Black farmers historically have had a difficult relationship with the U.S. Department of Agriculture (USDA) since 1862. Many believed that the U.S. government was going to play a major role in helping black families become independent landowners and farmers after slavery ended in 1865. This, however, did not happen. The majority of newly freed families did not receive either a mule or forty acres; nor did they gain admittance to state-based land grant colleges established by the Morrill Act of 1862. Not until 1890 did the USDA respond to African American petitioners who sought access to public education and experiment stations and the right to participate in other USDA programs with passage of the Morrill Act of 1890. The assistance that the federal government provided to white elite and yeomen farmers did not readily extend to black farmers.

By the mid-twentieth century, in the immediate aftermath of post–World War II agricultural changes, only haphazard help was given to selected black farm families who protested that they should have access to USDA services, particularly access to resources available through its Federal Extension Service (FES) and agricultural experiment stations. Help was and has been little and sparse. But African American farmers have not been silent about the lack of service. They have claimed neglect and protested against what they believed constituted unfair treatment due in part to the color of their skin.
This chapter profiles some of the black farmers’ encounters with national and local USDA offices and the failures the farmers experienced as they pursued equal access to and participation in USDA programs. Farm owners believed that government advice could help them negotiate changing markets, crop and stock science, and technological changes. They believed that they should be involved with and be allowed to benefit from all federal agricultural programs, specifically those created in the 1930s as part of the New Deal and modified in the decades since. The Civil Rights Act of 1964 guaranteed black farmers’ access, but many African American farmers recognized that federal policy implementation could ignore their civil rights. This led black farmers to label the USDA as the “Last Plantation.” The struggles black farmers have engaged in since the 1980s indicate the failure of civil rights legislation and prove that the quest for civil rights in the United States is largely unfinished.

Landowners made up the backbone of civic and political life in rural black communities. In fact, black landowners were among the first to join and support the civil rights movement in the rural South. Black landownership peaked during the 1910s with 218,972 individuals owning nearly 15.7 million acres (more than 8.8 million acres owned free and clear; 4.0 million acres mortgaged, and 2.8 million acres owned in part). Between 1910 and 1920 the number of African Americans owning farms declined even though the number operating farms increased from a total of 893,370 in 1910 to 925,710 in 1920. By 1992 the number of all minority farms had fallen from the 1910s high to around 60,000. For African Americans, the number fell from 925,000, or 14 percent of all farms, in 1920 to only 18,000, or 1 percent of all farms, in 1992.¹

Most African American farmers have been small operators who specialized in the production of cash crops, livestock, and fruit and vegetable produce.² Between 1920 and the 1990s a number of factors affected African American farmers’ ability to remain economically viable, and agents of the USDA and the federal government offered little support because, according to James Cobb, government policy designed support for large operators who happen to be majority white. This applies especially in the case of New Deal programs, such as the Agricultural Adjustment Act (AAA) and its successor, the Agricultural Stabilization and Conservation Service (ASCS). Both failed to serve blacks equitably. Cobb has shown that large planters in the Yazoo-Mississippi Delta were sustained by depression era federal agricultural relief programs, while the poor farmers starved.³
Legalized segregation facilitated creation of unequal public programs. Furthermore, elite white farmers proved more successful than blacks at lobbying for regulatory legislation that protected their individual and institutional interests. Nonetheless, black landowning families gained access during the 1930s through their involvement with each state’s Agricultural Extension Service. A few New Deal settlement communities, such as Tillery, North Carolina, served black constituents, and the Farmers Home Administration (FmHA) assisted some families with land purchases, houses, and buildings and with technical and scientific information to make farms more profitable. Most black farm families, however, remained unserved. According to Pete Daniel, powerful white farmers and bureaucrats controlled all the resources and programs made available by the federal government through the USDA. Black farm families, on the other hand, received little or no help and were forced to beg for access through segregated offices.

The racial segregation created a climate that marginalized African Americans as a whole from USDA decision making. Consequently, prior to 1964 no African American served on a county committee. Whites seemed comfortable with the politics as they were. But the absence of blacks and other minority farmers simply showed that little had changed for black farm laborers, owner-operators, and farm managers. Amid growing criticism and rising black activism of the mid-1960s, the USDA attempted a serious assessment of offerings to blacks.

The U.S. Commission on Civil Rights, an independent agency created by the Civil Rights Act of 1957 to investigate and report on a broad spectrum of discriminatory practices, focused on USDA programs. In 1965 the commission released a highly critical study, *Equal Opportunity in Farm Programs*. The study revealed how the ASCS, the FmHA, and the FES stubbornly refused demands to share power with African Americans. The commission also cooperated with the Sharecroppers Fund and the National Association for the Advancement of Colored People (NAACP), sharing complaints and suggesting approaches to end discrimination. In light of the report, on April 22, 1965, Secretary of Agriculture Orville L. Freeman issued a memorandum demanding that the USDA staff “put into effect with dispatch” comprehensive policies that would ensure an end to discrimination. “The right of all our citizens to participate with equal opportunity in both the administration and benefits of all programs of this Department is not only legally required but morally right,” he explained. But despite the
secretary's insistence, black farmers lost more ground in the 1960s because the USDA did not control the implementation of its policies at the state and local levels, and neither did it address any of the complaints made by those claiming discrimination. Thus the civil rights laws that should have ensured equal rights and parity were undermined by powerful whites who had all the money, machines, chemicals, and government subsidies and who dominated local and state USDA offices.\footnote{10}

