94	93.31	70.99	68.4%
WHEAT - PRICE ($ / bu)																								
USDA - SE & SS Regions (pr ac	-13.71	-7.93	-22.24	7.10	-12.76	-29.78	-10.75	-46.72	5.69	-10.29	-17.69	-19.33	-15.47	-4.16	66.69	29.70	18.04	146.56	-116.92	-106.33	-67.16	-15.27	-20.11	
Claimant assumption	-1.64	13.26	10.00	2.64	-10.94	-30.29	-24.72	-9.75	-15.60	-19.65	-42.24	-15.99	-36.43	-34.56	-14.12	-3.92	95.19	-46.11	-53.74	-71.39	-87.50	-52.96	-27.76	135%
BARLEY - PRICE ($ / bu)																								
USDA - SE & SS Regions (pr ac	-28.44	-51.01	-41.04	-31.06	-76.33	-83.56	-64.70	-84.93	-56.10	-80.04	-84.04	-3.46	2.66	0.85	26.38	-3.75	-103.10	-94.74	-50.74	-80.80	-93.84	-36.60	-44.84	
Claimant assumption	-3.14	-13.86	-14.86	-2.42	-33.94	-42.08	-16.72	-5.55	-82.85	-22.41	-40.07	-24.19	-39.79	-46.87	-51.75	4.02	-43.67	-74.44	-80.34	-82.95	-39.67	-80.82	-42.85	96%
HOGS ($/LIVESTOCK REVENUE ($ / cwt)																								
USDA - SE & SS Regions	9.10	9.13	4.66	2.04	10.62	9.86	10.74	1.56	0.49	12.94	7.23	-7.48	3.93	10.78	-11.30	-9.73	-5.37	-11.11	-10.93	2.04	2.70	-10.55	-1.23	
Claimant assumption	29.07	24.16	19.67	16.77	13.91	21.49	20.15	11.28	10.25	20.30	14.12	6.62	11.72	4.22	4.86	13.53	14.28	-5.76	-9.52	2.58	3.60	-8.29	10.60	???

Claimant Farm & Home Plan 81-02

COMMODITY SUMMARY VIRGINIA STATE AVERAGE PRICES (NASS) 2/12 (C) * Data printed: 22-year

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	avg
CORN ($/bu)	2.70	2.60	3.70	2.60	2.40	1.70	2.05	2.90	2.60	2.51	2.60	2.25	2.65	2.40	3.35	3.20	2.65	2.24	2.15	2.02	2.14	2.75	2.56
Claimant assumption	2.70	2.60	3.70	2.60	2.40	1.70	2.05	2.90	2.60	2.51	2.60	2.25	2.65	2.40	3.35	3.20	2.65	2.24	2.15	2.02	2.14	2.75	2.56
Difference (Claimant minus E	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
SOYBEANS ($/bu)	6.10	5.70	7.86	5.06	6.15	4.90	6.05	7.40	5.70	6.66	5.80	6.65	5.45	5.36	6.85	6.80	6.20	5.30	4.50	4.35	4.30	5.46	5.77
Claimant assumption	6.10	5.70	7.86	5.06	6.15	4.90	6.05	7.40	5.70	6.66	5.80	6.65	5.45	5.36	6.85	6.80	6.20	5.30	4.50	4.35	4.30	5.54	5.77
Difference (Claimant minus E	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.08	
WHEAT PRICE ($/bu)	3.64	3.05	3.40	3.35	2.95	2.55	2.55	3.45	3.45	2.95	2.70	3.10	2.70	2.65	3.70	4.15	3.05	2.41	2.00	2.00	2.29	2.80	2.86
Claimant assumption	3.64	3.05	3.40	3.35	2.95	2.55	2.55	3.45	3.45	2.95	2.70	3.10	2.70	2.65	3.70	4.15	3.05	2.41	2.00	2.00	2.29	2.80	2.86
Difference (Claimant minus E	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
BARLEY PRICE ($/bu)	2.10	1.90	2.05	2.35	1.70	1.60	1.95	1.95	2.10	2.10	1.70	1.90	1.80	1.75	2.90	2.10	1.40	1.31	1.35	1.29	1.40	1.86	1.81
Claimant assumption	2.10	1.90	2.05	2.35	1.70	1.60	1.95	1.95	2.10	2.10	1.70	1.90	1.80	1.80	1.75	2.90	2.10	1.40	1.31	1.35	1.29	1.40	1.83
Difference (Claimant minus E	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	-1.15	0.80	0.70	0.09	-0.04	0.07	-0.12	-0.46	
HOGS GROSS REVENUE ($/cwt	52.17	53.17	45.18	46.06	42.56	45.60	49.12	39.21	39.89	49.27	44.15	39.99	43.89	38.03	40.30	51.03	49.61	36.40	32.78	46.24	49.17	37.43	44.35
Claimant assumption	48.18	54.97	47.11	48.36	44.42	50.65	51.02	43.57	44.34	55.42	49.60	42.46	45.62	41.52	43.52	54.33	56.14	38.02	31.48	46.13	47.32	35.70	46.77
Difference (Claimant minus E	4.99	1.80	1.99	2.27	1.86	5.05	1.90	4.36	4.45	6.15	5.44	2.48	2.73	3.50	3.13	3.30	6.53	1.43	-1.29	-1.11	-1.86	-1.73	

Haynie Farm, North Umberland County, VA
COMMODITY SUMMARY - YIELD COMPARISONS

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	22-year avg	% of Co Avg
Corn Yields																								
Graham Farm & Home Plan				104																				
County average (bu/ac)																								
ERS Regional (bu/ac)																								
All US average (bu/ac)																								
Graham assumption (bu/ac)																								
Difference (Graham minus County)																								
Graham % change from ERS																								
SOYBEANS Yields																								
All Soybeans																								
Graham Farm & Home Plan				25																				
County average (bu/ac)																								
ERS Regional (bu/ac)																								
All US average (bu/ac)																								
Full-season Soybeans																								
VA Cooperative Extension Variety Tests																								
Graham assumption (bu/ac)																								
Double-cropped Soybeans																								
County avg (bu/ac)																								
VA Cooperative Extension Variety Tests																								
Graham assumption (bu/ac)																								
Difference (Graham minus ERS)																								
Graham % change from ERS																								
Wheat Yields																								
Graham Farm & Home Plan				51																				
County average (bu/ac)																								
ERS Regional (bu/ac)																								
All US average (bu/ac)																								
Graham assumption (bu/ac)																								
Difference (Graham minus ERS)																								
Graham % change from ERS																								
BARLEY Yields																								
Graham Farm & Home Plan				80																				
County average (bu/ac)																								
ERS Regional (bu/ac)																								
All US average (bu/ac)																								
Graham assumption (bu/ac)																								
Difference (Graham minus ERS)																								
Graham % change from ERS																								

CBP-ERS

EXHIBIT

PREPARED STATEMENT OF THOMAS BURRELL

WRITTEN TESTIMONY

OF

THOMAS BURRELL, PRESIDENT
BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC.

TO

THE UNITED STATES HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE
CONSTITUTION SUBCOMMITTEE

September 28, 2004

TO THE HONORABLE MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES, CHAIRMAN JAMES SENSENBRENNER, RANKING MEMBER JOHN CONYERS, AND SUBCOMMITTEE CHAIRMAN, MICHAEL OXLEY AND THE HOUSE JUDICIARY COMMITTEE, CONSTITUTION SUBCOMMITTEE, ON BEHALF OF THE BFAA., INC. BOARD OF DIRECTORS, BFAA, INC. STATE PRESIDENTS, MEMBERS OF BFAA, INC., THE THOUSANDS OF BLACK FARMERS DENIED RELIEF UNDER THE FLAWED PIGFORD CONSENT DECREE, TRACTS A & B, THE 70,000 BLACK FARMERS DESIGNATED AS LATE FILERS AND THE HEIRS OF OUR BELOVED FOREFATHERS WHO ONLY SOUGHT TO ENJOY THEIR LABORS ON THIS GLORIOUS, BOUNTIFUL LAND, I AM HONORED AND I AM HUMBLED TO BE SITTING BEFORE YOU TO EXPRESS OUR APPRECIATION FOR YOUR BOLD AND PROGRESSIVE ESTABLISHMENT OF THIS HISTORIC HEARING. PLEASE, MAKE NO MISTAKE, WE ALL UNDERSTAND THE MAGNITUDE OF YOUR EFFORT, THE PAINSTAKING NEGOTIATIONS BY YOUR BRAVE AND

COMMITTED STAFFS, MAJORITY AND MINORITY, IN PUTTING THIS HISTORIC HEARING IN PLACE AND THE FORESIGHT OF THIS COMMITTEE'S MEMBERSHIP IN CAUSING THIS HEARING TO BE HAD. LADIES AND GENTLEMEN, WE THANK YOU. WE WANT TO ALSO THANK THE HONORABLE BOBBY SCOTT, JOHN CONYERS AND BENNIE THOMPSON FOR THEIR UNWAVERING SUPPORT FOR THIS HEARING

LADIES AND GENTLEMEN, I REALIZE THAT MY TIME BEFORE YOU IS SHORT. I, THEREFORE, HAVE PREPARED FULL WRITTEN TESTIMONY WITH EXTENSIVE ATTACHMENTS THAT ENCOMPASS THE VIEWS, GOALS AND OBJECTIVES OF ALL BLACK FARMERS AND THEIR HEIRS AS YOU CONTEMPLATE A LEGISLATIVE REMEDY TO THE DEPARTMENTS OF AGRICULTURE AND JUSTICE'S WHOLESALE VIOLATIONS, PAST AND PRESENT, OF THE CONSITUTIONAL RIGHTS OF BLACK FARMERS AND THEIR HEIRS, ALL AMERICAN CITIZENS. CHAIRMAN SENSENBRENNER, I RESPECTFULLY REQUEST YOUR APPROVAL OF THE ENTRY OF THIS WRITTEN TESTIMONY INTO THE RECORD OF THE HOUSE OF REPRESENTATIVES. ***(PAUSE FOR HIS RESPONSE)***

IN THE INTEREST OF TIME, I WOULD LIKE TO STATE THAT OUR ACHIEVABLE GOAL HERE, TODAY, IS TO PROVIDE YOU EVIDENCE AND JUSTIFICATION TO SUPPORT THE SWIFT ENACTMENT OF LEGISLATION TO RIGHT A HORRIBLE WRONG AND TO REMEDY ATROCIOUS INJURY BY THE

UNITED STATES DEPARTMENTS OF AGRICULTURE AND JUSTICE TO PATRIOTIC AMERICAN CITIZENS, BLACK FARMERS AND THEIR HEIRS.

MY TESTIMONY QUICKLY FOCUSES ON FOUR (4) ASPECTS OF HISTORIC AND ILLEGAL CONDUCT OF THE USDA AGAINST BLACK FARMERS, THE FAILURE OF THE ***PIGFORD V. VENEMAN*** LAWSUIT AND THE FLAWED CONSENT DECREE CHARACTERIZED AS A SETTLEMENT.

1. THE LAW PROHIBITING DISCRIMINATION.
2. THE ILLEGAL ACTIONS OF THE DEPARTMENT OF AGRICULTURE
3. THE ILLEGAL ACTIONS OF THE DEPARTMENT OF JUSTICE IN CONCERT WITH THE DEPARTMENT OF AGRICULTURE
4. THE CONDUCT OF CLASS COUNSEL, AL PIRES.

THE CONSTITUTIONAL AND FEDERAL LAW AGAINST DISCRIMINATION

AS ALL OF YOU ARE KEENLY AWARE, THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS, IN PARTICULAR, THE THIRTEENTH AMENDMENT AND THE FOURTEENTH AMENDMENT (MADE APPLICABLE TO THE FEDERAL GOVERNMENT THROUGH THE FIFTH AMENDMENT) GUARANTEE CERTAIN RIGHTS, CIVIL RIGHTS AND CIVIL LIBERTIES, TO ALL AMERICANS REGARDLESS OF COLOR AND PREVIOUS CONDITION OF SERVITUDE.

ALSO, EACH OF YOU IS KEENLY AWARE THAT THE ACTS OF CONGRESS, 42 USC SECTIONS 1981 AND 1982 , TITLE VI, CIVIL RIGHTS ACT OF 1964, AND THE EQUAL CREDIT OPPORTUNITY ACT 1974 (ECOA), ALL PROHIBIT DISCRIMINATION AGAINST ANY AMERICAN AND ANY AMERICAN IN A PROTECTED CLASS, INCLUDING FARMERS WHO HAPPEN TO BE BLACK.

THE EQUAL CREDIT OPPORTUNITY ACT PROHIBITS BY ANY LENDER FROM DISCRIMINATING AGAINST ANY AMERICAN AND MEMBER OF THE PROTECTED CLASSES IN THE EXTENSION OF CREDIT. THE DEPARTMENT OF AGRICULTURE, THE LENDER OF LAST RESORT, IS LARGEST LENDER FOR AGRICULTUTRE IN THE WORLD; AND, THEREFORE, THE UNITED STATES DEPARTMENT OF AGRICULTURE IS EXPRESSLY PROHIBITED FROM EXTENSION OF CREDIT DISCRIMINATION, AS ARE PRIVATE LENDING INSTITUTIONS, AGAINST ANY AMERICAN ON THE BASIS OF RACE, BLACK.

USDA'S ADMITTED DISCRIMINATION
AND INJURY TO BLACK FARMERS

IN 1997, THE USDA PRODUCED THE CIVIL RIGHTS ACTION TEAM REPORT (CRAT). THE CRAT REPORT IS REPLETE WITH USDA'S ADMISSIONS OF WHOLESALE DISCRIMINATION AGAINST BLACK FARMERS.

FURTHER, THE USDA OFFICE OF INSPECTOR GENERAL, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE UNITED STATES

CIVIL RIGHTS COMMISSION HAVE PRODUCED NUMEROUS REPORTS SINCE THE PIGFORD LAWSUIT WAS FILED THAT CHRONICAL IN FACTUAL DETAIL BY DETAIL HOW THE USDA OFFICE OF CIVIL RIGHTS AND THE OFFICE OF GENERAL COUNSEL HAVE FAILED, MISERABLY, TO PROTECT THE RIGHTS OF BLACK FARMERS AND EMPLOYEES AND HOW THEY HAVE WORKED TOGETHER TO DENY BLACK FARMERS THE BENEFITS SUPPOSEDLY PROVIDED IN THE PIGFORD CONSENT DECREE.

MOREOVER, THE USDA CONTINUES ITS DESTRUCTIVE GOALS AGAINST BLACK FARMERS AS HUNDREDS FACE, THIS DAY, FORECLOSURE ON THEIR LAND, ADMINISTRATIVE OFFSETS AND NON-INVESTIGATION OF THE THOUSANDS OF COMPLAINTS THAT ARE SITTING IDLEY IN THE USDA DUNGEONS: SEE ENCLOSED PHOT0GRAPHS OF HOW THE BLACK FARMER COMPLAINT FILES ARE HANDLED BY THE OFFICE OF CIVIL RIGHTS. THESE PHOTOGRAPHS COME FROM A REPORT BY THE USDA'S OWN OFFICE OF INSPECTOR GENERAL.



