

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**In re BLACK FARMERS DISCRIMINATION
LITIGATION**

Misc. No. 08-mc-0511 (PLF)

This document relates to:

ALL CASES

**NOTICE OF AMENDMENT OF EXHIBITS TO MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION OF A
RULE 23(b)(1)(B) SETTLEMENT CLASS, AND FOR OTHER PURPOSES**

Certain Plaintiffs,¹ by and through undersigned counsel, hereby inform the Court that Exhibits 1 and 2 to their Motion for Preliminary Approval of Settlement, Certification of a Rule 23(b)(1)(B) Settlement Class, and for Other Purposes (“Motion for Preliminary Approval”) (Docket No. 161) have been amended since the filing of their Motion. Revised Exhibit 1, attached hereto, contains revisions to Paragraphs 11-13, 26, and 28 of, and adds a new Paragraph 37 to, Certain Plaintiffs’ Proposed Order Granting Preliminary Approval of Settlement Agreement, Certifying a Rule 23(b)(1)(B) Settlement Class, and For Other Purposes (“Preliminary Approval Order”) (previously Exhibit 1). Revised Exhibit 2, also attached hereto, includes new language amending and replacing Section V.A.5 of the Parties’ Settlement Agreement (previously Exhibit 2), addressing circumstances in which: (a) a Claimant has asserted claims for multiple farming operations; and/or (b) Multiple Claimants have asserted claims with reference to a single farming operation. Certain Plaintiffs respectfully request that

¹ Certain Plaintiffs are Plaintiffs James Copeland, Earl Moorer (on behalf of the estate of John Moorer), and Marshallene McNeil, on behalf of themselves and the proposed Class they seek to represent.

the Court consider the attached Revised Exhibits 1 and 2 in place of previously noticed Exhibits 1 and 2 when considering their Motion for Preliminary Approval.²

Respectfully submitted,

May 13, 2011

/s/
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Laurel Pyke Malson (D.C. Bar No. 317776)
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Attorneys for Certain Plaintiffs

CERTIFICATE OF SERVICE

I certify that on May 13, 2011, I filed a copy of this motion via the ECF system, and sent copies by electronic-mail to the counsel of record in the above-referenced case.

/s/
Michael W. Lieberman

² Undersigned counsel have conferred with counsel for the Defendant, and the Defendant has indicated its consent to this filing.

Revised Exhibit No. 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**In re BLACK FARMERS DISCRIMINATION
LITIGATION**

Misc. No. 08-mc-0511 (PLF)

This document relates to:

ALL CASES

**PLAINTIFFS' REVISED PROPOSED ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AGREEMENT, CERTIFYING A
RULE 23(b)(1)(B) SETTLEMENT CLASS, AND FOR OTHER PURPOSES**

The Court has reviewed and considered Plaintiffs' Motion for Preliminary Approval of Settlement Agreement, Certification of a Rule 23(b)(1)(B) Settlement Class, and for Other Purposes ("Motion"), including the exhibits thereto, and has reviewed and considered the terms and conditions of the Settlement Agreement dated February 18, 2010, revised as of May 13, 2011 (the "Settlement Agreement"). Upon consideration of these submissions and the entire record herein, with good cause for this Order having been shown, it is hereby

ORDERED that the terms of the Settlement Agreement are preliminarily approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that the proposed Settlement Agreement is within the range of reasonableness so that Notice of the proposed Settlement should be sent to the Class as provided in Paragraphs 16-18 of this Order.

CERTIFICATION OF THE SETTLEMENT CLASS

1. For purposes of settlement only, and pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1)(B), the action styled as *In re Black Farmers Discrimination Litig.*, Misc. No. 08-mc-0511 (PLF) (D.D.C.), is conditionally certified as a class action on behalf of the following persons (collectively, the “Class” and each member of the Class as a “Class Member”), effective upon Final Approval of the Settlement Agreement:

All individuals: (1) who submitted late-filing requests under Section 5(g) of the *Pigford v. Glickman* Consent Decree on or after October 13, 1999, and on or before June 18, 2008; but (2) who have not obtained a determination on the merits of their discrimination complaints, as defined by Section 1(h) of the Consent Decree.

Based on the Court’s review of the Motion and supporting materials, the Court finds that the proposed Class satisfies Rules 23(a) and 23(b)(1)(B).

2. The Court finds that the following Representative Plaintiffs will fairly and adequately protect the interests of the Class and therefore conditionally appoints them as representatives of the Class, pursuant to Federal Rule of Civil Procedure 23(a)(4):

James Copeland
3 Effingham Court
Columbus, GA 31909

Earl Moorner, on behalf of the Estate of John Moorner
292 Benton Rd.
Lowndesboro, AL 36752

Marshallene McNeil
472 Hwy 41 North
Camden, AL 36726

3. For purposes of effectuating the Settlement Agreement, the following individuals are conditionally appointed Lead Class Counsel:

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Orlando, FL 32801
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These Lead Class Counsel are responsible for carrying out the duties of Lead Class Counsel set forth in the Settlement Agreement.

4. Pursuant to Federal Rule of Civil Procedure 23(g), for purposes of effectuating the Settlement Agreement, the following individuals are conditionally appointed as Class Counsel:

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These Class Counsel are responsible for carrying out the duties of Class Counsel as set forth in the Settlement Agreement.

5. The certification of the Class, appointment of Representative Plaintiffs as representatives of the Class, and appointment of Class Counsel, Lead Class Counsel, and the Plaintiffs' Steering Committee are solely for the purposes of effectuating the Settlement Agreement. If the Settlement Agreement is terminated or is not consummated for any reason, the foregoing certification of the Class, appointment of the Representative Plaintiffs as representatives of the Class, and appointment and designation of Class Counsel, Lead Class Counsel, and the Plaintiffs' Steering Committee, shall be void and of no effect and both

Plaintiffs and the Secretary of the United States Department of Agriculture (the “Defendant”) (collectively “the Parties”) shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

INJUNCTION AGAINST FILING OF NEW AND AMENDED ACTIONS

6. All members of the prospective Class, and any other person, representative, or entity, are hereby barred and enjoined from: (i) filing, commencing, or intervening in any claim, lawsuit, arbitration, administrative, regulatory or other proceeding arising out of Section 14012 of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 and/or 110-246, (“Section 14012”), and (ii) organizing or soliciting the participation of any members of the Settlement Class into a separate class for the purposes of pursuing a purported class action arising out of Section 14012 (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action). The Court finds that the issuance of this injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's review of the Settlement.

7. All proceedings in the above-captioned Consolidated Action, other than that such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities thereto, are stayed and suspended until further Order of this Court.

APPROVAL OF THE COST CAP FOR IMPLEMENTATION COSTS

8. The “Cost Cap,” as defined in Section II.I of the Settlement Agreement, is set at \$35,000,000.

9. Class Counsel may move for the payment of up to an additional \$3,500,000 from 2008 Funds to pay for reasonable additional fees and costs above the Cost Cap incurred by the

Track A Neutrals, the Track B Neutrals, and/or the Claims Administrator arising out of the reporting requirements and/or the audit provisions of Section 201(h) of Pub. L. 111-291, 124 Stat. 3064 (Dec. 8, 2010).

APPROVAL OF CLAIMS ADMINISTRATOR AND NEUTRALS

10. Epiq Systems, Inc. is approved to serve as Claims Administrator for purposes of effectuating the Settlement Agreement and shall fulfill the roles designated for the Claims Administrator in the Settlement Agreement.

11. Upon further motion of the Parties, and prior to or concurrent with Final Approval of the Settlement Agreement, the Court will approve a Track A Neutral to fulfill the role designated for the Track A Neutral in the Settlement Agreement.

12. Upon further motion of the Parties, and prior to or concurrent with Final Approval of the Settlement Agreement, the Court will approve a Track B Neutral to fulfill the role designated for the Track B Neutral in the Settlement Agreement.

13. Each individual designated to serve as a Track A Neutral or Track B Neutral must notify Lead Class Counsel of their designation. Within ten (10) days of such notification, Lead Class Counsel shall inform the Court of the names of any individuals so designated so that the Court may administer an oath to each individual that he or she will fulfill his or her respective role faithfully, fairly, and to the best of his or her ability. No individual designated as a Track A or Track B Neutral may take any action in that role before taking the aforementioned oath administered by the Court.

14. The Claims Administrator, Track A Neutral, and Track B Neutral shall have no liability to any claimants, including both Class Members and other individuals seeking to participate in the claims program provided for in the Settlement Agreement and approved by this

Court. Accordingly, these entities, as well as their officers, employers, employees, independent contractors, vendors, subcontractors, shareholders, and agents, shall not be subject to any suits, claims, actions, or liabilities that may be asserted by any such claimants.

15. Payments to the Claims Administrator, the Track A Neutral, and the Track B Neutral are Implementation Costs that shall be paid in accordance with Sections IV.C, IV.D, IV.E, IV.F, and IV.H of the Settlement Agreement upon application of Class Counsel and approval by this Court. Such payments shall not, in total, exceed the Cost Cap.

FORM AND TIMING OF NOTICE

16. The Court finds the proposed Notice Program (Ex. 5, Att. 3 to Motion) to be appropriate for the Class, practicable under the circumstances, and designed to fairly ensure the protection of the interests of absent parties who are to be bound by it. When completed, it shall constitute due and sufficient notice of the Settlement Agreement and the Final Approval Hearing to all persons affected by and/or eligible to participate in the remedial processes set forth in the Settlement Agreement or the Final Approval Hearing, and therefore will satisfy the requirements of due process and the Federal Rules of Civil Procedure.

17. Pursuant to Federal Rule of Civil Procedure 23(e)(1), no later than thirty (30) days after entry of this Order, the Plaintiffs shall cause copies of the forms of Notice proposed in the Notice Program to be disseminated in the manner delineated in the Notice Program.

18. The costs of implementing the Notice Program shall be paid out of the “interim Implementation Costs” authorized in Sections IV.C and IV.D of the Settlement Agreement.

19. No later than twenty (20) days prior to the Final Approval Hearing, the Notice Provider shall file with the Court a declaration confirming compliance with the Notice procedures approved by this Court.

CONTINGENT ATTORNEYS' FEES

20. For purposes of effectuating the Settlement Agreement, a “Track A Individual Counsel Fee” (as defined in the Settlement Agreement) may not exceed 2% of a Class Member’s Final Track A Award.

21. For purposes of effectuating the Settlement Agreement, a “Track B Fee” (as defined in the Settlement Agreement) may not exceed 8% of a Class Member’s Final Track B Award.

PRELIMINARY APPROVAL OF THE FEE AWARD

22. The Court finds that a Fee Award (as defined in the Settlement Agreement) of between 4.1% and 7.4% of the Fee Base (as defined in the Settlement Agreement) appears to be a fair, reasonable, and adequate range for a Fee Award in this action, and this range therefore is preliminarily approved for purposes of providing Notice to the Class.

EXISTING RETAINER AGREEMENTS

23. No counsel who is designated as Class Counsel by this Order shall seek to enforce the terms of any existing contingency fee arrangements with Class Members.

24. Any counsel who is not designated as Class Counsel and who is retained by a member of the Class to represent such an individual for a Track A claim under the Settlement Agreement shall be limited to a 2% contingency fee.

25. Any counsel who is retained by a member of the Class to represent such an individual for a Track B claim under the Settlement Agreement shall be limited to an 8% contingency fee.

FINAL APPROVAL HEARING: RIGHT TO APPEAR AND OBJECT

26. A Final Approval Hearing shall take place before the Court on September 1, 2011, at 9:30 a.m. before the Honorable Paul L. Friedman, at the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001 to determine whether the Settlement Agreement should be finally approved by this Court as fair, reasonable, and adequate.

27. The Court may finally approve the Settlement Agreement at or after the Final Approval Hearing with any appropriate modifications agreed to by the Parties and without further notice to the Class Members.

28. Any Class Member wishing to raise objections to the Settlement Agreement that the Court may consider before Final Approval of the Settlement Agreement must adhere to the following process for submitting such objections:

- a. Any member of the Class may present written objections explaining why the Settlement Agreement should not be approved as fair, reasonable, and adequate, or why attorneys' fees and expenses to Class Counsel should not be awarded in the amounts requested. Any Class Member who wishes to object to any aspect of the Settlement Agreement must, no later than July 18, 2011, file a written statement of the objection(s) with the Court and serve such objection(s) on Lead Class Counsel and Defendant's Counsel either by (a) ECF filing with the Court or (b) first-class mail plus fax and/or electronic mail. The written statement of the objection(s) must include (1) a statement explaining the basis for the objector's belief that he or she is a Class Member and eligible for relief under the Settlement

Agreement; (2) a detailed statement of the Class Member's objection(s), as well as the specific reasons, if any, for each objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his or her objection(s); (3) the Class Member's name, address, and telephone number; and (4) any other supporting papers, materials, or briefs the Class Member wishes the Court to consider when reviewing the objection.

- b. Class Members may raise an objection either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney to represent him or her for purposes of filing an objection, the attorney must: (1) file a notice of appearance with the Clerk of Court no later than August 2, 2011; and (2) serve a copy of the notice on Lead Class Counsel and Defendant's Counsel by (a) ECF filing with the Court or (b) first-class mail plus either fax and/or electronic mail by August 2, 2011
- c. Class Members, or their attorneys, who wish to appear at the Fairness Hearing must file with the Court and serve on Lead Class Counsel and Defendant's Counsel, by (1) ECF filing with the Court or (2) first-class mail plus either fax and/or electronic mail, by August 2, 2011 a notice of their intention to appear at the Fairness Hearing.
- d. Any Class Member who fails to comply with the provisions of the preceding subsections shall waive and forfeit any and all rights he or she may have to object to the Settlement Agreement, and shall be bound by all

the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the litigation.

29. The Court may adjourn the Final Approval Hearing, or any subsequent hearings, including the consideration of the application for attorneys' fees, costs, and expenses, without any additional notice to putative Class Members other than an announcement in open court.

**ORDER REGARDING LISTS AND MATERIAL
RECEIVED FROM THE *PIGFORD* FACILITATOR**

30. For the purpose of allowing Lead Class Counsel to fulfill its duties under Sections VIII.A.3 and VIII.A.4 of the Settlement Agreement, the *Pigford* Facilitator is hereby directed to provide to Lead Class Counsel a current version of the *Pigford* Timely 5(g) List, the *Pigford* Participants List, and the *Pigford* Opt-Out List (collectively, the "*Pigford* Lists"), and copies of all late-filing requests and all other available information and correspondence regarding the late-filing status of Class Members, including any lists prepared by the *Pigford* Facilitator reflecting such status (collectively, "5(g) Communications").

31. The *Pigford* Lists and 5(g) Communications may be used by Class Counsel or other counsel only for the purposes set forth in the Settlement Agreement. Accordingly,

- a. Counsel other than Class Counsel may not use the *Pigford* Lists and/or 5(g) Communications to communicate with individuals unless such individuals were represented by the contacting counsel prior to disclosure of the list;
- b. Class Counsel or other counsel may use the *Pigford* Lists and/or 5(g) Communications to determine whether a particular individual is eligible to pursue a claim in the non-judicial claims process delineated in Section V of the Settlement Agreement;

- c. Upon request, Lead Class Counsel shall provide verification to a claimant under the Settlement Agreement and, if applicable, his or her counsel, that the claimant's name appears on the *Pigford* Lists;
- d. Upon request, Lead Class Counsel shall transmit to each claimant and his or her counsel within thirty (30) days of such request all 5(g) Communications regarding that claimant, provided that the claimant or his or her counsel has provided written certification in writing that he or she will comply with the terms of this Order and other protective orders entered by this Court;
- e. No information in the *Pigford* Lists and/or 5(g) Communications will be disclosed by Class Counsel or other counsel to any other person or entity, including any farmers' advocacy organizations, for recruitment, recruitment-related, or any other purposes;
- f. Lead Class Counsel shall transmit an electronic copy of the *Pigford* Lists to all Class Counsel within ten (10) days of receipt of such lists from the *Pigford* Facilitator;
- g. Each copy of the *Pigford* Lists provided to Class Counsel shall be stamped "PRODUCED SUBJECT TO PROTECTIVE ORDER;"

32. Nothing in this Order shall restrict in any way the ability of Class Counsel in *Pigford v. Glickman* to fulfill their duties as Class Counsel in that action; and

33. Nothing in this Order shall restrict in any way the Defendant's use of the *Pigford* Lists or 5(g) Communications.

34. This Court's Order on December 23, 2008, entitled "Protective Order Regarding '5(g) List'" (Docket No. 34) is hereby withdrawn.

OTHER PROVISIONS

35. The Parties are authorized to communicate with putative Class Members regarding the provisions of the Settlement Agreement so long as such communications are not inconsistent with the Settlement Agreement. The Secretary shall refer to the toll-free telephone number operated by the Claims Administrator any inquiries from putative Class Members about claims to be filed under the Settlement Agreement.

36. Neither the fact of settlement, nor the Settlement Agreement, nor any provision therein, nor any negotiations, statements, or proceedings in connection therewith, shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, Class Counsel, any putative Class Members, the Secretary, or the United States of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in *In re Black Farmers Discrimination Litigation* were or were not meritorious.

37. Class Counsel shall promptly bring to the attention of the USDA Inspector General and the Department of Justice information that they receive relating to potential scams on claimants and/or misrepresentations being made to claimants relating to the claims process or the relief available to claimants under the Settlement Agreement.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE: _____, 2011

Revised Exhibit No. 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**In re BLACK FARMERS DISCRIMINATION
LITIGATION**

Misc. No. 08-mc-0511 (PLF)

SETTLEMENT AGREEMENT

February 18, 2010
(Revised and Executed as of May 13, 2011)

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the Signatory Plaintiffs, by and through Signatory Plaintiffs’ Counsel, and the Secretary of the U.S. Department of Agriculture (“the Secretary” or “USDA”), by and through the Secretary’s Counsel, to resolve, fully and forever, the claims raised or that could have been raised in the cases consolidated in *In re Black Farmers Discrimination Litigation*, No. 08-mc-511 (D.D.C.), including, but not limited to, the claims asserted under Public Law No. 110-234 and/or 110-246, § 14012 (2008).