USDA officials procrastinated in implementing detailed recommendations issued by the U.S. Commission on Civil Rights in 1968 to bring the USDA into compliance with the Civil Rights Act. Subsequent reports provided more details about continued injustices, particularly on the part of the FmHA, the major public lending institution for family farmers.\footnote{11} The department failed to ensure equal opportunity and instead acquiesced to local patterns of racial segregation and discrimination.\footnote{12}

Complaints against the USDA increased during the 1970s. Not only were African American farmers complaining about experiencing abuse and intimidation from agents at the state and local offices of the ASCS and FmHA, but they also claimed that their civil rights were violated. Black farmers claimed that racism was as prevalent as it had been prior to the Civil Rights Act of 1964. They believed that unfair treatment by some agents of the USDA local offices undermined their efforts to farm successfully and compromised their ability to keep their land. The USDA needed to address several problems, including the office's commitment to civil rights, the program delivery of local offices, and the need to include minority and black representation on the local agricultural committees.\footnote{13}

The failed civil rights policies and practices of the 1970s, however, made it difficult for the USDA to establish a strong civil rights record in agriculture and farming in the 1980s. Based on past practices, the department's Civil Rights Policy Analysis and Coordination Center found that less than 1 percent of the department's full-time equivalent resources and budgetary resources were allocated to civil rights. Civil rights budgets were seriously reduced in the 1980s and have not fully recovered. The Civil Rights Leadership Council indicated that related agencies did not provide adequate resources to carry out the compliance and oversight activities needed to enforce civil rights laws and regulations.\footnote{14}

Black farmers also charged that the USDA had consistently tolerated discrimination in the distribution of program benefits predominantly to white farmers. They blamed farm program regulations that excluded minority and limited-resource farmers and ranchers from benefits. And they
blamed the USDA's insensitivity to the differing needs of minority and limited-resource farmers and customers and neglect of its responsibility to reach out and serve all who needed USDA assistance. Many black farmers and those working for the USDA viewed the 1980s as the critical period, a time when alleged racist practices and retaliation against those complaining became the most entrenched. The resurgence of conservatism during this time was accompanied by a rapid decline in the participation rate of black farmers in certain public agricultural programs.

During the 1990s the USDA attempted to respond to some of the criticism but seemed unable to establish the right kind of policies that black and small farmers needed. By the 1990s black farmers and their advocates complained that the way in which the USDA allowed the local county committee to function disrupted their ability to farm successfully and profitably. At least 94 percent of all county committees had no female or minority representation even though many southern farmers were female and minorities. Minority producers were 4.7 percent of eligible voters, but held only 2.9 percent of county committee seats. Women constituted 28.8 percent of eligible voters, but held only 1.5 percent of county committee seats. The General Accounting Office found that in 1995, only thirty-six of the 101 counties with the largest concentration of minority farmers had at least one minority county committee member.

During the mid-1990s, some important legislation appeared. In 1994, for example, Congress implemented a measure that attempted to address the problem of inadequate representation of black and minority farmers on county committees. The legislation required that the county committees reflect the demographics of the agricultural producers in the county or multicounty area. In counties with relatively high concentrations of minority farmers without elected minority county committee members, the Farm Service Agency (FSA, which replaced ASCS and FmHA) was to require an appointment of minority advisors to increase the minority awareness of programs, including elections. Minority advisors were to convey problems and viewpoints for consideration in all FSA actions. USDA believed that this addressed the problem that minority and black farmers claimed was one of the reasons they were losing their farms. But black farmers suggested that the unchecked power of local committee members caused them to lose their land. They believed that committee members deliberately delayed and denied loans to force foreclosure of their farms so the white members and/or their friends could buy the land at public auction with the USDA handling the sale.
Continuing to address issues of discrimination in the implementation of federal farm programs, the USDA created a debt relief program for minority and limited resource farmers. During the 1990s this resourceful program served as a conservation contract debt reduction program, called “Debt for Nature.” It encouraged reduction in a landowner’s debts in return for his/her placing a portion of the land under contract as a conservation easement for a specified length of time, usually fifty years. Use of the program allowed minority or limited-resource farmers to retain ownership of their land and continue farming on a large enough portion to remain profitable, while contributing to the conservation of highly erodible land, wetlands, endangered species habitats, and other fragile lands. Much to the chagrin of black farmers, however, these contracts were considered debt write-downs; therefore, their use disqualified the landowners from further FSA loans. A change in legislation to end that prohibition made “Debt for Nature” contracts more helpful to minority and limited-resource customers and increased benefits to fragile ecosystems.19

