

Assessing the Impacts of USDA Civil Rights Settlements: *Pigford* in Advocacy and Context

by

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I. Introduction

In 1999, a class of African-American farmers and landowners led by North Carolinian Timothy Pigford sued the United States Department of Agriculture under the Equal Credit Opportunity Act, alleging Farm Service Agency (FSA) officers had discriminated against them in loan-making during a period in which USDA's Office of Civil rights failed to process discrimination complaints. Such patterns of discrimination were connected to significant losses of black-owned farmland throughout the 20th century.¹ While *Pigford* has been cited as the largest and most successful civil rights case in recent decades, many experienced the settlements as a disappointment.² In 2010, a second historic agreement known as *Pigford II* provided another avenue for farmers excluded from the initial class to bring complaints, allocating an additional 1.25 billion dollars for settlement payments. Alongside *Pigford II*, USDA Secretary Tom Vilsack ushered in "a new era of civil rights,"³ refining loan and benefit programs intended to serve minority and disadvantaged farmers and reforming USDA leadership at many levels.

Almost a decade after *Pigford II*, African American farmers continue to lose land and experience discrimination in agriculture. Drawing from policy and historical research and nine semi-structured interviews with key stakeholders including advocates, farmers, community organizers, legal experts and academics, this project investigates the effectiveness and lasting impacts of the *Pigford* settlements. I find that remedies to correct USDA's discriminatory history failed to extricate structural racism within the department, which continues to uphold policies and practices favoring large, predominately white farmers. Such policies have shaped American landscapes and reproduce inequality in U.S. agriculture, which has consolidated farmland—and with it both power and wealth—into the hands of fewer, larger, whiter farmers.

This paper reviews literature on histories of land ownership and land loss in the U.S. and its connection to civil rights. I discuss current demographic data on U.S. land ownership and consider methodological issues with its collection which have supported claims of civil rights

¹ A 1997 Civil Rights Action Team Report found "minority and limited resource customers believe USDA has not acted in good faith on the complaints. Appeals are too often delayed and for too long. Favorable decisions are too often reversed." Civil Rights Action Team, "Civil Rights at the United States Department of Agriculture" (Washington, D.C.: United States Department of Agriculture, 1997), 30-31.

² See Mark A. Bunbury Jr., "Recent Development: 'Forty Acres and a Mule' ... Not Quite Yet: Section 14012 Of the Food, Conservation, and Energy Act Of 2008 Fails Black Farmers," 87 N.C.L. Rev. (2009): 1230-1251; Kindaka Jamal Sanders, "Re-Assembling Osiris: Rule 23, the Black Farmers Case, and Reparations," 118 Penn St. L. Rev. (2013): 339-373.

³ See Tom Vilsack, "The People's Department: A New Era for Civil Rights at USDA," Medium, updated August 2, 2016, <https://medium.com/usda-results/https-medium-com-usda-results-chapter-8-b57f91b64d49>.

improvements. I find USDA’s purported transformation is troubled by narratives of persistent discrimination deduced from interviews conveying lived experience. I discuss persistent land loss, the history of discrimination at USDA, and the wider context of the *Pigford* cases as factors which continue to inhibit ‘cultural transformation’ in agriculture.

Analyzing major themes from nine original interviews, I find analysis of the *Pigford* settlements and civil rights reform at USDA is mixed. I discuss failures internal to the settlement process and forms of structural discrimination which continue to disadvantage farmers of color, effecting mistrust and erasure. Using Minkoff-Zern’s framework of “state legibility,”⁴ I argue that farmers of color remain largely invisible to USDA when the department is governed by the interests of farmers of a privileged class (e.g. large, midwestern commodity farmers⁵). Though USDA’s attempted reforms and reparations have led to positive changes, I argue that United States agricultural policy retains biases which frustrate institutional reform.⁶ USDA must reconsider its own history, biases and mission in light of the experience of African American and minority farmers in order to approach equity, justice and cultural transformation.

A. Research Questions

This study seeks to assess the effectiveness and lasting impacts of the *Pigford* settlements and gauge any improvements in the situation of African American farmers in the Southeast since *Pigford I* and *II*. Additionally, it seeks to determine whether the “new era of civil rights” claimed by Secretary Vilsack⁷ had noticeable impacts in the lives of African American farmers or their access to USDA services. It also aims to identify policy recommendations that could improve relations between black farmers and USDA.

