



They have to do something about that debt...

Pigford and the Broken Promise of Debt Relief for Black Farmers

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Debt and credit access have long stood hand in hand as mechanisms of land expropriation from Black farmers. While the United States Department of Agriculture (USDA) does not disambiguate economic data by race outside of very specific instances, a Freedom of Information Act request by NPR revealed that the USDA approved only 36% of black farmers' loan applications in the 2022 fiscal year. The USDA approved White farmers at twice the rate, 72%.¹ Recent economic relief programs for farmers in the wake of COVID either have left Black farmers behind entirely, or have diluted benefits to a point where Black farmers stand to benefit significantly less. U.S. Agriculture Secretary Tom Vilsack noted in 2021 that just 0.1% of pandemic relief funding made available by the Trump administration went to Black farmers, who make up approximately 1.4% of the total farming population.²



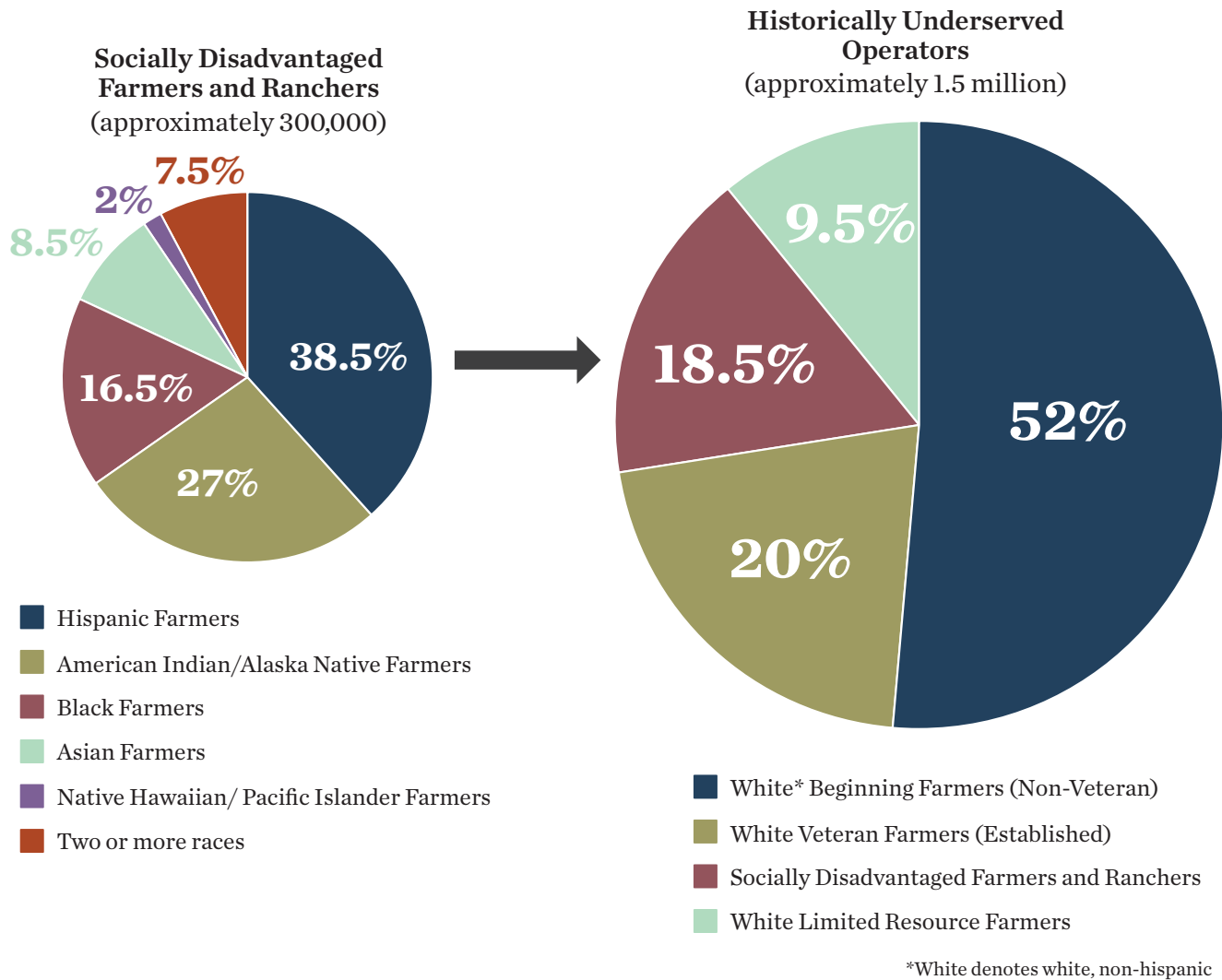
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The Pigford Project is a research initiative by the Institute for Economic and Racial Equity at Brandeis University and the Federation of Southern Cooperatives/LAF which seeks to the better understand the legacy and impact of *Pigford v. Glickman* and *In re Black Farmers Discrimination Litigation*, two of the largest civil rights class action lawsuits in the history of the nation, and apply those lessons to better support the lives and livelihoods of Black farmers today.