A third development that allowed the USDA to address criticism about its compliance process was the establishment of a new, independent appeals unit in 1994, the National Appeals Division (NAD). The director of NAD reported directly to the secretary of agriculture and bore responsibility for improving the appeals process. It was designed to provide farmers with information and render decisions quickly. Any farmer could appeal to NAD after going through at least one stage of appeal within the USDA. Black farmers still complained, however, that if NAD overturned an agency’s decision in favor of the farmer, the agency, usually FSA, could appeal to NAD’s director to have the decision reversed.20

Despite the suite of farm legislation created to help minorities remain in agriculture, the number of African American farmers decreased by 98 percent by 1997, while the number of white Americans who farmed declined by 66 percent. Documentation of black land loss dates to 1971 when the Black Economic Research Center sponsored a two-day conference at Clark College in Atlanta. The Emergency Land Fund grew out of these efforts.21 R. S. Browne produced a report of the 1971 conference in 1973 that described the outcome of approximately a dozen projects dealing with land loss. Browne’s comprehensive report argued that between 1950 and 1969, the number of acres of farmland fully or partly owned by blacks dropped from 12 million to 5.5 million.22 The reduction in ownership of acres continued because black farmers could not acquire capital and also, as some black farmers believed, because the USDA allowed large white landowners
to manipulate local USDA offices to maintain their domination of agricultural life and production.  

During the 1990s black farmers became increasingly vocal in blaming the USDA’s relatively autonomous local delivery structure for racial discrimination. They charged that USDA has long tolerated unequal distribution of program benefits and misuse of power to influence land ownership and farm profitability. They blamed farm program regulations that intentionally or not prevented minority and limited-resource farmers and ranchers from the benefits of the same programs that had helped larger nonminority producers survive the changes in agriculture since the 1930s. And they blamed USDA’s insensitivity to the differing needs of minority and limited-resource farmers and customers and neglect of its responsibility to reach out and serve all who needed USDA’s assistance.

The 1990s were ripe for protest. And some black farmers took advantage, began to press for greater inclusion and participation, and demanded action with expected results. On December 12, 1996, for example, black farmers representing each region of the country demonstrated outside the White House and called upon President Bill Clinton to ask for fair treatment in the implementation of federal agricultural lending programs. Thereafter Secretary of Agriculture Daniel R. Glickman established the Civil Rights Action Team (CRAT) within the USDA to investigate the charges black farmers were making. Glickman authorized listening sessions to take place throughout the country to field complaints of black and minority farmers and ordered that a findings report be submitted to the USDA in a timely manner.

The USDA sponsored twelve listening sessions in eleven locations in January 1997. The purpose was to learn about the experiences of black and minority farming from the farmers, especially the socially disadvantaged ones. Nine listening sessions were held with farmers and producers, typically called the customers, and three with USDA staff employees. Each session was designed to address concerns regarding gender and race, as they related to interactions between USDA local offices and African Americans, American Indians, Hispanics, and Asians. Farmers and staff employees who did not speak at the listening sessions were allowed to submit recorded or written statements to CRAT. In addition, the USDA established an e-mail address, a fax number, and a hotline for civil rights comments.

Throughout the country thousands of self-proclaimed farmer-victims attended the sessions. At the sessions, those who spoke voiced concerns about program delivery and civil rights issues. Details varied from family to
family, but the general themes of the stories farmers told to CRAT personnel focused on loan processing, delays in delivery of approval of loans, and the lack of information and help needed to participate in USDA programs. Farmers, too, orally documented their concern about declining minority farmers and farms. Many black farmers indicated they believed that the USDA was involved in a conspiracy to take land from minority farmers so that wealthy landowners could gain access to more land.26

At these sessions, farmers also described a pattern of discriminatory behavior. The most serious accusation concerned how the black farmer was treated as a person and how minority farm business was not treated as an agricultural enterprise. Within this context, some claimed that their paperwork had not been taken seriously and that they were disrespected because of their skin color. Other complaints emphasized loans that arrived long after planting season, arbitrary reductions in loan amounts, and a much higher rejection rate than white applicants received. An overwhelming majority of black farmers also accused the USDA of ignoring research that would help small-scale and limited-resource farmers, and of failing to include minority populations in outreach efforts to raise awareness of federal programs. Finally, minority farmers indicated that official complaints of discrimination were processed slowly, if at all, and that the USDA often continued with foreclosure proceedings even when a relevant discrimination complaint had been filed. Members of CRAT heard more than thirty different complaints at the USDA-authorized listening sessions where USDA representatives supervised meetings, gathered data, and began processing the scope and nature of the problems black and other farmers were alleging.27 These were the same issues they had raised before Glickman established his “action” team.