Figure 2. CR's File Room, Showing Files Stacked in Borrowed Shopping Cart.

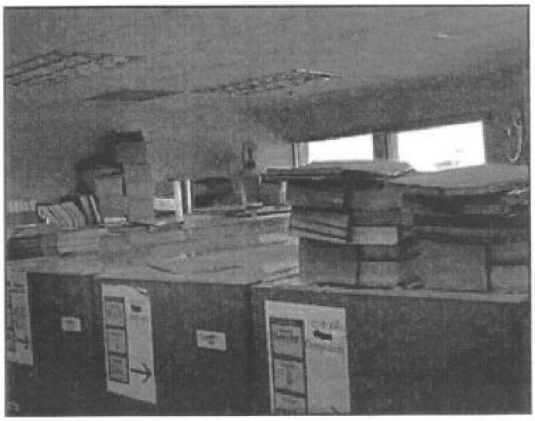

Figure 3. CR's File Room, Showing Boxed Files



Figure 4. CR's File Room, Showing Unfiled Casefiles.

During our inventory, we also discovered that not all casefiles were maintained in a secure area. Some casefiles we inventoried were left unsecured in employees' cubicles when they were absent. Several more casefiles relating to complaints that were awaiting a signature from the director were shelved out in the open and not subject to ECD's normal file room checkout procedures.

Because of the condition of CR's file room and its casefiles, we cannot be certain that we have been apprised of all of CR's complaints or their status in the complaints resolution process. Our best guess, based on our physical inventory, is that CR maintained a caseload, as of September 7, 1999, of 1,731 open cases.

Reconciliation of Casefiles Inventoried by OIG

Total Casefiles inventoried by OIG		2,129
- Closed files (per casefile documentation)	263	
- Closed files (per EEOMAS)	136	
- Undetermined Status	17	416
Total Open Casefiles inventoried		1,713
+ Missing Open Casefiles (Open per EEOMAS. Unable to review.)		18
Total Open Casefiles per OIG (See Table 6.)		1,731

Table 7. Number of Casefiles Inventoried and Number Actually Open.

CR's Caseload Does Not Match USDA Agencies' Records

Each USDA agency maintains a list of all EEO complaints filed by its employees. In our attempt to validate CR's data base, we obtained a listing of open complaints from the



Figure 4. CR's File Room, Showing Unfiled Casefiles.

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ON JULY 26, 2004, THE ENVIRONMENTAL WORKING GROUP, A WASHINGTON BASED WATCHDOG GROUP, AND JOHN BOYD, PRESIDENT OF THE NATIONAL BLACK FARMERS ASSOCIATION, ISSUED A REPORT ENTITLED, ***"OBSTRUCTION OF JUSTICE: USDA UNDERMINES HISTORIC CIVIL RIGHTS SETTLEMENT FOR BLACK FARMERS."*** LIKE THE OTHER REPORTS, THE EWG REPORT CONCLUDES THAT THERE WAS AND IS A CONTRIVED EFFORT BY USDA TO DENY BLACK FARMERS THEIR BENEFITS UNDER THE PIGFORD CONSENT DECREE.

I QUOTE FROM THE REPORT AS FOLLOWS:

"A new investigation by Environmental Working Group (EWG) and the National Black Farmers' Association (NBFA) finds that the United States Department of Agriculture (USDA) willfully obstructed justice by deliberately undermining the terms of a 1997 landmark civil rights settlement with African American farmers. As a result, the vast majority of African American farmers have been denied compensation that the court, in approving the settlement, described as "automatic." For the 81,000 farmers denied compensation, there is no future opportunity to obtain relief. Even though USDA has admitted to civil rights abuses, it withheld some three quarters of the $2.3 billion that the settlement was worth. Without intervention by the United States Congress, these farmers will never receive the compensation they so clearly deserve."

RELEVANT PORTIONS OF THE ALL THE REPORTS I HAVE LISTED ABOVE ARE DELINEATED IN BFAA'INC.' S NEW 20.5 BILLION DOLLAR BLACK FARMER CLASS ACTION LAWSUIT FILED SEVERAL WEEKS AGO BY

BFAA, INC.'S GENERAL COUNSEL, MR. JAMES WILLIE MYART, JR. OF TEXAS.

THE ACTIONS OF THE DEPARTMENT OF JUSTICE

THE ACTIONS OF THE DOJ CIVIL DIVISION ATTORNEYS, HEADED BY MR. MICHAEL SITCOV, ARE JUST AS HORRENDOUS AS THAT OF THE LAWYERS AT THE USDA.

• 56,000 hours spent by DOJ fighting farmers at a cost of over $12,000,000 and still counting.

THE DEPARTMENT OF JUSTICE, ON BEHALF OF THE GOVERNMENT AND USDA, AGGRESSIVELY FOUGHT, AND STILL IS FIGHTING, CLAIMS BY AFRICAN AMERICAN FARMERS, AND $12 MILLION CONTESTING INDIVIDUAL FARMER CLAIMS FOR COMPENSATION. THIS HAS BEEN DONE DESPITE THE ADMISSIONS OF ILLEGAL ACTIONS AGAINST AND INJURY TO ALL THE PLAINTIFFS IN THE CASE.

THE COMMITTEE SHOULD ALSO KNOW THAT DOJ LAWYERS, INCLUDING MR. MICHAEL SITCOV, ARE NOW BEING INVESTIGATED BY THE DC BAR GRIEVANCE COMMITTEE, AS DIRECTED BY FEDERAL JUDGE EMMETT SULLIVAN, FOR OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING IN THE NATIVE AMERICAN CLASS ACTION LAWSUIT, A LAWSUIT ESSENTIALLY THE SAME AS THE BLACK FARMERS CLASS ACTIONS LAW SUITS AGAINST THE GOVERNMENT.

THE ACTIONS OF CLASS COUNSEL

BLACK FARMERS ARE SEEKING IN COURT THE DISQUALIFICATION OF CLASS COUNSEL, AL PIRES AND THE LAW FIRM CONLON, FRANTZ, PHELAN & PIRES, L.L.P., AND ALL OTHER AFFILIATED COUNSEL AND CO-COUNSEL, FOR THEIR CONTINUED FAILURE TO REPRESENT THE BEST INTERESTS OF THEIR CLIENTS, THE PIGFORD CLASS MEMBERS. NOTICE OF CLASS CERTIFICATION WAS WHOLLY DEFICIENT RESULTING IN NEARLY 70,000 LATE FILED CLAIMS BY BLACK FARMERS, ALL OF WHOM WERE DENIED ENTRANCE IN THE LAW SUIT.

FURTHER, THE IMPLEMENTATION OF THE CONSENT DECREE, ENTERED INTO BY CLASS COUNSEL WITHOUT APPROVAL OF THE CLASS AND ABOVE THE CLASS MEMBERS' OBJECTIONS, HAS FAILED TO COMPENSATE MOST CLASS MEMBERS AND HAS FAILED TO ADEQUATELY COMPENSATE CLASS MEMBERS WHO OSTENSIBLY PREVAILED.

CLASS COUNSEL HAS REFUSED TO ADVOCATE FOR HIS CLIENTS IN SEEKING MODIFICATION OF THE CONSENT DECREE. INSTEAD, CLASS COUNSEL HAS OPPOSED EVERY EFFORT BY CLASS MEMBERS, HIS CLIENTS, TO ENSURE MODIFICATION OF THE CONSENT DECREE.

CLASS COUNSEL HAS BEEN SUBJECTED TO EXTENSIVE COURT-IMPOSED PENALTIES FOR MATTERS THAT OBVIOUSLY OFFENDED THE

COURT AND IRREVERSABLY INJURED THE CLASS MEMBERS. AMONG OTHER SERIOUS FAULTS, CLASS COUNSEL IS GUILTY OF FAILURE TO CONDUCT DISCOVERY PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE IN THE BEST INTEREST OF THE CLASS MEMBERS AND TO PROVIDE THE EVIDENCE NECESSARY TO SUBSTANTIATE THEIR CLAIMS WHEN SAID INFORMATION WAS AVAILABLE AND DISCOVERABLE,

FAILURE TO PROVIDE ADEQUATE NOTICE TO PUNATIVE CLASS MEMBERS RESULTING IN APPROXIMATELY 70,000 SUCH INDIVIDUALS BEING DENIED ACCESS TO DAMAGES INCURRED AS A RESULT OF THE USDA'S ADMITTED DISCRIMINATION, FAILURE TO GET CONSENT AND PERMISSION FROM NAMED CLASS PLAINTIFFS, OR ANY OTHER CLASS MEMBERS, BEFORE ENTERING INTO THE PIGFORD CONSENT DECREE, WHICH WAS OPPOSED BY NAMED PLAINTIFFS AND REPRESENTATIVES OF THOUSANDS OF CLASS MEMBERS,

FAILURE TO FOLLOW THE DEMANDS OF BLACK FARMERS AND NAMED PLAINTIFFS AT THE FAIRNESS HEARING NOT TO APPROVE THE CONSENT DECREE,

FAILURE TO SEEK FORWARD LOOKING INJUNCTIVE RELIEF IN THE CONSENT DECREE AS NOTED BY JUDGE PAUL FRIEDMAN,

FAILURE TO PROVIDE JUDICIAL RELIEF TO STOP THE USDA FROM CONTINUED DISCRIMINATION AS NOTED BY JUDGE PAUL FRIEDMAN.

LAST, BUT NOT LEAST, CLASS COUNSEL JUST LAST WEEK FILED A MOTION IN FEDERAL COURT TO ENJOIN ME, AS THE REPRESENTATIVE

OF THOUSANDS OF BLACK FARMERS, AND BFAA GENERAL COUNSEL, JAMES W. MYART, TO KEEP US FROM PUBLICALLY SPEAKING ABOUT THE PIGFORD LAWSUIT AND HIS NEAR MAL-PRACTICE AS OBSERVED BY A FEDERAL JUDGE WHEN SHE IMPOSED NEARLY A HALF MILLION DOLLARS IN FINES AGAINST HIM FOR FAILING TO MEET DEALINES AND HARMING HIS CLIENTS.

BUT MAKE NO MISTAKE, WE WILL NOT BE GAGGED BY AL PIRES OR ANY OTHER PERSON WHO HAS CONTRIBUTED TO THE DENIAL OF OUR CIVIL RIGHTS.

CONCLUSION AND REQUEST FOR SWIFT CONGRESSIONAL ACTION

IN CONCLUSION, LADIES AND GENTLEMEN, I CAN ONLY SAY THE PHRASE MY GRANDFATHER TAUGHT ME ABOUT

"FORTY ACRES AND A MULE." THE HISTORICAL BASIS OF THE PRECEDING PHRASE, THE UNITED STATES GOVERNMENT'S 19TH CENTURY ***PROMISE*** TO THE FREEDMEN, THE FORMER SLAVES AND THEIR HEIRS, HAS A 21ST CENTURY LIFE, A LIFE LACED WITH GOVERNMENT-SANCTIONED DEPRIVATION OF OUR COUNTRY'S CHERISHED CIVIL RIGHTS AND LIBERTIES AS DELINEATED IN THE BILL OF RIGHTS.[1] THE UNITED

1 It is well established that the US Constitution Bill of Rights constitute two types of individual protections - civil rights and civil liberties. *Civil Rights* are those rights that the government is obligated to protect between parties. *Civil Liberties* are those same exact rights

STATES, AS ADMITTED BY ITS SECRETARY OF AGRICULTURE, ANN VENEMAN, HAS SYSTEMATICALLY AND RELENTLESSLY EXERCISED DESPICABLE AND REPUGNANT DISCRIMINATION AGAINST BLACK FARMERS RESULTING IN PAIN, SUFFERING, DISTRESS, LAND LOSS AND DEATH TO BLACK FARMERS THAT TRIED AND, TODAY, TRY TO ETCH OUT A LIVING ON THE LAND IN THEIR GUARANTEED PURSUIT OF LIFE, LIBERTY, HAPPINESS AND OWNERSHIP OF PROPERTY. EVEN MORE, THE UNITED STATES GOVERNMENT AND ITS USDA OFFICIALS, THE DEFENDANTS HEREIN, HAVE ENGAGED AND CONTINUE TO ENGAGE IN AN INSTITUTIONAL AND INSIDIOUS RACISM AND CONSPIRACY TO INTERFERE WITH THE BLACK AMERICAN FARMERS' CIVIL RIGHTS AND LIBERTIES.

TO THIS DAY, THE ***PROMISE*** REMAINS ELUSIVE FOR ALL BLACK AMERICANS, BLACK AMERICAN FARMERS AND THEIR HEIRS, MERELY BECAUSE OF THEIR RACE, BLACK.

THE RACIAL HATRED AND ANIMUS PERPETRATED BY THE USDA, DUBBED, "**THE LAST PLANTATION,**" PERSIST LIKE A PLAGUE. THE DEFENDANTS, THROUGH INTENTION, DECEIT, PASSIVITY, INACTION AND BENIGN NEGLECT, HAVE KNOWINGLY ALLOWED AND EVEN ENCOURAGED TOP GOVERNMENT ADMINISTRATORS AND LAWYERS AS WELL AS LOCAL FEDERAL FARM SERVICE AGENCY OFFICIALS ACROSS THIS LAND TO TRAMPLE ON THE CIVIL RIGHTS OF THE CLASS REPRESENTATIVES AND TO MAKE A MOCKERY OF OUR PRECEPTS OF FREEDOM. DEFENDANTS,

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but the government is prohibited from infringing upon. (Citation omitted) The USDA fails, intentionally and with malice, at both.

INDIVIDUALLY AND JOINTLY, KNEW OR SHOULD HAVE KNOWN THAT THESE BLATANT VIOLATIONS OF LAW RUN RAMPANT THROUGHOUT EVERY SINGLE AGENCY IN THE MAMMOTH USDA, "**THE LAST PLANTATION.**" THE DEFENDANTS HAVE ADMITTED THEIR MISDEEDS AND OVERT VIOLATIONS OF LAW. YET, THEY CONTINUE THEIR TERROR AGAINST BLACK FARMERS WITH AN INDESCRIBABLE CALLOUS DISREGARD, ALL IN THE FACE OF JUDICIAL, LEGISLATIVE AND PUBLIC SCRUTINY.

MY STATEMENT HERE, TODAY, IS MADE TO DISPEL THE NOTION THAT THE UNITED STATES GOVERNMENT AND ITS USDA OFFICIALS CAN FURTHER EMPLOY A REPUGNANT RACIAL ANIMUS IN DENYING ANY AMERICAN CITIZENS, IN THIS MATTER, BLACK FARMERS AND THEIR HEIRS, THE BENEFITS OF ANY FEDERAL PROGRAM OR ACTIVITY ON THE BASIS OF THEIR RACE, ***BLACK***, AND TO VINDICATE THE CLASS MEMBERS' RIGHTS AS GUARANTEED BY THE UNITED STATES CONSTITUTION.