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In response to this growing crisis, the Biden administration passed robust programs for debt relief and financial remedy for discrimination for farmers of color in the American Rescue Plan Act (ARPA). However, court challenges from conservative legal organizations claiming to represent White farmers halted ARPA relief, and the ensuing color-blind policy passed in the Inflation Reduction Act (IRA) opened the door for White farmers to make claims and diluted the money available to Black, Latino, and Indigenous farmers. Despite increased funding overall to assist underserved farmers under section 22007, by our estimate, had ARPA dollars been spent according to the more directed funding guidelines outlined in the IRA, broadening the definition of potential beneficiaries has actually decreased accessibility and, hence, money available for farmers of color.



Assuming similar spending, under ARPA provisions, approximately \$900 million would have been made available for technical outreach, grants and loans for land access and financial assistance for borrowers related to discrimination. These funds would have gone to around 300,000 Socially Disadvantaged Farmers and Ranchers,³ which includes Black, Latino, Native American, and Asian farmers, averaging around \$3,000 available per producer. Alternatively, the total money dedicated to supporting farmers in the “racially blind” IRA is much higher, an estimated \$2.58 billion. However, approximately 1.5 million Historically Underserved Operators are eligible, coming out to an average of \$1,775 per farmer, of whom just about 20% are farmers of color.⁴

ARPA also appropriated funds to modify and pay down the outstanding debt from USDA Farm Service Agency loans for each Socially Disadvantaged Farmer and Rancher. The legislation offered no direct upper limit to this funding, apart from 120% of the outstanding indebtedness for each eligible farmer. It laid the groundwork for the creation of a true debt relief plan that could have had a massive impact for farmers of color who have been historically overburdened by debt. Alternatively, section 22006 of the IRA provides \$3.1 billion to relieve USDA Farm Service Agency debt for distressed farmers of any race. However, a century of expropriation, exploitation, and violence means that Black farmers now hold such a small share of the farming industry (1.4%) that this money is unlikely to have a transformative effect.

In fact, this is more of the same type of marginalizing behavior that Black farmers have faced, especially from USDA programs, since the so-called “restoration” era at the end of the 19th-century. Promises and high-minded policies that aim to foster economic equality are quickly diluted, so that Black farmers stand to gain little from participation or are replaced with feel-good policies that do little to actually improve the lives and livelihoods of Black farmers. Debt relief and damage from discrimination were central themes decades earlier in the *Pigford* cases. However, farmers and advocates note that the promise of these civil rights class action lawsuits went unfulfilled. As part of our study of the legacy and impact of the *Pigford* lawsuits, we have been speaking with *Pigford* claimants and their descendants from across the county. In our interviews with Black farmers, nearly all noted confusion about the promised debt relief provisions in the settlement agreement, and the majority of farmers noted that they received no relief at all. Given this response, our team decided to do a deep-dive on whether *Pigford* moved the needle for Black farmers on debt.