Although the listening sessions created a forum for dialogue, none of them produced any real solutions to problems or answers to questions that positively and significantly affected black farmers’ ability to survive. But the USDA ordered CRAT to gather data, and plenty of it was found. Only a fraction of the findings from the oral testimonies from the twelve listening sessions was included in the February 1997 CRAT Report. Yet the report made possible a black farmers’ lawsuit, because CRAT personnel indicated discrimination had taken place and that the USDA was liable.28 Overall, the CRAT Report found little accountability within the USDA, especially in its local offices, and county officials who had allegedly discriminated against minority farmers went unpunished.29
Meanwhile, some black farmers and their advocates developed grassroots strategies to be heard. Their activism included protest marches in Washington, D.C., Detroit, Chicago, Atlanta, and other major cities. They organized letter writing campaigns, sent messages to churches, emailed messages to local and national politicians, conducted major fundraisers to help farmers, and founded national and regional farm organizations to address media questions concerning the struggle. Among the many issues raised by the protests, none seemed more pressing than the fight against foreclosure of farms owned by black farmers and the snail’s pace at which the USDA handled complaints. Black farmers clearly linked these two issues to the ready loss of land and of farms.\(^{30}\)

More than 90 percent of the farmers were concerned about the slow pace and ineffective process of handling complaints. In 1997 the Office of General Counsel notified CRAT that USDA did not have any published regulations with clear guidance on the process or timelines involved in program discrimination complaints. When a farmer alleged discrimination, preliminary investigations were typically conducted by the agency involved. This, according to USDA’s compliance office, took more time, time that black farmers had indicated they did not have because of growing debts and threats to their land. Because expediency seemed to be lacking in processing claims, black farmers also charged that while complaints worked their way through the agency, USDA proceeded with farm foreclosures. Seemingly, the USDA did not respond to all complaints. On the few occasions when a complaint had been acted upon and discrimination was documented, black farmers claimed the USDA refused to pay damages. They charged the USDA with forcing them into court to seek justice, rather than working with them to address grievances.\(^{31}\)

Farmers described a complaints processing system which they believed made the matters worse. When USDA denied a loan, payment, or any other benefit, the customer almost always had appeal rights. Agency appeals processes varied, but typically, an appeal went to a higher level agency official in the county, state, or region and then to the agency’s national office or to the department. Until 1995 the FSA’s appeals process was handled entirely within the agency. If the farmer did not agree with the national decision, he or she could appeal to the courts. Yet many farmers, especially small farmers who managed to appeal their cases to FSA, charged that even when decisions were overturned, local offices often did not honor the decision. They claimed that decisions favoring farmers were simply not enforced. Farmers
also mentioned the backlog and length of time needed to appeal and the lack of timely communication to inform them of the status of their cases.\textsuperscript{32}

National black farm organizations, specifically the Black Farmers and Agriculturalists Association (BFAA) led by Gary Grant, the National Black Farmers Association (NBFA) led by John Boyd, and the Federation of Southern Cooperatives (FSC) led by Ralph Paige took the leadership on the racial discrimination charges against the USDA. The FSC especially had provided a consistent and uninhibited voice against discrimination in farm policy since the 1960s. The FSC had lobbied for land loss prevention, paying particular attention to reclamation processes and ways that black farmers could diversify their operations and maintain land ownership. In terms of the 1997 black farmer class action lawsuit, however, the BFAA and NBFA took the forefront, leading the charge for compensation for the discrimination that black farmers had suffered. They represent, through membership, thousands of black farmers from each region of the country. These organizations have had the support of a leading watchdog, the Environmental Working Group (EWG), which keeps abreast of issues relating to alleged injustices. EWG has issued numerous reports concerning the status of black farmers and their quest for justice.\textsuperscript{33}

In August 1997 three African American farmers representing a putative class of 641 black farmers filed a proposed class action lawsuit against the USDA, \textit{Timothy C. Pigford et al. v. Dan Glickman, Secretary, U.S. Department of Agriculture}. Attorneys Pires and Fraas handled the case. At an initial status conference on October 30, 1997, plaintiffs' attorneys requested that the case be referred to Magistrate Judge Alan Kay of the U.S. District Court of the District of Columbia (DDC) for the purpose of discussing settlement. The government opposed that request, and the DDC did not require the government to engage in settlement negotiations. Regardless, the DDC made it clear that the process would move swiftly. Although much legal maneuvering took place on many issues, both sides believed there were problems that had to be resolved for the case to proceed. A second proposed class action lawsuit was filed on July 7, 1998, \textit{Cecile Brewington et al. v. Dan Glickman, Secretary, U.S. Department of Agriculture}, and included black farmers who alleged discrimination but who had missed the deadline for joining the Pigford class action. On October 9, 1998, the DDC granted a motion for a class certification in \textit{Pigford}. On January 5, 1999, the two cases petitioned to consolidate and join the classes. In December of 1999 Judge Friedman certified \textit{Pigford} as a class action lawsuit. This allowed the debate over racial discrimination within the USDA to begin.\textsuperscript{34}
Initially, nearly 15,000 African Americans joined the class action lawsuit. The USDA offered each certified claimant a settlement of $50,000 and forgiveness of debt owed the USDA (but not to private lenders). Claimants could also choose arbitration, in which the settlement equaled actual cash damages. These two options became known as Track A for $50,000 and Track B for an unspecified amount. In the end, a consent decree was established, thereby making way for cases to be filed, reviewed, and compensated if discrimination was found.\textsuperscript{35}