WE ALL KNOW, WHERE THERE IS NO RIGHT, THERE IS NO REMEDY.

THANK YOU FOR YOUR HEARTFELT PASSION AND INTEREST IN PROVIDING JUSTICE AND ADJUSTING JUSTICE FOR AMERICA'S BLACK FARMERS AND THEIR HEIRS.

LETTER FROM THE FEDERATION OF SOUTHERN COOPERATIVES SUBMITTED BY CHAIRMAN CHABOT

Federation of Southern Cooperatives
Land Assistance Fund
Public Relations and Fundraising Office
2769 Church Street
East Point GA 30344

October 5, 2004

The Honorable Steve Chabot
U.S. House of Representatives
Chair, House Judiciary Committee on the Constitution
129 Cannon House Office Building
Washington DC 20515

Dear Mr. Chabot:

We thank you and other members of the House Judiciary Subcommittee on the Constitution for the attention recently given to Pigford v Venenam lawsuit in a hearing held on Tuesday, September 28, 2004 by your subcommittee. There are many issues that our membership are concerned about regarding the lawsuit and we wanted to share those with you to be included of the hearing record.

The Federation of Southern Cooperatives/Land Assistance Fund (Federation) was created in 1967. It grew out of concern that the rural south, in the 1960's, was being left behind in efforts to redress on-going civil rights abuses and discrimination. The Federation works with 20,000 rural families in the region to assist them in sustaining and building their communities through cooperative economic development. The outreach of the Federation staff includes technical assistance to Black family farmers in debt restructuring, farm management, and development of farm plans and marketing. Our cooperative development includes agriculture and marketing cooperatives, credit unions, housing and non-farm business ventures. The work of the organization is conducted from offices in Georgia, Mississippi, South Carolina and in Alabama where we own a 1,000-acre "Rural Training and Research Center".

Many past studies have cited the discrimination Black farmers have suffered at the hands of the U.S. Department of Agriculture. Most notable was the 1982 report by the U.S. Commission on Civil Rights, which reported that the primary reason Blacks have lost land is because of the actions of U.S. Department of Agriculture itself. While the USDA has been known as the lending institution of last resort, Black family farmers have been conspicuously left out of the USDA lending opportunities, as well as the information about and access to other USDA programs and services offered to white farmers. Importantly, in 1981 Ronald Reagan's Administration also abolished the Office of Civil Rights Compliance at the USDA so that there was no vehicle to address the problems encountered and expressed by Black farmers.

In response to the 1982 study, the Federation formed a national coalition to develop corrective legislation that would help level the playing field for Black farmers regarding access to services

and loans from USDA. The result of this effort was that in 1990, portions of the Minority Farmers Rights Act were passed in Congress to become Section 2501 of that Farm Bill. Section 2501 has remained an integral part of every subsequent Farm Bill. The measure called for federal monies to provide outreach and technical assistance to minority farmers through 1890 Land Grant universities and community based organizations working with minority farmers. It marked the first time federal resources were devoted to directly assist minority farmers.

In 1990, Congress authorized $10 million for section 2501; however, it has never appropriated that amount. Annually about $3 million has been appropriated for this critical program. In the last congressional session, $25 million was authorized for Section 2501, however once again a relatively smaller amount ($5.9 million) was appropriated. This time the program was also opened to competitive grants to institutions such as the 1862 Land Grant universities, which significantly dilutes the resources of this program going directly to minorities.

The crux of the above scenario is that while Section 2501 programs have been extremely successful in areas where this outreach and technical assistance have been provided, the resources have never been what they could and should be to correct the years of lack of services and loan opportunities to the Black family farming community across the country.

Many of our farmer members chose to join the Pigford v Veneman lawsuit as at least one way to redress the discriminatory problems with USDA. The process has been slow, however, in payments received and frustration in confronting the bureaucratic nightmare of petitions for reconsideration, late claims and extensions which have become confusing and disturbing for many. Furthermore, the systemic problems of racism and discrimination at USDA have never been adequately addressed. For example, many of those Farm Service Agency staff who discriminated against our members are still sitting in the same offices throughout the South, making it difficult for many class members to even begin to participate in the injunctive relief portion of the consent decree.

Debt relief is a major issue facing Pigford claimants. We are calling for the debt relief on all USDA loans for class members and those claimants should not suffer negative consequences for debt write-down in or out of Pigford. When the decision was being made to settle the Pigford case, the farmers had the understanding from the attorneys that all USDA debt would be relieved. That's the way the Pigford settlement was sold to them. However, when the case was implemented, the claimants discovered this was not to be case. Debt relief could take place only when the discrimination was found to be in a particular category - so the debt relief occurs for the loan in that category the year the discrimination took place and the subsequent years, up to 1996, for loans in that category.

The consequences for this are immense. For example, consider the scenario where a farmer received an ownership loan in 1988 and sought a farm-operating loan in 1991. The 1991 operating loan was sent to him too late to adequately produce his/her crop. It is likely, then, that the farmer had problems making the payments on the 1988 ownership loan. Chances are the farmer had to write off the 1988 ownership debt or the debt became compounded because of the problem with the late receipt of the operating loan from USDA.

Rarely can discrimination be considered an isolated incident. Invariably, discrimination problems are likely to exacerbate all aspects of existing past loans and subsequent farming operations. In Pigford, let's say the farmer was successful in claiming discrimination for the 1991 operating loan but the 1988 ownership loan remains a problem. The 1988 debt is perhaps either still on the books or if the debt was written off the farmer likely has negative consequences from provisions of the last Farm Bill. In the Farm Bill it states that if a farmer causes financial loss to the USDA, as in a debt write-down, receiving another loan from USDA is prohibited by statute and regulations. A farmer is eligible for one write-down and cannot be given a second loan no matter what the circumstances or the degree to which discrimination played a role in the original situation.

Other issues of concern were presented in a resolution by our farmer members at the last annual membership meeting on August 21, 2004 at our Rural Training and Research Center in Epes, Alabama, in an attempt to offer remedies to the Pigford case the membership passed a resolution in which the following were recommended.

More specifically, on the Black Farmers Class Action lawsuit:

- expand the membership in the class to take in all that were discriminated against. This calls for inclusion in the class of the Black farmers who have been denied class status through late filing and inclusion of farmers in the class who as original claimants were denied because of technicalities such as problems in identifying "similarly situated white farmers" who received credit assistance.

- expedite the handling of appeals, late claim reviews and other processes in the case to allow farmers to claim benefits. The claims process is altogether too slow. For example, farmers whose cases the Monitor decided a year ago, prescribing that they should receive reconsideration of their claims by a new adjudicator, have yet to hear from the adjudicator. The delays also mean that farmers cannot take advantage of injunctive relief portion of the lawsuit (i.e. priority in operating loans, ownership loans) which makes it difficult for them to plan their future farming activities.

- have more uniform and published standards for arbitration, adjudication, late claim reviews, so participants in the case will have clarity on the standards and criteria on which decisions are being made. What is the arbitrator Michael Lewis[1] definition and standards for determining the eligibility of farmers for the provisions of Section 5g of the Consent Decree dealing with circumstances beyond someone's control and the problem of "similarly situated white farmers" as criteria for inclusion into the class. There is a lack of uniformity in the adjudication of claims. For example, we have had two farmers offering virtually the same information in their claims in which one adjudicator found in favor of the claimant and another adjudicator denied the claimant.

- review the current process and results and provide more technical assistance and support for farmers seeking to use their injunctive relief benefits to acquire priority consideration for future loans from the government. While many farmers are eligible for injunctive relief no one is helping them take advantage of it.

On general policy toward Black farmers and other small and disadvantaged family farmers:

- full funding for the USDA Section 2501 Outreach, Education and Technical Assistance Program, at $25 million to enable more small and disadvantaged family farmers to participate in all the USDA programs. This program is essential to providing technical assistance to Black farmers so that they can adequately take advantage of the injunctive relief. The program provides funding for community based organizations and land grant colleges and universities to provide outreach to the Black farming community.

- provide more Farm Service Agency Direct Farm Operating and Farm Ownership Loans, and target them to Black farmers and other small and disadvantaged farmers, who do not have access to banks and other commercial lenders participating in the guaranteed lending program.

- suspend all FSA loan foreclosures until the Black, Hispanic and Native American class action lawsuits are resolved and completed.

- provide for implementation of the Farm Service Agency low-documentation loans to make smaller operating loans available on an expedited basis to farmers. There is a provision in the Farm Bill for loans under $50,000 to be expedited which has yet to be implemented by the Farm Service Agency (FSA). Some of these loans would be the most effective for small farmers. A similar expedited loan program, however, has been implemented by the Small Business Administration (SBA).

-work with Black farmer organizations, like the Federation and other community based organizations, to develop model loan packages that groups of farmers can secure, especially for cooperative projects. The Federation is constantly exploring potential lucrative markets for small farmers. For example, we are presently encouraging farmers to plant seedless watermelon and to raise goats given the growing demand for these products. To develop these different specialized projects farmers need capital and loans.

Understanding that small farmers can best compete when they pool their resources, we need the FSA to set up model projects that will be cooperative in nature and to fund these cooperative ventures. If 20 farmers were to raise goats cooperatively in a certain area Alabama, the FSA should consider offering each farmer a similar and complimentary loan to participate in the project. There would be a standard package so that each farmer could take part in the production activities necessary to make the cooperative marketing/processing or value added project a success. Loans would be made based on a common loan package and model instead of a one-loan-at-a-time scenario. Small farmers will not succeed without cooperative and economies of scale to market together in a unified marketing approach.

- make inventory land available to Black and other small and disadvantaged farmers on a priority basis.

- develop outreach plans and appropriate implementation plans in all USDA program areas, e.g., conservation, forestry, research, nutrition, marketing and others, to serve Black and small

disadvantaged farmers. In addition to the Farm Service Agency, other agencies in the USDA, such as Forestry and the Natural Resource and Conservation Service, all have programs for farmers in terms of credit and other services that need to be made available to Black farmers.

The Federation appreciates the opportunity to present its views on legislative remedies to improve the implementation of the Consent Decree in Pigford v. Glickman, as well as other wider legislative remedies to the continuing plight of the Black and other disadvantaged family farmers in our nation. We hope you will remain in contact us as you plan other hearings before the Subcommittee so that we may present these and other views on these critical issues that have formed the heart of our organizational activities for the past four decades.

Cooperatively yours,
Ralph Paige
Executive Director

cc: Judiciary Subcommittee members
Members of the Congressional Black Caucus

SUPPLEMENTAL STATEMENT FROM WITNESS MICHAEL K. LEWIS



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House Committee on the Judiciary

Subcommittee on the Constitution

Supplemental Testimony of Michael K. Lewis, Arbitrator, *Pigford v. Veneman*

September 28, 2004

I would like to thank the Committee for having granted me the opportunity to testify before you. During the hearing a number of questions were posed to me and I hope that the answers I provided then, as supplemented below, help to provide a greater understanding of the *Pigford* settlement for members of the Committee. If there are additional areas in which the Committee believes that I could contribute to further understanding, I would be pleased to respond to those inquiries.

In his initial questioning, the Chairman asked why it was that so many individuals filed after the October 12, 1999 deadline. In my response, I indicated that about half affirmatively stated that the cause was lack of knowledge. With the assistance of the Facilitator, I compiled a list of reasons that petitioners gave in their petitions to file late claims, and 64,006 of the petitions (out of 65,950) were coded using that list of reasons. As the table attached as Appendix 1 indicates, 28,854 late claimants cited lack of knowledge as the primary reason for missing the deadline.

Congressman Scott asked if someone stating that he or she did not know about the settlement would automatically result in a denial of his or her petition. I responded to that question in the affirmative. However, where it was also evident that the lack of knowledge stemmed from some cause that met the 5(g) standard, such as mental or neurological illness or overseas deployment, such petitions were

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approved. Congressman Scott also asked me what I thought was wrong with the process, to which I responded that I did not know. It was not until after the July 14, 2000 Order that it became apparent that anything was even remotely wrong. Those who filed late-claim petitions by the January 30, 2000 deadline were approved at approximately a 50% rate. No one anticipated the flood of petitions in the Summer of 2000, especially as the notice provided in the 2000 was less broad than that used to notify claimants of the settlement. Neither could I explain, in response to Congressman Watt, why the vast majority of the Summer 2000 petitioners were unrepresented—whether they did not seek counsel or whether they were turned away. However, because of the investigations I undertook to afford petitioners greater process (both represented and unrepresented), I do not draw the same conclusion as Congressman Scott that representation would have been outcome determinative.

Several questions were posed regarding modifications to the Consent Decree and steps that could be taken moving forward. The Chairman asked why 180 days was chosen as the filing period (April 14, 1999 – October 12, 1999). The actual filing period was longer, since filing could begin once notice was provided in January 1999, providing approximately 10 months in which claimants could file timely claims.. As Judge Friedman noted on page 39 of his opinion approving the Consent Decree, the only place sufficiency of notice might have been called into question was in the U.S. Virgin Islands. Congressman Scott asked whether I had any objections to modifications that would permit late filers to have their claims heard on the merits. As a neutral, I have no objection—the process belongs to the parties, *i.e.* the farmers and the United States; if they want to make changes, it is entirely up to them. Like the other neutrals, my role is to act within the framework of the Consent Decree.

Finally, in my testimony I referenced the six semi-annual reports to the Court on the late-claim petition process. For the record, I am attaching them herein as Appendix 2. Again, I would like to thank you for the opportunity to address the Committee.

Appendix 1: Categorization Table

Appendix 2: Arbitrator's Reports to the Court

A) November 14, 2001
B) May 3, 2002
C) November 4, 2002
D) June 2, 2003
E) December 9, 2003
F) June 4, 2004

Appendix 1

Categorization Chart

Reason	Count of Reason1
Case Not Legitimate	444
Claim Sent PD did not receive	270
Defective Not Cured	294
Difficulty Obtaining Info/Signature	946
Estate/Deceased	1182
Family Member Health/Death	7004
Hurricane Floyd in NC	1310
Hurricane Floyd outside NC	32
Incarcerated	224
Lawyer did not send Claim	148
Lawyer Unavailable	646
Lost Claim/Forgot about Deadline	420
Misinformed About Qualifications	2941
Never Received Claim	1154
No Reason Provided	2521
Not Eligible	179
Personal Health	11999
Postal: Moved/Stolen	542
Slave Reparations	82
Tax Forms - Back tax Lawsuit	31
Unable to attend Meeting	1725
Unaware of Lawsuit/Deadline	28854
Unaware of need to request claim	647
Unsure on How to Fill Out Claim	411
Total	**64006**

Appendix 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al., Plaintiffs, v. ANNE VENEMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE, Defendant.	)	Civil Action No. 97-1978 (PLF)
CECIL BREWINGTON, et al., Plaintiffs, v. ANNE VENEMAN, Defendant.	)	Civil Action No. 98-1693 (PLF)

FILED
NOV 13 2001
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ARBITRATOR'S REPORT ON THE LATE-CLAIM PETITION PROCESS

On December 20, 1999, and again on July 14, 2000, the Court delegated to the Arbitrator the review of late claim petitions filed pursuant to ¶5 (g) of the Consent Decree. There has been no public report on the late claim process. Given the thousands of farmers who have filed late claim affidavits, the implementation of this portion of the Decree has assumed an importance no one expected when the Court's delegations were made. The report below details progress on the review of late-claims.