***Pigford's* aims for debt relief**

Pigford v. Glickman was a class action lawsuit that Black farmers brought against the USDA because of evidenced discrimination between 1981 and 1996 in its farm credit and service programs. Though the case only covered a small period of time, throughout the 20th century, the USDA engaged in virulent anti-Black discrimination that exacerbated the already hostile conditions that Black business owners, communities, and families faced throughout the nation. Black farmers were given loans with worse terms than their White neighbors, often on a timeline too late for them to fairly compete in the marketplace. One interview participant noted:

“... Most farmers in this area, one way or another, were discriminated against. Because, like I said earlier, if you apply for your loan in November, December, it'll be May or June before you receive it. And by then you would have to go and either use your own money or you would have to depend on the person that you purchase your seeds and fertilizer from to credit you until you got your money.”

Debt relief was written into the consent decree for *Pigford* and included in the settlement agreement for the second case that settled late claims, *In re Black farmers Discrimination Litigation*. Farmers could choose to pursue remedy through Track A, which included a \$50,000 standard award, or Track B, which allowed farmers to claim full damages, but required them to provide a higher level of evidence. The settlement agreement stipulated that any USDA Farm Service Agency loan that was incurred under or affected by the discriminatory program was to be canceled if the claim was successful. **However, debt relief in practice fell woefully short of this promise.**

Did *Pigford* provide debt relief to Black farmers?⁵

As part of the settlement, first, the USDA was to stop all foreclosure proceedings against any claimant, though, if their claim was denied, the USDA could resume foreclosing on the property. Second, if a claim was successful the USDA was to discharge any of the outstanding debt to the USDA that was incurred under or affected by the loan program connected to the claim.

In theory, this provision would be transformative – wiping out the toxic debt that had been placed on Black farmers through hundreds of years of discriminatory lending practices and land expropriation by the USDA. In practice, however, the provision was flawed from the start. Confusion over definitions in the consent decree’s language caused significant delays and ended up narrowing the definition of eligible outstanding debt, putting debt relief out of reach for most claimants. The final review of debt relief implementation did not happen until the summer of 2008, nearly a decade after the consent decree was agreed upon, and debt relief payments weren’t finalized until 2012.

Of course, life went on for *Pigford* claimants. If they were still farming, they still needed to purchase seeds, fertilizer, machinery, and other inputs, meaning that they still needed capital to operate their businesses, at times necessitating that they take out more loans, thus perpetuating a toxic debt cycle. Farmers still had to deal with natural disasters – droughts, hurricanes, tornadoes – and major market fluctuations like the great recession, all while they waited for promised debt relief to come.

One participant noted that due to the long wait for payments, *“A lot of Blacks, they lost, even when they got the 50 [thousand] they lost the farm because ... every year when something happened it snowballed, and the interest kept going up higher and higher and they ended up losing the farm”*

While the USDA was barred from foreclosing on properties during this period, claimants were still legally obligated to pay balances on the very loans that they were filing discrimination claims about, and interest continued to accrue, leading to substantial balances by the end of the claims process for some claimants who would later find themselves ineligible for debt relief. Farmers who were able to pay on their loans were also hurt in the end, as some personally paid off loans that would have been eligible for relief if there was still an outstanding balance on their account.

Overall, while 15,645 claims were successful in Track A, and 115 claims were successful or resolved through settlement agreement in Track B, **only about 2.7% of claimants (425 people total)** received debt relief as part of *Pigford*. In *In Re Black Farmers Discrimination Litigation*, **only five** farmers received loan awards, which were modeled after the debt relief provisions in *Pigford*.

***Pigford*’s role in contributing to farm debt**

The long wait times for the implementation of the consent decree was noted by the court-appointed Monitor as a contributor to increased debt for claimants, as interest still accrued on unforgiven USDA loans, but the farmers we spoke to were angry at spotty and troubled implementation of the decree by class counsel and the USDA. For example, in some cases, payment was issued to the claimant before the USDA issued payment to the USDA, leaving claimants with a \$12,500 tax liability to the IRS.

Furthermore, existing debt and financial precarity influenced claimant choices. One participant summed up her choice in applying for Track A vs the higher value of Track B by saying *“it would have been more... I was in debt and stuff and needed money at that time. If I could have waited – They gave you a chance,*

except the wait was five times more...” Another noted an environment that allowed charlatans to take advantage of Farmers who were desperate for relief, *“There was one guy who charged \$100 (to submit a claim), but I found out later that was a scam.”*

An overwhelming number of participants we spoke to used some or all of their settlement dollars to settle public and private debt they had to take on to keep their farms afloat. Had debt relief covered these farmers, that money could have been used elsewhere – on irrigation, capital improvements, land acquisition, all things that would have helped claimants prepare themselves for the future rather than respond only to their current financial crisis.