Black farmers and their advocates criticized the terms of the class action and consent decree because they believed the terms were insufficient to address the long-term effect of discrimination and their need for compensation options. Their criticism suggested they believed that the proposed consent decree was unfair; that compensatory damages were too limited in Track A and too difficult to obtain in both Tracks A and B; that the timing of the settlement and the extent of discovery was also not considerate of the farmers' experiences; that the definition of "class" needed to be clearer and in keeping with the experiences the class action addressed; that the issue of collusion needed to be settled before any claims were settled; that a notice of opportunity needed to be heard in reaction to the class action; and that the issue of recovery had to be addressed as if the case would proceed to trial.\textsuperscript{36} In this endeavor several other organizations supported the farmers, including Concerned Black Farmers of Tennessee, Arkansas, Mississippi, Georgia, and North Carolina, the Coordinating Council of Black Farm Groups, Land Loss Prevention Project, NAACP, National Council of Community Based Organizations in Agriculture, and National Family Farm Coalition.\textsuperscript{37} Together, these organizations, with BFAA, NBFA, and FSC, demanded greater clarity, fairness, and resources to address adequately the debts black farmers had incurred due to USDA discrimination and lack of funding support that would have helped them secure their land.

Some resolution did come in the wake of the criticism articulated. To resolve conflict, the court ruled that adequate notice had to be provided to all members of the class and that a fairness hearing had to be conducted. Notices were provided through black media outlets, announcements in churches and other institutions in the black community, and through advertisements in local newspapers. But after a fairness hearing was conducted, the court found that the "settlement is fair, adequate and reasonable, and was not the product of collusion between the parties."\textsuperscript{38}

A review of the history of the case revealed that sufficient discovery was provided and reviewed and that the term "class" in this class action lawsuit
was correctly defined. It was expected that the government would provide the plaintiffs with the files of “class members.” Consequently, the class action included all African American farmers who: (1) farmed or attempted to farm between January 1, 1981 and December 31, 1996; (2) applied to the U.S. Department of Agriculture during that period for participation in a federal farm credit or benefit program and who believed that they had been discriminated against on the basis of race in USDA’s response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA’s treatment of such farm credit or benefit application. Some wanted the class to be broadened to include all African American farmers who claimed to have faced discrimination in credit transactions or benefit programs with the USDA, even if they had not filed a complaint of discrimination by July 1, 1997, or by July 7, 1998, in a second case, Cecil Bre wington et al. v. Dan Glickman, Secretary, U.S. Department of Agriculture. Others, especially those in the USDA and the U.S. Justice Department, were concerned that the broadening of the class would inject legal and factual issues into the case that were not present at the time and would, therefore, hinder a fair and reasonable settlement for the African American farmers who were legitimately a part of the class action, as per the definition of the case.

Any negative court determination had the potential of undermining black farmers’ ability to maintain ownership of their land. Issues of foreclosures, statute of limitation, and proof of discrimination had to be resolved. Judge Friedman and President Bill Clinton, with the support of officials and politicians, responded to associated issues. In 1998 Congress provided relief to plaintiffs with respect to the statute of limitations for all those who filed discrimination complaints with the USDA before January 1, 1997, and who alleged discrimination at any time during the period beginning January 1, 1981 and ending on or before December 31, 1996. A moratorium on foreclosures was also issued. On January 5, 1999, Judge Friedman consolidated the Pigford and Brewington lawsuits under Pigford and issued preliminary approval of a consent decree that had been negotiated between Department of Justice attorneys and class counsel. With these developments, it was clear that the court would not hear tens of thousands of individual cases at taxpayers’ expense but expected the federal government to give black farmers legal support against foreclosures and moratoriums while their cases were in deliberations.

With these resolutions other kinds of criticism evolved. Some conservatives, some anti-black organizations, and persons opposed to black farmers
being paid weighed in. By their estimate, the class action lawsuit was a sham. They called the suit a reparation payment for black enslavement. Others referred to it as a shakedown for segregation and the discrimination blacks have experienced in the work force. Some others dismissed the suit by claiming that it was simply a big lie against the government to make this country look bad and that the discrimination charge was a figment of black farmers’ (and by extension the black community’s) imagination. Still others proclaimed that the class action invited blacks to continue complaining and hustling money from white taxpayers. The class action was believed to have encouraged scoundrels and thieves, lawyers who joined the case simply for the money, and one woman even posed as a lawyer so she could get money. Eventually, black farmers criticized the lead attorneys, Pires and Fraas, for being incompetent, greedy, and for not genuinely caring about the discrimination black farmers had faced and the subsequent land loss they experienced. The lawsuit proceeded in spite of these and other criticisms.

The consent decree established a dual track system to handle the claims filed. Once a claim package was submitted and accepted, the claimant was required to choose one of the two tracks. As the judge described them, the consent decree provided those class members with little or no documentary evidence an automatic cash payment of $50,000 and forgiveness of debt owed to the USDA (Track A), while those entitled to a larger payment had to prove their cases with documentary or other evidence (Track B). Under the original consent decree, claimants had to file their claims with the facilitator (Poorman-Douglas Corporation) within the 180 days of the consent decree, or no later than October 12, 1999. For those determined to be eligible class members, the facilitator was to forward the claim to the adjudicator (JAMS-Endispute, Inc.), if it was a Track A claim, or to the arbitrator (Michael Lewis, ADR Associates), if designated as a Track B claim. If the facilitator determined that the claimant did not qualify as a class member, the claimant could seek review by the court-appointed monitor Randi Roth. If the facilitator ruled that the claim was filed after the initial deadline, the adversely affected party could request permission to file a late claim under a process ordered by the court.