The literature assessing *Pigford* is mixed. Many have cited it as the most successful civil rights litigation in recent decades,⁸ an exemplary reparations case, and a “significant first step” in

⁴ Laura-Anne Minkoff-Zern and Sean Sloat, “A New Era of Civil Rights? Latino Immigrant Farmers and Exclusion at the United States Department of Agriculture,” *Agriculture and Human Values* 34 no. 3 (2017): 631–43.

⁵ Deborah Dixon and Holly Hapke argue that American agriculture possesses a legislative bias for midwestern forms of agriculture. Deborah P. Dixon and Holly M. Hapke, “Cultivating Discourse: The Social Construction of Agricultural Legislation,” *Annals of the Association of American Geographers* 93 no. 1 (2003), 143.

⁶ See Garrett Graddy-Lovelace, “The Coloniality of U.S. Agricultural Policy: Articulating Agrarian (in)Justice,” *The Journal of Peasant Studies* 44, no. 1 (2017): 78–99.

⁷ See Vilsack, “The People’s Department.”

⁸ Stephen Carpenter, “The USDA Discrimination Cases: Pigford, In Re Black Farmers, Keepseagle, Garcia, and Love,” 17 *Drake J. Agric. L.* (2012): 1-35.

correcting past mistakes and improving conditions for black farmers.⁹ Others have argued that *Pigford* fell short – that settlement payments were inadequate to appropriately redress actual harms suffered by class members, or that the class itself too exclusive,¹⁰ covering only the period the period between 1981-1996,¹¹ when significant discrimination existed prior.¹²

If settlements were largely inadequate to compensate for the costs of discrimination or assist farmers in regaining land lost, did the settlement process reform the culture of USDA to curtail ongoing discrimination or improve access to land, credit or assistance programs? The number of active advocacy organizations still working on behalf of black farmers indicates the persistence of problems facing farmers of color in the U.S. neither *Pigford* nor steps taken in its aftermath adequately solved.

B. Methods

This study involves nine semi-structured, qualitative interviews with expert stakeholders including land loss advocates, scholars, legal experts and former USDA employees in addition to analysis of *Pigford's* political and historical context. Seven advocacy organizations focused on black land loss prevention in the Southeast region were contacted,¹³ and a total of six representatives from three organizations agreed to an interview.¹⁴ In addition, an attorney specializing in land loss prevention and food systems advocacy, a legal scholar conducting

⁹ Phil Fraas “The Pigford Settlement: Grading its Success and Measuring its Impact,” Federation of Southern Cooperatives (2013), accessed March 16, 2019, db04/0836770.0002/8366441.1 wp14.

¹⁰ Bunbury, “Forty Acres and a Mule.”; Monica M. Clark, “So Near, Yet so Far: The Past, Present, and Future of the Complaints Process within the USDA,” 32 S.U. L. Rev. (2005): 139-194.; Minkoff-Zern, “A New Era of Civil Rights?”; Shakara S. Tyler and Eddie A. Moore, “Plight of Black Farmers in the Context of USDA Farm Loan Programs: A Research Agenda for the Future,” *Professional Agricultural Workers Journal* 1 no. 1 (2013): 1-11. Notably, the text of the initial settlement acknowledged arguments that the class definition was too narrow.

¹¹ *Pigford v. Glickman*, 185 F.R.D. 82 (1999), at 89. In 1983, the USDA Office of Civil Rights (OCR) was effectively dismantled when a number of employees were dismissed, including 14 program investigators. When these 14 program investigators were rehired in 1997 and early 1998, the OCR was considered functional again. Congress extended the Statute of Limitations for the Equal Credit Opportunity Act from 1981-1996, two years prior to these two employment events. Interview participant #8, personal communication, April 29, 2019.; See *Pigford v. Glickman*, 185 F.R.D. 82 (1999), at 100.

¹² For a history of discrimination within USDA, see Pete Daniel, *Dispossession: Discrimination against African American Farmers in the Age of Civil Rights* (Chapel Hill: University of North Carolina Press, 2013).

¹³ The Black Farmers and Agriculturalists Association, Black Family Land Trust, the Federation of Southern Cooperatives, Land Loss Prevention Project, Black Belt Justice Center, the Southwest Georgia Project, and the Center for Land and Community Security at Tuskegee University.

¹⁴ These included representatives from the Black Farmers and Agriculturalists Association, the Land Loss Prevention Project, and the Black Family Land Trust.

policy and qualitative research on USDA discrimination, and three former USDA employees¹⁵ participated in interviews. This study relies on data from nine interviews involving ten participants in total.¹⁶ Interviews were conducted in person and over the phone, lasting from 30 minutes to two hours, with most lasting between 40 minutes and one hour. Seven of ten participants elected to remain anonymous and are noted accordingly.