Conclusion

Perhaps the most egregious way that the *Pigford* settlement exacerbated the current farming debt crisis is that it did not require the USDA to admit fault or make plans to change their behavior. This has contributed to a critical lack of trust between Black farmers and the agency that is supposed to help them. One interviewee summed up their experience of *Pigford* thusly: *“you know, they make a law, and they break their own law, and get mad at the people who didn’t make it... And when it passed the government didn’t admit that it was racist. The government said, ‘well, we ain’t gonna admit that, but we’re gonna let y’all have the money.’”* Another farmer summed up inefficacy of the settlement’s provisions by saying *“my guess is 100% of the Pigford money was back in the hands of the White majority in three days...”*

While some of the folks we’ve spoken to believe that they face a different USDA today, many more believe that not much has changed, especially on the local level. One noted an interaction with a local official in the grocery store, *“He [a USDA official] made the statement to me ‘I went ahead and retired because you gonna make me lose my job’... They don’t understand what people of color go through in this country.”* Another noted, *“They’re still doing pretty much the same thing. They’ll tell you one thing and then when you show up to have something done.. I haven’t got nothing but a bunch of red tape.”*

Another claimant speaking about current policy under the Inflation Reduction Act echoed the lack of trust in the USDA, saying, *“They’re doing [the same thing] with discrimination payments now. You don’t try to correct something, and the people that did it – you put them back in there – They’re gonna get vindictive. They don’t like the idea they got caught.”* Another farmer noted, *“there’s a lot of money out there being invested, and we the last ones that get it.”*

Pigford failed to address the mounting debt crisis among Black farmers at the turn of the century and, in many ways, its spotty implementation made it more difficult for the USDA to administer programs and services to Black farmers. Rather than standing as a new chapter in the relationship between Black farmers and the USDA, *Pigford* has been taken as yet another broken promise made to Black farmers.

The reactive about-face that the Biden administration took in shifting from ARPA to the IRA drummed up memories of the *Pigford* cases’ broken promises for those who lived through them. If the USDA is serious about making things right for Black farmers, it must be proactive in addressing farmer’s needs, hold itself publicly accountable for its past actions in a public and reparative way, and work to rebuild real trust with Black farmers. First and foremost, doing something real about debt is a good starting point.

Endnotes

1. Bustillo, X (2023) “In 2022, Black farmers were persistently left behind from the USDA’s loan system.” NPR. <https://www.npr.org/2023/02/19/1156851675/in-2022-black-farmers-were-persistently-left-behind-from-the-usdas-loan-system>
2. Reiley, L. (2021) “Agriculture Secretary Tom Vilsack says only 0.1 percent of Trump administration’s covid farm relief went to Black farmers.” Washington Post. <https://www.washingtonpost.com/business/2021/03/25/vilsack-interview-usda-rescue-plan/>
3. Estimates of producer numbers drawn from 2017 USDA Census of Agriculture. Specific estimates of limited resource farmers may represent a slight overlap with veteran farmers, as the number of limited resource veteran farmers was not reported.
4. Estimates of spending drawn from section 22007 of the IRA and section 1006 of ARPA. H.R.5376 - 117th Congress (2021-2022): Inflation Reduction Act of 2022. § 22006-22007 (2022, August 16). <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>; H.R.1319 - 117th Congress (2021-2022): American Rescue Plan Act of 2021. § 1005-1006 (2021, March 11). <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>
5. This and the following section pull extensively from facts stated in the Monitor’s Final Report on Good Faith Implementation of the Consent Decree and Recommendation for Status Conference. *Pigford v. Vilsack*, Case 1:97cv01978 PLF Document 1812. (D. C. 2012).

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For more information on the Pigford Project, visit our website:

<https://heller.brandeis.edu/iere/projects/current-and-recent-projects/pigford-v-glickman.html>