I. RECITALS

- A. In 1997, a putative class of African-American farmers brought suit against USDA under, *inter alia*, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, for alleged discriminatory actions in the acquisition of farm credit, credit servicing, and non-credit farm benefits. This case was called *Pigford v. Glickman*, No. 97-1978 (D.D.C.) (“*Pigford*”).
- B. On January 5, 1999, the Court in *Pigford* certified the following Class pursuant to Federal Rule of Civil Procedure 23(b)(3):

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.
- C. After notice and an opportunity to be heard by all *Pigford* Class Members, on April 14, 1999, the Court approved the terms of a Consent Decree which provided the Class Members with a choice of non-judicial processes (*i.e.*, “Track A” or “Track B”) for resolving their discrimination claims.
- D. The *Pigford* Consent Decree directed that *Pigford* Class Members who did not opt out of the Class would have 180 days from entry of the Decree in which to submit completed claim packages. An extension of this deadline until September 15, 2000, was available under Section 5(g) of the Consent Decree (“Section 5(g)”), but only where a Class Member could show that his or her late filing was due to “extraordinary circumstances” beyond the Class Member’s control.
- E. Approximately 20,000 individuals filed claims under the *Pigford* Consent Decree within the 180-day deadline, which was October 12, 1999. On or after October

13, 1999, and on or before September 15, 2000, approximately 61,000 additional individuals sought to participate in the Decree's claim resolution processes pursuant to Section 5(g). Approximately 2,700 of these individuals were deemed to satisfy the "extraordinary circumstances" test and were permitted to participate in the claim resolution processes. Between September 16, 2000, and June 18, 2008, thousands of additional individuals unsuccessfully sought to participate.

- F. Notwithstanding that more than 60,000 individuals were denied participation under the *Pigford* Consent Decree, and if *Pigford* Class Members, were bound by the Decree and deemed to have waived and released all claims against USDA that were or could have been raised in *Pigford*, on May 22, 2008, and again on June 18, 2008, Congress created a new cause of action in Section 14012 of the Food, Conservation, and Energy Act of 2008 for such individuals.
- G. Section 14012(i)(1) designates \$100,000,000 to pay meritorious Section 14012 claims.
- H. Section 14012(d) provides that "[i]t is the intent of Congress that [Section 14012] be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each *Pigford* claim previously denied that determination."
- I. Section 14012(f) further provides for "expedited resolutions" whereby a person filing a complaint under Section 14012 "may seek liquidated damages of \$50,000, discharge of the debt that was incurred under, or affected by, the 1 or more programs that were the subject of the 1 or more discrimination claims that are the subject of the person's complaint, and a tax payment in the amount equal to 25 percent of the liquidated damages and loan principal discharged[;]" while Section 14012(g) provides an action whereby a plaintiff may seek "actual damages sustained."
- J. On November 30, 2010 and December 8, 2010 respectively, Congress passed and the President signed into law Pub. L. 111-291, which provided an additional \$1,150,000,000 "to carry out the terms of [this] Settlement Agreement."
- K. As of January 1, 2011, more than 40,000 plaintiffs had filed individual claims under § 14012 in 23 complaints in the U.S. District Court for the District of Columbia, which have been consolidated under this caption in the Consolidated Case.
- L. In order to bring the Consolidated Case to a close FOREVER and FINALLY, the Parties have determined to settle the Consolidated Case, including all claims that the proposed Class and Class Members have brought or could have brought in the

Consolidated Case, and including all claims that have been or could have been brought under Section 14012.

- M. The Signatory Plaintiffs believe that the terms of this Agreement are fair, reasonable, and adequate; that this Agreement provides substantial benefits to the proposed Class and the Class Members; and that settlement of the Consolidated Case on the terms set forth in this Agreement is in the best interests of the proposed Class and the Class Members. Signatory Plaintiffs recognize that the amount of the funding for the Settlement may not be sufficient to provide recovery in the full amount contemplated for successful Claimants by Section 14012, and that the amount actually recovered by each successful Claimant will depend on the amount of funding appropriated and the number of successful Class Members.
- N. The Secretary expressly denies any wrongdoing, as alleged in the Consolidated Case or otherwise, and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged in the Consolidated Case. Nonetheless, the Secretary considers it desirable to settle the Consolidated Case on the terms set forth in this Agreement because it will avoid disruption to USDA due to the pendency and defense of the Consolidated Case, and it will avoid the substantial expense, burdens, and uncertainties associated with litigation of the Consolidated Case.
- O. Accordingly, the purpose of this Agreement is to make a full, complete, and final resolution of all claims and causes of action that have been or could have been asserted against the Secretary by the proposed Class and the Class Members in the Consolidated Case arising out of the conduct alleged therein.
- P. NOW, THEREFORE, in reliance on the mutual promises, covenants, releases, and obligations as set out in this Agreement, and for good and valuable consideration, the Parties hereby stipulate and agree to resolve all claims that were or could have been at issue in this matter.

II. DEFINITIONS

Unless otherwise noted, as used in this Agreement:

- A. “2008 Funds” are the funds (\$100,000,000) designated by Congress in Public Law No. 110-234 and/or 110-246, § 14012(i)(1) (2008).
- B. “2010 Funds” are the funds (\$1,150,000,000) designated by Congress in Public Law No. 111-291, § 201 (2010).

- C. A “Claimant” is any individual who submits a claim and/or seeks an award under this Agreement.
- D. The “Claim Deadline” is 180 calendar days from the Final Approval Date.
- E. A “Claim Determination” is the binding and final result of Track A and Track B and represents whether, and what amount, a Class Member is eligible to receive as a result of the Non-Judicial Claims Process.
- F. The “Claims Administrator” is an administrator approved by the Court and hired by Lead Class Counsel to determine whether individual claimants are members of the Class, to make payments to meritorious Class Members and counsel in accordance with this Agreement, and to conduct other duties as assigned to the Claims Administrator under this Agreement.
- G. “Common Benefit Fees” are reasonable attorneys’ fees, expenses, and costs for the work Class Counsel perform on behalf of the Class as a whole both before and after execution of this Agreement, including negotiation of this Agreement, and the work Class Counsel agrees to perform on behalf of the Class as a whole as set forth in this Agreement. Common Benefit Fees do not include Track A Individual Counsel Fees, Track B Fees, or fees for work performed on behalf of individual Class Members who prevail under Track B.
- H. “Consolidated Case” refers to the complaints consolidated in *In re Black Farmers Discrimination Litigation*, No. 08-mc-511 (D.D.C.).
- I. The “Cost Cap” is \$35,000,000, and represents the maximum amount of Implementation Costs that Class Counsel may pay out of the funds provided by the Secretary under this Agreement; provided, however, that upon application of Class Counsel, the Court may approve the payment of up to \$3,500,000 out of the 2008 Funds in reasonable additional fees and costs above the Cost Cap incurred by the Track A Neutrals, the Track B Neutrals, and/or the Claims Administrator arising out of the reporting requirements and/or the audit provisions of Section 201(h) of Pub. L. No. 111-291.
- J. “Designated Account” means a bank account, set up by Class Counsel and held for the benefit of the Class, at a Designated Bank that is (1) insured by the Federal Deposit Insurance Corporation up to the applicable limits, (2) a segregated trust account that is not subject to claims of a bank’s creditors, or (3) invested in U.S. Treasury securities.

- K. “Designated Bank” means a bank that has a Veribanc (www.veribanc.com) rating of Green with three stars and one for which neither the bank nor any of its senior officers appear in the Excluded Parties List System (www.epls.gov), which is a list of entities and individuals suspended or debarred from doing business with the federal government.
- L. “Effective Date” is the date upon which, if the Agreement is not voided under Section XI, an order providing final approval of this Agreement under Federal Rule of Civil Procedure 23(e) becomes non-appealable, or, in the event of any appeals, upon the date of final resolution of said appeals. When this Agreement refers to the date on which the Agreement became “Effective,” such date is the Effective Date.
- M. “Execution Date” is March 23, 2011.
- N. “Fee Award” is the total amount approved by the Court for the payment of Common Benefit Fees and Track B Fees.
- O. “Fee Base” is the sum of the 2008 Funds plus any 2010 Funds minus \$22,500,000.
- P. “FSA” is the Farm Service Agency, an agency of USDA.
- Q. “Final Approval Date” is the date on which the Court enters an order providing final approval of this Agreement under Federal Rule of Civil Procedure 23(e).
- R. “Implementation Costs” are the Court-approved administrative costs associated with implementing this Agreement, including the fees and costs of the Track A and Track B Neutrals, the Claims Administrator, costs incurred under Section VIII.A.3, and the costs necessary to provide notice of this Agreement to the Class. With the exception of the costs incurred under Section VIII.A.3, Implementation Costs do not include (1) attorneys’ fees, costs, and expenses, (2) the costs and expenses associated with preparing and/or submitting claims on behalf of individual Claimants, (3) the fees, expenses, and costs of the Ombudsman (“Ombudsman Costs”), and (4) costs and expenses incurred by Class Counsel in the performance of their duties under this Agreement.
- S. “Individual Counsel” are counsel, other than Class Counsel, retained by Claimants to represent them in the Non-Judicial Claims Process.

- T. “Late-Filing Request” is a written request to the Court, the *Pigford* Facilitator, the *Pigford* Monitor, the *Pigford* Adjudicator, or the *Pigford* Arbitrator seeking to participate in the claims resolution processes in the *Pigford* Consent Decree.
- U. “Multiple Claimants” are partners, shareholders, or family members operating a single farming operation.
- V. “Ombudsman Costs” are fees, costs, and expenses paid to the Ombudsman out of the 2008 Funds, subject to approval by the Court, for performance of his or her duties under this Agreement.
- W. “Parties” means the Signatory Plaintiffs and the Secretary.
- X. “*Pigford*” means *Pigford v. Glickman*, Nos. 97-1978, 98-1693 (D.D.C.).
- Y. “*Pigford* Consent Decree” is the April 14, 1999 Consent Decree entered in *Pigford*.
- Z. “*Pigford* Opt-Out List” is a list maintained or prepared by the *Pigford* Facilitator that identifies those individuals who the *Pigford* Facilitator has determined opted out of the *Pigford* Consent Decree pursuant to Section 2(b) of the Decree.
- AA. “*Pigford* Participants List” is a list maintained or prepared by the *Pigford* Facilitator that identifies those individuals who the *Pigford* Facilitator has determined (1) submitted a claim under the *Pigford* Consent Decree on or before October 12, 1999, or (2) submitted a Late-Filing Request under 5(g) of the *Pigford* Consent Decree after October 12, 1999, which was determined by the *Pigford* Arbitrator to satisfy the “extraordinary circumstances” requirement.
- BB. “*Pigford* Timely 5(g) List” is a list maintained or prepared by the *Pigford* Facilitator that identifies those individuals who the *Pigford* Facilitator has determined submitted Late-Filing Requests under Section 5(g) of the *Pigford* Consent Decree after October 12, 1999, and on or before September 15, 2000.
- CC. “Preliminary Approval Date” is the date on which the Court enters a Preliminary Approval Order.
- DD. “Preliminary Final Accounting Date” is the date that the Secretary receives the Preliminary Final Accounting provided for in Section V.E.7.

- EE. The “Secretary” is, individually and collectively, Thomas Vilsack, in his official capacity as Secretary of USDA, his successors as Secretary of USDA, USDA, its agencies, instrumentalities, agents, officers, and employees.
- FF. The “Secretary’s Counsel” is the U.S. Department of Justice.
- GG. “Section [or §] 14012” means Public Law No. 110-234 and/or 110-246, § 14012 (2008).
- HH. “Signatory Plaintiffs” are the individuals who have filed claims in any of the complaints consolidated into the Consolidated Case as of February 18, 2010 with the exception of the complaints captioned *Beckley v. Vilsack*, No. 09-1019 (D.D.C.); *Edwards v. Vilsack*, No. 10-465 (D.D.C.); *Latham v. Vilsack*, No. 10-737 (D.D.C.); *Andrews v. Vilsack*, No. 10-801 (D.D.C.); and *Johnson v. Vilsack*, No. 10-839 (D.D.C.).
- II. “Track A Individual Counsel Fee” is a fee negotiated between a Claimant and his or her Individual Counsel, subject to a cap set by the Court, which the Claimant agrees to pay to Individual Counsel if he or she obtains a Track A Award and which Individual Counsel agrees to accept in full satisfaction for the fees, expenses, or costs associated with work performed on behalf of the Claimant in obtaining that Award.
- JJ. “Track A Neutral” is an adjudicator hired by Lead Class Counsel and approved by the Court, the Secretary, and the Attorney General to determine the merits of the claims submitted under Track A and conduct other duties as assigned under this Agreement. Prior to determining any claims, each Track A Neutral must take an oath administered by the Court that he or she will determine each claim faithfully, fairly, and to the best of his or her ability.
- KK. “Track A Award” is a combination of a Track A Liquidated Award, a Track A Tax Award, and a Track A Loan Award, if applicable. A “Provisional” Track A Award refers to the amount specified in Part V of a Track A Determination Form. A “Final” Track A Award refers to the amount specified in Part III of a Track A Determination Form. *Track A Awards are subject to reduction based on the amount of available funds and the number of meritorious claims.*
- LL. “Track A Liquidated Award” is \$50,000 per Class Member for credit claims, regardless of the number of the Class Member’s prevailing claims, and \$3,000 per Class Member for non-credit claims, regardless of the number of the Class Member’s prevailing claims. A “Provisional” Track A Liquidated Award refers to the amount specified in Part V of a Track A Determination Form. A “Final” Track A Liquidated Award refers to the amount specified in Part III of a Track A

Determination Form. *Track A Liquidated Awards are subject to reduction based on the amount of available funds and number of meritorious claims.*

MM. “Track A Loan Award” is the amount of a Class Member’s outstanding debt as of the date certain specified in Section V.B.6 incurred under the following FSA Farm Loan Program loans:

1. Those that form the basis of a Class Member’s prevailing credit claim (“Prevailing Loan”);
2. Those that: (a) were part of the same loan program as the Prevailing Loan; (b) originated at the same time or subsequent to the Prevailing Loan but prior to January 1, 1997; and (c) are not the subject of an adverse administrative decision that has become final or an adverse federal or state court judgment that has become final (collectively “Related Loan”); and
3. Those that have been consolidated with or restructured into a new loan that includes either a Prevailing Loan or a Related Loan.

A “Provisional” Track A Loan Award refers to the amount specified in Part V of a Track A Determination Form. A “Final” Track A Loan Award refers to the amount specified in Part III of a Track A Determination Form. *Track A Loan Awards are subject to reduction based on the amount of available funds and number of meritorious claims.*

NN. “Track A Tax Award” is an award made in recognition of a Class Member’s expected tax liability in an amount equal to 25% of the Class Member’s Track A Liquidated Award and 25% of the principal amount of the Class Member’s Track A Loan Award, if applicable. A “Provisional” Track A Tax Award refers to the amount specified in Part V of a Track A Determination Form. A “Final” Track A Tax Award refers to the amount specified in Part III of a Track A Determination Form. *Track A Tax Awards are subject to reduction based on the amount of available funds and number of meritorious claims.*

OO. “Track B Award” is the amount of actual damages, up to \$250,000, for which the Track B Neutral determines that a Class Member is eligible under the applicable standards for Track B. A “Provisional” Track B Award refers to the amount specified in Part V of a Track B Determination Form. A “Final” Track B Award refers to the amount specified in Part III of a Track B Determination Form. *Track B Awards are subject to reductions based on the amount of available funds and number of meritorious claims.*

- PP. “Track B Cap” is \$100,000,000.
- QQ. “Track B Fee” is a fee negotiated between a Claimant and his or her Counsel, whether Class Counsel or Individual Counsel, subject to a cap set by the Court, which the Claimant agrees to pay if he or she obtains a Track B Award and which Counsel agrees to accept in full satisfaction for the fees, expenses, or costs associated with work performed on behalf of the individual Claimant in obtaining that Award.
- RR. “Track B Neutral” is an adjudicator hired by Lead Class Counsel and approved by the Court, the Secretary, and the Attorney General to determine the merits of the claims submitted under Track B. Prior to determining any claims, each Track B Neutral must take an oath administered by the Court that he or she will determine each claim faithfully, fairly, and to the best of his or her ability.
- SS. The “United States” is, individually and collectively, the Executive Branch of the United States, its agencies, instrumentalities, agents, officers, and employees.

III. THE SETTLEMENT CLASS

- A. The Parties agree, for purposes of this Agreement only, to the following Federal Rule of Civil Procedure 23(b)(1), non-opt-out class:

All individuals: (1) who submitted Late-Filing Requests under Section 5(g) of the *Pigford v. Glickman* Consent Decree on or after October 13, 1999, and on or before June 18, 2008; but (2) who have not obtained a determination on the merits of their discrimination complaints, as defined by Section 1(h) of the Consent Decree.

Where used in this Agreement, the “Class” refers, individually and collectively, to the Class Representatives, the Class, and each Member of the Class as well as their heirs, administrators, personal representatives, successors, and/or assigns.

- B. In accordance with the terms of this Agreement, the Signatory Plaintiffs will move for certification of this Settlement Class, for appointment of some of the Signatory Plaintiffs as the Class Representatives, for appointment of Class Counsel, and for designation of specific counsel from among Class Counsel to serve as Lead Class Counsel and members of the Plaintiffs’ Steering Committee.

IV. DISMISSAL AND FUNDING

- A. The Class agrees to the dismissal of all actions pending in the Consolidated Case with prejudice under Federal Rules of Civil Procedure 41(a)(1) and 23(e). In

accordance with the terms of this Agreement, the Signatory Plaintiffs will move for dismissal, with prejudice, of all actions pending in the Consolidated Case, to be effective on the Final Approval Date. Notwithstanding such dismissal, the Court shall retain continuing jurisdiction to oversee and enforce this Agreement.