Let this be filed.

PAUL L. FRIEDMAN
United States District Judge

DATE: 11/14/01

552

Background

On April 14, 1999, the Court approved the Consent Decree in the above-captioned case. The Consent Decree required that in order for class members to obtain relief under the decree, they must have submitted completed claim packages within 180 days of the date of entry of the Consent Decree. Consent Decree, Paragraph 5(c). As a result, October 12, 1999 became the last date a claim could be postmarked to be considered timely.

Potential relief from the October 12, 1999 deadline was provided by Paragraph 5(g) of the Consent Decree.[1] If "extraordinary circumstances" beyond a claimant's control prevented him from meeting the October 12, 1999 deadline, the claimant could petition the Court to permit him to file after the October 12, 1999 deadline.[2] On December 20, 1999, the Court determined that it would be more "efficient and expeditious" for the Arbitrator[3] to decide several hundred expected petitions to file late claims and delegated its authority under Paragraph 5(g) to the Arbitrator. The Court's

[1] On October 21, 1999, the Court declined to grant potential claimants an extension of time beyond the October 12, 1999 deadline to submit their claims. The Court further expected the parties and movants to "devise a means by which individual farmers or discrete, defined groups of farmers will be required to provide adequate, documented justification for an extension of time as required by the Consent decree."

[2] Paragraph 5(g) of the Consent Decree states:

> A claimant who satisfies the definition of the class in ¶ 2(a), above, but who fails to submit a completed claim package within 180 days of entry of this Consent Decree may petition the Court to permit him to nonetheless participate in the claims resolution procedures provided in ¶¶ 9 & 10, below. The Court shall grant such a petition only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.

[3] The Consent Decree names Michael K. Lewis of ADR Associates as the "Arbitrator". See Consent Decree, Paragraph 1(b).

order established a deadline for filing such petitions of January 30, 2000.[4] By Stipulation and Order of July 14, 2000, the parties and the Court permitted potential claimants who had not previously sent in petitions to file late claims by January 31, 2000, to do so by September 15, 2000. In that stipulation, the Court continued to delegate the Court's authority under Paragraph 5(g) to the Arbitrator.[5]

Processes and Procedures

Forms & Filing

Acting pursuant to the Court's October 21, 1999 order, the parties and the Arbitrator developed a form captioned, Affidavit in Support of Petition to File a Late Claim, to be executed under penalty of perjury as required by 28 U.S.C. § 1746. The form established three categories to justify an extension of time: (1) "Hurricane Floyd", which permitted petitioners to indicate that they "resid[ed] and/or farm[ed] in one of the

[4] Specifically, the Court stated:

> The Court has been advised by class counsel that several hundred putative class members who did not submit completed claim forms that were post-marked by October 12, 1999 intend to utilize the ¶ 5(g) process. The Court has determined that it would be more efficient and expeditious for the Arbitrator to determine, on a case-by-case basis, whether these putative class members can demonstrate that their failure to submit timely claim forms "was due to extraordinary circumstances beyond [their] control" than if this Court were to make each of those determinations. According, it hereby is
>
> ORDERED that the Court's authority to determine whether a class member's petition under ¶ 5(g) of the Consent Decree shall be granted is hereby delegated to the Arbitrator. It further is
>
> ORDERED that all petitions under ¶ 5(g) of the Consent Decree shall be postmarked not later than January 30, 2000 and submitted directly to the Arbitrator (and without copies to the Court)[.]

[5] Specifically, the Stipulation and Order stated:

> 2. All putative class members who seek relief under ¶ 5(g) of the Consent Decree shall submit written requests for such relief to the Facilitator – without a Claim Sheet and Election Form – postmarked no later than September 15, 2000. No extensions of that deadline will be granted for any reason.
>
> 3. Michael K. Lewis, the Decree's Arbitrator, is hereby delegated this Court's authority to determine whether requests for relief under ¶ 5(g) of the Consent Decree that were filed after January 31, 2000 and before September 15, 2000 satisfy the requirements of that provision.

North Carolina counties declared by the federal government to be a disaster area as a result of Hurricane Floyd" and that they were "unable to submit [their] claim before the October 12, 1999 deadline because of this disaster;"[6] (2) "Homebound", which permitted petitioners to indicate that they "became homebound due to illness and/or physical disability, and remained homebound, during the time-period beginning on August 12, 1999, and ending on October 12, 1999;" and (3) "Other Extraordinary Circumstances Beyond Your Control", which served as a catch-all category. For this third category, petitioners were required to provide details about the circumstances preventing them from filing a timely claim. The form provided some guidance to putative petitioners for this third category, advising that "'extraordinary circumstances' do not include 'I did not know about the case' or 'I did not know about the deadline.' It means you were prevented from completing the forms on time by unique circumstances over which you had no authority."[7]

A second form was developed in response to the Stipulation and Order of July 14, 2000. This form provided information about the late-claim petition process, but did not identify any specific categories. It also advised petitioners to provide detailed information and documentation which could help convince the Arbitrator that

[6] On September 16, 1999, then President Clinton declared that certain portions of North Carolina warranted designation as federal disaster areas as a result of the damage caused by Hurricane Floyd on September 15, 1999. That same day, James L. Witt, Director of the Federal Emergency Management Agency listed 66 counties as the areas adversely affected by the disaster. See FEMA-1292-DR.
[7] In the Court's opinion of April 14, 1999 in which it entered the Consent Decree, the Court concluded that "class members have received more than adequate notice...[and] the timing and breadth of notice of the class settlement was sufficient" with the possible exception of the U.S. Virgin Islands. 185 F.R.D. 82, 101-102.

circumstances beyond their control prevented them from filing a timely claim. This form also required execution pursuant to 28 U.S.C. § 1746.

Putative claimants were instructed to send their affidavits to the Claims Facilitator. Most did, although some petitioners sent affidavits directly to the Arbitrator or to Class Counsel. All affidavits were forwarded to the Claims Facilitator for processing. The Facilitator entered all late claim petitions into its database for tracking purposes and subsequent mailings, and, beginning with petitions received in response to the July 14, 2000 order, assigned each petition a unique identifying number. The Facilitator then forwarded information relating to the petition to the Arbitrator's office.

In response to the Court's order of December 20, 1999, approximately 2300 petitions to file late claims were filed by January 30, 2000. Approximately 61,000 petitions were filed by the September 15, 2000 deadline. An additional 7500 putative claimants filed petitions postmarked after the September 15, 2000 deadline.

Categorization & Research

To facilitate review of the affidavits, the Arbitrator collaborated with staff of the Claims Facilitator to develop a series of categories into which late claim affidavits could be sorted. These categories, based on the justifications put forward by petitioners to establish the extraordinary circumstances surrounding their failure to file a claim by October 12, 1999, included, in addition to the "Hurricane Floyd" and "Homebound"

justifications provided in the first form, such categories as "Misplaced papers or forgot about deadline date", "Unaware of lawsuit," "Unaware of deadline," "Unaware that they qualified," "Unaware of need to request claim form," "Did not understand the form or how to file" and "Lawyer unavailable," among others.

Categorization guided the decision-making process. For example, those petitioners who documented in their petition that they fell into the "Hurricane Floyd" and "Homebound" categories were approved on the basis of the paperwork submitted with their petition to file a late claim. Conversely, those whose affidavits clearly demonstrated that they belonged in the "Unaware of lawsuit" category, without any mitigating factors, were rejected. Categorization helped to decide which petitioners had demonstrated that extraordinary circumstances prevented them from filing a timely claim, which ones had failed to demonstrate that extraordinary circumstances caused them not to file timely, and which petitions required further information before a decision could be made.

In order to gather further information about late-claim petitions, the Arbitrator hired a cadre of law school students and graduates. This staff contacts petitioners by telephone to conduct structured interviews based upon the categories into which each undecided petition falls. The interviewers record the information collected from the petitioners and maintain a log of the persons contacted. They also maintain a log of who they have been unable to reach by telephone. Those petitioners who cannot be reached

by telephone are sent a letter requesting that they provide current contact information. To date, approximately 500 petitioners have been sent such letters. If petitioners respond that they cannot be reached by telephone, they are mailed a detailed questionnaire based upon the category of their affidavit.

Five interviewers were hired to contact petitioners for late claim affidavits received pursuant to the January 30, 2000 deadline. That number has increased to a staff of twenty. Affidavits are assigned to interviewers in batches of one hundred. At any given time, over two thousand petitions are being investigated by the interviewers.

Based on the Arbitrator's criteria for late claim affidavits, as well as the discovery of new types of standard explanations for missing the October 12, 1999 filing deadline (e.g. "Slave Reparations"), the Facilitator developed a late claim affidavit categorization list. Following an agreement on the categorization list with the Arbitrator, the Facilitator used the list in sorting late claim petitions.

Internally, the Facilitator created a document to help guide the categorizations, which fully described the categories, and assigned a two letter code for database entry. The Facilitator then categorized every late-claim petition which had not previously been forwarded to the Arbitrator for decision. The Facilitator completed sorting the petitions into categories in May 2001.

Following completion of the categorization process, members of the Arbitrator's staff traveled to the Facilitator's offices in Portland, Oregon to review the results. Following this review, all petitions falling solely into one of the following categories were rejected: EG (Not Eligible), FO (Unsure on How to Fill Out Claim), NL (Case Not Legitimate), SR (Slave Reparations), & TX (Tax Forms ("Back Tax Lawsuit")), and those in the UL (Unaware of Lawsuit/Deadline) & RQ (Unaware of Need to Request Claim) categories who had not requested a claim package prior to October 12, 1999.

Rejections based upon the categories above were sent at the end of June and during July 2001. At the same time, letters were sent to those petitioners whose affidavits were postmarked after September 15, 2000 that their petitions would not be considered. A number of farmers who filed a late claim affidavit following the Court's December 20, 1999 order attempted to file a second affidavit following the issuance of the Court's July 14, 2000 order. These farmers have been reminded of the decision already made on their initial affidavit. To date, approximately 33,000 petitions to file late claims have been denied, 1100 approved, with 27,000 remaining to be decided. The vast majority of approvals have come from petitioners who filed their petitions before January 30, 2000.

Reconsideration

Persons whose petitions are denied initially, may make a written request for reconsideration. Many of those who have requested reconsideration of a denial of their

late claim appeal directly to the Arbitrator upon receiving their rejection letter. Others request reconsideration following telephone calls to the Arbitrator or to the Facilitator asking what steps may be taken in the wake of a denial. The late-claim process continues to generate a high volume of telephone calls. The Facilitator fields most of those calls.

Other petitioners have submitted what is essentially a *de facto* request for reconsideration; that is, although they did not explicitly request a reconsideration of the decision to deny their petition, they have submitted a second petition to file a late claim (prior to September 15, 2000) after they received a letter denying their right to participate. This last group is almost completely comprised of persons who had initially petitioned by January 30, 2000, had their petitions denied, and who submitted the second standardized form in response to the Court's July 14, 2000 order. Several petitioners have made multiple requests for reconsideration.

Although approximately 800 formal requests for reconsideration have been made, with an additional 500 *de facto* requests for reconsideration as described above, it has become clear that the reconsideration process is not well understood. To address this problem two steps have been taken. First, the standard denial letter has been edited to specifically include information on the reconsideration process. Second, the Facilitator has sent a letter to all previous petitioners who had been denied, and who

have not yet requested that their petitions be reconsidered, informing them of the reconsideration process.[8]

As with the original review of affidavits, decisions on reconsiderations may be made on the record submitted by the petitioner, or the record may be augmented through an information-gathering telephone call or letter. If, in the request for reconsideration itself (and any attached evidence), the petitioner demonstrates that the original denial was in error, the petition is approved. If, in the request for reconsideration, the petitioner presents no information which calls into question the original denial, the petitioner is sent a letter detailing the reasons for the denial. If, however, in the request for reconsideration the petitioner presents information which calls into question the decision to reject the petition, but fails to provide sufficient information to justify an approval, the petitioner may be interviewed or sent a letter requesting further information. This letter provides for a thirty day period in which to supplement the record. Following the thirty day period or the interview, the petition is approved or the petitioner is sent a factually specific, detailed letter explaining the reasons for the denial.

Approximately 340 of the 800 formal requests for reconsideration have been reviewed to date. Of that number, 55 petitions have been approved. The Facilitator is notified of all approvals following reconsideration. All petitioners who request

[8] The original letters of denial, the new letter of denial, and the letter informing petitioners of the reconsideration process are attached.

reconsideration and send such a request through the Facilitator are sent a letter notifying them that their requests for reconsideration may take some time as approximately half of the late claim petitions received have not been reviewed for the first time.

Results to Date

The current status of the late claim review process, as described above, is presented in tabular form below. All figures are approximate.

Number of Petitions to File Late Claims	68,000
Petitions filed by September 15, 2000	61,000
Petitions filed by January 30, 2000	2,300
Petitions Approved	1,100
Petitions Denied	33,000
Petitions assigned to Researchers	6,400
Petitioners sent "No Contact" letters	500
Requests for Reconsideration	1,300
Requests for Reconsideration Decided	340
Petitions Approved upon Reconsideration	55

Conclusion

The Court believed that the review of late claim petitions could be made more efficiently and expeditiously by the Arbitrator than by the Court. When the Court issued the July 14, 2000 order, no one anticipated the high volume of petitions ultimately received in response to the Court's order. All of the parties

associated with implementing the Consent Decree are cognizant of the impact of the late-claim petition process upon the other portions of the Consent Decree. The Arbitrator's intention is to make an initial decision on every petition within the next twelve months. It is not at all clear that all current and forthcoming requests for reconsideration will be resolved in that same time frame. Finally, given the importance of the late claim process to the implementation of the Consent Decree, the Arbitrator intends to report to the Court and to the parties on a semi-annual basis.

Respectfully submitted,

Michael K. Lewis
Arbitrator

Date: NOVEMBER 14, 2001

Copies to:

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46 East Fourth Street, Suite 1301
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Fax: 651-223-5335

Mediation
Arbitration
Training &
Dispute Systems
Design

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e-mail
ADRAssoc@aol.com

FILED

NOV 13 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Re: Pigford et al. v. Glickman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Glickman - Civil Action No. 98-1693 (PLF)

Dear Claimant:

The deadline for filing a claim in the Black Farmers Settlement against the U.S. Department of Agriculture was October 12, 1999. Paragraph 5(g) of the Consent Decree in this case provides that farmers who missed the October 12, 1999 deadline may petition the Court to permit the farmer to nonetheless participate in the claims resolution procedures set out in the decree.

The Consent Decree also establishes a high standard for the review of late claims in that the farmer must demonstrate that his failure to submit a timely claim was due to extraordinary circumstances beyond his control. On December 20, 1999, Judge Friedman delegated to me the review of all late-filed claims.