Prior to conducting interviews, participants were provided the following list of questions:

- In what ways have the *Pigford* settlements impacted black farm owners, landowners, and rural communities in the Southeastern U.S.?
- Did *Pigford I* and *Pigford II* adequately compensate farmers who experienced discrimination by the USDA and/or suffered land loss? Why or why not?
- In your experience, what made the settlements effective or ineffective?
- What have been the lasting effects of the settlements?
- What broader impacts have the *Pigford* settlements had for farmers of color in the United States, their farm operations, and access to land?
- What do you think the USDA should do or should have done post-*Pigford* to better support black farm owners and operators?
- In what ways have different understandings of agricultural land's history and use been reflected in the settlement processes?

These questions were either asked directly or addressed organically within guided conversations. Eight of nine interviews were recorded, transcribed, and analyzed for common themes.

II. Background

B. The Power of Land: Resistance, Agency and Black Agrarianism

Numerous studies throughout the past several decades have drawn attention to the precipitous decline in black-owned and operated farmland in the United States. These losses have been concentrated in the Southeastern U.S., where the country's highest number of African American farm owners and operators have historically resided. The demographic characteristics

¹⁵ These included a former Undersecretary of Natural Resources and the Environment under secretary Tom Vilsack, a former USDA cooperative extension agent, and a representative from the USDA Office of Civil Rights.

¹⁶ One interview involved two participants. Responses were attributed individually. Two of ten participants were also active farmers at the time of the *Pigford* settlements. One was a successful claimant.

of Southern agriculture are attributable to a confluence of economic and policy processes, including global capitalist and westward expansion fueled by plantation agriculture and the enslaved labor it exploited and concentrated.¹⁷ Emancipation and Reconstruction transformed Southern agriculture and patterns of land ownership, but nonetheless kept exploitative power relations intact. Legacies of forced labor found new expression in sharecropping agreements, through which white landowners continued to economically exploit black labor on leased land while trapping black agriculturalists in poverty and debt.¹⁸

For many black farmers and agricultural workers of color, farmland ownership signifies more than a material asset or a source of income: it is a guarantee of economic and political power and a means of self-determination, self-sufficiency and resilience. Sociologist and agricultural historian Jess Gilbert describes the importance of landownership:

Landownership is important because it is a form of wealth, not just income. As such, it can provide a spur to economic development and broader investment, including the education of children. In the Black Belt of the rural South, where most African-American farms are located, land is still key to cultural and political power as well. From the visions of Thomas Jefferson and Abraham Lincoln, to Booker T. Washington and George Washington Carver, through populists and progressives of yesterday and today, widespread property ownership has promised fuller citizenship and a more egalitarian distribution of wealth and power.¹⁹

Property ownership also determines individuals' power to shape, influence and benefit from public amenities, social services and education systems. It determines not only who has voice in the policy processes, but who benefits from public investment and who is vulnerable to dispossession or relocation. The benefits of landownership are not merely economic, but essential for cultural preservation, self-reliance and resistance. Socioeconomic well-being, civic participation, optimism,²⁰ participation in Civil Rights movements, the maintenance of

¹⁷ See, for example, Sven Beckert, *Empire of Cotton: A Global History* (New York: Vintage Books, 2014), which chronicles the role of the cotton industry in the proliferation of plantation-style agricultural expansion, slave labor and soil degradation across the United States.

¹⁸ See Equal Justice Initiative, "History of Racial Injustice: Sharecropping," accessed April 14, 2019, <https://eji.org/history-racial-injustice-sharecropping>.

¹⁹ Jess Gilbert, Gwen Sharp, and M. Sindy Fezin, "The Loss and Persistence of Black Owned Farms and Farmland: A Review of the Research Literature and Its Implications," *Southern Rural Sociology* 18 no. 20 (2002), 6.