- B. Class Counsel shall, within seven (7) calendar days of the Preliminary Approval Date, notify the Secretary and the Court in writing of the identities of the Designated Account and Designated Bank.
- C. Within thirty (30) calendar days of the Preliminary Approval Date, Class Counsel shall seek approval from the Court for a disbursement of up to \$5,000,000 from the Designated Account for payment of Court-approved interim Implementation Costs provided for in this Agreement. Upon Court approval of this request and in accordance with the Court's Order, the Secretary shall, within twenty (20) days of such approval, provide the U.S. Department of the Treasury with all necessary forms and documentation to direct a payment for the benefit of the Class in accordance with and subject to the following conditions:
 - 1. The Secretary shall make this payment from the 2008 Funds;
 - 2. The payment shall be in an amount ordered by the Court, not to exceed \$5,000,000;
 - 3. The Secretary shall direct the deposit of these funds into the Designated Account. Class Counsel shall provide the Secretary in writing with the information necessary to direct the deposit;
 - 4. Class Counsel shall use these funds solely for Court-approved interim Implementation Costs provided for in this Agreement; and
 - 5. Class Counsel shall provide the Secretary and the Court with quarterly written reports related to the expenditure of the funds provided in this Subsection. The quarterly reports, which may be submitted on the Quarterly Disbursement Reporting Form (Ex. E), shall identify (a) to whom Class Counsel has paid the funds, (b) the amount of such payment, (c) when the funds were paid, and (d) for what purpose the payment has been made, with reference to this Agreement.
- D. If, prior to the Final Approval Date, Class Counsel determines that the amount provided in IV.C is insufficient to cover the Court-approved interim Implementation Costs, Class Counsel may submit additional written requests to the Court for up to \$5,000,000 to be used for interim Implementation Costs,

except that Class Counsel may not request more than \$10,000,000 in aggregate Implementation Costs prior to the Final Approval Date. Upon Court approval of any such request and in accordance with any related Court Order, the Secretary shall, within twenty (20) days of such approval, provide the U.S. Treasury with all necessary forms and documentation to direct a payment for the benefit of the Class in accordance with and subject to the conditions in Section IV.C.

- E. After the Final Approval Date, Class Counsel may submit additional written requests to the Court for additional Court-approved interim Implementation Costs and for Court-approved interim Common Benefit Fees, subject to the following conditions:
1. Class Counsel shall not make more than four requests per calendar year, shall not seek more than \$5,000,000 per request, and must submit, with each request, evidence that the Designated Account has been or will be depleted; and
 2. Class Counsel shall make no request that would cause the sum of interim Implementation Costs and interim Common Benefit Fees paid by the Secretary under this Agreement to exceed \$20,000,000.
- F. Upon Court approval of any request in Section IV.E and in accordance with any related Court Order, the Secretary shall, within twenty (20) days of such approval, provide the U.S. Department of the Treasury with all necessary forms and documentation to direct the payment of the requested funds, for the benefit of the Class, in accordance with and subject to the following conditions:
1. The Secretary shall make these payments from the 2008 Funds;
 2. The total of all interim Implementation Costs and interim Common Benefit Fees under Sections IV.C, IV.D, and IV.F shall not exceed \$20,000,000;
 3. The Secretary shall direct the deposit of these funds into the Designated Account. Class Counsel shall provide the Secretary in writing with the information necessary to direct the deposit;
 4. These funds shall be used solely for Court-approved interim Implementation Costs and Court-approved interim Common Benefit Fees provided for in this Agreement. Any Court-approved Common Benefit Fees may be paid only to those counsel who have incurred fees to date for

work performed on behalf of the Class as a whole, including negotiation of this Agreement; and

5. Class Counsel shall provide the Secretary and the Court with quarterly written reports related to the expenditure of the funds provided in this Subsection. The quarterly reports, which may be submitted on the Quarterly Disbursement Reporting Form (Ex. E), shall identify (a) to whom Class Counsel has paid the funds, (b) the amount of such payment, (c) when the funds were paid, and (d) for what purpose the payment has been made, with reference to this Agreement. For the expenditure of interim Common Benefit Fees, the report must also identify the specific work performed to merit the payment of interim fees.

G. At any point after Preliminary Approval of the Settlement Agreement, the Court may order payment of Ombudsman Costs, as defined in Section VI.A of this Agreement. Within twenty (20) days of any such Court Order, the Secretary shall provide the U.S. Department of the Treasury with all necessary forms and documentation to direct a payment to the Designated Account for the fees and expenses of the Ombudsman, subject to the following conditions:

1. Any payment to the Ombudsman made before the Preliminary Final Accounting Date shall be paid from the 2008 Funds;
2. Any payment to the Ombudsman shall be for fees and expenses incurred or expected to be incurred in the performance of the Ombudsman's duties under Section VI of this Agreement;
3. The Ombudsman shall provide Class Counsel, the Secretary, and the Court with quarterly written reports identifying his or her fees and expenses, as related to the expenditure of the funds provided in this Subsection.

H. Within thirty (30) days of the Preliminary Final Accounting Date or the Effective Date, whichever is later, Class Counsel shall seek approval from the Court for a payment for the benefit of the Class equal to the lesser of (1) the 2010 Funds plus any remaining 2008 Funds, or (2) the sum, as set forth in the Preliminary Final Accounting in Section V.E.7, of (a) all Final Track A Liquidated Awards, Final Track A Loan Awards, and Final Track A Tax Awards, (b) all Final Track B Awards, (c) the incurred and estimated final Implementation Costs up to the Cost Cap as approved by the Court, (d) the incurred and estimated final Ombudsman Costs approved by the Court, and (e) the Fee Award approved by the Court minus the sum of Track B Fees incurred by Track B Class Members, minus any amounts the Secretary has already paid under Sections IV.C, IV.D, IV.F, and IV.G. Within twenty (20) days of Court approval of this request and in accordance with

the Court's Order, the Secretary shall provide the U.S. Department of the Treasury with all necessary forms and documentation to direct a payment in the amount the Court approves in accordance with and subject to the following conditions:

1. The Secretary shall direct the deposit of these funds into the Designated Account. Class Counsel shall provide the Secretary in writing with the information necessary to direct the deposit;
 2. These funds shall be used solely to pay (a) Final Track A Liquidated Awards, Final Track A Loan Awards, Final Track A Tax Awards, and Final Track B Awards to or on behalf of Class Members pursuant to the Non-Judicial Claims Process (Section V); (b) Common Benefit Fees approved by the Court; (c) Track B Fees; (d) reasonable and compensable Court-approved Implementation Costs; (e) reasonable and compensable Court-approved Ombudsman Costs; and (f) if applicable, any leftover funds to Cy Pres Beneficiaries, as specified in Section V.E.13 and approved by the Court; and
 3. Class Counsel shall provide the Secretary and the Court with written quarterly reports related to the expenditure of the funds provided in this Subsection. The quarterly reports, which may be submitted on the Quarterly Disbursement Reporting Form (Ex. E), shall identify (a) to whom Class Counsel has paid the funds, (b) the amount of such payment, (c) when the funds were paid, and (d) for what purpose the payment has been made, with reference to this Agreement. If Class Counsel has expended funds to pay Final Track A Liquidated Awards, Final Track A Loan Awards, Final Track A Tax Awards, and Final Track B Awards during the reporting period, Class Counsel shall also identify the number of such awards.
- I. Any funds other than 2008 Funds or 2010 Funds are outside the scope of this Agreement and the scope of the payment obligations of the Secretary and/or the United States under this Agreement and shall not be paid by the Secretary and/or the United States to the Class or Class Counsel under this Agreement.
 - J. Once the funds paid by the Secretary under this Agreement are deposited into the Designated Account, the Secretary has no liability whatsoever for the protection or safeguard of the deposited funds, regardless of bank failure, fraudulent transfers, or any other fraud or misuse of the funds.

- K. Nothing in this Agreement shall limit in any way the duties owed by Class Counsel to the Class under any applicable law, including any law governing counsel's management or handling of client funds.
- L. The funds that the Secretary pays pursuant to this Agreement are inclusive of damages and other monetary relief, attorneys' fees, expenses, costs, tax payments, payments in recognition of outstanding FSA Farm Loan Program debt, interest, and costs, and are the only funds that will be paid by the Secretary under this Agreement.
- M. Other than the funds specified in this Agreement, no other funds, including those from the Judgment Fund, 31 U.S.C. § 1304, the Commodity Credit Corporation, or from the Salaries and Expenses Account of USDA or any of its agencies shall be available for any purpose related to this Agreement, except by the Secretary for purposes of satisfying his duties under this Agreement.
- N. The binding effect and implementation of this Agreement is not contingent in any way upon the provision by Congress of any funds. The Class Representatives and the Class acknowledge that Congress is not obligated to appropriate any additional funds.
- O. The limitations on funding in this Agreement apply notwithstanding a determination by the Class Representatives, the Class, or Class Counsel that the funds made available under this Agreement are inadequate to pay claims submitted pursuant to the Non-Judicial Claims Process (Section V), attorneys' fees, expenses, and costs incurred under this Agreement, and/or Implementation Costs incurred under this Agreement.
- P. The Secretary and/or the United States shall not be liable to pay the Claims Administrator, the Pigford Facilitator, the Track A Neutral, the Track B Neutral, the Ombudsman, or any of their employees and agents. Subject to the Cost Cap, all fees, costs, and expenses incurred by the Claims Administrator, the Neutrals and their employees and agents shall be paid from the Designated Account as Implementation Costs. All fees, costs, and expenses incurred by the Ombudsman shall be paid from the Designated Account as Ombudsman Costs.
- Q. The Class Representatives, the Class, and/or Class Counsel may not terminate this Agreement because the Class Representatives, the Class, and/or Class Counsel assert that the Cost Cap is inadequate, and neither the Class Representatives nor Class Counsel shall be permitted to amend, alter, or reduce their obligations and duties under this Agreement in any manner. The Class Representatives and Class Counsel agree to continue with implementation of this Agreement notwithstanding the amount of Implementation Costs incurred under this

Agreement. The Secretary shall have no responsibility for Implementation Costs above the Cost Cap.

- R. Nothing in this Agreement shall preclude the Class, the Secretary and/or the United States from seeking additional funds from Congress for purposes of this Agreement. The Secretary and/or the United States, however, are not obligated to seek any additional funds, support any legislation, or refrain from opposing any additional funds or legislation. The binding effect and implementation of this Agreement are not contingent in any way upon the interactions between the Secretary and/or the United States and Congress.
- S. The Class Members will have sole responsibility to comply with their own applicable federal, state, and local tax requirements that arise as a result of this Agreement. Class Counsel will have sole responsibility to comply with their own applicable federal, state, and local tax requirements that arise as a result of this Agreement.

V. NON-JUDICIAL CLAIMS PROCESS

To obtain relief under this Settlement, Claimants must be Class Members and have their claims determined to be meritorious under one of two tracks – (1) Track A, which tests claims against a lower “substantial evidence” standard of proof, and awards successful claimants with a liquidated payment of up to \$50,000 for credit claims and/or up to \$3,000 for non-credit claims, a payment in recognition of outstanding debt owed to USDA/FSA, and a payment to offset tax liability from these awards; or (2) Track B, which tests claims against a higher “preponderance of the evidence” standard of proof, and provides awards to successful Claimants in the amount of their actual damages up to \$250,000, subject to the Track B Cap.

Each of these awards is subject to reduction based on the amount of available funds and the number of meritorious claims.

A. GENERAL REQUIREMENTS

- 1. To obtain a Claim Determination under this Agreement, a Claimant must be a Class Member and must submit a Complete Claim Package to the Claims Administrator by the Claim Deadline (180 days from the Final Approval Date). A “Complete Claim Package” must include:
 - a. A completed Claim Form (Ex. C), including the Claimant’s declaration, under penalty of perjury, that each of the statements provided by the Claimant is true and correct;

- b. For a Track A Claimant who seeks a Track A Loan Award, a statement that the Claimant seeks such an award and an executed Authorization to Disclose Debt Information Form (Ex. D);
- c. A declaration by the Claimant's Counsel, whether Class Counsel or Individual Counsel, made under penalty of perjury, that to the best of the attorney's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the claim is supported by existing law and the factual contentions have evidentiary support. For Claimants proceeding without counsel, the declaration on the Claim Form (Ex. C) is sufficient to satisfy this requirement;
- d. For a Claimant who is deceased, (a) a death certificate and (b) either (i) proof of legal representation, or (ii) a sworn statement describing why the submitting individual believes he or she will be appointed the legal representative of the Claimant's estate; and
- e. For a Claimant unable to submit a claim on his or her own behalf due to a physical or mental limitation, (a) proof of legal representation or (b) a sworn statement describing why the Claimant is unable to submit a claim on his or her own behalf and why the submitting individual asserts a right to do so on the Claimant's behalf.

The submission date of the Claim Package shall be the date of postmark if the Claim Package is sent via first-class mail, the date of deposit if sent by courier or overnight delivery, and the date of transmission if sent electronically.

- 2. A Claimant may be represented in this Claims Process by Class Counsel or Individual Counsel, or the Claimant may submit a claim without counsel. A Track A Claimant shall be represented at no additional charge by Class Counsel, unless that Claimant elects to be represented by Individual Counsel or elects to submit a claim without counsel. For Track A, if a Claimant elects to be represented by Individual Counsel, the Claimant must make separate arrangements to pay Individual Counsel, subject to the terms of this Agreement and the cap on Track A Individual Counsel Fees set by the Court. For Track B, if a Claimant elects to be represented by either Class Counsel or Individual Counsel, the Claimant must make separate arrangements to pay Class Counsel or Individual Counsel, subject to the terms of this Agreement and the cap on Track B Fees set by the Court. An attorney who serves as Individual Counsel

consents to the terms of this Agreement and agrees to abide by all orders of the Court in the Consolidated Case.

3. In the case of a Claimant who is deceased, the legal representative of the Claimant's estate may submit a claim on the Claimant's behalf. If there is no legal representative, any other individual who asserts a right to be the legal representative of the Claimant's estate may submit a claim on the Claimant's behalf. If there is no legal representative and more than one individual submits a claim on behalf of the Claimant, a Track A Neutral or Track B Neutral designated by the Claims Administrator shall decide which of the individuals is entitled to pursue the claim on the Claimant's behalf. If the Claimant prevails, and a legal representative for the Claimant's estate has not yet been appointed, the Claimant's award shall be held for up to one year in a separate account established by Class Counsel for the benefit of the estate until a legal representative to whom the funds may be disbursed is appointed. The Claims Administrator may extend this period upon receipt of proof that a probate petition is pending in the appropriate Court.
4. In the case of a Claimant who is unable to submit a claim on his or her own behalf due to a physical or mental limitation, the Claimant's legal representative may submit a claim on the Claimant's behalf. If there is no legal representative, any other individual who asserts a right to be the legal representative may submit a claim on the Claimant's behalf. If there is no legal representative and more than one individual submits a claim on behalf of an individual who is unable to submit a claim on his or her own behalf, a Track A Neutral or Track B Neutral designated by the Claims Administrator shall decide which of the individuals is entitled to pursue the claim on the Claimant's behalf. If the Claimant prevails, and a legal representative for the Claimant has not yet been appointed, the Claimant's award shall be held for up to one year in a separate account established by Class Counsel for the benefit of the Claimant until a legal representative for the Claimant to whom the funds may be disbursed is appointed. The Claims Administrator may extend this period upon receipt of proof that a petition for appointment of a legal representative for the Claimant is pending in the appropriate Court.
5. A Claimant who has an interest in more than one farming operation may file a claim on behalf of more than one farming operation. However, in such a situation, the Claims Administrator will not distribute to the Claimant more than the maximum liquidated damages recovery established by Section II.LL above regardless of the number of farming operations in which discrimination is found to have occurred. To the

extent that Multiple Claimants operating a single farming operation file separate claims, the Neutral shall consider all such claims together and shall make no more than one Track A Liquidated Award or Track B Award per farming operation. Any award made for a farming operation for which Multiple Claimants have filed multiple claims shall be distributed *pro rata* to each of the claimants the Neutral determines to be legitimate, provided that the Neutral may allocate such an award on a basis other than *pro rata* if one or more of such multiple claimants presents compelling evidence to justify an alternative allocation. Loan Awards may be made to Multiple Claimants for a single farming operation if the Neutral determines that such claimants have loans that are eligible for such an award.

6. A Claimant's election of Track A is irrevocable and exclusive. A Claimant's election of Track B is irrevocable and exclusive, except as provided in Section V.B.7.
7. Claimants whose claims arise under non-credit benefit programs are required to proceed under Track A.
8. The Class Membership Determinations, Claim Determinations, and any other determinations made under this Section are final and are not reviewable by the Claims Administrator, the Track A Neutral, the Track B Neutral, the Court, or any other party or body, judicial or otherwise. The Class Representatives and the Class agree to forever and finally waive any right to seek review of the Class Membership Determinations, the Claim Determinations, and any other determinations made under this Section.
9. Except as specified in Section V.B.6, the Secretary and/or the United States shall have no role in the non-judicial claims process provided in this Section.
10. The Secretary and/or the United States shall not be liable to pay any Claim Determinations, any Track A Liquidated Awards, Track A Loan Awards, Track A Tax Awards, Track B Awards, or discharge or otherwise satisfy any debt except as provided in Section V.A.12. All Track A Liquidated Awards, Track A Loan Awards, Track A Tax Awards, and Track B Awards shall be paid from the Designated Account.
11. The Secretary and/or the United States shall have no obligation to provide any information, documents, or discovery to the Class, Class Members, or Class Counsel, except as provided in Section V.B.6.

12. The Claims Administrator will make Track A Loan Awards and Track A Tax Awards directly to FSA (for Track A Loan Awards) and the Internal Revenue Service (for Track A Tax Awards) on each prevailing Class Member's behalf and not to the prevailing Class Member. If a Track A Loan Award provided by the Claims Administrator to FSA to reduce or discharge outstanding Farm Loan Program loans held by a prevailing Class Member does not discharge or otherwise satisfy the Class Member's debt in full, interest will continue to accrue unless and until the Class Member repays the loan in full. Subject to the limitations in Section VII, FSA will maintain all available options for servicing and recovering all Farm Loan Program debt from the Class Member, including, but not limited to, acceleration and foreclosure in accordance with the governing regulations.
13. The Claims Administrator shall send all correspondence and all payments to Claimants, Class Members, and/or their Counsel by first-class mail, postage prepaid.
14. Class Counsel, the Claims Administrator, the Ombudsman, and the Neutrals shall take reasonable steps to protect private personal and financial information submitted to them under this Agreement.
15. The Claims Administrator and the Track A and B Neutrals shall report periodically to Lead Class Counsel and the Ombudsman any issues of concern that arise in the course of the execution of their duties.