After a thorough review of your late claim affidavit and supporting documentation, I have concluded that you have not met the high standard contained in paragraph 5(g). Thus, your request to be permitted to participate in the settlement is denied.

Sincerely,

Michael K. Lewis

Mediation
Arbitration
Training &
Dispute Systems
Design

ADR ASSOCIATES

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ADRAssoc@aol.com

Re: Pigford et al. v. Glickman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Glickman - Civil Action No. 98-1693 (PLF)

Dear Claimant:

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After a thorough review of your late claim affidavit and supporting documentation, I have concluded that you have not met the high standard contained in paragraph 5(g). Thus, your request to be permitted to participate in the settlement is denied. My decision is final and may not be appealed to the Monitor or to the Court.

Sincerely,

Michael K. Lewis

Black Farmers' Settlement
P.O. Box 4390
Portland, OR 97208-4390
1-800-646-2873

Re: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

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After a thorough review of your late claim affidavit and supporting documentation, I have concluded that you have not met the high standard contained in paragraph 5(g). Thus, your request to be permitted to participate in the settlement is denied. My decision is final and may not be appealed to the Monitor or to the Court.

Sincerely,

Michael K. Lewis
Arbitrator

Black Farmers' Settlement
P.O. Box 4390
Portland, OR 97208-4390
1-800-646-2873

November 14, 2001

«Name_of_Client_First_Middle_Last»
«Address_1»
«Address_2»
«City», «St» «Zip_Code»

Claim # «Claim_»
Tracking # «Tracking_»

RE: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

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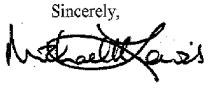
On December 20, 1999, Judge Friedman delegated to me the review of all late-filed claims. After a thorough review of your late claim affidavit and supporting documentation, I have concluded that you have not met the high standard contained in paragraph 5(g). Thus, your request to be permitted to participate in the settlement is denied.

There is a process for me to reconsider your application. Such a request must be in writing to the address above, postmarked within 60 days of the date of this letter. Before you make a request for reconsideration, I ask that you think about any circumstances that make stronger your argument that you should be permitted to participate in the settlement. As I have said above, the standard established in the consent decree is that only circumstances beyond the control of the claimant should be considered. Only information or documents I do not already have will convince me to change my decision.

All written information must be accompanied by a cover letter signed by the claimant. The following sentence must be written above the claimant's signature: "I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT."

As you may be aware, there were thousands of people who petitioned to file late claims. Although you have received a decision from me, many others have not. Fairness dictates that before I review your petition for a second time, I must decide the petitions of those who have not heard from me once. In time, I will review your petition if you send me a request for reconsideration, but please be advised that it may be as much as a year before you hear from me again.

Sincerely,



Michael K. Lewis
Arbitrator

Black Farmers' Settlement
P.O. Box 4390
Portland, OR 97208-4390
1-800-646-2873

November 14, 2001

«Name_of_Client_First_Middle_Last»
«Address_1»
«Address_2»
«City», «St» «Zip_Code»

Tracking # «Tracking_»

RE: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

Dear Claimant,

As you know, you previously received a letter from me that denied your petition to file a late claim in the Black Farmers' Settlement. This letter is to inform you that there is a process for me to reconsider your application. Such a request must be in writing to the address above, postmarked within 60 days of the date of this letter. If you previously have requested reconsideration, you do not need to respond to this letter.

Before you make a request for reconsideration, I ask that you think about any circumstances that make stronger your argument that you should be permitted to participate in the settlement. As I said in my first letter to you, the standard established in the consent decree is that only circumstances beyond the control of the claimant should be considered. Only information or documents I do not already have will convince me to change my decision.

All written information must be accompanied by a cover letter signed by the potential claimant. The following sentence must be written above the claimant's signature: "I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT."

As you may be aware, there were thousands of people who petitioned to file late claims. Although you have received a decision from me, many others have not. Fairness dictates that before I review your petition for a second time, I must decide the petitions of those who have not heard from me once. In time, I will review your petition if you send me a request for reconsideration, but please be advised that it may be as much as a year before you hear from me again.

Sincerely,

Michael K. Lewis
Arbitrator

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,

Plaintiffs,

v.

ANNE VENEMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE,

Defendant.

Civil Action No. 97-1978 (PLF)

JUDGE'S COPY
MAY 0 3 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

CECIL BREWINGTON, et al.,

Plaintiffs,

v.

ANNE VENEMAN,

Defendant.

Civil Action No. 98-1693 (PLF)

ARBITRATOR'S SECOND REPORT ON THE LATE-CLAIM PETITION PROCESS

On November 14, 2001, the Arbitrator filed his first report on the late-claim process, detailing the review of late claim petitions filed pursuant to ¶5(g) of the Consent Decree. At the conclusion of that report, the Arbitrator announced that he would continue to report to the Court and to the parties on a semi-annual basis. The report below details progress on the review of late-claims in the past six months.

Background

As explained in the first report, the Arbitrator has been delegated the responsibility to make the determination whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he demonstrates that extraordinary circumstances beyond his control prevented the filing of a timely claim. In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." Pigford v. Veneman, 173 F. Supp. 2d 38, 40 (D.D.C. 2001).

Processes and Procedures

Forms & Filing

Since the issuance of the first report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. As described in the first report, approximately 61,000 petitions were filed by the September 15, 2000 deadline, and an additional 7500 putative claimants filed petitions after that deadline. Since the first report was filed, an additional 250 putative claimants have filed petitions; those 250 individuals have been notified that the Arbitrator cannot consider their petitions. Late claim petitions filed after September 15, 2000 have not been reviewed unless the putative claimant could demonstrate that the Facilitator or the Arbitrator misread their postmark. One or two claimants have been able to meet that hurdle.

Categorization & Research

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the investigative process. Currently, a staff of thirty-eight interviewers investigate late claim petitions where further research is necessary to make an informed decision. At any given time, the interviewers are investigating over four thousand petitions.

As of the filing of the first report, approximately 34,100 late claim petitions had been reviewed and decided, leaving 26,900 to be reviewed. Of the number decided, 33,000 petitions were denied and 1100 approved. As of the filing of this report, approximately 48,400 petitions have been reviewed and decided, leaving 12,300 petitions to be decided. Of the petitions decided to date, 47,500 have been denied and1300 approved. There remain 12,200 petitions to be decided. The Arbitrator expects to make an initial decision on every petition within the next six months, except for those claims (currently, approximately 2,500) in which (1) the Arbitrator has concluded that additional information is necessary in order to make a decision, and (2) researchers have been unable to reach the putative claimant by telephone. The Arbitrator has learned through experience that many members (and would-be members) of the class do not communicate well via the written word).

Renotification

After the submission of the first report, the Arbitrator learned that the Facilitator had not included a Claim Sheet and Election Form with the letter notifying those approved petitioners of their decision. Upon consultation with counsel for the parties, those petitioners were resent the notification of decision and were supplied the forms needed to submit a completed claim. That letter also included information on obtaining Class and Of Counsel's assistance in submitting a completed claim; such information is now included in every approval letter.

Reconsideration

As described in the first report, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in the first report with one non-substantive difference.

Requests for reconsideration are now routed through the Facilitator. Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 17,000 requests for reconsideration have been filed, 15,500 of which were sent within the 60-day window. As the numbers indicate, slightly over one-third of all denied petitioners have requested reconsideration. The Facilitator makes a record of the request for reconsideration, noting whether such request was filed within the 60-day deadline. Under the current plan, the Facilitator will begin forwarding all requests for reconsideration to the Arbitrator shortly. The Facilitator will continue to forward

reconsideration requests as they are filed until all reconsideration requests have been decided.

As a part of the request for reconsideration, putative claimants must present information not previously provided to the Arbitrator. The requests for reconsideration will be distributed to a team of researchers for investigation. They will review the underlying petition, the information from any earlier interviews, any previously submitted documentation, the information submitted in the request for reconsideration, and may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response for the Arbitrator's approval. If a petition remains denied upon reconsideration, that decision will be final.

The forthcoming reconsideration review will begin staffed by 12 researchers, all of whom have had experience described in the "Categorization & Research" section above. As the Arbitrator finishes reviewing 5(g) petitions in the first instance, the remainder of the researchers will be transferred to the reconsideration process. Because the reconsideration process is dependant upon first instance decisions, it is difficult to estimate a completion date.

Of the requests for reconsideration, which were sent directly to the Arbitrator, decisions have been made in 376 with 61 petitions approved in the reconsideration process.

Results to Date

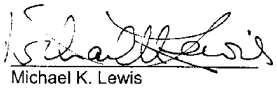
Presented in tabular form, the status of the late claim process follows below.

Approximate number of Petitions to File Late Claims:	68,750
Approximate number filed before Sept. 15, 2000:	61,000
Approximate number of petitions approved:	1,300
Approximate number of petitions denied:	47,500
Approximate number of Requests for Reconsideration:	17,000
Approximate number filed within 60 days:	15,500
Number of requests decided:	376
Number resulting in approval of petition:	61

Conclusion

This Court has affirmed that decisions on late claims have been made efficiently and expeditiously by the Arbitrator. All of the parties associated with implementing the Consent Decree remain fully cognizant of the impact of the late-claim petition process upon the other portions of the Consent Decree. As stated above, it is the Arbitrator's intention to make an initial decision on every petition within the next six months. The Arbitrator is unable to presently estimate resolution time for the current and forthcoming requests for reconsideration. Finally, given the importance of the late claim process to the implementation of the Consent Decree, the Arbitrator reports periodically to the parties on the status of late claim petition review at the Monitor's Roundtable meetings, and intends to continue these semi-annual reports to the Court.

Respectfully submitted,



Michael K. Lewis
Arbitrator

Date: May 3, 2002

Copies to:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 97-1978 (PLF)
ANNE VENEMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE,	)	
Defendant.	)	
CECIL BREWINGTON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 98-1693 (PLF)
ANNE VENEMAN,	)	
Defendant.	)	

ARBITRATOR'S THIRD REPORT ON THE LATE-CLAIM PETITION PROCESS

On May 10, 2002, following the Arbitrator's Second Report to the Court, the Court reaffirmed its prior orders of December 20, 1999 and July 14, 2000, holding that "all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. 2002). In keeping with established practice, the Arbitrator will continue to report

to the Court and to the parties on a semi-annual basis. The report below details progress on the review of late-claims in the past six months.

Background

As noted above, the Arbitrator has been delegated the responsibility to make the determination of whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he demonstrates that extraordinary circumstances beyond his control prevented the filing of a timely claim. In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." Pigford v. Veneman, 173 F. Supp. 2d 38, 40 (D.D.C. 2001).

Processes and Procedures

Forms & Filing

Since the issuance of the first report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 61,000 petitions were filed by the September 15, 2000 deadline, and an additional 8,000 putative claimants filed petitions after that deadline. Late claim petitions filed after September 15, 2000 have not been reviewed unless the putative claimant could demonstrate that the Facilitator or the Arbitrator misread their postmark. One or two claimants have been able to meet that hurdle.

Categorization & Research

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the investigative process. Currently, a staff of thirty-seven interviewers investigate late claim petitions where further research is necessary to make an informed decision. At any given time, the interviewers are investigating over three thousand petitions.

As of the filing of the second report on May 3, 2002, approximately 48,400 petitions had been reviewed, leaving 12,300 petitions to be decided. As of the filing of this report, approximately 53,900 petitions have been reviewed and decided, leaving 7,300 to be decided. Of the petitions that have been decided, 52,300 were denied and 1,600 were approved. Petitions remain undecided for two primary reasons: (1) the Arbitrator is awaiting supplemental information from the petitioner, or (2) researchers have been unable to reach the petitioner claimant by telephone.

No Contacts

In August 2002, the Facilitator mailed approximately 3,000 letters to petitioners who have proven impossible to contact via telephone.[1] That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 1,700 petitioners responded in a timely manner, and those petitions, with updated contact information, are in the process of being reassigned to researchers. The

[1] A copy of the letter used is attached as Appendix A.

Arbitrator will again review the petitions of the 1,300 petitioners who did not respond in a timely manner to his August letter prior to making determinations on each of their claims.

Reconsideration

As described in the first and second reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 20,600 requests for reconsideration have been filed, 18,400 of which were sent within the 60-day window. As the numbers indicate, slightly over one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August. The Facilitator will continue to forward reconsideration requests as they are filed until all reconsideration requests have been decided.

The requests for reconsideration are distributed to the team of researchers for investigation. Approximately 3,000 requests for reconsideration have already been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response to the

request for reconsideration for the Arbitrator's approval. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 379 reconsideration requests to date, with 65 petitions having been approved in the reconsideration process.

Results to Date

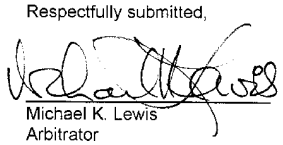
Presented in tabular form, the status of the late claim process follows below.

Approximate number of Petitions to File Late Claims:	69,000
Approximate number filed before Sept. 15, 2000:	61,000
Approximate number of petitions approved:	1,600
Approximate number of petitions denied:	52,300
Approximate number of Requests for Reconsideration:	20,600
Approximate number filed within 60 days:	18,400
Number of requests decided:	379
Number resulting in approval of petition:	65

Conclusion

Other than the inability to contact approximately 1,300 petitioners, the Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator is unable presently to estimate a completion date for the late claim review process.

Respectfully submitted,



Michael K. Lewis
Arbitrator

Date: November 4, 2002

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Black Farmers' Settlement
Claims Facilitator
P.O. Box 4390
Portland, OR 97208-4390
1-800-646-2873

DATE

CLAIM # «CLAIM»
TRACKING # «TRACKING»
AFFIDAVIT # «AFFIDAVIT»

«NAME1»
«NAME2»
«ADDRESS1»
«ADDRESS2»
«CITYSTATEZIP»

RE: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

Dear Claimant:

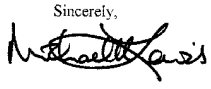
The deadline for filing a claim in the Black Farmers Settlement against the U.S. Department of Agriculture was October 12, 1999. Paragraph 5(g) of the Consent Decree in this case provides that farmers who missed the October 12, 1999 deadline may petition the Court to permit the farmer to nonetheless participate in the claims resolution procedures set out in the decree.

The Consent Decree also establishes a high standard for the review of late claims in that the farmer must demonstrate that his or her failure to submit a timely claim was due to extraordinary circumstances beyond his or her control. On December 20, 1999, Judge Friedman delegated to me the review of all late-filed claims.

After reviewing your late claim affidavit, I find that I need additional information to determine whether you meet the standard necessary to participate in the settlement. Thus far, the attempts to contact you at the number(s) listed in our files, have been unsuccessful.

If you want me to continue to consider your request to participate in the settlement, you must contact me in writing at the above address. Within two weeks (fourteen days) of the date of this letter, you must send me either (1) a phone number at which you can be reached and the times that you are generally available at that number, or (2) a statement that you are not available by phone. If you do not send me this information within two weeks (fourteen days) of the date of this letter, I will deny your request to participate in the settlement based on the information you have provided to date.

