

Request for Records Disposition Authority

Records Schedule Number **DAA-0060-2011-0029**

Schedule Status **Approved**

Agency or Establishment **Department of Justice**

Record Group / Scheduling Group **General Records of the Department of Justice**

Records Schedule applies to **Major Subdivision**

Major Subdivision **Civil Division**

Minor Subdivision **Federal Programs Branch**

Schedule Subject **Pigford Case Files**

Internal agency concurrences will be provided **No**

Background Information

Records of the Civil Division, U S Department of Justice, associated with (1) the litigation of two consolidated actions Timothy Pigford, et al , v Dan Glickman, Secretary, U S Department of Agriculture and Cecil Brewington v Dan Glickman, Secretary, U S Department of Agriculture [DJ number 136-16-43, CIV 97-1978 and CIV 98-1693, USDC, DDC] (collectively "Pigford"), (2) the resolution of claims of those members of the class who elected to pursue their claims through Track B of the April 14, 1999, Consent Decree entered in the case, (3) the litigation of individual suits brought against the Government by those persons who were eligible for class membership but elected to opt out of the Pigford settlement (approximately 200 farmers opted out, we do not know how many farmers filed their own suits because they all would have been handled by the appropriate USAOs), and (4) the filing of 17 individual lawsuits that together name about 28,000 plaintiffs and the resolution of claims resulting from provisions of the 2008 Farm Bill (P L 110-246, Section 14012) that enabled individuals who had not filed timely claims under the terms of the Consent Decree to have their petitions decided on the merits in district court With respect to the latter, none of those claims filed pursuant to section 14012 were litigated, instead, the district court will almost certainly approve a Settlement Agreement that certifies a non-opt-out Rule 23(b)(1) class and creates the exclusive ADR processes by which the members' claims will be resolved

In Pigford, African American farmers brought a putative class action alleging that they had been victims of discrimination in certain USDA farm credit and non-credit benefit programs during the period

1983-1996 and that USDA had not acted on their administrative claims of discrimination Pursuant to a consent decree entered on April 14, 1999, the district court certified a Rule 23(b)(3) opt-out class of African American farmers who alleged they experienced discrimination in connection with the same farm credit and non-credit benefit programs between 1981 and 1996 The Consent Decree dismissed with prejudice all the claims of those class members who did not opt out of the settlement within 120 days of its entry and required them to elect between two separate and mutually exclusive alternative dispute resolution ("ADR") "Tracks " Under Track A, a plaintiff who could prove by substantial evidence that he or she was the victim of racial discrimination in a USDA credit program was entitled to (1) forgiveness of any outstanding USDA debt that was related to discriminatory conduct, and all subsequent debt incurred under the same credit program in which discrimination was found, (2) a lump sum \$50,000 payment from the Judgment Fund, and (3) a payment from the Judgment Fund on his or her behalf directly to the IRS in an amount equal to the sum of the principal amount of any forgiven debt plus the \$50,000 Those class members who elected to proceed under Track B were entitled to actual damages for any credit discrimination they experienced, but only if they could prove the discrimination by a preponderance of the evidence in accordance with the Federal Rules of Evidence Farmers who prevailed on non-credit claims received a one-time \$3000 payment from USDA appropriated funds regardless of the number of such claims that were decided in a farmer's favor

More than 22,000 black farmers qualified for membership in the Pigford class and elected to have their claims resolved under one of the Consent Decree's ADR Tracks All but about 169 class members elected to proceed under Track A, in which USDA represented itself before an Adjudicator The Civil Division of the Department of Justice represented the USDA in the arbitrations To date, the government has paid successful claimants more than \$1 billion in cash awards, tax payments, and debt relief

§ 5(g) of the Consent Decree allowed farmers whose applications for class membership were untimely, and therefore were not resolved on the merits, to apply for membership in the Pigford class To succeed, a "late filer" had to demonstrate that his failure to file a timely application was due to extraordinary circumstances beyond his control Id All but about 2300 of the approximately 66,000 5(g) applications were denied To afford the unsuccessful late filers an opportunity to have their discrimination claims heard, Congress created a cause of action in USDA's 2008 Appropriations Act that permitted them to file suit, and that made \$100 million available to

pay awards to successful plaintiffs (P L 110-246, Section 14012) 17 separate suits, most of which were class actions, were filed in the wake of the passage of section 14012 Those cases were eventually consolidated, see In Re Black Farmers Discrimination Litigation, (D D C (PLF), a Rule 23(b)(1), a non-op-out class was preliminarily certified under Rule 23(b)(1), the parties achieved a settlement that provided successful class members the same sort of ADR processes and relief that were provided under the Pigford Consent Decree (although award amounts may vary due to the number of successful claims, and USDA will not participate in the ADR processes as it did in Pigford), and Congress increased the amount available to pay successful class members to \$1 25 billion

Item Count

Number of Total Disposition Items	Number of Permanent Disposition Items	Number of Temporary Disposition Items	Number of Withdrawn Disposition Items
1	1	0	0

GAO Approval

Outline of Records Schedule Items for DAA-0060-2011-0029

Sequence Number	
1	Pigford Case Files Disposition Authority Number DAA-0060-2011-0029-0001

Records Schedule Items

Sequence Number		
1	Pigford Case Files	
	Disposition Authority Number	DAA-0060-2011-0029-0001
	Final Disposition	Permanent
	Item Status	Active
	Is this item media neutral?	Yes
	Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing?	No
	Disposition Instruction	
	Cutoff Instruction	Cut off at the close of the case
	Transfer to the National Archives for Accessioning	Transfer to the National Archives 30 year(s) after cutoff
	Additional Information	
	First year of records accumulation	1999
	What will be the date span of the initial transfer of records to the National Archives?	Unknown Depends on case closure
	How frequently will your agency transfer these records to the National Archives?	Unknown One-time transfer

Agency Certification

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal in this schedule are not now needed for the business of the agency or will not be needed after the retention periods specified

Signatory Information

Date	Action	By	Title	Organization
09/30/2011	Certify	Curt Francisco	Records Manager	JMD - OoRMP
01/18/2012	Submit for Concurrency	Stephen Cooper	Work Group Leader	National Archives and Records Administration - ACN
01/19/2012	Concur	Margaret Hawkins	Appraiser	National Records Management Program - Records Management Services
01/19/2012	Concur	Laurence Brewer	for	National Archives and Records Administration - Records Management Services
01/25/2012	Approve	David Ferrero	Archivist of the United States	Office of the Archivist - Office of the Archivist