²⁰ Lester Salamon compares farmers who became landowners through New Deal programs with tenant farmers and found both increased civic participation and optimism for the future as characteristics differentiating the former.

agricultural knowledge traditions and resistance to white supremacy are all associated with access to and ownership of land.²¹

Black agrarian traditions recognize the importance of landownership, as land has enabled participation in civil rights movements, voting rights and political resistance to racial terrorism in the Jim Crow South. If power comes from land, a community without a land base is vulnerable. Indeed, Fannie Lou Hamer's conviction that "in order for any people or nation to survive, land is necessary"²² was the motivating ethos of her Freedom Farm Cooperative in the Mississippi Delta, which at its height provided over 600 acres of farmland for poor, black farmers connected to Student Nonviolent Coordinating Committee efforts to build rural economic and political resilience.²³ Monica White argues that land has always been central to generating collective agency in African American communities: from the cultivation of slave gardens and the preservation of African crops in U.S. agriculture, to historically black 1890 land grant institutions, to the cooperative movement of the 20th century to contemporary urban agrarian movements pursuing public health and community development aims.²⁴

African agricultural practices were highly influential in the development of Southern agriculture.²⁵ Those who lived in slavery were skilled farmers who sustained the inhabitants of the Americas while also employing strategies of resistance and capacity building through sharing

Lester M. Salamon, *Land and Minority Enterprise: The Crisis and the Opportunity* (Durham, NC: Duke University Institute of Policy Sciences and Public Affairs, June 30, 1976).

²¹ See Dãnia C. Davy, Savonala Horne, Tracy Lloyd McCurdy, and Edward "Jerry" Pennick, "Resistance," *Land Justice: Reimagining Land, Food and the Commons in the United States*, ed. Justine M. Williams and Eric Holt-Giménez (Oakland, CA: Food First Books, 2017).; Jess Gilbert, Gwen Sharp, and M. Sindy Fezin, "The Loss and Persistence of Black Owned Farms and Farmland: A Review of the Research Literature and its Implications," *Southern Rural Sociology* (2002), 6.

²² Monica White, *Freedom Farmers: Agricultural Resistance and the Black Freedom Movement* (Chapel Hill, NC: University of North Carolina Press, 2108), 3.

²³ Shorlette Ammons, "Shining a Light in Dark Places: Raising Up the Work of Southern Women of Color in the Food System: A Policy Brief" (New York: Center for Social Inclusion, 2014), 11.

²⁴ Importantly, White's work moves beyond a narrative of oppression and exploitation to recover "another narrative of the relationship between labor, land use and the black farmers whose contributions were intrinsic to the development of the agricultural sector in the United States of America." Her work centers on the work of Fannie Lou Hamer's Freedom Farm Cooperative, the North Bolivar County Farmers Cooperative, the Federation of Southern Cooperatives and the Detroit Black Food Security Network, among others. White, *Freedom Farmers*, 3.

²⁵ "Enslaved Africans drew deeply upon the agricultural expertise and the crops of their own heritage, while adopting the knowledge systems and plants bequeathed to them by the Amerindians...In addition to human cargo, slave ships carried African food staples, seed root vegetables, other produce, and livestock...Researchers identify the introduction of African yams, arrowroot, bananas, various types of beans, cowpeas, eddo, guinea squash, hibiscus, lablab beans, millet, okra, pearl millet, pigeon peas, plantains, purslane, rice, sesame, sorghum, sweet potatoes, tamarind, taro and watermelon to the Americas and the Caribbean through the middle passage." White, 12.

knowledge and even smuggling seeds.²⁶ West African rice cultivation techniques, for example, influenced rice-growing in the Carolinas,²⁷ and African food traditions drove the development of Southern cuisine.²⁸ Even before the industrial plantation economy's proliferation, black farmers "were among the first agricultural trailblazers in British North America."²⁹

bell hooks reflects on the foundational importance of land within the black community. Even when forced to work rented or sharecropped land, she writes, "it was the earth itself that protected exploited black folks from dehumanization"³⁰ in ways not possible after the Great Migration to urban centers.³¹ For hooks, the earth witnesses to a natural egalitarianism and a power that exceeds human oppression which can overcome dehumanizing forces.³² Furthermore, hooks connects the exploitation of land and people: "When we are forgetful and participate in the destruction and exploitation of the dark earth, we collude with the domination of the earth's dark people, both here and globally."³³ Living in harmony with land, then, is a kind of "meaningful resistance" to the forces of "corrupt capitalism and hedonistic consumerism" which "work daily to strip [poor people] of their ties with nature."³⁴

Throughout the 20th century, land ownership remained fundamentally important within black communities, and declining landownership produced anxiety despite historically complex

²⁶ White, 12.

²⁷ Waymon R. Hinson and Edward Robinson, "'We Didn't Get Nothing:' The Plight of Black Farmers," *Journal of African American Studies* 12, no. 3 (September 2008), 285.