Sincerely,



Michael K. Lewis
Arbitrator

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al., Plaintiffs, v. ANNE VENEMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE, Defendant.	Civil Action No. 97-1978 (PLF)
CECIL BREWINGTON, et al., Plaintiffs, v. ANNE VENEMAN, Defendant.	Civil Action No. 98-1693 (PLF)

COPY

ARBITRATOR'S FOURTH REPORT ON THE LATE-CLAIM PETITION PROCESS

The Court has held that "all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. May 10, 2002); see also, *Pigford v. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman,* No. 97-1978 (D.D.C.

Jul. 14, 2000). This is the Arbitrator's fourth semi-annual report on the status of the review of late claims pursuant to Section 5(g).

Background

As noted above, the Court delegated to the Arbitrator the responsibility to make the determination of whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he demonstrates that extraordinary circumstances beyond his control prevented the filing of a timely claim. In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." *Pigford v. Veneman*, 173 F. Supp. 2d 38, 40 (D.D.C. 2001).

Processes and Procedures

Forms & Filing

Since the issuance of the first report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 61,400 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative claimants filed petitions after that deadline. Late claim petitions filed after September 15, 2000 have not been reviewed unless the putative claimant could demonstrate that the Facilitator or the Arbitrator misread their postmark. One or two claimants have been able to meet that hurdle.

Categorization & Research

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the review process. Currently, a staff of thirty-seven researchers investigates late claim petitions where further research is necessary to make an informed decision. At any given time, the researchers are investigating over three thousand petitions.

As of the filing of the third report on November 4, 2002, approximately 53,900 petitions had been reviewed and decided, leaving 7,300 to be decided. As of the filing of this report, approximately 57,000 petitions have been reviewed and decided, leaving 4,300 to be decided. Of the petitions that have been decided, 55,000 were denied and 2,000 were approved. Petitions remain undecided for two primary reasons: (1) the Arbitrator is awaiting supplemental information from the petitioner, or (2) researchers have been unable to reach the petitioner by telephone.

Recently, the parties and the neutrals in this case learned that a small number of claims were deposited at a local Alabama post office, postmarked to reflect a timely filing, but not delivered to the Claims Facilitator until long after the filing deadline. The issue of deciding late claim petitions in which putative claimants allege that they had filed in a timely manner but whose claims were not received by the Claims Facilitator has been considered by the Arbitrator prior to the recent discovery. A number of putative claimants

have filed petitions pursuant to Paragraph 5(g) of the Consent Decree and have asserted delivery failure as "extraordinary circumstances beyond [their] control" which prevented the filing of a timely claim. Where such petitions were filed and such assertions made, researchers have been assigned to investigate those allegations, in order to uncover the circumstances of the alleged timely filing and to seek corroborating evidence. Researchers have asked those petitioners to provide documentation such as the pink (claimant's copy) or yellow copies (attorney's copy) of the claim form, U.S. Postal Service return receipts, affidavits of attorneys who allegedly completed the form in a timely manner, and/or statements of other witnesses to corroborate the allegation. Thus far, of claimants asserting this reason for lateness, 13 have been approved, 298 rejected, and 52 undecided. Petitioners asserting faulty mail service represent approximately 0.4% of the total number of late-claim petitioners.

No Contacts

In March 2003, the Facilitator mailed approximately 1,300 additional letters to petitioners who have proven impossible to contact via telephone. That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 700 petitioners responded in a timely manner, and those petitions, with updated contact information, are being reassigned to researchers; those petitioners who responded that they will not be reachable by telephone will be sent written questionnaires based on the categorization of their petitions. The Arbitrator will again

review the petitions of the 600 petitioners who did not respond in a timely manner to his March letter prior to making determinations on each of their petitions.

Reconsideration

As described in the prior reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 21,600 requests for reconsideration have been filed, 19,100 of which were sent within the 60-day window. As the numbers indicate, slightly above one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August 2002. The Facilitator will continue to forward reconsideration requests as they are filed until all reconsideration requests have been decided.

The requests for reconsideration are distributed to the team of researchers for investigation. Approximately 10,500 requests for reconsideration have already been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response to the

request for reconsideration for the Arbitrator's review. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 379 reconsideration requests to date, with 65 petitions having been approved in the reconsideration process. An additional 7,100 reconsideration requests have been returned by the researchers and are in various stages of review.

Results to Date

Presented in tabular form, the status of the late claim process follows below. As of May 27, 2003, the Claims Facilitator is including Late Claim Petition information in its weekly status report. In order to reduce confusion due to differences in calculation methodology, the Arbitrator will use the Claims Facilitator's methodology in future reports.

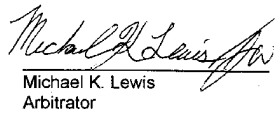
Approximate number of Petitions to File Late Claims:	69,200
Approximate number filed before Sept. 15, 2000:	61,400
Approximate number of petitions approved:	2,000
Approximate number of petitions denied:	55,000
Approximate number of Requests for Reconsideration:	21,600
Approximate number filed within 60 days:	19,100
Number of reconsideration requests decided:	377
Number of reconsideration requests resulting in approval of petition:	70

Conclusion

The Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed

claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator is unable to estimate a completion date for the late claim review process.

Respectfully submitted,



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Arbitrator

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DEC - 9
OFFICE OF THE MONITOR

TIMOTHY C. PIGFORD, et al.,

Plaintiffs,

v.

ANNE VENEMAN, SECRETARY, THE UNITED STATES DEPARTMENT OF AGRICULTURE,

Defendant.

Civil Action No. 97-1978 (PLF)

CECIL BREWINGTON, et al.,

Plaintiffs

v.

ANNE VENEMAN,

Defendant.

Civil Action No. 98-1693 (PLF)

ARBITRATOR'S FIFTH REPORT ON THE LATE-CLAIM PETITION PROCESS

The Court has held that "all putative class members seeking permission to late-file under Section 5(c) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 199 (D.D.C. May 10, 2002); see also *Pigford v. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman*, No. 97-1978 (D.D.C.

Jul. 14, 2000). This is the Arbitrator's fifth semi-annual report on the status of the review of late claims pursuant to Paragraph 5(g) of the Consent Decree.

Background

Since December 20, 1999, the Arbitrator has had the responsibility to determine whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he "demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree, ¶5(g). In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." *Pigford v. Veneman*, 173 F. Supp. 2d 38, 40 (D.D.C. 2001). As a result, the Court has declared that "it has retained no authority to review the Arbitrator's rulings on petitions to late file... Nor has it retained authority to control or review the procedures that the Arbitrator employs to reach his decisions." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *4 (D.D.C. Jun. 4, 2003).

Processes and Procedures

Forms & Filing

Since the issuance of the First Report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 65,900 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative

claimants filed petitions after that deadline. Fewer than five putative late claimants have been able to convince the Arbitrator that the Facilitator or the Arbitrator misread the postmark on their late claim petition. All other late claims postmarked after September 15, 2000 have been rejected.

Categorization & Research

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the review process. Currently, a staff of nineteen researchers investigates late claim petitions where further research is necessary to make an informed decision.

As of the filing of the Fourth Report on June 2, 2003, approximately 4,300 petitions remained to be decided. As of the filing of this report, 1,700 petitions remain to be decided. Of the 64,200 petitions that have been decided, 62,100 were denied and 2,100 were approved. Petitions remain undecided for two primary reasons: (1) the Arbitrator is awaiting supplemental information from the petitioner, or (2) researchers have been unable to reach the petitioner by telephone. The Arbitrator expects to complete all initial decisions by the end of the first quarter of 2004.

In the Fourth Report, the Arbitrator discussed the situation where the parties and he learned that a small number of claims were deposited at a local Alabama post office, postmarked to reflect a timely filing, but not delivered to the Claims Facilitator until long after the filing deadline. At that time there was a pending motion by Class Counsel to

reopen all late claims because of the mail delays discovered in that one post office in Alabama. Based in part upon the Arbitrator's procedures for dealing with such a possibility, the Court declined to order such a reopening. Specifically, the Court held, "In light of these procedures, the Court sees no reason to direct Mr. Lewis to reopen all late claims alleging mail delivery failures or to provide standards for the decision of such claims." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *5 (D.D.C. Jun. 4, 2003).

No Contacts

In November 2003, the Arbitrator's office notified the Facilitator that a final grouping of approximately 1,000 petitioners had proven impossible to contact via telephone and would need to be sent a letter. That letter requires petitioners to respond with updated contact information within two weeks of the date of the letter. Based upon prior experience with such letters, the Arbitrator anticipates a 57% timely rate of reply. Those petitions with updated contact information will be reassigned to researchers; those petitioners who respond that they will not be reachable by telephone will be sent written questionnaires based on the categorization of their petitions. The Arbitrator will again review the petitions of those petitioners who do not respond in a timely manner to the letter prior to making determinations on each of their petitions. At this point, every petitioner who has required an interview has had his petition assigned to a researcher at least once. Thus, the Arbitrator does not anticipate a need to send any further letters requesting updated contact information.

Reconsideration

As described in the prior reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 22,500 requests for reconsideration have been filed, 20,400 of which were sent within the 60-day window. As the numbers indicate, slightly above one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August 2002. The Facilitator will continue to forward timely reconsideration requests as they are filed.

Requests for reconsideration are distributed to researchers for investigation. Approximately 17,500 requests for reconsideration have been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response to the request for reconsideration for the Arbitrator's review. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 715 reconsideration requests to date, with 96 requests resulting in approved petitions. An additional 13,500 reconsideration requests have been returned by the researchers and are in various stages of review.

Results to Date

Presented in tabular form, the status of the late claim process follows below. As noted in the Fourth Report, as of May 27, 2003, the Claims Facilitator is including Late Claim Petition information in its weekly status report. In the past, the Arbitrator has attempted to count and report upon individual petitioners, whereas the Facilitator reports upon the number of affidavits and requests for reconsideration filed. In order to reduce confusion due to differences in calculation methodology, the Arbitrator will use the Claims Facilitator's methodology, although it should be noted that all numbers are skewed upwards due to individual petitioners filing multiple affidavits and requests for reconsideration.

Approximate number of Petitions to File Late Claims:	69,200
Approximate number filed before Sept. 15, 2000:	66,900
Approximate number of petitions approved:	2,100
Approximate number of petitions denied:	82,100
Approximate number of Requests for Reconsideration:	22,500
Approximate number filed within 60 days:	20,400
Number of reconsideration requests decided:	715
Number of reconsideration requests resulting in approval of petition:	96

Conclusion

The Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator anticipates completing initial review of all petitions within three months. Additionally, the Arbitrator expects to notify all those who will have prevailed on their request for reconsideration by mid-2004. Detailed letters to be sent to those who do not prevail on their request for reconsideration should be largely completed by the end of 2004.

Date: December 9, 2003 Respectfully submitted,



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ADR Associates, LLC
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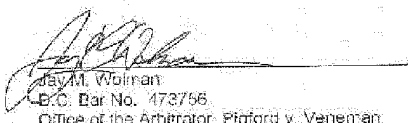
Washington, DC 20009



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	97-1978 (PLF)
ANNE VENEMAN, SECRETARY,	)	
THE UNITED STATES DEPARTMENT	)	
OF AGRICULTURE,	)	
	)	
Defendant.	)	
	)	
CECIL BREWINGTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	98-1693 (PLF)
ANNE VENEMAN,	)	
	)	
Defendant.	)	

ARBITRATOR'S SIXTH REPORT ON THE LATE-CLAIM PETITION PROCESS

The Court has held that "all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. May 10, 2002); see also, *Pigford v. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman,* No. 97-1978 (D.D.C. Jul. 14, 2000). This is

the Arbitrator's sixth semi-annual report on the status of the review of late claims pursuant to Paragraph 5(g) of the Consent Decree.

Background

Since December 20, 1999, the Arbitrator has had the responsibility to determine whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he "demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree, ¶5(g) In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." *Pigford v. Veneman*, 173 F. Supp. 2d 38, 40 (D.D.C. 2001). As a result, the Court has declared that "it has retained no authority to review the Arbitrator's rulings on petitions to late file... Nor has it retained authority to control or review the procedures that the Arbitrator employs to reach his decisions." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *4 (D.D.C. Jun. 4, 2003).

Processes and Procedures

Forms & Filing

Since the issuance of the First Report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 65,900 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative claimants filed petitions after that deadline. Fewer than five putative late claimants have

been able to convince the Arbitrator that the Facilitator or the Arbitrator misread the postmark on their late claim petition. All other late claims postmarked after September 15, 2000 have been rejected.

Categorization & Research

As of the filing of the Fifth Report on December 9, 2003, approximately 1,700 petitions remained to be decided. By March 31, 2004, the Arbitrator had completed all initial decisions on the petitions and notified the petitioners. Of the 65,947 petitions, 63,816 were denied and 2,131 were approved. Any additional timely petitions discovered after this point will be reviewed on a priority basis.

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the review process. Currently, a staff of three researchers investigates late claim petitions where further research is necessary to make an informed decision.

No Contacts

Over the course of the research process, approximately 6,400 petitioners had proven impossible to contact via telephone and were sent a letter requesting further information. That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 3,650 timely responses were received in response to those letters. Those petitions, with updated contact information were reassigned to researchers; those petitioners who responded that they were not

reachable by telephone were sent written questionnaires based on the categorization of their petitions. The Arbitrator again reviewed the petitions of those petitioners who did not respond in a timely manner to the letter prior to making determinations on each of their petitions.

Reconsideration

As described in prior reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 23,800 requests for reconsideration have been filed, 20,900 of which were sent within the 60-day window. As the numbers indicate, slightly under one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August 2002. As of the date of this report, the period for filing timely requests for reconsideration has expired. The Arbitrator anticipates the Facilitator will route the final grouping of timely reconsideration requests in a few weeks.

Requests for reconsideration are distributed to researchers for investigation. Approximately 18,900 requests for reconsideration have been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher is responsible for

drafting an individually tailored response to the request for reconsideration for the Arbitrator's review. If a petition remains denied upon reconsideration, that decision is final.

Decisions have been made in 731 reconsideration requests to date, with 99 requests resulting in approved petitions. Approximately 18,000 requests for reconsideration have been investigated by researchers and have been returned to the Arbitrator's office for further review.

Results to Date

Presented in tabular form, the status of the late claim process follows below. As noted in the Fourth Report, as of May 27, 2003, the Claims Facilitator began including Late Claim Petition information in its weekly status report. The Facilitator reports the number of affidavits and requests for reconsideration filed. The Arbitrator is using the Claims Facilitator's methodology, which slightly inflates all petition numbers due to the fact that individual petitioners have filed multiple petitions to file claims and requests for reconsideration.