An overwhelming majority of the claimants qualified for Track A. Through midsummer 2010, at least twenty thousand payments had been made to persons in Track A, while Track B, the more difficult claim, had only fifty successful claimants. Most of these claims were settled between 2000 and 2004. The small number of successful claimants resulted from a
small pool of clients who, with other potential claimants, argued that insufficient notice and time had been given to file. According to data reported by Louis T. March, in the year 2000, there were 50,551 decisions on cases with a 60 percent success rate; in 2002, there were 42,831 with a 60 percent success rate; in 2003, 43,260 decisions with a 61 percent success rate; and in 2004, 22,138 decisions with a 61 percent success rate. Consistently, 39 percent of claimants failed to secure settlement.\textsuperscript{44} While these data and these numbers seem high and somewhat inconsistent with the staggering number of reports addressing the failure and success rate of cases and the number of persons who filed, March claimed that these percentages represented the most accurate data between 2000 and 2004, because they are reported by the Department of Justice. Yet this 60 percent success rate seems suspicious, as if some people decided that a 60 percent win rate would be publicly acceptable and would be satisfying because this acknowledged the discrimination, while at the same time suggesting it was not as serious as the black farmers and their lawyers and advocates claimed.\textsuperscript{45}

It is worth noting, however, that in the adjudication process, the adjudicator’s decisions are final. The decisions are subject to review only by the court’s appointed monitor, whose job it is to review appeals from either side. Decision-making power concentrated in the hands of one person in this way did not satisfy black farmers. Reports show that the appeal process has been used primarily by black farmers constituting the 40 percent failed rate due to a negative decision or to additional debt requiring more documentation.\textsuperscript{46} Moreover, documentary evidence shows that the process has been brutal, with debate and bickering back and forth among the parties and with some farmers being required to refile their cases with more supporting evidence. Some black farmers have had success getting compensation for discrimination; others claimed they have neither had their case heard nor had it reviewed and therefore have not received any compensation. For those who claimed they never had the opportunity to be included, Pires, the attorney for the class action, sought to have the case reopened and the deadline extended to include a new filing date. A new era in this struggle was dawning and the fight for a positive outcome for black farmers intensified.\textsuperscript{47}

The year 2000 held many battles. No period of time during this year seemed more contested and significant than July 2000, when growing concern about the class action escalated. Written and loud verbal demands for a new class action were drawing considerable negative attention to the USDA, President Clinton and his administration, and the Department of
Justice. To arrest fears and to quiet the political mayhem circling this issue, Judge Friedman intervened again and on September 15, 2000, established a new filing date for late claimants and lowered the requirements for the new filers, who could now forego the actual claim package and provide an explanation as to why they had to file late. As a result, a record 61,400 additional farmers joined the class action. Most of the claimants lived in the South. According to news reports and e-mail communications from the leaders of the black farm organizations, these claimants have not secured justice and have not been compensated.48

The extension drew criticism. Some believed the USDA was the victim of another shakedown. They claimed that this decision was about politics because 2000 was a presidential election year, and groups of anti-Democrats believed the new file date for late claimers was a gift to the black farmers to keep the black community loyal to the Democratic Party.49 Criticism also came from black farm leaders, and it did not show concerns for the Democratic Party or its nominee but for the black farmers. Black farm advocates believed that the court and the government were not doing enough to get justice and compensation for either the group who filed in time to be considered as part of the original class action in *Pigford I* or this new group of black farmers comprising *Pigford II*. This belief remains today, and there is continuous concern, even after BFAA filed a $20.5 billion class action lawsuit in September 2004 on behalf of approximately 25,000 farmers who alleged racial discriminatory practices between January 1997 and August 2004.50 The failure of the 2004 attempt to establish a new lawsuit and class action certification meant that the question of justice and compensation for black farmers continued with little success for an overwhelming majority in *Pigford I* and for nearly all of those in the subsequent *Pigford II* case. Even President Barack Obama suggested that not enough was being done to “close this chapter” on the country’s racial history.51

In actuality, black farmers’ struggles with the USDA over civil rights violation do not seem to be nearing an end. More sad episodes keep emerging. The Shirley Sherrod debacle is an example. It connects to this struggle not only in terms of her family being one of the black farm and landowning families who joined the class action lawsuit against the USDA in 1997 but also in her work as an employee of the USDA. Sherrod was head of the rural development office in Georgia. She was released from this position following a claim that she had behaved in a racist manner toward a white farm family. News of this claim and the edited video that accompanied it created a fuss with Sherrod being forced to resign. But she made her forced
resignation a public issue and she fought back, thereby forging an investigation of her situation, which ultimately showed that she had been wrongly terminated. In this situation the USDA appeared inefficient and ineffective, as additional reporting made clear that Sherrod had been a victim of partisan politics and had been treated shamefully. Those connected to her, especially some of the 1960s civil rights workers, many black farmers and leaders of national black farm organizations, and members of the national rural coalition were stunned at this treatment. Sherrod's experience with the USDA provides an example of the kind of business blacks have claimed is the norm when working with USDA offices and agents, locally and nationally. The Sherrod incident proved an embarrassment, and it signaled that the USDA is still very confused around the notions of civil rights and how best to enforce its policies. Because of this incident, a leader of one of the black farm organizations called for the resignation of Secretary of Agriculture Tom Vilsack. 52