B. REVIEW OF THE CLAIM SUBMISSION AND THE CLASS MEMBERSHIP DETERMINATION

1. Upon receipt of a claim, the Claims Administrator shall first assign the claim a unique Claim Identification Number and then determine whether the Claimant's submission satisfies the Claim Deadline and whether the submission is a Complete Claim Package. The Claims Administrator shall make every reasonable effort to complete this determination within ten (10) days of receipt of the claim.
2. For each Claimant who has submitted an incomplete Claim Package or for each Claim Package that the Claims Administrator is unable to determine whether it is complete or timely, the Claims Administrator shall send to the Claimant and his or her Counsel a completed Your Claim Package is Not Complete Form (Ex. F). A Claimant shall have thirty (30) calendar days from the date of postmark of such a Form to submit, either by first-class mail, postage prepaid, or electronically, a Complete Claim Package.

There shall be no exceptions to or extensions of the time frames set forth in this paragraph, and the failure of a Claimant to provide any requested materials within the specified time frames will result in that Claimant obtaining a final and unreviewable adverse determination.

3. For each Claimant whose claim is untimely submitted, the Claims Administrator shall return the Claim Package to the Claimant and his or her Counsel with a completed You Have Not Submitted Your Claim On Time Form (Ex. G). This determination is final and not reviewable by the Claims Administrator, the Track A Neutral, the Track B Neutral, the Court, or any other party or body, judicial or otherwise.
4. For each Claimant determined by the Claims Administrator to have submitted a timely and Complete Claim Package, the Claims Administrator shall determine whether the Claimant is a Class Member. To make this determination, the Claims Administrator shall determine whether the Class Member has established, by a preponderance of the evidence, that:
 - a. The Claimant submitted a Late-Filing Request under Section 5(g) of the *Pigford* Consent Decree on or after October 13, 1999, and on or before June 18, 2008. For purposes of this determination, the Claims Administrator shall review the *Pigford* Timely 5(g) List. If a Claimant appears on the *Pigford* Timely 5(g) List, the Claimant will be deemed to have submitted a Late-Filing Request. If the Claimant is not on the *Pigford* Timely 5(g) List, the Claimant must establish with independent documentary evidence that he or she submitted a Late-Filing Request. A tracking number given to a Claimant in *Pigford* or a list maintained by the *Pigford* Facilitator other than the Timely 5(g) List are insufficient, on their own, to constitute independent documentary evidence for this purpose. The Claims Administrator shall make this determination by examining the documents, if any, provided by Class Counsel and the documents submitted by the Claimant as part of his or her claim; and
 - b. The Claimant has not obtained a determination on the merits of his or her discrimination complaint, as defined by Section 1(h) of the *Pigford* Consent Decree. For purposes of this determination, the Claims Administrator shall review the *Pigford* Participants List and the *Pigford* Opt-Out List. If a Claimant (a) appears on either of these Lists, or (b) has obtained a judgment from a judicial or administrative forum on the basis of the race discrimination claim

that provides the basis of the Claimant's discrimination complaint, that Claimant will be deemed to have obtained a determination on the merits of his or her discrimination claim. If the Claims Administrator determines, at any time prior to paying a Claimant under this Agreement, that the Claimant already has obtained a determination on the merits of his or her discrimination complaint, the Claims Administrator shall not make any payments to the Claimant.

5. For each Claimant who the Claims Administrator determines is not a Class Member, the Claims Administrator shall complete a You Are Not a Class Member Form (Ex. H) and send the Form to the Claimant and his or her counsel. This determination is final and not reviewable by the Claims Administrator, the Track A Neutral, the Track B Neutral, the Court, or any other party or body, judicial or otherwise.
6. For each Claimant who the Claims Administrator determines to be a Class Member and who elects Track A, the Claims Administrator shall complete Parts I and VI of a Track A Claim Determination Form (Ex. A) and send the Form and the Class Member's claim electronically to the Track A Neutral. If the Class Member seeks a Track A Loan Award and has submitted an Authorization to Disclose Debt Information Form (Ex. D), the Claims Administrator shall request that FSA confirm whether the Class Member has an outstanding Farm Loan Program loan(s) and provide the applicable loan(s) balance(s) and loan payoff amount(s). In order to make this request, the Claims Administrator must complete the Authorization to Disclose Debt Information Form received from the Class Member and send it, along with the Class Member's completed Claim Form, to FSA. Within sixty (60) calendar days of receipt of the request or as soon thereafter as is practicable, FSA will return the Authorization to Disclose Debt Information Form to the Claims Administrator with the requested information. The payoff amount will be as of a date certain with a daily interest accrual note. Interest will continue to accrue until the account is paid in full. The Claims Administrator shall submit the completed Authorization to Disclose Debt Information Form to the Track A Neutral reviewing the Class Member's Claim, the Class Member, and the Class Member's Counsel.
7. Within ten (10) days after the Claim Deadline, for each Claimant who the Claims Administrator determines to be a Class Member and who elects Track B, the Claims Administrator shall send the Class Member a notice in writing informing the Class Member of the total number of Class Members who submitted Complete Claims Packages under Track B by the

Claim Deadline. Such notification shall also remind each Class Member of: (a) the definition of Track B Awards; (b) the Track B Cap; and (c) the possibility that a Class Member's Track B Award will be reduced if the total of all Track B Awards exceeds the Track B Cap. Such notification shall inform the Class Member that the Class Member may change his or her election to Track A by so notifying the Claims Administrator in writing within thirty (30) days of the postmark of the notification. If a Track B Class Member does not so notify the Claims Administrator, his or her claim shall be treated as a Track B claim.

8. For each Claimant who the Claims Administrator determines to be a Class Member and who elects Track B under Section V.B.7, the Claims Administrator shall complete Parts I and VI of a Track B Claim Determination Form (Ex. B) and send the Form and the Class Member's claim electronically to the Track B Neutral.
9. For each Claimant who the Claims Administrator determines to be a Class Member and who elects Track A under Section V.B.7, the Claims Administrator shall follow the procedure in Section V.B.6.
10. The Claims Administrator shall make every reasonable effort to complete the Class Membership Determination and complete his or her other duties under this Section within sixty (60) days of receipt of a Complete Claim Package.

C. TRACK A

1. For each Class Member asserting a claim under Track A, the Track A Neutral shall determine whether the Class Member has established, by substantial evidence, each of the following elements:
 - a. The Class Member is an African-American who farmed, or attempted to farm, between January 1, 1981, and December 31, 1996;
 - b. The Class Member owned or leased, or attempted to own or lease, farm land;
 - c. The Class Member applied, or constructively applied, for a specific farm credit transaction(s) or non-credit benefit(s) at a USDA office between January 1, 1981, and December 31, 1996;

- d. For claimants who applied -- *i.e.*, not constructively applied -- for a specific farm credit transaction(s) or non-credit benefit(s), the farm loan(s) or non-credit benefit(s) for which the Class Member applied was denied, provided late, approved for a lesser amount than requested, encumbered by a restrictive condition(s), or USDA failed to provide an appropriate loan service(s);
- e. USDA's treatment of the loan or non-credit benefit application(s) or constructive application(s) led to economic damage to the Class Member; and
- f. The Class Member complained of discrimination to an official of the United States Government on or before July 1, 1997, regarding USDA's treatment of him or her in response to the application(s).

"Substantial evidence" is such evidence that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence in the record that fairly detracts from that conclusion. Substantial evidence is a lower standard of proof than a preponderance of the evidence.

- 2. For each Class Member who asserts that he or she "constructively applied" for a loan or non-credit benefit in order to satisfy Section V.C.1.c, the Track A Neutral must make an additional determination that the Class Member has established, by substantial evidence, that:
 - a. The Class Member made a *bona fide* effort to apply for a loan or non-credit benefit. Such *bona fide* effort may be established by evidence of:
 - (1) the year in which the Class Member attempted to apply and the general time period within that year (*e.g.*, late fall, early spring, sometime in January, February, or March);
 - (2) the type and amount of loan or non-credit benefit for which the Class Member attempted to apply;
 - (3) how the Class Member planned to use the funds (*i.e.*, identification of crops, equipment, acreage, etc.); and

- (4) how the Class Member's plans for a farm operation were consistent with farming operations in that county/area in that year; and
 - b. USDA actively discouraged the application. Active discouragement may be established by evidence of:
 - (1) statements by a USDA official that, at the time the Class Member wanted to apply, there were no funds available and therefore no application would be provided;
 - (2) statements by a USDA official that, at the time the Class Member wanted to apply, there were no application forms available; or
 - (3) statements by a USDA official that, at the time the Class Member wanted to apply, USDA was not accepting or processing applications.
3. The Track A Neutral's determination shall be based solely on the materials submitted by the Class Member and, if applicable, the information provided by FSA in response to a completed Authorization to Disclose Debt Information Form.
4. If, in the Track A Neutral's judgment, additional documentation and evidence would be necessary or helpful in deciding the merits of a particular claim, or if the adjudicator suspects fraud regarding a particular claim, the Track A Neutral may require that the Class Member provide additional documentation and evidence. A Class Member's inability to provide the requested additional documentation or evidence shall not require a rejection of that Class Member's claim.
5. If the Track A Neutral determines that the Class Member has satisfied the elements listed above in Sections V.C.1 and V.C.2 for a credit or non-credit claim, the Neutral shall complete Part V on the Class Member's Track A Claim Determination Form (Ex. A). If the Track A Neutral determines that the Class Member has not satisfied the elements listed above, the Neutral shall complete Part IV of the Track A Claim Determination Form. The Neutral shall make every reasonable effort to complete this determination and send the Track A Claim Determination Form electronically to the Claims Administrator within thirty (30) calendar days of receipt of the claim or within ten (10) calendar days of

receipt of the Authorization to Disclose Debt Information Form, whichever is later.

D. TRACK B

1. For each Class Member asserting a credit claim under Track B, the Track B Neutral shall determine whether the Class Member has established, by a preponderance of the evidence and through independent documentary evidence admissible under the Federal Rules of Evidence, each of the following elements:
 - a. The Class Member is an African-American who farmed, or attempted to farm, between January 1, 1981, and December 31, 1996;
 - b. The Class Member owned or leased, or attempted to own or lease, farm land;
 - c. The Class Member applied for a specific farm credit transaction(s) at a USDA office between January 1, 1981, and December 31, 1996. Constructive application is insufficient;
 - d. The farm loan(s) for which the Class Member applied was denied, provided late, approved for a lesser amount than requested, encumbered by a restrictive condition(s), or USDA failed to provide an appropriate loan service(s);
 - e. The treatment of the Class Member's loan application(s) by USDA was less favorable than that accorded a specifically identified, similarly situated white farmer(s);
 - f. USDA's treatment of the loan application(s) led to economic damage to the Class Member; and
 - g. The Class Member complained of discrimination to an official of the United States Government on or before July 1, 1997, regarding USDA's treatment of him or her in response to the application(s).

A "preponderance of the evidence" is such relevant evidence as is necessary to prove something is more likely true than not true.

2. Notwithstanding the requirement that each element in Track B be established by a preponderance of the evidence and with independent documentary evidence admissible under the Federal Rules of Evidence,
 - a. Sections V.D.1.e and V.D.1.g may be established by a preponderance of the evidence and with a sworn statement based on personal knowledge by an individual who is not a member of the Class Member's family;
 - b. The Class Member's loan application and supporting documents forming the basis of the Class Member's claim are deemed admissible under the Federal Rules of Evidence upon a sworn statement by the Class Member that the loan application and supporting documents were submitted to FSA contemporaneously to the date of the complete application. FSA documents that were provided to the Class Member in response to the Class Member's loan application are also deemed admissible under the Federal Rules of Evidence upon a sworn statement by the Class Member that the Class Member received the FSA documents in response to the Class Member's loan application contemporaneously to the date of the response; and
 - c. Nothing in this Section precludes a Class Member from submitting expert testimony to explain the independent documentary evidence submitted by the Class Member with respect to Section V.D.1.f.
3. Once the Class Member has submitted independent documentary evidence admissible under the Federal Rules of Evidence or evidence as provided for above in Section V.D.2 on each element, the Track B Neutral may consider the materials submitted by the Class Member and any other information or material deemed appropriate for consideration by the Track B Neutral.
4. If, in the Track B Neutral's judgment, additional documentation and evidence would be necessary or helpful in deciding the merits of a particular claim, or if the adjudicator suspects fraud regarding a particular claim, the Track B Neutral may require that the Class Member provide additional documentation and evidence. A Class Member's inability to provide the requested additional documentation or evidence shall not require a rejection of that Class Member's claim.
5. If the Track B Neutral determines that the Class Member has satisfied the elements listed in Section V.D.1 above, the Neutral shall complete Part V

on the Class Member's Track B Claim Determination Form (Ex. B). If the Track B Neutral determines that the Class Member has not satisfied the elements listed above, the Neutral shall complete Part IV of the Track B Claim Determination Form. The Neutral shall make every reasonable effort to complete this determination and send the Track B Claim Determination Form electronically to the Claims Administrator within sixty (60) calendar days of receipt of the claim.

E. DISTRIBUTION OF CLAIM DETERMINATIONS AND SETTLEMENT FUNDS

1. Within thirty (30) days of the Claims Administrator's receipt of a Track A or Track B Claim Determination Form (Exs. A or B) for a denied claim, the Claims Administrator shall complete Parts I, II, and IV of the applicable Claim Determination Form and send the completed Claim Determination Form to the non-prevailing Class Member and his or her counsel, and to Lead Class Counsel.
2. Within thirty (30) days of the Claims Administrator's receipt of a Track A or Track B Claim Determination Form (Exs. A or B) for a prevailing claim, the Claims Administrator shall send a letter in the form of Exhibit J to the prevailing Class Member and his or her counsel, and to the Lead Class Counsel.
3. On a quarterly basis, the Claims Administrator shall provide to the Secretary and Lead Class Counsel a written report, which may be provided on the USDA Quarterly Payment Reporting Form (Ex. I), that includes:
(a) the name, address, and Social Security or Taxpayer Identification Number of each Class Member who has completed the claims process;
(b) the Class Member's FSA Account Number, if applicable, and (c) the status of the Class Member's claim.
4. Within thirty (30) calendar days of receipt of all Track A and Track B Claim Determination Forms (Exs. A and B), the Claims Administrator shall calculate: (a) the sum of all Provisional Track A Liquidated Awards, Provisional Track A Loan Awards, and Provisional Track A Tax Awards, as shown on Part V of the Track A Claim Determination Forms (Ex. A); (b) the sum of all Provisional Track B Awards, as shown on Part V of the Track B Claim Determination Forms (Ex. B); (c) the sum of all Final Track A Liquidated Awards, Final Track A Loan Awards, Final Track A Tax Awards, and Final Track B Awards, as calculated in Appendix 1; (d) the Implementation Costs incurred to date; (e) a good faith estimate of Implementation Costs necessary for the Claims Administrator to perform

its final duties under this Agreement; (f) the Ombudsman Costs incurred to date; (g) a good faith estimate of the Ombudsman Costs necessary for the Ombudsman to perform his or her final duties under this Agreement; (h) the amount of the Fee Award; (i) the sum of Track B Fees incurred by Track B Class Members, as calculated in Appendix 1.

5. CALCULATION OF AWARDS – Final Awards for each Claimant shall be calculated in accordance with the procedure delineated in Appendix 1. The following is a summary of Appendix 1: To calculate a Claimant's Final Award, each Claimant's Provisional Award may be subject to the following reductions:
 - a. The first reduction involves Track B Awards. If the total amount of Track B Awards exceeds the Track B Cap, all Track B Awards are reduced proportionately until their sum equals the Track B Cap. If the sum of all Track B Awards is under the Track B Cap, no reduction is applied.
 - b. The next reduction involves Class Members who submitted Late-Filing Requests in *Pigford* after September 15, 2000. If, after making the reduction in subsection (a), the amount of the funds available to pay the prevailing Class Members is *insufficient* to fully pay Track A Awards and Track B Awards, the awards for those claimants who submitted Late-Filing Requests in *Pigford* after September 15, 2000 will be reduced by up to 30%. If, after making the reduction in subsection (a), the amount of the funds available to pay the prevailing Class members is *sufficient* to fully pay Track A Awards and Track B Awards, no reduction is applied.
 - c. The final reduction involves all Class Members. If, after making the reductions in subsections (a) and (b), the amount of the funds available to pay the prevailing Class Members is still insufficient to fully pay Track A Awards and Track B Awards, all Class Members will have their awards proportionally reduced until the total of all awards equals the amount of funds available.
6. The Claims Administrator shall record the Final Awards and the Final Track B Fees in Parts II and III of the prevailing Class Members' Track A and Track B Claim Determination Forms (Exs. A and B). The Claims Administrator shall then remove Parts V and VI from the Determination Forms.