Approximate number of Petitions to File Late Claims:	73,700
Approximate number filed before Sept. 15, 2000:	65,900
Approximate number of petitions approved:	2,100
Approximate number of petitions denied:	63,800
Approximate number of Requests for Reconsideration:	23,800
Approximate number filed within 60 days:	20,900
Number of reconsideration requests decided:	731
Number of reconsideration requests resulting in approval of petition:	99

Conclusion

The Arbitrator's review of late claim petitions is proceeding without difficulty, as he has completed initial review of all petitions. He expects to notify all those who will have prevailed on their request for reconsideration by the end of August 2004. All those who do not prevail on their request for reconsideration will receive detailed letters explaining the Arbitrator's decision by the end of the first quarter of 2005.

Date: June 4, 2004

Respectfully submitted,

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PREPARED STATEMENT OF LAWRENCE LUCAS

This Hearing unfortunately did not hear from Mr. Tom Burrell, spokesperson for thousands of Black farmers around this country. Mr. Burrell has experienced the powers of an internal " Watergate -Type Mentality" inside the US Department of Agriculture (USDA) and the Office of Civil Rights. This mentality has been foisted upon USDA employees, farmers of this Nation and others, who demand justice. These actions undermine the intent of our constitution.freedom of speech and the James S. Sensenbrenner, " No Fear Bill," H.R. 169.

The U.S. Department of Agriculture (USDA) Coalition of Minority Employees, "The Coalition" is a multi-ethnic, multi- cultural, multi- racial organization with 55 presidents in 34 states. The Coalition is committed to changing the discriminatory culture at USDA and holding proven discriminatory officials and others accountable for reprisal against employees and farmers.

The Coalition has informed USDA leadership on numerous occasions regarding the Department's historical and lingering problems; that result in demoralized employees, injured customers and millions of taxpayer dollars wasted on dysfunctional civil rights process generated by discriminatory managers. Currently, there are thirty Class Action (employee) lawsuits that have been filed and a backlog of thousands of employee and farmer complaints requiring processing. Despite "The Coalition's" warnings, the Department continues to ignore the wrong doings of discriminatory officials.

The US Equal Employment Opportunity Commission (EEOC), Office of Federal Operations, in a report dated February 26, 2003, confirmed "The Coalition's" allegations regarding the longstanding systemic problems in civil rights administration and processing. Despite the failures and shortcomings cited in the EEOC report, the Department is still in a state of denial and is attempting to gloss over its systemic problems.

The Coalition worked painstakingly with the Congress to secure the passage of the "No Fear Bill," passed to protect federal employees from reprisal and retaliation when they choose to utilize the danger-ridden civil rights process. " The Coalition" collaborated with stakeholders and testified at Congressional Hearings to create an Assistant Secretary for Civil Rights position at USDA, now occupied by Mr. Vernon B. Parker. As President of "The Coalition" I warned him that "the Reign of Terror" was so deeply ingrained into the fiber of USDA operations that resistance would be met at every turn. "The Coalition" offered its assistance, advice and counsel to help Mr. Parker succeed, including asking the Congress to provide the necessary resources required for success. Prior to his confirmation Senator Charles E. Grassley (R-Iowa) warned Mr. Parker

that given the agency's troubled history on the issue, it might resist improvements. "You're going into a bureaucracy that's maybe not very friendly."

The purpose of my testimony is to inform, apprise and sensitize members of this Committee of the terrible wrongs inflicted by USDA on this Nation's Black farmers and USDA employees.

Background on Pigford Consent Decree

The Pigford Consent Decree, signed by Judge Paul Friedman in April of 1998, is the written settlement agreement in the federal court case, Pigford et al v. Ann Veneman, Secretary of Agriculture; was settled in 1999 between the U.S. Department of Agriculture and Black farmers who sued the agency over race discrimination in loan practices and loss of millions of acres of land. Black farmers have complained since the settlement was entered into that the process was flawed. The Agriculture Department acknowledged a past history of discrimination and agreed to a two-tiered process of resolving claims. For both, claimants needed to prove that a similarly situated white farmer was treated better than they. Many had trouble acquiring evidence from USDA or local officials to establish unfair treatment. It appears that the wrong choices continue to be made by USDA officials, compounding the injustices emanating from USDA's failure to comply with the Consent Decree.

The settlement contained two options, Track A and Track B, Track A was a more simplified process. Ninety-Nine percent (99%) of the claimants opted for track A. This Track included a $50,000 settlement, plus $12,500 for taxes, forgiveness of previous federal loans and class wide injunctive relief. Track B was more difficult because the burden of proof was higher than in Track A. By opting for Track B, one could receive actual damages, but again, the burden of proof had to be "beyond shadow of doubt". The class action lawsuit should have paid more than 30, 000 eligible farmers several billion dollars and provided them forgiveness on loan debts for the USDA's discrimination. To date, the lawsuit has compensated only 13,000 Black farmers $50,000 each, leaving tens of thousands uncompensated and denying them at least 3 billion dollars or more as well as the land stolen from them by the government.

Over twenty-two thousand one hundred fifty nine (22,159) "Track A" applications were accepted in the lawsuit. As of March 15, 2004, only 61%of the claims were ruled in favor of the claimants and 39% had been denied. Although some denials were reversed, no one else has gotten paid in 2 years. The total money dispersed to these claimants remains at about $818,450,387,which is far below the $2.4 billion that the government claimed."

It's true that some people did get paid in the lawsuit. However, many more farmers would have been paid had as required by the Consent Decree, had they been notified by USDA. On April 14, 2004, the statute of limitations ran out and more than 65,000 potential claimants were shut out of the process, denying Black farmers an opportunity to prove their claims. At the Fairness Hearing (1999), I told Judge Friedman that if he didn't do something about many of the issues before him, we'd be right back here three of four years from now. And, by the way, here we are talking about what was not fixed in the Pigford settlement.

The Coalition is grateful to the Environmental Working Group (EWG) and John Boyd, Jr., President, The National Black Farmers' Association (NBFA) for the dramatic report entitled, " A Century of USDA's Institutionalized Racism Subjects African American Farmers to Dramatic Land Loss," from which much of the data for this document was obtained.

The Department of Agriculture has denied payments to approximately 90 percent of Black farmers, who sought compensation for discrimination under a landmark court settlement the agency reached with African American growers five years ago, according to a report released in July 2004, by the Washington-based Environmental Working Group (EWG). A two-year investigation found that USDA officials contracted Justice Department lawyers to aggressively fight the farmers' claims after the settlement of the $3 billion class-action lawsuit. The Report states that of the 94,000 growers who sought restitution for discrimination in a process set up by the court, 81,000 were turned away.

The report, funded by the Ford Foundation, said the USDA's actions "willfully obstructed justice" and "deliberately undermined" the spirit of the settlement. The department asserted that the court sought to appoint an independent arbitrator to oversee individual claims under the settlement, stating that USDA provides information regarding each farmer's case to an arbitrator and then steps out of the way.

The settlement of the class action lawsuit claimed that USDA discriminated against Black farmers in providing loans and other resources. Under its terms, Black farmers could file for compensation along two tracks. Track A promised an automatic payment of $50,000 if a claim was approved. Track B, which provided the possibility of greater compensation, required a Hearing before restitution could be made.

According to the EWG report, about 40 percent of the 22, 100 farmers whose claims were reviewed under Track A were denied. Of the 173farmers that filed cases under Track B, only 18 won compensation. Arbitrators never reviewed

an additional 72,000 claims, saying they were filed late. Many farmers were turned away. Federal lawyers fought claims aggressively, the farmers said, forcing growers to present documents that were hard to find in incidents that were almost a decade old. The Justice Department spent 56,000 hours of attorney and paralegal time challenging 129 claims, and billed USDA $12 million of taxpayer dollars.

During the process, other Black farmers joined the suit and the Department admitted discrimination, denying Black farmers the justice they deserve. Native American and Hispanic farmers have similar class-action claims pending against USDA.

"The . . . settlement is complete failure," said Marianne Calendar, a lawyer for EWG. "In part, it was the plaintiffs' lawyers who failed them. They took advantage of every aspect of the court's rules and the settlement's shortcomings to avoid responsibility. Black farmers failed to benefit from a consent decree that was supposed to remedy years of a "sophisticated, race-based system of intentional discrimination" that encouraged government officials to discriminate against them, by obstructing and denying the efforts of Black farmers to obtain loans and other programmatic assistance.

It said the Department of Justice ran up 55,712 staff hours reviewing the claims.again wasting taxpayer money. Employees suffer from the same abuses and reprisals. .Costing taxpayers millions of dollars. USDA has produced many reports that capture the severe systemic problems existing within the Department including: the USDA Blue Ribbon Task Force Report, EEOC Report, US Commission on Civil Rights Report, The D.J.Miller Report. The USDA Civil Rights Action Team and Civil Rights Implementation Team Reports vividly documented the problems, that have been discussed by "The Coalition" time and time again with USDA officials and the Congress. As long as the USDA Office General Counsel and the Office of Human Resources continue to be "intrusive" and to be a" barrier" to the civil rights process and administration nothing will change at USDA. Poor leadership, lack of accountability, reprisal, intimidation, and divisiveness permeates the civil rights process and administration at USDA.

USDA has failed to erect a "firewall" between the Office of General Counsel (OGC) and Office of Civil Rights (OCR), as cited in the "Equal Employment Opportunity Commission (EEOC) Report on USDA." USDA leadership has allowed OGC to continue its activities."obstruction of justice" and blatant "intrusion" into USDA's administrative processing, procedures and settlement of complaints for both farmers and employees. (Ref. EEOC Report, and Congressional Black Caucus letter to Secretary Veneman). Without this "firewall" and accountability OGC and OCR will continue to undermine civil rights at USDA and the Department will continue on this destructive path forever.. and taxpayer dollars

will continue being wasted. This same EEOC Report cited that it was a " Conflict of Interest" for OGC to intrude into USDA civil rights. Completely disregarding warnings regarding conflict of interest, the Department selected Sadna True, (former Deputy Director OGC) Civil Rights Division, under Arlean Leland) as Director, USDA office of Civil Rights. OGC is historically responsible for ruining the lives of farmers and employees. During October 2004, the OCR was reorganized. The Office of Adjudication, Programs and Employment were combined and it is said that career bureaucrats will be removed and replaced by OGC personnel..continuing this "Conflict of Interest."

USDA leadership continues to exhibit a lack of concern for the harassment and the widespread retaliation by its officials against farmers and employees that speak out against civil rights injustices. They used government resources to investigate and intimidate Black farmers that filed complaints against USDA.those who received $50,000 under Pigford. USDA has withheld the files of farmers in Pigford to prevent them from showing proof of the discrimination they have experienced. Employees engaging in the legally mandated EEO process have suffered similar fates.

The House Judiciary Subcommittee on the Constitution held its Hearing in September 2004, in response to America's outcry for justice. because so many people are fed up and demand that USDA halt the abuses perpetrated against Black and minority farmers. This Hearing exposed those responsible for the injustices against farmers, at the hands of USDA, the Justice Department, Court Ordered Monitors, Arbitrators and even their own Attorney. Hopefully, this Hearing will help eliminate the institutionalized "Racism and Sexism" and other abuses by USDA officials nationwide because of poor leadership and accountability. Lawmakers and others now recognize that the 1999 class action settlement did not help most of the farmers in the Class. About 65,000 Black farmers were excluded because they didn't file claims in time. I am not just talking about Black farmers but Hispanic farmers, Asian and Women farmers. We are "sick and tired of being sick and tired" of USDA's inflexible recalcitrant abuses and refusal to rectify its continued lack of respect for, this Nation and its own employees. It is now obvious to this Nation that discrimination is out of control at USDA and that little is being done to correct it.

This Hearing was convened to obtain the facts, truth and justice for those in pain and suffering and to rid USDA of its deep seated culture of discrimination, racism and sexism, removing and losing information, hostile work environment, disparate program delivery, intimidating and reprising against those who try to seek justice. USDA must be prevented from providing managers and others the tools, resources and latitude to engage in the abhorrent unacceptable behaviors that waste taxpayer dollars.

The promise of another Hearing, hopefully, will include USDA employee abuse as well. The situation we have at USDA is not a Republican or a Democratic problem, but an American problem and America must come to grips with it. The Agriculture Department has steadfastly contended that their record on civil rights is exemplary, during President George W. Bush's administration. It has cited numerous initiatives it has undertaken to give Black farmers a greater voice in the agency's organizational structure and its efforts to funnel more business to minority farmers. Rather than help Black farmers, the real truth is they have been instrumental in causing their decline.

What you have heard is an ironic twist.. the process that was created to provide a forum for those whose claims had been shut out has itself shut out nearly two-thirds of all who wanted to have their discrimination claims heard. The process should have at least allowed them the opportunity to be heard, preventing the reoccurrence of this destructive cycle against Black farmers. What must come next is restoring justice to the nearly 65,000 people who were denied a voice, the opportunity to be heard. USDA must resolve every Black farmer's case, otherwise, the taxpayers will be paying for USDA's mistakes..and lack of accountability.

Too much has been lost and too much is at stake for Black farmers to just accept that the Pigford Settlement of 1999 has failed more farmers than it has helped. USDA the" People's Agency" established in 1862 under President Abraham Lincoln, has sabotaged its reputation and credibility by creating conditions that make farm ownership impossible for Black farmers and providing an unhealthy work environment for employees. **America cares more about the Bald Eagle, Snail Darters and Bears, than they care about the Nation's Black farmers. USDA just doesn't get it!**

House of Representatives
Committee on the Judiciary

Subcommittee on the Constitution

Supplemental Testimony of Alexander J. Pires, Jr.
Class Counsel / *Pigford, et al. v. Veneman*

The following is a supplement to the testimony presented by Alexander J. Pires, Jr., on September 28, 2004, at this Subcommittee's hearing on the Status of the Implementation of the *Pigford v. Glickman* Settlement.

1. Approval of the Consent Decree

a. Before the Settlement

Class Counsel wrote to, and held conference calls with, major Black farming organizations in the South such as the Coordinating Council of Black Farmers, the Federation of Southern Cooperatives, and the Black Farmers and Agriculturalists of America.

On November 18, 19 and 20, 1998, Class Counsel/Of Counsel toured three locations in the South – Selma, Alabama, Pine Bluff, Arkansas and Raleigh, North Carolina – and met directly with approximately 2,000 Black farmers to discuss and receive feedback about the structure of a possible settlement.

Class Counsel held a series of individual and group meetings, by telephone and in-person, with the six lead Plaintiffs – Tim Pigford, Lloyd Shaffer, George Hall, Eddie Ross, Cecil Brewington and Lucious Abrams.

b. After the Consent Decree was Signed and Preliminarily Approved

After January 5, 1999, when the Consent Decree was signed and preliminarily approved, Class Counsel set out to disseminate detailed information about the Consent Decree to influential members of the African-American community (and, in turn, also respond to concerns raised by Black farmers who opposed the Consent Decree), the media and other interested parties, including congressional staff, by having Mr. Pires participate as the key figure in a stream of conference calls and meetings throughout the South.

In addition, prior to the Fairness Hearing – held on March 2, 1999 – at the Court's request, Class Counsel filed a response to the briefs of 17 Objectors. At the Fairness

Hearing, Class Counsel/Of Counsel addressed the Court and responded to Objectors and, subsequently, responded in writing to supplemental briefs filed by Objectors.[1]

From January 5, 1999 to April 14, 1999 – the date upon which the Court gave final approval to the Consent Decree – Class Counsel/Of Counsel held over 26 meetings in 12 states to explain the Consent Decree to Black farmers and introduce them to the claims process.