Toward the end of the first decade of the twenty-first century, other developments created mixed results for black farmers. A provision in the 2008 Farm Bill permitted any claimant in the Pigford decision who had not previously obtained a determination on debt payments or foreclosure on the merits of a Pigford claim to petition in civil courts to obtain such a determination, but the provision has not helped many farmers. Further, President Obama announced during May 2009 that the Farm Bill would contain language to address the larger issue of justice and compensation, but in June 2010, after the House passed a bill appropriating funds for Pigford II settlements, the U.S. Senate voted against funding Pigford II in the “Extenders Bill.” Then during July 2010, the Republicans, according to Democrat Senator Harry Reid, stalled justice once again. This time, they blocked a measure that would have settled compensatory disputes between the USDA and black farmers (Pigford II) and between the USDA and Native American farmers (Cobell). For the fourth time in three months, Reid explained, the Republicans prevented fairness and justice to minority farmers, and as Reid continued, “Their obstruction has not only hurt our economic recovery and our growth as a nation, [but] it is now preventing individuals and families who suffered discrimination for decades from receiving a long-overdue resolution to their grievances.” 53

Taken together, these developments made it very difficult for the Obama Administration to follow through on promises made to black farmers in February 2010. At that time the Obama Administration expressed support
for an additional $1.15 billion to settle *Pigford II*, which Congress had to appropriate by March 31, 2010. Administration officials praised the agreement, especially Secretary of Agriculture Tom Vilsack, who indicated his approval by thanking President Obama “for bringing the [struggles] of African American farmers to a rightful solution.” Vilsack explained that he looked “forward to a swift solution to this issue, so that the families affected can move on with their lives . . . and the department [USDA] has made it a top priority to ensure that all farmers are treated fairly and equally. . . . We have worked hard to address [this issue] and its checkered past so that we can get to the business of helping farmers succeed.”

But not one of these promises was realized as of late summer and early fall of 2010. In fact, all developments seemed to be pointing in the opposite direction, with the U.S. Senate continuously denying all claims related to *Pigford II*. For example, a Senate vote on July 25, 2010, prevented payments from going forward. Then again on August 6, 2010, despite broad support, legislation to finalize $4.6 billion in settlements with black farmers and American Indians stalled in the Senate because of partisan politics. Lawmakers on both side of the aisle claimed they supported resolving the problem between two minority farm groups and the USDA, but senators appeared unclear and often confused as to how to pay for the settlement. For black farmers, *Pigford II* represents the unfulfilled 1999 class action decision. Reports indicate that the federal government has paid out more than $1 billion to about 16,000 farmers, with most getting payments of $50,000. The money, not yet appropriated, was earmarked for farmers numbering between 70,000 and 80,000 who were denied earlier payments because they missed filing deadlines.

In 2008 a report from the Office of the Monitor, written by a representative who had been certified by Judge Friedman to be involved in this case, suggested quite a different story. Data showed that cases were being resolved and that the filing was not at the level reported by Louis T. March in his 2004 study, even though March indicated that the numbers he reported were from the Justice Department. Further, according to a 2008 monitor’s report, 22,547 decisions in Track A had been made, with adjudications approving 15,640 cases (69 percent); adjudication denied 6,895 cases (31 percent). In terms of Track A payouts for $50,000, compensation totaled $756,900,000. Payouts in non-credit awards total $1,299,900, while another $36,655,757 had been awarded for debt relief. IRS tax payments for Track A claimants have amounted to $189,225,000, and the IRS received
$6,307,903 in payments for debt-relief compensation. By the end of 2008 the government had paid a total of $990,387,660 to compensate some of those involved in Pigford I.\(^57\)

Two years later, by December 2010, some gain had been made in the number of black farmers receiving settlements. A 2010 Congressional Research Service Report indicated a slight increase in funds dispensed and cases evaluated: 22,550 decisions in Track A, with adjudications approving 15,640 cases (69 percent); adjudication denied 6,910 cases (31 percent). In terms of Track A payouts for $50,000, compensation was provided in the amount of $768,200,000. Payouts in non-credit awards amounted to $1,512,000, while another $39,180,011 was awarded for debt relief. IRS tax payments for Track A claimants have amounted to $192,050,000 and the IRS had received $6,690,517 in payments for debt-relief compensation. By the end of 2010, the government had paid a total of $1,007,632,528 to compensate some of those involved in Pigford I.\(^58\)