7. Within thirty (30) calendar days of receipt of all Track A and Track B Claim Determination Forms (Exs. A and B), the Claims Administrator shall prepare the Preliminary Final Accounting and submit it to Lead Class Counsel, the Secretary and the Court. The Preliminary Final Accounting shall identify: (1) the number and amount of all Final Track A Liquidated Awards, Final Track A Loan Awards, Final Track A Tax Awards, and Final Track B Awards (shown in Part III of the completed Track A and Track B Determination Forms); (2) the Implementation Costs incurred to date; (3) a good faith estimate of Implementation Costs necessary for the Claims Administrator to perform its final duties under this Agreement; (4) the Ombudsman Costs incurred to date; (5) a good faith estimate of Ombudsman Costs necessary for the Ombudsman to perform its final duties under this Agreement; (6) the amount of the Fee Award; (7) the sum of Track B Fees incurred by Track B Class Members, and (8) the amounts that the Secretary already has paid for interim Implementation Costs, interim Common Benefit Fees, and Ombudsman Costs, and the status of these funds.
8. Within thirty (30) calendar days of the date that the Secretary makes the payment specified in Section IV.H, the Claims Administrator shall:
 - a. Send to each prevailing Track A Class Member who retained Class Counsel or proceeded without counsel the Class Member's Track A Claim Determination Form (Ex. A) (without Parts V and VI) and a check payable to the Class Member in the amount of the Class Member's Final Track A Liquidated Award. The Claims Administrator shall also send to the Individual Counsel for each Track A Class Member who retained Individual Counsel the Class Member's Track A Claim Determination Form (Ex. A) (without Parts V and VI) and a check jointly payable to the Class Member and his or her Individual Counsel in the amount of the Final Track A Liquidated Award. The Claims Administrator shall also send to each prevailing Track B Class Member the Class Member's Track B Claim Determination Form (Ex. B) (without Parts V and VI) and a check payable to the Class Member in the amount of the Final Track B Award, minus the Class Member's Final Track B Fee.
 - b. Send, on behalf of each prevailing Track A Class Member: (a) to the Internal Revenue Service (IRS), the amount of the Class Member's Final Track A Tax Award; and (b) to FSA, the amount of the Class Member's Final Track A Loan Award. The Claims Administrator shall provide the Class Member's counsel, or the Class Member directly if the Class Member has no counsel, notice

that such payment(s) has been made. When transmitting payments for Track A Loan Awards to FSA, the Claims Administrator shall provide FSA with the name, address, and Social Security or Taxpayer Identification Number of the Class Member on whose behalf the payment is being made as well as the FSA Account Number of the loan to which the credit should be made.

- c. Send a check to the counsel for each prevailing Track B Class Member in the amount of that Class Member's Final Track B Fee.
9. Within thirty (30) calendar days of the date that the Secretary makes the payment specified in Section IV.H, the Claims Administrator shall cause to be paid from the Designated Account any outstanding Implementation Costs and Ombudsman Costs approved by the Court.
10. Within thirty (30) calendar days of the date that the Secretary makes the payment specified in Section IV.H and upon approval by the Court, the Claims Administrator shall pay Common Benefit Fees to Class Counsel equal to the Fee Award minus the sum of Track B Fees the Claims Administrator caused to be paid and minus any interim Common Benefit Fees already paid.
11. All checks distributed under this Section will be valid for 180 calendar days from the date of issue. The funds corresponding to any check that remains uncashed 181 calendar days from its date of issue shall remain in the Designated Account if Appendix 1 Section I.A.3 applies, shall be distributed *pro rata* to all prevailing Class Members if Appendix 1 Section I.A.4.a.(1) applies, or shall be distributed *pro rata* to the prevailing Class Members subject to the 30% reduction if Appendix 1 Section I.A.4.a.(2) applies. The Claims Administrator shall send a check made payable to the Class Member in the amount of the *pro rata* distribution, if applicable. These checks will be valid for 180 calendar days from the date of issue. Notwithstanding any other provision, no Class Member shall receive a total of more than his or her Provisional Track A Award or Track B Award.
12. If a Class Member who is deceased or was unable to submit a claim on his or her own behalf due to a physical or mental limitation prevails, and a legal representative has not yet been appointed for the Class Member, the funds payable to the Class Member shall be held for up to one year in a separate account established by Class Counsel for the benefit of the Class Member until a legal representative for the Class Member to whom the funds may be disbursed is appointed. The Claims Administrator may

extend this period upon receipt of proof that a petition for appointment of a legal representative for the Class Member is pending in the appropriate court.

13. In the event there is a balance remaining in the Designated Account after the last check has been cashed, the last check has been invalidated due to passage of time, and after the passage of time set forth in Section V.E.12, Class Counsel may then move the Court to designate "Cy Pres Beneficiaries." A "Cy Pres Beneficiary" must be a non-profit organization, other than a law firm, legal services entity, or educational institution that has provided agricultural, business assistance, or advocacy services, including assistance under *Pigford* and the Consolidated Case, to African American farmers between 1981 and the Execution Date. Each Cy Pres Beneficiary designated by the Court shall receive equal shares of the balance remaining in the Designated Account. The Claims Administrator shall send to each Cy Pres Beneficiary, via first class mail, postage prepaid, a check in the amount of the Beneficiary's share.
- F. Within 200 calendar days of making all payments set forth in this Section, the Claims Administrator shall prepare the "Final Accounting" and submit it to Lead Class Counsel, the Secretary, the Attorney General, and the Inspector General of the Department of Agriculture. The "Final Accounting" is an accounting prepared and signed by the Claims Administrator after all funds in the Designated Account have been disbursed. The Final Accounting shall identify: (1) the number and amount of all awards the Claims Administrator has caused to be paid to Class Members, to FSA, and to the Internal Revenue Service; (2) the Implementation Costs incurred under the Agreement; (3) the Ombudsman Costs incurred under the Agreement; (4) the amount the Claims Administrator caused to be paid in Common Benefit Fees; (5) the sum of Track B Fees the Claims Administrator caused to be paid; and (6) the amount of any leftover funds paid to Cy Pres Beneficiaries. The Final Accounting shall also identify the total amount of funds the Secretary has provided under this Agreement and the status of these funds.
- G. For purposes of conducting the performance audit prescribed in Section 201(h)(2) of Pub. L. 111-291 based on a statistical sampling of adjudicated claims relating to this Agreement, the Inspector General of the Department of Agriculture shall have access, upon request, to the Claims Administrator, the Track A Neutral, and the Track B Neutral, and to any information and records generated, used, or received by them, including but not limited to names and addresses.

VI. OMBUDSMAN

- A. The Court may appoint an independent Ombudsman, who shall report directly to the Court. The Ombudsman shall not be removed except for good cause and shall serve for as long as the Court has continuing jurisdiction to enforce the Settlement Agreement. The Ombudsman's fees, costs, and expenses ("Ombudsman Costs") shall be paid separately from Implementation Costs, from the Designated Account, upon Court approval.
- B. The Ombudsman shall:
 - 1. Be available to Class Members and the public through a toll-free telephone number in order to address concerns about implementation of this Settlement Agreement;
 - 2. Attempt to address any concerns or questions that any Class Member may have with respect to the implementation of this Settlement Agreement;
 - 3. Make periodic written reports (not less than every six months) to the Court, the Secretary, and Class Counsel on the good faith implementation of this Settlement Agreement;
 - 4. Have access to the records maintained by the Claims Administrator and the Neutrals involved in the claims process; and
 - 5. Make recommendations to the Court relating to the implementation of this Settlement Agreement.
- C. The Ombudsman shall not have the power to alter in any way substantive claims decisions made by the Neutrals or the Claims Administrator, nor shall the Ombudsman have the power to direct the Secretary and/or the United States to take any actions pursuant to this Settlement Agreement.

VII. ACCELERATIONS AND FORECLOSURES

- A. The Secretary agrees to refrain from accelerating or foreclosing any FSA Farm Loan Program loan held by a Class Member that originated between January 1, 1981, and December 31, 1996, until the quarterly report provided in Section V.E.3 reports that the Class Member is not eligible for a Track A Award or a Track B Award under Section V.C.5 or V.D.5.
- B. This Section does not:

1. Prohibit the Secretary from taking any action up to, but not including, acceleration or foreclosure that is necessary to protect his interests or service a loan under applicable law; or
2. Apply to a loan that is the subject of:
 - a. a judicial proceeding in which the United States is a party pending as of the Execution Date, or
 - b. a non-judicial foreclosure proceeding initiated under state law by or on behalf of the United States pending as of the Execution Date.

VIII. THE DUTIES OF CLASS COUNSEL

- A. Class Counsel, under the direction of Lead Class Counsel, shall:
 1. Perform all duties set forth in Federal Rule of Civil Procedure 23, those ordered by the Court, and those provided for in this Agreement;
 2. Provide representation without additional charge to Claimants who elect to submit claims under Track A;
 3. Obtain from the *Pigford* Facilitator (a) a current version of the *Pigford* Timely 5(g) List, (b) copies of all late-filing requests, (c) all other available information and correspondence regarding the late-filing status of Class Members, including any lists prepared by the *Pigford* Facilitator reflecting such status, (d) the *Pigford* Participants List, and (e) the *Pigford* Opt-Out List. Lead Class Counsel shall make these materials available to the Claims Administrator and the Track A and B Neutrals. This information shall be subject to any existing or future protective orders of the Court;
 4. Upon request by a Claimant or Individual Counsel representing a Claimant and after proof of compliance with any existing or future protective orders of the Court, provide to such Individual Counsel or Claimant verification of the Claimant's presence on the most recent *Pigford* Timely 5(g) List, *Pigford* Participants List, and *Pigford* Opt-Out List in Class Counsel's possession as well as copies of any of the communications or information in Class Counsel's possession that refer or relate to the Claimant on whose behalf the request is made;
 5. Provide the Court-approved Notice of this Agreement to Class Members;

6. Answer Class Member questions and respond to issues raised by the Ombudsman;
 7. Provide information to Class Members regarding the status of claims processing or the distribution of the funds provided under this Agreement; and
 8. Perform other such duties as may be incidental to proper coordination of this Agreement. Class Counsel shall have no obligation to perform any legal work for any Class Member related to the probate of a Class Member's estate, including the appointment of executors or legal representatives.
- B. Lead Class Counsel shall be responsible for general coordination and direction of the activities of all other Class Counsel. In performing this responsibility, Lead Class Counsel shall:
1. Determine and present the position of the Class on any matters arising during Court proceedings, including any proceedings relating to class certification and the approval and implementation of this Agreement;
 2. Coordinate and direct the efforts of all counsel acting on behalf of Class Members so as to assist Class Members with completing claims, provide accurate and timely information to Class Members, allocate work load to Class Counsel, and ensure that all Class Counsel assigned to represent Class Members are performing the work allocated to them. (In this regard, certain counsel who are signatories to this Settlement Agreement have agreed to share responsibility for work performed on behalf of Class Members in the percentages set forth in a Counsel Participation Agreement that will be provided to the Court with Class Counsel's fee petition.);
 3. Develop and enforce time reporting requirements for all other counsel acting on behalf of the Class and maintain a database of all reported time and expenses by counsel acting on behalf of the Class;
 4. Prepare and file a fee petition with the Court;
 5. Subject to approval by the Court, retain and dismiss the Claims Administrator and the Track A and B Neutrals, and ensure that these administrators do not incur costs that would cause the Implementation Costs to exceed the Cost Cap;

6. Retain and dismiss other vendors and providers as appropriate to assist in the implementation of the Agreement;
7. Direct and oversee the implementation and dissemination of notice of this Agreement to Class Members, and control or direct all communications with Class Members subject to approval and oversight by the Court if required by Federal Rule of Civil Procedure 23;
8. Develop the content of a Settlement Website (to be approved by the Court) and ensure its proper use and administration;
9. Plan, develop and conduct meetings or seminars designed to provide notice or assistance to Class Members regarding this Agreement;
10. Conduct additional or supplemental negotiations on behalf of the Class (in consultation with the Plaintiffs' Steering Committee), if necessary;
11. Delegate specific tasks to other counsel or committees of counsel in a manner to ensure the Agreement is effectuated and adequate notice and assistance with the submission of claims is provided to Class Members;
12. Work with the Secretary's Counsel as necessary for the conduct of this Agreement and its approval and implementation under Federal Rule of Civil Procedure 23;
13. Prepare and distribute periodic status reports and any accountings required by this Agreement to Class Members, the Court, or the Secretary as appropriate;
14. Maintain adequate time and disbursement records covering services as Lead Class Counsel and develop and enforce time reporting requirements for all other counsel acting on behalf of the Class;
15. Monitor and redirect the activities of Class Counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
16. Develop procedures and methods to provide Class Members with answers to frequently asked questions, to respond to issues raised by the Ombudsman, to assist with the claims process and the distribution of funds provided under this Agreement, and to wind up the administration of this Agreement when appropriate; and

17. Coordinate all communications among counsel working on behalf of individual Class Members (both Class Counsel and Individual Counsel), and all communications among Class Counsel acting on behalf of the Class
 18. Perform other such duties as may be incidental to proper coordination of this Agreement.
- C. Under the direction of Lead Class Counsel, the Plaintiffs' Steering Committee shall assist Lead Class Counsel in the performance of their duties, including:
1. Overseeing the quality and allocation of work among Class Counsel; and
 2. Performing other such duties as may be incidental to proper coordination of this Agreement.

IX. PROCEDURES GOVERNING APPROVAL OF THIS AGREEMENT

- A. Within twenty (20) business days of the Execution Date, the Signatory Plaintiffs shall submit this Agreement and its Exhibits and a Motion for Preliminary Approval to the Court. The Motion shall specifically request that the Court set a hearing on the Motion and be accompanied by a proposed Preliminary Approval Order, a proposed Settlement Notice, and a proposed Settlement Notice Plan. The Motion shall specifically request that the Court:
1. Certify, for settlement purposes only, a Federal Rule of Civil Procedure 23(b)(1) limited fund, non-opt-out class as defined by this Agreement;
 2. Appoint some of the Signatory Plaintiffs as Representatives for the Class pursuant to Federal Rule of Civil Procedure 23(a)(4);
 3. Appoint Class Counsel pursuant to Federal Rule of Civil Procedure 23(g) and order that Class Counsel perform the duties set forth in this Agreement. Signatory Plaintiffs, in their Motion, will propose specific individuals as Class Counsel;
 4. Designate Lead Class Counsel and the Plaintiffs' Steering Committee. Signatory Plaintiffs, in their Motion, will propose specific individuals for these designations;
 5. Preliminarily approve this Agreement;

6. Approve the Signatory Plaintiffs' selection of a Claims Administrator and Neutrals to perform the duties set forth in this Agreement within the cost controls set out in this Agreement. The Claims Administrator and the Neutrals will be designated by Signatory Plaintiffs' Counsel prior to the date of the requested hearing on the Preliminary Approval Motion;
 7. Approve the Signatory Plaintiffs' plan for dissemination of notice of this Agreement pursuant to Federal Rule of Civil Procedure 23(e)(1);
 8. For purposes of the notice to be provided to members of the Class, preliminarily determine the cap on Track A Individual Counsel Fees and the Track B Fees;
 9. For purposes of the notice to be provided to members of the Class, preliminarily approve a range of Common Benefit Fees between 4.1% and 7.4% of the Fee Base;
 10. Set a date and procedure by which objections from Class Members must be filed;
 11. Set a date for a hearing (the "Fairness Hearing") to consider whether the Agreement should be approved under Federal Rule of Civil Procedure 23(e);
 12. Enter a Federal Rule of Civil Procedure 26(c) protective order regarding the dissemination of the personal information contained in the *Pigford* Participants List, the *Pigford* Opt-Out List, the *Pigford* Timely 5(g) List, and the information and correspondence maintained by the *Pigford* Facilitator regarding the late-filing status of Claimants; and
 13. Authorize the Secretary to pay into the Designated Account the funds specified in Sections IV.C, IV.D, IV.F, and IV.G and order that the expenditure of such funds for purposes of this Agreement are a proper and consistent use of the funds, and that the Secretary shall not be liable in any other context or proceeding for these funds in the event that the Agreement becomes void or is voided.
- B. The Signatory Plaintiffs shall provide the Secretary with a draft of the Motion for Preliminary Approval and accompanying exhibits ten (10) business days prior to filing such papers. .

- C. No later than three (3) business days before the Fairness Hearing, Lead Class Counsel shall file with the Court a declaration confirming compliance with the Notice procedures approved by the Court.
- D. At the Fairness Hearing, the Parties will each request that the Court finally approve this Agreement pursuant to Federal Rule of Civil Procedure 23(e), order all existing retainer agreements for Section 14012 claims between prospective Class Members and their attorneys be modified to conform to the fee provisions of this Agreement; finally approve the Track A Fee Cap and Track B Fee Cap; and finally approve the distribution of any remaining funds pursuant to Section IV of this Agreement. The Parties agree to take all actions necessary to obtain approval of this Agreement.

X. ATTORNEYS' FEES, EXPENSES, AND COSTS

- A. As part of the Motion for Preliminary Approval of this Agreement, Signatory Plaintiffs will move the Court to preliminarily approve a cap on Track B Fees of 8% of a Track B Claimant's Final Award and a cap on Track A Individual Counsel Fees of 2% of a Track A Claimant's Final Award. As part of the Motion for Final Approval of this Agreement, Signatory Plaintiffs will move the Court to finally approve a cap on Track B Fees of 8% of a Track B Claimant's Final Award and a cap on Track A Individual Counsel Fees of 2% of a Track A Claimant's Final Award.
- B. As part of the Motion for Preliminary Approval, Signatory Plaintiffs will move the court to preliminarily approve the range of the Fee Award, for purposes of notice to the Class, between 4.1% and 7.4% of the Fee Base. No later than sixty (60) days after the Claim Deadline, Class Counsel will move the Court to set the amount of the Fee Award, except that the amount of the Fee Award shall be at least 4.1% and not more than 7.4% of the Fee Base. Lead Class Counsel shall have sole responsibility to prepare and file a petition with the Court seeking approval of, and setting the amount for, the Fee Award prior to receiving any fees under this Agreement.
- C. The Secretary reserves the right to respond to the fee petition in full and reserves the right to argue that the Fee Award should be limited to 4.1% of the Fee Base.
- D. The Court's determination of the Fee Award, the cap on Track A Individual Counsel Fees, and the cap on Track B Fees shall be conclusive, and neither the Class, nor Class Counsel, nor the Secretary shall appeal the decision.
- E. Class Counsel shall be paid Common Benefit Fees for their reasonable and compensable work on behalf of the Class. The total amount of Common Benefit

Fees shall equal the Fee Award minus the sum of Track B Fees the Claims Administrator caused to be paid. Class Counsel may accept interim payments of Common Benefit Fees, costs, and expenses from funds designated in Section IV.F. Certain Signatory Plaintiffs' Counsel have entered into a Counsel Participation Agreement which reflects their agreement regarding allocation of work and distribution of fees. This Counsel Participation Agreement will be submitted to the Court with Class Counsel's fee petition.