2. Class Notice

The Court evaluated the "extraordinary efforts [of the parties] to reach class members through a massive advertising campaign in general circulation and African American targeted publications and radio and television stations," and concluded that "class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree." Pigford, et al. v. Veneman, 185 F.R.D. 82, 101-102 (D.D.C. 1999)

Paragraph 4 of the Consent Decree summarizes what notice to the class entails:

> Within ten days after the preliminary approval of the Consent Decree, the facilitator mailed a copy of the Notice of Class Certification and Proposed Class Settlement to all then-known members of the class. The facilitator also arranged a print notification program with one-quarter page advertisements in 26 general circulation newspapers for January 21, 1999, and in 100 African-American newspapers between January 13, 1999 and January 27, 1999. The facilitator also arranged to have a full page advertisement announcing the preliminary approval of the Consent Decree and the time and place of the fairness hearing placed in the editions of TV Guide that were distributed in an 18-state region, and a half page advertisement in the national edition of Jet Magazine. In addition, the facilitator aired 44 commercials announcing the preliminary approval of the Consent Decree and the time and place of the fairness hearing on the Black Entertainment Network and aired 18 similar commercials on the Cable News Network over the course of a two-week period. Id. at 91. (Citations omitted).

Response to class notice was strong. "The facilitator estimates that on average, the print and television notice campaign 'reached 87 percent of African-American farm operators, managers or others in farm-related industries, an average frequency of 2.4 times.' As of February 19, 1999, the facilitator had received 15,132 telephone calls as a

[1] Including the above briefs, between January and October, inclusive, Class Counsel also prepared and filed with the Court no less than ten motions and responsive motions.

result of its notification campaign." Id. (Citations omitted).

"The Court has received approximately sixty written submissions from forty-three groups or individuals objecting to or commenting on the fairness of the settlement. The Court also heard from numerous individuals and organizations at the fairness hearing on March 2, 1999." Id. at 103.

Though thousands were aware of the notice provisions, and sixty written objections were filed, only one person complained about the sufficiency of notice:

> "One objector maintains that notice was insufficient because the facilitator did not advertise in the United States Virgin Islands. With the exception of that one objection, no one appears to believe that the scope of the notice provided was insufficient." Id. at 102.

3. Opting Out

For putative class members who were not satisfied with the terms of the Consent Decree, the settlement allowed them to opt-out. By opting out, a farmer could file and proceed with his or her own action completely independent of the Pigford case. It is important to bear this in mind when assessing the criticisms of the settlement terms. This settlement, unlike many class action settlements, did not require individual farmers to participate or forever lose their rights. Critics of our litigation and of the settlement we negotiated could have filed their own litigation and attempted to effectuate their own settlements. An example is Mr. Haynie, who opted out of this case.

4. Discovery

With regard to the discovery issue:

a) Identities of white farmers are protected by the Privacy Act and any discovery of the names of white farmers would be vigorously opposed by the government.

b) If we left open the option for every farmer (22,000) to take discovery, it would have been a two-way street and USDA could have subjected every class member to answering interrogatories and having their depositions taken. This would have taken years and cost millions.

c) Farmers at all times had the right to obtain their own files from USDA if they wanted to, and many farmers did so.

5. The Work Class Counsel Undertook to Help Farmers With Their Claims

Following the entry of the Consent Decree, class counsel and of counsel spent hundreds of thousands of dollars and thousands of hours traveling throughout the country assisting farmers with the Track A claim forms *free of charge*.

During a nine-month period we met with and assisted over 25,000 individual farmers. From January through mid-October 1999 Class Counsel/Of Counsel held 235 days of group meetings at 146 scheduled locations in 20 states, the District of Columbia, and the U.S. Virgin Islands.

In addition to these group meetings, Class Counsel/Of Counsel met with hundreds of individual farmers at their offices. We also assisted farmers who could not attend the meetings and called our offices by phone. This effort was completely voluntary, not mandated by the court or the terms of the Consent Decree.

In contrast, in most class actions, claimants receive little or no assistance from class counsel in filling out claim forms.

6. White Farmers

As a matter of law, in order to show discrimination, a claimant is required to prove disparate treatment. Comparison with similarly situated whites is the standard method to show discrimination.

Track A claimants whose claims were denied for the reason that they failed to correctly identify a white farmer who received better treatment (for example, a white farmer who received a loan when claimant's loan was denied), had a right to appeal by petitioning the Monitor for review and supplementing the record.

During the appeals process, at my law firm, Conlon Frantz Phelan & Pires ("Conlon Frantz"), we compiled SSWF information in binders, organized by state, county and year. If we did not have a SSWF loan record on hand relevant to a Claimant's case, we explained to the Claimant how to access UCC Financing Statements and Real Estate Mortgage records in his or her county courthouse, and asked that the Claimant send us photocopies of the records. We asked Claimants to call us collect from the courthouse if the Claimant encountered any difficulty in obtaining the needed records so that we could speak to the Clerk and ensure that the Claimant received appropriate assistance. (In most cases, when a Claimant asked to use the telephone to call his or her attorney, the county courthouse staff volunteered assistance and the phone call was not necessary).

Out of the approximately 4000 requests from claimants for assistance with petitions for Monitor review handled by Conlon Frantz, in not one case did we withdraw assistance from a Claimant for the reason that we could not find a SSWF.

7. Conlon Frantz has never opposed a motion to let the 65,000+ late claimants into the settlement.

No such motion has ever been filed.

The motion to modify the Consent Decree, filed May 17, 2004, by James Myart, contained 57 pages and 12 exhibits, but did not ask for said relief.

Mr. Myart's amended motion to modify the Consent Decree, filed June 15, 2004, contained 63 pages and 104 exhibits, but did not request relief for the 65,000+ late claimants. Rather, Mr. Myart asks the Court for an Order "reopening the case and / or modifying the Consent Degree [sic] to remedy the fatal flaws," with no proposal as to any remedies.

Likewise, Mr. Myart's motion to supplement his amended motion, filed July 20, 2004, contains criticism of the Consent Decree, but no request for relief for the 65,000+ late claimants.

8. Class Counsel's Attempts to Help Late Claimants

A settlement agreement is a binding contract that cannot be unilaterally changed by one party or the Court. The law is clear on this. Our Consent Decree had a deadline in it for participation, as does every other class action settlement. That deadline was an integral part of the settlement agreement and cannot be put aside.

In July 2000, class counsel requested, and the Department of Justice consented, to include 1100 claimants who timely filed claims which were defective, but were corrected and resubmitted after the filing deadline. The only way these original 1100 late claimants were permitted to participate under the Consent Decree was by a negotiated agreement with the government where we gave, and they gave, concessions. Since that time, DOJ has opposed all attempts to extend deadlines for late filers, and the court has ruled in favor of the government in each instance:

a) On July 14, 2000, the Court approved a Stipulation and Order, negotiated by the parties, setting forth the procedure for late claimants. The Court considered and rejected the sole objection to this Stipulation.

b) On December 12, 2001, class counsel filed a motion on behalf of 97 claimants whose petitions for Monitor review were designated "late" by the Facilitator, asking the Court to allow these petitions to proceed. We withdrew the motion so that we could include a larger number of claimants. On July 19, 2002, we filed a similar motion on behalf of 350 claimants. The government opposed the motion, and the court refused to allow the appeals to proceed. We have taken the matter to the U.S. Court of Appeals for the D.C. Circuit. Oral argument is scheduled for March 2005.

c) On February 19, 2003, co-lead counsel Chestnut Sanders filed a motion to reopen all late claims due to mail delays. The government opposed the motion, and the Court agreed and ruled that the appropriate course for these claimants was the same as for all other late claimants – they must petition the Arbitrator to be admitted.

Based on this procedural history, it is my opinion that the court will not extend filing deadlines in this case without the consent of the government.

9. Conlon Frantz Opposes Mr. Myart's Motion

On May 17, 2004, James Myart filed a motion to modify the Consent Decree, alleging a string of complaints against the Consent Decree.

We oppose Mr. Myart's motion because each of the issues he raises has been previously considered and ruled upon by the District Court. Some issues, such as the sufficiency of prospective injunctive relief under the Consent Decree, have been the subject of subsequent review by the U.S. Court of Appeals for the D.C. Circuit. See e.g. Pigford, 206 F.3d at 1216.

On September 11, 2002, the Court denied a similar motion to vacate the Consent Decree:

> Indeed, to vacate the Consent Decree would nullify the settlement of this case, 'the grand, historical first step toward righting the wrongs visited upon thousands of African-American farmers for decades by the United States Department of Agriculture,' and would undo the substantial progress that has been made for so many African-American farmers in the long five years since this case was filed. To vacate the Consent Decree also would require that every dollar already paid out to African –American farmers, whether in cash awards or in the form of debt relief or tax relief, be returned to the government. To date, nearly $800 million of relief has gone to approximately 13,000 families of African-American farmers. Requiring these families to pay back the considerable sums that they received would be an extreme, unwarranted remedy that would bring great hardship to thousands of members of the class. See Memorandum Opinion and Order, docket # 665, filed September 11, 2002. (Citations omitted.)

10. Class Counsel's Motion to Enjoin

We did not move to enjoin "Black farmers" from speaking about the case. Black farmers speak about the case all the time. We moved to enjoin Mr. Myart and Mr. Burrell from making *misrepresentations* to class members and using those misrepresentations to

obtain money from Black farmers. We have proof of multiple false statements made by Myart and Burrell and have submitted those to the Court in a Motion to Enjoin James W. Myart and Thomas Burrell From Disseminating Misleading Communications to Class members, filed September 16, 2004.

11. Statistics for Alabama

Mr. Bacchus stated "in Alabama, for 294 cases that were granted, 14,268 were rejected. And the most all of those were because they filed too late…" It appears these statistics are taken from the Environmental Working Group Report (http://www.ewg.org/reports/blackfarmers/part3.php), and refer *only* to claimants who filed late.

According to the Claims Facilitator:

- 4524 timely claims were filed in Alabama.
- 3125 were approved. (69%).
- Of the 1385 claims that were denied, 982 petitioned the Monitor for review.
- To date, total recovery for Track A claimants in Alabama is $187,480,287.

12. Philip Haynie's list of Consent Decree "Failures"

Mr. Haynie opted out of the Pigford class. Thus, he is not a class member, and has no standing to complain about a lawsuit in which he is not participating. Mr. Haynie has filed his own lawsuit, which is pending before the Court. Mr. Haynie testified to a string of "failures" of the Consent Decree, to which we respond below.

a. *"The settlement has failed to end discrimination against black farmers by USDA."*

Pigford is not, and could not be, the end of discrimination against Black farmers. No lawsuit can do that.

Pigford is *one* lawsuit, which sought restitution for a *specifically defined subset* of Black farmers.

> "As with all settlements, it does not provide the plaintiffs and the class they represent with everything they sought in the complaint. Instead it is a negotiated settlement intended to achieve much of what was sought without the need for lengthy litigation and uncertain results." Pigford, et al. v. Veneman, 185 F.R.D. 82, 95 (D.D.C. 1999).

b. *"The settlement failed to prevent the loss of black land."*

A comparison of the 1997 and 2002 Agriculture Census indicates an *increase* in the number of African American farmers from 26,785 to 29,145. 2002 Census of

Agriculture, United States and State Data, Preliminary Report, "Principal Operators by Race: 2002 and 1997" (February 2004), located at http://www.nass.usda.gov/census/census02/preliminary/cenpre02.txt. (During that same time period, the number of white farmers has decreased by 86,893.) (Emphasis added).

c. "*The settlement has failed to provide educational and financial opportunities to help young African Americans to engage in farming.*"

Pigford is but *one* step, out of many that are needed, toward bringing restitution to Black farmers and addressing discrimination at USDA.

Pigford provides compensation to Black farmers who experienced discrimination at the hands of USDA, and whose discrimination complaints went unanswered. That was the goal of Pigford. It is the settlement of a lawsuit; it is not, and could not be, a program to "help young African Americans to engage in farming."

d. "*The settlement has failed to end foreclosures on black farmers and their land.*"

The Consent Decree requires that USDA (1) "immediately cease all efforts to dispose of any foreclosed real property formerly owned" by claimants who satisfy the class definition, and (2) "refrain from foreclosing on real property owned by the claimant or accelerating the claimant's loan account" until a final decision is issued for a claimant. See Consent Decree ¶ 7.

Successful Track A claimants are entitled to the "immediate termination of any foreclosure proceedings that USDA has initiated against any of the class member's real property in connection with the ECOA claim(s) resolved in the class member's favor by the adjudicator; and the return of any USDA inventory property that formerly was owned by the class member but which was foreclosed in connection with the ECOA claim(s) resolved in the class member's favor by the adjudicator." See Consent Decree ¶ 9(iii)(E).

In addition to ceasing foreclosure proceedings while a claim is pending, the USDA generally refunds to a successful claimant any monies collected by administrative offset on debt that was the subject of the claim.

e. "*The settlement has failed to provide the injunctive relief that is outlined in the settlement.*"

The Consent Decree provides class-wide injunctive relief as follows:

(a) "priority consideration, on a one-time basis, for the purchase, lease, or other acquisition of inventory property to the extent permitted by law,"

(b) "priority consideration for one direct farm ownership loan and one farm operating loan,"

(c) "any application for a farm ownership or operating loan , or for inventory property ... will be viewed in a light most favorable to the class member ...,"

(d) "... reasonable technical assistance and service, including the assistance of qualified USDA employees who are acceptable to the class member, in connection with the class member's preparation and submission" of loan applications. See Consent Decree ¶ 11.

The Monitor's office assists claimants to ensure they receive the injunctive relief to which they are entitled. The Monitor reports on injunctive relief in the Monitor Reports, available at http://www.pigfordmonitor.org/reports/rptrec20040819.pdf. The most recent Monitor's Report, of August 19, 2004, notes a relatively low rate of use of injunctive relief, but does not fault the Consent Decree for this.

The Consent Decree provides injunctive relief for a period of five years from the date of the Decree. USDA has voluntarily agreed to extend the time period for class members to participate in injunctive relief for an extra year, until April 14, 2005.

f. "*The settlement has failed to provide black farmers with equal and fair access to land in USDA inventory.*"

As described above, successful class members have "priority consideration, on a one-time basis, for the purchase, lease, or other acquisition of inventory property to the extent permitted by law." See Consent Decree ¶ 11.

g. "*The government has systematically and purposefully low-balled damage estimates in Track B....*"

Class counsel, working with two economists, developed a methodology for calculating damages for Track B claimants, utilizing either a) state and county averages for costs and prices, or b) the claimant's actual history relating to costs and prices, whichever was more favorable to the claimant. This model was usually accepted by the arbitrators, and in many instances was accepted by the government economists. We used this model in the more than 20 Track B cases litigated successfully by our firm, which resulted in millions of dollars in awards.