More important, by the end of 2010, the federal government, Congress, and the USDA achieved their greatest results relating to Pigford II. The U.S. Senate finally decided that Pigford II was legitimate and worthy of compensatory damages, thereby clearing the way for late claimers in the black farmers’ class action lawsuit to be awarded. Late in the evening of November 19, 2010, the U.S. Senate passed a bill to fund Pigford II, largely with the support and work of Senators Harry Reid of Nevada and Chuck Grassley of Iowa. Yet efforts to appropriate the $1.25 billion necessary to fund Pigford II stalled in the U.S. Senate, even though the money was twice appropriated by the U.S. House in 2010. The November 2010 decision was tied to the Cobell settlement, a Native American suit that the federal government also settled due to Native Americans’ claims that for centuries, the U.S. Department of the Interior engaged in land abuse and mismanagement of royalty funds that belonged to their communities of peoples.\(^59\)

In the wake of the U.S. Senate vote in November 2010, there has been strong opposition from many who believe the settlement is a farce. Objections have been raised by Reps. Steve King (R-Iowa) and Bob Goodlatte (R-Virginia), for example. In one instance Rep. Michele Bachmann (R-Minnesota) told Fox News she would fight the settlement because she has been informed by insiders that many blacks were getting money they did not deserve. Bachmann suggested that if discrimination was as widespread at the USDA as claimed, the office should have been shut down. These politicians are not alone in their belief that Pigford II is fraudulent. On
dozens of Web sites, comments from American citizens indicate outrage with President Obama, Congress, and the USDA.\textsuperscript{60}

In spite of the hardships that black farmers endured trying to obtain compensatory damages, their long and slow journey to secure justice has not deterred other groups from coming forward. Women and other minority farm groups indicated that they have also been neglected and negatively affected by the USDA. These cases include \textit{Keepseagle} (Native Americans), \textit{Garcia} (Hispanics), \textit{Love} (women), and \textit{Green} (farmers not part of a “protected” racial, ethnic, or gender class). \textit{Green} has been dismissed by a U.S. District Court and the others remain in various stages of litigation.\textsuperscript{61}

The quest of black farm owners to survive represents a larger civil rights struggle. Some believe that the eighteen thousand African Americans still farming could survive by diversifying their income through crop choices, using less hired labor, and bringing idle farmland back into production. This compares to a larger movement to revitalize diversified production in the face of global monoculture. Others believe that black farmers should focus on high-value vegetable crops to compensate for the small sizes of their farms. This compares to the slow-food movement’s goal to create more markets for local produce. Still others suggest that survival could be enhanced through the development of alternative marketing strategies designed specifically for small-scale farmers. Some black farmers believe that their chances of remaining farm owners would be improved if new approaches could be developed, specifically direct or cooperative marketing strategies, engaged and profit-earning youth outreach programs, and legal services aimed specifically at encouraging black farmers to write wills that protect their land and estates.

Other black farmers believe that agribusiness could provide the answer. To that end, a number of projects by black organizations try to link black farmers to mainstream supermarkets and consumers. The USDA’s National Commission on Small Farms has responded by targeting credit to minority farmers, developing direct marketing and value-added activities, increasing funding to programs that work with limited-resource farmers, and implementing the CRAT recommendations. Increased access to credit may lead to permanent indebtedness unless black farmers also use technologies that increase productivity.\textsuperscript{62}

Thinking of ways to use the land other than in the production of crops may increase the survival rate of black owner-operators as well. In 1994, Jones’s study of federal agricultural programs found that the forestry and
convention incentive programs could provide major opportunities for blacks who do not have the credit or capital to continue to produce commercial crops. This is an area of federal farm program participation where blacks lagged far behind whites in participation rates. Research shows that some African American farmers have earned an income from their lands by leasing acreages to hunting and fishing lodges as well as to paper companies to grow trees. However, although these appear to be ideas that can help black farmers, many continue to claim that information concerning these alternative enterprises has not been well disseminated to them and their community, especially to owners of small acreages and plots who possibly could benefit greatly from this relevant information and the additional income that can be earned from these kinds of alternative uses of their land.63

Ultimately, the will and strategy to survive depends on the choices that black farmers make. Several studies suggest that personal characteristics of farmers affect success or failure rates. Successful black farmers have been early adopters of new technologies and managerial techniques, have participated in government programs, and have high educational aspirations for their children as well as a strong work ethic.64 Education and off-farm income relate more closely to increased incomes than do value-added farm activities. This means that many black farmers have not made much money in farming and do not see their income generating opportunities. Increasing farm income often means that farmers have to take risks, and this proves difficult for many black farmers because they are averse to risk, lack access to capital, and do not have information on new management practices.65 Many depend on off-farm jobs rather than their farms to survive, and those off-farm jobs may not always be lucrative because farmers’ age, education levels, and lack of job skills limit their ability to find off-farm work. Of special concern is the reality that low earning potential will remain consistent, since most black farmers are concentrated in counties and states with few nonfarm employment opportunities. To help with this need for cash and credit, the Housing Assistance Council has encouraged legislation that would allow USDA agencies to provide loans to black farmers who are co-owners of heir property, even when they do not have clear title to the entire property, so that they can continue farming. Such a policy would make it possible for those interested in farming not to be hindered by conflicts with heirs over land.66

The United States remains a nation vested in liberty and justice for all. Thus the future of African American farmers could be guaranteed more by