- F. Except for the payments to the Designated Account required under Section IV, the Secretary shall not be liable to pay Class Counsel, Signatory Plaintiffs' Counsel, or Individual Counsel any attorneys' fees, expenses, or costs.
- G. The Class Representatives, the Class, and/or Class Counsel may not terminate this Agreement because the Class Representatives, the Class, and/or Class Counsel assert that the amount of the Fee Award, the cap on Track A Individual Counsel Fees, or the cap on Track B Fees is inadequate.
- H. The Class Representatives, the Class, Class Counsel, and Individual Counsel release, acquit, and forever discharge any claim that they may have against the Secretary for attorneys' fees, expenses, or costs associated with their representation of the Signatory Plaintiffs, the Class, or any Member of the Class in the Consolidated Case or under this Agreement.
- I. If a person preparing a claim on a Claimant's behalf seeks the Claimant's award as a representative of the Claimant's estate, Class Counsel and Individual Counsel may, but are not required to, represent that Claimant in any probate proceedings. The fee for such probate work is outside the scope of this Agreement and is not subject to any limitation on attorneys' fees, expenses, or costs contained within this Agreement.

XI. CONDITIONS THAT RENDER AGREEMENT VOID OR VOIDABLE

- A. With the exception of Section XII,
 - 1. This Agreement shall be voidable by the Secretary if, at any time prior to the Effective Date or the Preliminary Final Accounting Date, whichever is later, Congress appropriates additional funds such that the total of all funds appropriated for Section 14012 claims exceeds \$1,250,000,000. The Secretary shall have sixty (60) calendar days from the date that this Agreement becomes voidable to notify Class Counsel that he is exercising the option to void this Agreement.

2. This Agreement shall be void if, at any time prior to the Effective Date or Preliminary Final Accounting Date, whichever is later, Congress appropriates additional funds, from the Judgment Fund, 31 U.S.C. § 1304, or any other source, or otherwise legislates to cause the 2010 Funds to be unlimited or without a maximum cap.
3. This Agreement shall be voidable by the Secretary if, prior to the Effective Date, Congress alters or amends Section 14012 to (a) expand or contract the cause of action set forth in Section 14012(b); (b) expand or contract the group of individuals eligible to file claims under Section 14012; and/or (c) impose new burdens or obligations under Section 14012 on the Secretary and/or the United States beyond those set forth in Section 14012 as of June 18, 2008. The Secretary shall have sixty (60) calendar days from the date that this Agreement becomes voidable to notify Class Counsel that it is exercising the option to void this Agreement.
4. This Agreement shall be voidable by the Secretary or the Class if the Court does not approve this Agreement in full, including the amount of the Fee Award, or if the Court's order granting final approval of this Agreement is reversed on appeal. The Secretary and/or the Class shall have sixty (60) calendar days from the date of such decision to notify the other party that it is exercising its option to void this Agreement.

XII. EFFECT OF AGREEMENT IF VOIDED

- A. Should this Agreement become void or be voided as set forth in Section XI,
 1. The Secretary will not object to reinstatement of the individual complaints dismissed under this Agreement.
 2. All negotiations in connection herewith, and all statements made by the Parties at or submitted to the Court during the Fairness Hearing shall be without prejudice to the Parties to this Agreement and shall not be deemed or construed to be an admission by a Party of any fact, matter, or proposition.
 3. The Secretary retains all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Consolidated Case, and nothing in this Agreement shall be raised or construed by any Signatory Plaintiff, Claimant, Class Representative, Class, or Class Counsel, to defeat or limit any defenses, arguments, or motions asserted by the Secretary. Neither this Agreement, nor the fact of its having been made, nor any exhibit or other document prepared in connection with this

Agreement, shall be admissible, entered into evidence, or used in any form or manner in discovery, over the objection of the Secretary in the Consolidated Case or in any other action or proceeding for any purpose whatsoever.

4. With the exception of the Release provided in Section XII.A.5 below, Signatory Plaintiffs, Claimants, and Class Members shall retain all rights, claims, causes of action, arguments, and motions as to all claims that have been or might later be asserted in the Consolidated Case, and nothing in this Agreement shall be raised by the Secretary or the Secretary's Counsel to defeat or limit any rights, claims, causes of action, arguments, or motions asserted by any Claimants and/or the Class. With the exception of the Release provided in Section XII.A.5 below, neither this Agreement, nor the fact of its having been made, nor any exhibit or other document prepared in connection with this Agreement, shall be admissible, entered into evidence, or used in any form or manner in discovery, over the objection of any Signatory Plaintiffs, Claimants, and/or the Class in the Consolidated Case or in any other action or proceeding for any purpose whatsoever.
5. The Signatory Plaintiffs hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE the United States and the Secretary from, and are hereby FOREVER BARRED and PRECLUDED from prosecuting, any and all claims, causes of action, or requests for any monetary relief, including, but not limited to, damages, tax payments, debt relief, costs, attorneys' fees, expenses, and/or interest that, whether presently known or unknown, related to the funds that the Secretary has paid pursuant to Sections IV.C, IV.D, IV.F, and/or IV.G. Neither the Signatory Plaintiffs nor Signatory Plaintiffs' Counsel shall be obligated to repay any interim Implementation Costs, interim Common Benefit Fees, and/or Ombudsman Costs paid by the Secretary under Sections IV.C, IV.D, IV.F, and/or IV.G, but Signatory Plaintiffs' Counsel who have received interim Common Benefit Fees under this Agreement agree not to seek from the United States, the Secretary, or any other source any additional fees for the work compensated by the interim fees.

XIII. RELEASES

- A. The Class Representatives, the Class, and its Members and their heirs, administrators, successors, and assigns (the "Class Releasers") hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE the United States and the Secretary (the "Government Releasees") from, and are hereby FOREVER BARRED and PRECLUDED from prosecuting, any and all claims, causes of

action, or requests for any monetary relief, including, but not limited to, damages, tax payments, debt relief, costs, attorneys' fees, expenses, and/or interest, whether presently known or unknown, that have been or could have been asserted in the Consolidated Case by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the Consolidated Case that the Class Releasors, or any of them, have against the Government Releasees, or any of them.

- B. The Class Releasors hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE any and all rights they have or may have under Public Law No. 110-234 and/or 110-246, § 14012 (2008) and each of its provisions.
- C. The Class Releasors hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE any and all rights they have or may have to request or obtain any information, documents, testimony, or discovery in the Consolidated Case or under § 14012 from the Government Releasees.

XIV. NO ADMISSION OF LIABILITY

- A. Neither this Agreement nor any order approving it is or shall be construed as an admission by the Secretary and/or the United States of the truth of any allegation or the validity of any claim asserted in the Consolidated Case, or of the liability of the Secretary and/or the United States, 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 Secretary and/or the United States, nor shall this Agreement 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 the subject of any discovery or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Secretary and/or the United States, nor as an admission by any Party to this Agreement that the consideration to be given hereunder represents the relief which could have been recovered after trial.
- B. The Secretary and the United States deny liability and damages as to each of the claims and requests for damages that were or could have been raised in the Consolidated Case, and this Agreement does not constitute, and may not be construed as, a determination or an admission of a violation of any law, rule, regulation, policy, or contract by the Secretary and/or the United States, the truth of any allegation made in the Consolidated Case, or the validity of any claim asserted in the Consolidated Case. This Agreement does not constitute, and may not be construed as, a determination or an admission that the Secretary and/or the United States is liable in this matter, that the Class or any Member is a prevailing

party, that the Class or any Member was substantially justified in any claim or position, or that any claim, defense, or position of the United States was substantially unjustified.

- C. Neither the determination to pay money nor the payment of money under the Non-Judicial Claims Process (Section V) shall be deemed to be a finding of fact, conclusion of law, or an admission of liability or damages by the Secretary and/or the United States, and any such determination to pay money or the payment of money under the Non-Judicial Claims Process (Section V) shall not be admissible in any civil, criminal, or administrative action or proceeding, nor shall it be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Secretary and/or the United States, nor as an admission by any Party to this Agreement that the consideration to be given hereunder represents the relief which could have been recovered after trial.
- D. Nothing herein shall be construed to preclude the use of this Agreement to enforce the terms thereof.

XV. CONTACT INFORMATION FOR THE SECRETARY AND FSA

- A. The reports, forms, transmissions, accountings, and documentation that must or may be provided to the Secretary under this Agreement shall be sent via electronic transmission or overnight delivery to (1) Counsel of Record for the Secretary in the Consolidated Case, and (2) General Counsel, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.
- B. The reports, forms, transmissions, accountings, documentation, and checks that must or may be provided to FSA under this Agreement shall be sent via electronic transmission or overnight delivery to Deputy Administrator, Farm Loan Programs U.S. Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250, STOP 0520.

XVI. CONTINUING JURISDICTION

Notwithstanding the dismissal of claims on the Final Approval Date under Section IV.A, the Court shall retain continuing jurisdiction to oversee and enforce this Agreement until two-hundred (200) days after the date the Final Accounting in Section V.F is completed.

XVII. INTEGRATION

This Agreement and its Exhibits constitute the entire agreement of the Parties, and no prior statement, representation, agreement, or understanding, oral or written, that is not contained herein, will have any force or effect.

XVIII. MODIFICATION

- A. Before the Preliminary Approval Date, this Agreement, including the attached exhibits, may be modified upon written agreement of the Parties.
- B. After the Preliminary Approval Date, this Agreement, including the attached exhibits, may be modified only with the written agreement of the Parties and with the approval of the Court, upon such notice to the Class, if any, as the Court may require.

XIX. DUTIES CONSISTENT WITH LAW AND REGULATIONS

Nothing contained in this Agreement shall impose on the Secretary 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.

XX. DUTY TO DEFEND

The Parties to this Agreement shall defend against any challenges to it in any forum.

XXI. HEADINGS

The headings in this Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Agreement.

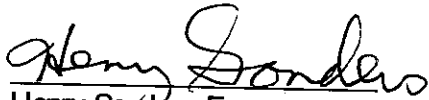
XXII. SEVERABILITY

Should any non-material provision of this Agreement be found by a court to be invalid or unenforceable, then (A) the validity of other provisions of this Agreement shall not be affected or impaired, and (B) such provisions shall be enforced to the maximum extent possible.

XXIII. COUNTERPARTS

This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement:

For the Signatory Plaintiffs:

Henry Sanders, Esq.
CHESTNUT, SANDERS, SANDERS,
PETTAWAY & CAMPBELL, L.L.C.
One Union Street
Selma, AL 36701
Tel: (334) 875-9264
Fax: (334) 875-9853

Dated: _____

Andrew H. Marks, Esq.
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: (202) 624-2920
Fax: (202) 628-5116

Dated: _____

David J. Frantz, Esq.
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1818 N Street, N.W., Suite 400
Washington, DC 20036
Tel: (202) 331-7050
Fax: (202) 331-9306

Dated: _____

James Scott Farrin, Esq.
LAW OFFICES OF JAMES SCOTT FARRIN
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Fax: (919) 688-4468

Dated: _____

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1150 18th Street, N.W., Suite 800
Washington, DC 20036-3816
Tel: (202) 572-9904
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Dated: _____

Donald McEachin, Esq.
MCEACHIN & GEE LLP
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Henrico, VA 23223
Tel: (804) 226-4111
Fax: (804) 226-8888

Dated: _____

For the Signatory Plaintiffs:

Henry Sanders, Esq.
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Tel: (334) 875-9264
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Dated: May 12, 2011

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Dated: _____

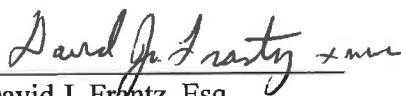
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Dated: _____

For the Signatory Plaintiffs:

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Tel: (804) 226-4111
Fax: (804) 226-8888

Dated: _____

For the Signatory Plaintiffs:

Henry Sanders, Esq.
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Tel: (334) 875-9264
Fax (334) 875-9853

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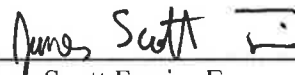
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Dated: 5/12/11

Donald McEachin, Esq.
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Dated: _____

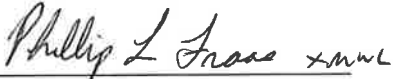
For the Signatory Plaintiffs:

Henry Sanders, Esq.
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Dated: 5-12-11

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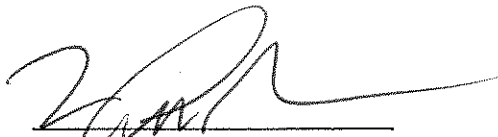
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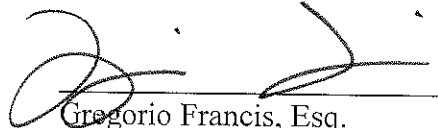
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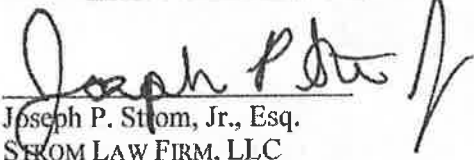
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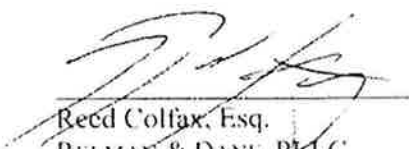
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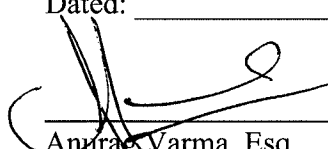
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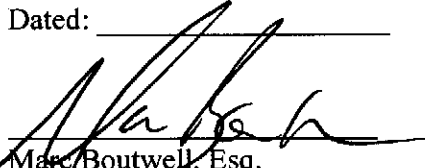
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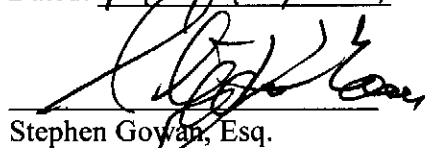
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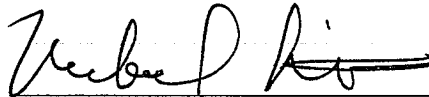
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APPENDIX 1

Calculation of Final Awards

- I. Pursuant to Section V.E.5 of the Settlement Agreement, individual Track A Awards and Track B Awards are calculated as follows:
 - A. In order to calculate each Class Member's Final Award(s), the Claims Administrator shall do as follows:
 1. First, if the sum total of all Track B Awards exceeds the Track B Cap,
 - a. The Claims Administrator shall divide each Class Member's Track B Award by the sum total of all Track B Awards to obtain that Class Member's "Track B Percentage."
 - b. Then, the Claims Administrator shall multiply each Class Member's Track B Percentage by the Track B Cap to obtain the Class Member's "Modified Track B Award." The Claims Administrator shall then replace the Track B Award indicated in Part V of the Class Member's Track B Determination Form with his or her Modified Track B Award. This Modified Track B Award shall serve as the Class Member's "Track B Award" or "Provisional Track B Award" for purposes of this Section.
 2. Next, the Claims Administrator shall calculate the Sum of Available Funds and the Sum of Awards. The Sum of Available Funds is the lesser of (a) the sum of the 2010 Funds plus the 2008 Funds, minus the difference between the Fee Award and the product of the cap on Track B Fees set by the Court in Settlement Agreement Section X.A multiplied by the Sum of Provisional Track B Awards (as modified by Appx. Section I.A.1), minus the incurred and anticipated final Implementation Costs, minus the incurred and anticipated Ombudsman Costs; or (b) the sum of all Provisional Track A Liquidated Awards, Provisional Track A Loan Awards, Provisional Track A Tax Awards, and Provisional Track B Awards, as shown on Part V of the Track A Claim Determination Forms (Ex. A). The Sum of Awards is the sum of all Provisional Track A Liquidated Awards, Provisional Track A Loan Awards, Provisional Track A Tax Awards, and Provisional Track B Awards, as shown on Part V of the Track A and Track B Claim Determination Forms (Exs. A and B).
 3. If the Sum of Available Funds is equal to or exceeds the Sum of Awards, each prevailing Track A Class Member's Final Track A Liquidated Award, if applicable, shall be equal to the Provisional Track A Liquidated Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A). Each prevailing Track A Class Member's Final Track A Loan Award, if applicable, shall be equal to the Provisional Track A Loan Award in Part V of that Class Member's Track A Claim Determination Form. Each prevailing Track A Class Member's Final Track A Tax Award, if applicable, shall be equal to the Provisional Track A Tax Award in Part V of that Class Member's Track A Claim Determination Form. Each prevailing Track B Class Member's Final Track B

Award, if applicable, shall be equal to the Provisional Track B Award in Part V of that Class Member's Track B Claim Determination Form (Ex. B).

4. If the Sum of Available Funds is less than the Sum of Awards:
 - a. For each prevailing Class Member whose Late-Filing Request was submitted after September 15, 2000, the Claims Administrator shall reduce by 30% the Class Member's Provisional Track A Liquidated Award, Provisional Track A Loan Award, Provisional Track A Tax Award, and Provisional Track B Award, and so modify Part V of the Class Member's Track A or Track B Claim Determination Form. The Claims Administrator shall then recalculate the total of all Provisional Track A Awards and Provisional Track B Awards to obtain a Revised Sum of Awards.
 - (1) If the Revised Sum of Awards is more than the Sum of Available Funds,
 - (a) The Claims Administrator shall divide the Sum of Available Funds by the Revised Sum of Awards to obtain a percentage. This percentage shall be called the "Second Percentage."
 - (b) Each prevailing Track A Class Member's Revised Track A Liquidated Award, if applicable, shall be equal to the Second Percentage multiplied by the Provisional Track A Liquidated Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A). Each prevailing Track A Class Member's Revised Track A Loan Award, if applicable, shall be equal to the Second Percentage multiplied by the Provisional Track A Loan Award in Part V of that Class Member's Track A Claim Determination Form. Each prevailing Track A Class Member's Revised Track A Tax Award, if applicable, shall be equal to the Second Percentage multiplied by the Provisional Track A Tax Award in Part V of that Class Member's Track A Claim Determination Form multiplied by the Second Percentage. Each prevailing Track B Class Member's Revised Track B Award, if applicable, shall be equal to the Second Percentage multiplied by the Provisional Track B Award in Part V of that Class Member's Track B Claim Determination Form (Ex. B).
 - (2) If the Revised Sum of Awards is less than the Sum of Available Funds,
 - (a) First, the Claims Administrator shall subtract the Revised Sum of Awards from the Sum of Available Funds to

determine the “Leftover Interim Reduced Funds.”

- (b) Second, for each Class Member subject to the 30% reduction, the Claims Administrator shall calculate that Class Member’s “Percentage of Leftover Reduced Funds” by dividing the Class Member’s Provisional Track A or Track B Award (reduced by 30%) by the sum of all Provisional Awards subject to the 30% reduction.
- (c) Third, for each Class Member subject to the 30% reduction, the Claims Administrator shall multiply the Class Member’s Percentage of Leftover Reduced Funds times the Leftover Interim Reduced Awards to obtain that Class Member’s “Leftover Funds Enhancement.”
- (d) Fourth, for each Class Member subject to the 30% reduction, the Claims Administrator shall (a) divide the Class Member’s Provisional Track A Liquidated Award by the Class Member’s Provisional Track A Award to obtain the Class Member’s “Liquidated Award Percentage,” (b) divide the Class Member’s Provisional Track A Loan Award by the Class Member’s Provisional Track A Award to obtain the Class Member’s “Loan Award Percentage,” and (c) divide the Class Member’s Provisional Track A Tax Award by the Class Member’s Provisional Track A Award to obtain the Class Member’s “Tax Award Percentage.”
- (e) For each Class Member subject to the 30% reduction,
 - (i) The Class Member’s Revised Track A Liquidated Award, if applicable, shall be equal to the sum of (1) the Class Member’s Liquidated Award Percentage multiplied by the Leftover Funds Enhancement, and (2) 70% of the Provisional Track A Liquidated Award in Part V of that Class Member’s Track A Claim Determination Form (Ex. A).
 - (ii) The Class Member’s Revised Track A Loan Award, if applicable, shall be equal to the sum of (1) the Class Member’s Loan Award Percentage multiplied by the Leftover Funds Enhancement, and (2) 70% of the Provisional Track A Loan Award in Part V of that Class Member’s Track A Claim Determination Form (Ex. A).
 - (iii) The Class Member’s Revised Track A Tax Award, if applicable, shall be equal to the sum of (1) the

Class Member's Tax Award Percentage multiplied by the Leftover Funds Enhancement, and (2) 70% of the Provisional Track A Tax Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A).

(iv) The Class Member's Revised Track B Award, if applicable, shall be equal to the sum of (1) the Class Member's Leftover Funds Enhancement, and (2) 70% of the Provisional Track B Award in Part V of that Class Member's Track B Claim Determination Form (Ex. B).

(f) For each Class Member not subject to the 30% reduction,

(i) The Class Member's Revised Track A Liquidated Award, if applicable, shall be equal to the Provisional Track A Liquidated Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A).

(ii) The Class Member's Revised Track A Loan Award, if applicable, shall be equal to the Provisional Track A Loan Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A).

(iii) The Class Member's Revised Track A Tax Award, if applicable, shall be equal to the Provisional Track A Tax Award in Part V of that Class Member's Track A Claim Determination Form (Ex. A).

(iv) The Class Member's Revised Track B Award, if applicable, shall be equal to the Provisional Track B Award in Part V of that Class Member's Track B Claim Determination Form (Ex. B).

B. Next, the Claims Administrator shall calculate the Provisional Track B Fee for each Class Member by multiplying each Class Member's Revised Track B Award by the fee percentage indicated by the Class Member in Part IX of the Class Member's Claim Form. The Claims Administrator shall then calculate the sum of all Provisional Track B Fees.

C. If the Claims Administrator determined that the Sum of Available Funds was less than the Sum of Awards (*i.e.*, Revised Awards were calculated under Appx. Section I.A.4), then the Claims Administrator shall calculate the Class Member's Final Awards as follows:

1. If the Sum of Available Funds was calculated using Appx. Section I.A.2.(a), the Claims Administrator shall divide (1) the Sum of Available Funds minus (a) the

difference between (i) the cap on Track B Fees set by the Court in Settlement Agreement Section X.A multiplied by the Sum of Provisional Track B Awards and (ii) all Track B Fees calculated in Appx. Section I.B by (2) the Sum of Available Funds, to obtain the “Available Funds Multiplier.” The Claims Administrator shall then calculate each Class Member’s Final Track A Liquidated Award, Final Track A Loan Award, Final Track A Tax Award, Final Track B Award, and Final Track B Fee by multiplying each Revised Award by the Available Funds Multiplier.

2. If the Sum of Available Funds was calculated using Section I.A.2.(b), the Revised Awards calculated in Appx. Section I.A.4 are the Class Members’ Final Awards, and the Provisional Track B Fee calculated in Section I.B, if applicable, is the Class Member’s Final Track B Fee.

Appendix 1a

SETTLEMENT AGREEMENT
in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)

EXAMPLES OF CLAIM CALCULATIONS

The following provides illustrative examples to demonstrate how variations in the number of successful Claimants may affect the amount of the payments made to successful Class Members, as determined by the procedures set forth in Appendix 1 of the Settlement Agreement. Calculation of Final Awards under the Settlement is a two-step process. First, the Claims Administrator must apply the aggregate Track B Cap to the Track B Awards. After that is done, the Claims Administrator must determine whether reductions apply to each award based on the number of successful Class Members and the availability of funds. These types of calculations are illustrated below.

I. Application of Track B Cap

Under the terms of the Settlement Agreement, successful Track B Class Members are entitled to an award equal to “the amount of [their] actual damages, up to \$250,000.” However, Track B Awards, in the aggregate, are capped at \$100 million. Thus, assuming the total funding appropriated by Congress for black farmer claims is \$1.25 billion, the total of all Track B Awards would be capped at \$100 million.

The following chart illustrates the application of the Track B Cap, as prescribed by Section I.A.1 of Appendix 1. For illustrative purposes, we assume a \$100 million Track B Cap applies, and that only two uniform groups of successful Track B Claimants are entitled to awards – (1) Group B1, each member of which is eligible for a \$250,000 Track B Award (based on proof of actual damages of \$250,000 or more); and (2) Group B2, each member of which is eligible for a \$100,000 Track B Award (based on proof of actual damages of \$100,000).

Number of Successful Track B Claimants	Total Amount of Proven Claims	Percent of Track B Award Provided After Application of Track B Cap	Adjusted Track B Award after Application of the Track B Cap
Group B1 – 100 Claimants (\$250,000 per claim) Group B2 – 500 Claimants (\$100,000 per claim)	\$75 million	100%	Group B1 – <i>\$250,000 per claim</i> Group B2 – <i>\$100,000 per claim</i>
Group B1 – 500 Claimants (\$250,000 per claim) Group B2 – 750 Claimants (\$100,000 per claim)	\$200 million	50%	Group B1 – <i>\$125,000 per claim</i> Group B2 – <i>\$50,000 per claim</i>
Group B1 – 1,000 Claimants (\$250,000 per claim) Group B2 – 1,500 Claimants (\$100,000 per claim)	\$400 million	25%	Group B1 – <i>\$62,500 per claim</i> Group B2 – <i>\$25,000 per claim</i>

II. Calculation of Awards After Application of the Track B Cap

After application of the Track B Cap to Track B Awards, the Claims Administrator is required to calculate the Final Award for each successful Class Member based on the number of successful Class Members and the overall availability of funds.

Under the Settlement, Track A Class Members are eligible to recover three categories of damages:

(1) liquidated damages of \$50,000 for credit claims and/or \$3,000 for non-credit claims; (2) a loan award equal to the amount of outstanding debt the Class Member owes to USDA/FSA; and (3) a tax award equal to 25% of the sum of the liquidated damages award and the loan award.

The Settlement makes a distinction between “*Late Filers*” – *i.e.*, those Class Members who filed Late-Filing Requests in *Pigford* on or between October 13, 1999 and September 15, 2000 – and “*Late-Late Filers*” – *i.e.*, those Class Members who filed Late-Filing Requests in *Pigford* on or between September 16, 2000 and June 18, 2008. To the extent that Congress does not appropriate sufficient funds to pay all Track A and Track B Class Members in full, the Settlement Agreement provides for a reduction of up to 30% in the awards for Late-Late Filers.

If a 30% reduction for Late-Late Filers is insufficient to bring total awards within the amount of available funds, all awards to successful Class Members – both Late Filers and Late-Late Filers – will be subject to reduction to conform the awards to the amount of available funds.

The following chart illustrates the calculations prescribed by Section I.A.2-4, I.B, and I.C. of Appendix 1, based on variation in the number of successful Class Members.

Final Awards for Track A and Track B Class Members

	Number of Successful Class Members by Type	Total Number of Successful Class Members	Amount of Awards (With “Lower Costs”/With “Higher Costs”)			
			Track A Late Filers (A1) (per claim)	Track A Late-Late Filers (A2) (per claim)	Track B Late Filers (B1) (per claim)	Track B Late-Late Filers (B2) (per claim)
Scenario #1	Group A1 (“Late Filers”) = 6,000 Claimants Group A2 (“Late-Late Filers”) = 1,500 Claimants Group B1 (“Late Filers”) = 200 Claimants Group B2 (“Late-Late Filers”) = 100 Claimants	7,800	\$75,000 / \$75,000	\$75,000 / \$75,000	\$250,000 / \$250,000	\$250,000 / \$250,000
Scenario #2	Group A1 (“Late Filers”) = 9,600 Claimants Group A2 (“Late-Late Filers”) = 2,400 Claimants Group B1 (“Late Filers”) = 200 Claimants Group B2 (“Late-Late Filers”) = 100 Claimants	12,300	\$75,000 / \$75,000	\$75,000 / \$75,000	\$250,000 / \$250,000	\$250,000 / \$250,000
Scenario #3	Group A1 (“Late Filers”) = 12,000 Claimants Group A2 (“Late-Late Filers”) = 3,000 Claimants Group B1 (“Late Filers”) = 200 Claimants Group B2 (“Late-Late Filers”) = 100 Claimants	15,300	\$75,000 / \$74,847	\$70,410 / \$52,393	\$250,000 / \$249,490	\$234,700 / \$174,643
Scenario #4	Group A1 (“Late Filers”) = 20,000 Claimants Group A2 (“Late-Late Filers”) = 5,000 Claimants Group B1 (“Late Filers”) = 200 Claimants Group B2 (“Late-Late Filers”) = 100 Claimants	25,300	\$48,555 / \$46,012	\$33,989 / \$32,208	\$161,850 / \$153,375	\$113,295 / \$107,363
Scenario #5	Group A1 (“Late Filers”) = 40,000 Claimants Group A2 (“Late-Late Filers”) = 10,000 Claimants Group B1 (“Late Filers”) = 200 Claimants Group B2 (“Late-Late Filers”) = 100 Claimants	50,300	\$24,735 / \$23,438	\$17,315 / \$16,406	\$82,450 / \$78,125	\$57,715 / \$54,688

The numbers used in this chart are for illustrative purposes only. The sole purpose of this chart is to show how the array of variables might affect the actual recovery of a successful claimant. Even if Congress appropriates the full \$1.25 billion that has been sought to fund this settlement, the figures used in this chart should not be relied on as a predictor of how much a successful Track A Claimant will recover because that figure cannot be computed until the total number of successful claimants is established and the actual amounts of Implementation Costs, Ombudsman Costs, and attorneys’ fees are determined.

Accordingly, for illustrative purposes only, this chart assumes that (1) Congress appropriates \$1.25 billion to pay successful Section 14012 Claimants; (2) all successful Track A claimants receive a total award of \$75,000 (including liquidated damages, debt relief, and tax relief); and (3) all successful Track B claimants receive a total award of \$250,000. From there, this chart computes a range of recoveries using different assumptions regarding the number of successful claimants and estimates for the total of Implementation Costs, Ombudsman Costs, and attorneys’ fees that would be deducted from the available settlement funds prior to the calculation and distribution of awards. For purposes of this illustrative chart, the “Lower Costs” figure assumes \$15 million for Implementation Costs and Ombudsman Costs, and attorneys’ fees of 4.1%. The “Higher Costs” figure assumes \$35 million for Implementation Costs and Ombudsman Costs, and attorneys’ fees of 7.4%.

EXHIBIT A

SETTLEMENT AGREEMENT

**in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)**

“TRACK A” CLAIM DETERMINATION FORM

PART I. CLAIMANT INFORMATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Claimant's Name (First, Middle, Last)

_____-_____-_____
Claimant's Social Security/Taxpayer
I.D. Number

Claimant's Mailing Address/City/State/Zip

Claimant Identification Number

Claimant's Phone Number

Claimant's Alternate Phone Number

_____/_____/_____
Claimant's Date of Birth

Attorney's Name (First, Middle, Last), if applicable

Attorney's Mailing Address/City/State/Zip

Attorney's Phone Number

Submitter's Name (First, Middle, Last), if applicable

_____-_____-_____
Submitter's Social Security/Taxpayer
I.D. Number

Submitter's Mailing Address/City/State/Zip

Submitter's Phone Number

PART II. SUMMARY OF CLAIM DETERMINATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

☐

Your Claim is APPROVED. Your Total Award is \$_____. From this amount, a payment of \$_____ has been made on your behalf to the IRS to reduce your expected tax liability associated with this award, and a payment of \$_____ has been made on your behalf to USDA/FSA to reduce your outstanding Farm Loan Program debt. Enclosed with this Form is a check for the remaining \$_____. (See Part III)

☐

Your Claim is DENIED. (See Part IV)

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART III. EXPLANATION OF APPROVED CLAIM (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Several months ago, you submitted a Track A claim to the Non-Judicial Claims Process under the Settlement Agreement in *In re Black Farmers Discrimination Litigation*, Civ. No. 1:08-mc-0511 (D.D.C.). Since that time, a Neutral has determined that your claim is APPROVED. Enclosed with this Form is a check containing your award. A payment to the Internal Revenue Service (IRS) to reduce your expected tax liability associated with this award has been made on your behalf. If you obtained a Track A Loan Award, a payment to U.S. Department of Agriculture, Farm Service Agency (USDA/FSA) to reduce outstanding Farm Loan Program debt has also been made on your behalf.

Based on the materials you submitted, the following claims were APPROVED:

- ☐ Track A Credit Claim
- ☐ Track A Non-Credit Claim

AWARD YOU RECEIVE**TRACK A CREDIT CLAIM**

Track A Liquidated Award: \$ _____

Track A Loan Award: \$ _____

Subtotal (Liquidated Award + Loan Award): \$ _____

Track A Tax Award (25% multiplied by the subtotal): \$ _____

TOTAL TRACK A CREDIT CLAIM AWARD:

\$ _____

TRACK A NON-CREDIT CLAIM.

TOTAL TRACK A NON-CREDIT CLAIM AWARD:

\$ _____

TOTAL AWARD: \$ _____

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PAYMENTS MADE AND MONEY YOU RECEIVE

If you received a Loan Award or a Tax Award on a Track A Credit Claim, those payments have already been made by the Claims Administrator to USDA/FSA and the IRS respectively on your behalf. The check contained herein is the remainder of your total award.

\$ _____ (Total Award)

– \$ _____ (Total Track A Loan Award Made to USDA/FSA)

– \$ _____ (Total Track A Tax Award Made to IRS)

CHECK YOU RECEIVE: \$ _____

NOTE: You are responsible for compliance with all applicable federal, state, and local tax requirements that arise as a result of this award. You are encouraged to consult a tax professional if you have any questions about these requirements.

NOTE: If you received a Loan Award (debt payment) as part of your Track A Award, it is possible that the payment did not satisfy the entire amount outstanding on your USDA/FSA loan. In that event, you are responsible for paying the remainder of your outstanding debt. Interest on your debt will continue to accrue unless and until you pay your debt in full, and USDA/FSA maintains any and all options for servicing and recovering outstanding debt, including but not limited to acceleration and foreclosure.

QUESTIONS

If you have any questions, you may contact Class Counsel at **[Phone]**

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART IV. EXPLANATION OF DENIED CLAIM (TO BE COMPLETED BY THE TRACK A NEUTRAL)

Several months ago, you submitted a Track A claim to the Non-Judicial Claims Process under the Settlement Agreement in *In re Black Farmers Discrimination Litigation*, Civ. No. 1:08-mc-0511 (D.D.C.). Since that time, a Neutral has determined that your claim is DENIED.

Your claim is DENIED because (check all that apply):

- ☐ You failed to prove that you are an African-American farmer.
- ☐ You failed to prove that you farmed, or attempted to farm, between January 1, 1981, and December 31, 1996.
- ☐ You failed to prove that you owned or leased, or attempted to own or lease, farm land.
- ☐ You failed to prove that you applied, or constructively applied, for a specific farm credit transaction or non-credit benefit at a USDA office between January 1, 1981, and December 31, 1996.
- ☐ You failed to prove that the farm loan or non-credit benefit for which you applied was denied, provided late, approved for a lesser amount than requested, encumbered by a restrictive condition, or that USDA failed to provide an appropriate loan service.
- ☐ You failed to prove that USDA's treatment of your loan or non-credit benefit application led to economic damage to you.
- ☐ You failed to prove that you complained of discrimination to an official of the United States Government on or before July 1, 1997, regarding USDA's treatment of you in response to your application.

THIS DECISION IS FINAL. IT IS NOT REVIEWABLE BY THE CLAIMS ADMINISTRATOR, THE TRACK A NEUTRAL, THE TRACK B NEUTRAL, THE COURT, OR ANY OTHER PARTY OR BODY, JUDICIAL OR OTHERWISE.

IMPACT ON OUTSTANDING LOAN OBLIGATIONS: Please note that if you are not current on loan payments you owe the USDA, the Secretary of Agriculture may, in view of the denial of your claim, proceed immediately with any loan acceleration or foreclosure proceedings he believes are appropriate.

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART V. PROVISIONAL AWARD FOR APPROVED CLAIMS (TO BE COMPLETED BY THE TRACK A NEUTRAL)

The Claimant is eligible for the following Track A award(s), subject to reduction:

- ☐ **TRACK A CREDIT CLAIM.** The Track A Credit Claim is APPROVED. The Claimant is eligible for an award, subject to reduction, as follows:

Track A Liquidated Award (\$50,000): \$ _____

Track A Loan Award: _____ \$ _____
FSA Account Number_____ \$ _____
FSA Account Number_____ \$ _____
FSA Account Number**Subtotal (Liquidated Award + Loan Award):** \$ _____

Track A Tax Award (25% multiplied by the subtotal): \$ _____

TOTAL TRACK A CREDIT CLAIM AWARD:

\$ _____

- ☐ **TRACK A NON-CREDIT CLAIM.** The Track A Non-Credit Claim is APPROVED. The Claimant is eligible for an award, subject to reduction, as follows:

TOTAL TRACK A NON-CREDIT CLAIM AWARD (\$3,000):

\$ _____

TOTAL AWARD: \$ _____

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART VI. DATE OF LATE-FILING REQUEST (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

- ☐ The Class Member submitted a Late-Filing Request in *Pigford* on or before September 15, 2000.
- ☐ The Class Member submitted a Late-Filing Request in *Pigford* after September 15, 2000.

EXHIBIT B

SETTLEMENT AGREEMENT
in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)

“TRACK B” CLAIM DETERMINATION FORM

PART I. CLAIMANT INFORMATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Claimant's Name (First, Middle, Last)

_____-_____-_____
Claimant's Social Security/Taxpayer
I.D. Number

Claimant's Mailing Address/City/State/Zip

Claimant Identification Number

Claimant's Phone Number

Claimant's Alternate Phone Number

_____/_____/_____
Claimant's Date of Birth

Attorney's Name (First, Middle, Last), if applicable

Attorney's Mailing Address/City/State/Zip

Attorney's Phone Number

Submitter's Name (First, Middle, Last), if applicable

_____-_____-_____
Submitter's Social Security/Taxpayer
I.D. Number

Submitter's Mailing Address/City/State/Zip

Submitter's Phone Number

PART II. SUMMARY OF CLAIM DETERMINATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

☐

Your Claim is APPROVED. Your Award is \$_____. From this amount, a payment of \$_____ has been made on your behalf to your attorney to pay his or her fees, costs, and expenses. Enclosed with this Form is a check for the remaining \$_____. (See Part III)

☐

Your Claim is DENIED. (See Part IV)

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART III. EXPLANATION OF APPROVED CLAIM (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Several months ago, you submitted a Track B claim to the Non-Judicial Claims Process under the Settlement Agreement in *In re Black Farmers Discrimination Litigation*, Civ. No. 1:08-mc-511 (D.D.C.). Since that time, a Neutral has determined that your claim is APPROVED.

AWARD YOU RECEIVE

TOTAL AWARD: \$ _____

PAYMENTS MADE AND MONEY YOU RECEIVE

Payments to your attorney are made automatically from your award. On your Claim Form, you indicated that you and your attorney have negotiated a Track B Fee of _____% of your Track B Award.

\$ _____ (Total Award)

– \$ _____ (Attorney's Fees, Costs, and Expenses)

CHECK YOU RECEIVE: \$ _____

NOTE: You are responsible for compliance with all applicable federal, state, and local tax requirements that arise as a result of this award. You are encouraged to consult a tax professional if you have any questions about these requirements.

QUESTIONS

If you have any questions, you may contact Class Counsel at **[Phone]**.

Claimant's Name (First, Middle, Last)

Claimant ID Number

Claimant's Social Security/Taxpayer I.D. Number

PART IV. EXPLANATION OF DENIED CLAIM (TO BE COMPLETED BY THE TRACK B NEUTRAL)

Several months ago, you submitted a Track B claim to the Non-Judicial Claims Process under the Settlement Agreement in *In re Black Farmers Discrimination Litigation*, Civ. No. 1:08-mc-511 (D.D.C.). Since that time, a Neutral has determined that your claim is DENIED.

Your claim is DENIED because (check all that apply):

- ☐ You failed to prove that you are an African-American farmer.
- ☐ You failed to prove that you farmed, or attempted to farm, between January 1, 1981, and December 31, 1996.
- ☐ You failed to prove that you owned or leased, or attempted to own or lease, farm land.
- ☐ You failed to prove that you applied for a specific farm credit transaction at a USDA office between January 1, 1981, and December 31, 1996.
- ☐ You failed to prove that the farm loan for which you applied was denied, provided late, approved for a lesser amount than requested, encumbered by a restrictive condition, or that USDA failed to provide an appropriate loan service.
- ☐ You failed to prove that USDA's treatment of your loan application was less favorable than that accorded a specifically identified similarly situated white farmer.
- ☐ You failed to prove that USDA's treatment of your loan application led to economic damage to you.
- ☐ You failed to prove that you complained of discrimination to an official of the United States Government on or before July 1, 1997, regarding USDA's treatment of you in response to your application.

THIS DECISION IS FINAL. IT IS NOT REVIEWABLE BY THE CLAIMS ADMINISTRATOR, THE TRACK A NEUTRAL, THE TRACK B NEUTRAL, THE COURT, OR ANY OTHER PARTY OR BODY, JUDICIAL OR OTHERWISE.

IMPACT ON OUTSTANDING LOAN OBLIGATIONS: Please note that if you are not current on loan payments you owe the USDA, the Secretary of Agriculture may, in view of the denial of your claim, proceed immediately with any loan acceleration or foreclosure proceedings he believes are appropriate.

EXHIBIT C

EXHIBIT D

SETTLEMENT AGREEMENT

**in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)**

AUTHORIZATION TO DISCLOSE DEBT INFORMATION FORM

PART I. REQUEST TO UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY (USDA/FSA)				
Claimant's Last Name:	Claimant's First Name:	Claimant's Middle Name:	Claimant's Suffix:	
Claimant's Full Address (including zip code):		Claimant's Social Security/Taxpayer I.D. Number:		
Address or Other Description of Farm Property that is the Subject of the Claim		Claimant's USDA/FSA Account Number(s):		
I hereby request and authorize USDA/FSA to provide the information about my outstanding USDA/FSA Farm Loan Program loans to the Claims Administrator in <i>In re Black Farmers Discrimination Litigation</i>. I acknowledge and understand that USDA/FSA will not reduce, discharge, or forgive my debt and that interest on my debt will continue to accrue unless and until I have paid the debt in full. Claimant's Signature: _____ Date: _____				
PART II. USDA/FSA RESPONSE TO CLAIMS ADMINISTRATOR				
This Response is as of:				
LOAN #	PRINCIPAL BALANCE	INTEREST BALANCE	TOTAL	DAILY INTEREST ACCRUAL
USDA/FSA Authorizing Official Signature: _____			Date Prepared: _____	Page ____ of ____

EXHIBIT E

Total number of payments made during current reporting quarter: _____

Total amount of payments made during current reporting quarter: \$ _____

Total number of payments made to date:
(inclusive of current and all prior reporting quarters) _____

Total amount of payments made to date:
(inclusive of current and all prior reporting quarters) \$ _____

Total number of Track A Awards made during current reporting quarter: _____

Total amount of Track A Awards made during current reporting quarter: \$ _____

Total number of Track A Awards made to date:
(inclusive of current and all prior reporting quarters) _____

Total amount of Track A Awards made to date:
(inclusive of current and all prior reporting quarters) \$ _____

Total number of Track B Awards during current reporting quarter: _____

Total amount of Track B Awards made during current reporting quarter: \$ _____

Total number of Track B Awards made to date:
(inclusive of current and all prior reporting quarters) _____

Total amount of Track B Awards made to date:
(inclusive of current and all prior reporting quarters) \$ _____

I, _____, certify that the above content is true, complete, and accurate.

Signature of Class Counsel

Date

EXHIBIT F

SETTLEMENT AGREEMENT
in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)

YOUR CLAIM PACKAGE IS NOT COMPLETE
YOU MUST RESPOND WITHIN 30 DAYS
OF THE POSTMARK ON THIS MAILING

PART I. CLAIMANT INFORMATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Claimant's Name (First, Middle, Last)

_____-_____-_____
Claimant's Social Security/Taxpayer
I.D. Number

Claimant's Mailing Address/City/State/Zip

Claimant Identification Number

Claimant's Phone Number

Claimant's Alternate Phone Number

_____/_____/_____
Claimant's Date of Birth

Attorney's Name (First, Middle, Last), if applicable

Attorney's Mailing Address/City/State/Zip

Attorney's Phone Number

Submitter's Name (First, Middle, Last), if applicable

_____-_____-_____
Submitter's Social Security/Taxpayer
I.D. Number

Submitter's Mailing Address/City/State/Zip

Submitter's Phone Number

YOU ARE RECEIVING THIS NOTICE BECAUSE THE
CLAIM PACKAGE YOU SUBMITTED
IS NOT COMPLETE
AND WE NEED ADDITIONAL INFORMATION
(SEE PARTS II, III, IV, and V)

Claimant's Name (First, Middle, Last)

Claimant ID #

Claimant's Social Security/Taxpayer I.D. #

PART II. ELEMENTS OF A COMPLETE CLAIM PACKAGE

To be eligible for relief, a Claimant must submit:

- 1) A completed Claim Form.
- 2) For a Claimant who selects Track A and seeks a payment in recognition of outstanding USDA/FSA Farm Loan Program debt, a completed Authorization to Disclose Debt Information Form.
- 3) For a Claimant with an attorney, a declaration by the Claimant's attorney attesting to the attorney's good faith belief in the truth of the factual basis for the claim.
- 4) For a Claimant who is deceased, (a) a death certificate and (b) either (i) proof of legal representation, or (ii) a sworn statement describing why the submitting individual believes he or she will be appointed the legal representative of the Claimant's estate.
- 5) For a Claimant unable to submit a claim on his or her own behalf due to a physical or mental limitation, (a) proof of legal representation or (b) a sworn statement describing why the Claimant is unable to submit a claim on his or her own behalf and why the submitting individual asserts a right to do so on the Claimant's behalf.

PART III. DEADLINE FOR SUBMISSION OF A COMPLETE CLAIM PACKAGE

To be eligible for relief, a Claimant must submit a Complete Claim Package by [**Claims Deadline**]. The submission date is the date of postmark if the Claim Package is sent via first-class mail, the date of deposit if sent by courier or overnight delivery, and the date of transmission if sent electronically.

PART IV. PROBLEM(S) WITH YOUR CLAIM PACKAGE (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

We have identified the following problem(s) with your claim package (check all that apply):

- ☐ You did not submit a Claim Form.
- ☐ You did not sign your Claim Form.
- ☐ You did not answer the following questions on the Claim Form:

- ☐ You are a Track A Claimant seeking a payment in recognition of outstanding USDA/FSA Farm Loan Program debt, and you did not submit a completed Authorization to Disclose Debt Information Form.

Claimant's Name (First, Middle, Last)

Claimant ID #

Claimant's Social Security/Taxpayer I.D. #

- ☐ You have an attorney but your submission did not include a declaration by your attorney attesting to the attorney's good faith belief in the truth of the factual basis for your claim.
- ☐ You are submitting a claim on behalf of a Claimant who is deceased, and you did not submit a death certificate.
- ☐ You are submitting a claim on behalf of a Claimant who is deceased, and you did not submit proof of legal representation or a sworn statement describing why you believe you will be appointed the legal representative of the Claimant's estate.
- ☐ You are submitting a claim on behalf of a Claimant who is unable to submit a claim on his or her own behalf due to a physical or mental limitation, and you did not submit (a) proof of legal representation or (b) a sworn statement describing why the Claimant is unable to submit a claim on his or her own behalf and why you assert a right to do so on the Claimant's behalf.
- ☐ Based on the information included in your Claim Package, we were unable to determine whether your claim was submitted before the Claims Deadline. Please submit additional evidence that shows:

- ☐ Based on the information included in your Claim Package, we were unable to determine whether your Claim Package is complete. Please submit additional evidence that shows:

PART V. DEADLINE TO RE-SUBMIT YOUR CLAIM PACKAGE

From the date on the postmark of this Form, you have 30 days to re-submit your claim package. Your resubmission must be postmarked no later than 30 days after the postmark on this Form. Your failure to submit a Complete Claims Package within 30 days will result in denial of your claim. You are encouraged to consult an attorney to assist you in re-submitting your claim.

QUESTIONS

If you have any questions, you may contact Class Counsel at [Phone].

EXHIBIT G

SETTLEMENT AGREEMENT
in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)

YOU HAVE NOT SUBMITTED YOUR CLAIM ON TIME

PART I. CLAIMANT INFORMATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Claimant's Name (First, Middle, Last)

_____-_____-_____
Claimant's Social Security/Taxpayer
I.D. Number

Claimant's Mailing Address/City/State/Zip

Claimant Identification Number

Claimant's Phone Number

Claimant's Alternate Phone Number

_____/_____/_____
Claimant's Date of Birth

Attorney's Name (First, Middle, Last), if applicable

Attorney's Mailing Address/City/State/Zip

Attorney's Phone Number

Submitter's Name (First, Middle, Last), if applicable

_____-_____-_____
Submitter's Social Security/Taxpayer
I.D. Number

Submitter's Mailing Address/City/State/Zip

Submitter's Phone Number

YOUR CLAIM IS DENIED.
(SEE PART II)

**THIS DECISION IS FINAL. IT IS NOT REVIEWABLE BY THE
CLAIMS ADMINISTRATOR, THE TRACK A NEUTRAL, THE
TRACK B NEUTRAL, THE COURT, OR ANY OTHER PARTY OR
BODY, JUDICIAL OR OTHERWISE.**

Claimant's Name (First, Middle, Last)

Claimant ID #

Claimant's Social Security/Taxpayer I.D. #

PART II. EXPLANATION OF DENIED CLAIMS (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Your claim is DENIED because you failed to submit your claim on time. Your claim was submitted on _____. All claims had to be submitted by **[Claims Deadline]** to be eligible for relief. The date of submission is the date of postmark if the Claim Package is sent via first-class mail, the date of deposit if sent by courier or overnight delivery, and the date of transmission if sent electronically.

IMPACT ON OUTSTANDING LOAN OBLIGATIONS: Please note that if you are not current on loan payments you owe the USDA, the Secretary of Agriculture may, in view of the denial of your claim, proceed immediately with any loan acceleration or foreclosure proceedings he believes are appropriate.

QUESTIONS

If you have any questions, you may contact Class Counsel at **[Phone]**

EXHIBIT H

SETTLEMENT AGREEMENT

**in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)**

YOU ARE NOT A CLASS MEMBER

PART I. CLAIMANT INFORMATION (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Claimant's Name (First, Middle, Last)

_____-_____-_____
Claimant's Social Security/Taxpayer
I.D. Number

Claimant's Mailing Address/City/State/Zip

Claimant Identification Number

Claimant's Phone Number

Claimant's Alternate Phone Number

_____/_____/_____
Claimant's Date of Birth

Attorney's Name (First, Middle, Last), if applicable

Attorney's Mailing Address/City/State/Zip

Attorney's Phone Number

Submitter's Name (First, Middle, Last), if applicable

_____-_____-_____
Submitter's Social Security/Taxpayer
I.D. Number

Submitter's Mailing Address/City/State/Zip

Submitter's Phone Number

**YOUR CLAIM IS DENIED.
(SEE PART II)**

**THIS DECISION IS FINAL. IT IS NOT REVIEWABLE BY THE
CLAIMS ADMINISTRATOR, THE TRACK A NEUTRAL, THE
TRACK B NEUTRAL, THE COURT, OR ANY OTHER PARTY OR
BODY, JUDICIAL OR OTHERWISE.**

Claimant's Name (First, Middle, Last)

Claimant ID #

Claimant's Social Security/Taxpayer I.D. #

PART II. EXPLANATION OF DENIED CLAIMS (TO BE COMPLETED BY THE CLAIMS ADMINISTRATOR)

Your claim is DENIED because (check all that apply):

- ☐ You failed to prove that you submitted a Late-Filing Request pursuant to Section 5(g) of the *Pigford* Consent Decree before June 19, 2008.
- ☐ You failed to prove that you have not already obtained a determination on the merits of your discrimination complaint.

IMPACT ON OUTSTANDING LOAN OBLIGATIONS: Please note that if you are not current on loan payments you owe the USDA, the Secretary of Agriculture may, in view of the denial of your claim, proceed immediately with any loan acceleration or foreclosure proceedings he believes are appropriate.

QUESTIONS

If you have any questions, you may contact Class Counsel at **[Phone]**.

EXHIBIT I

SETTLEMENT AGREEMENT
in *In re Black Farmers Discrimination Litigation*,
Civil Action No. 1:08-mc-0511 (PLF)

QUARTERLY CLAIM DETERMINATION REPORTING FORM				
Claimant's Name (Last, First, Middle, Suffix)	Claimant's Mailing Address (Street, City, State, Zip)	Claimant's Social Security/Taxpayer I.D. Number	Claimant's USDA/FSA Account Number(s), if applicable	Did Claimant Prevail? (Yes/No)
Signature of Claims Administrator: _____			Date Prepared:	Page __ of __

EXHIBIT J



Claims Administrator, *In re Black Farmers Discrimination Litigation*

[Date]

[Claimant's Name]

[Claimant's ID Number]

[Claimant's Address]

RE: *In re Black Farmers Discrimination Litigation*: Claim Status

Dear [Mr./Mrs.] [Claimant's Last Name]:

Some time ago, you submitted a Track [A/B] claim to participate in the Non-Judicial Claims Process under the Settlement Agreement in *In re Black Farmers Discrimination Litigation*, Civ. No. 1:08-mc-0511 (D.D.C.). A neutral party has reviewed your claim materials and determined that your claim is **APPROVED**.

You are eligible to receive a payment for your successful claim. However, at this time we do not know the amount of the payment you will receive, and we will not know that information until all claims in this case have been determined and final award amounts for all claims have been calculated. No payments will be made under the Settlement Agreement until all claims have been decided.

Please be patient. We will be back in touch with you when the claims process has ended and we are ready to issue payments.

If you have any questions, please feel free to contact us at 1-877-810-8110.

Sincerely,

Claims Administrator