²⁸ See Michael W. Twitty, *The Cooking Gene: A Journey Through African American Culinary History in the Old South* (New York: HarperCollins, 2018).

²⁹ Hinson and Robinson cite the story of Anthony Johnson, a black landowner (and slaveowner) who held a 250-acre tobacco estate in colonial Virginia in the 17th century. Hinson and Robinson, "We Didn't Get Nothing," 284.

³⁰ bell hooks, *Belonging: A Culture of Place* (New York: Routledge, 2009), 118.

³¹ "The fundamental understanding that white folks were not gods (for if they were they could shape nature) helped imbue black folks with an oppositional sensibility. When black people migrated to urban cities, this humanizing connection with nature was severed; racism and white supremacy came to be seen as all powerful, the ultimate factors informing our fate." hooks, 118.; Graddy-Lovelace narrates the Great Migration as a story of loss, resistance and discrimination, noting that "90 percent of African-Americans lived in the rural south in the 1910s, but just a decade later, less than half did. Those who remained used their considerable agricultural expertise and experience to farm their own lands. Yet federal farm policy systematically undermined their endeavors." Graddy-Lovelace, "The Coloniality of U.S. Agricultural Policy, 84.

³² "Humankind, no matter how powerful, cannot take away the rights of the earth. Ultimately, nature rules. That is the great democratic gift earth offers us – that sweet death to which we all inevitably go – into that final communion. No race, no class, no gender, nothing can keep us from dying into that death where we are made one. To tend the earth is always then to tend our destiny, our freedom and our hope." hooks, *Belonging*, 117.

³³ hooks offers an invocation to return to the land: "Reclaiming our history, our relationship to nature, to farming in America, and proclaiming the humanizing restorative of living in harmony with nature so that earth can be our witness is meaningful resistance." hooks, 118.

³⁴ hooks, 119.

relationships with Southern agricultural land.³⁵ Today, after a century characterized by significant demographic shifts in and across the Southeast, black-owned land remains important for rural and urban growers and people of color activists alike.³⁶ Underlying these movements is a belief in land's connection to autonomy, self-determination, political and economic power.

While the importance of landownership is the context of this report, the loss of land within the black community and the role of discrimination are its subjects. While many consider demographic shifts and the consolidation of white-owned farmland a result of the Green Revolution, agricultural mechanization, specialization, rural disinvestment and urban development, the transformation of United States farmland also owes itself also to a racialized policy history.³⁷ This report explores ways in which agricultural policy and structural discrimination have affected shifts in farmland ownership.

C. Who Owns U.S. Farmland?

Agricultural land access and distribution is a growing area of concern for policymakers, environmental advocates, and farmers alike. Land access is a major problem for young and beginning farmers.³⁸ Barriers to affordable, arable land coupled with predictions of large-scale

³⁵ A 1972 report published with the Federation of Southern Cooperatives worried about the black community "becoming a community without a land base," as "the possession of intangible wealth [does not] provide one with the same sense of participation in the national patrimony as does the ownership of real estate, a consideration which may be of some significance for a group which already has numerous reasons to feel itself to be a less-than-full participant in the American scheme." Robert S. Browne, "Only Six Million Acres: The Decline of Black-Owned Land in the Rural South" (New York: Black Economic Research Center, 1973), 3.

³⁶ Brian Barth, "Black Land Matters," *Modern Farmer*, accessed February 14, 2019, <https://modernfarmer.com/2018/08/black-land-matters/>; See also Leah Penniman, *Farming While Black: Soul Fire Farm's Practical Guide to Liberation on the Land* (White River Junction, Vermont: Chelsea Green Publishing, 2018).

³⁷ See Nathan Rosenberg and Bryce Stucki, "The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History," 13 *J. Food L. & Policy* 12 (2017), 14.

³⁸ A 2011 report by the National Young Farmers Coalition found that 68% of farmers surveyed indicated land access to be a significant challenge. Lindsey Lusher Shute et al., "Building a Future with Farmers: Challenges Faced by Young, American Farmers and a National Strategy to Help Them Succeed" (New York: National Young Farmers' Coalition, November 2011), 20.

landownership transfer³⁹ have contributed much renewed attention to the interactions between landownership, equity and sustainability in agriculture.⁴⁰

While many USDA and Farm Bill programs addressing land access target socially disadvantaged farmers, land access issues have been especially pronounced for farmers of color and exacerbated by decades of discriminatory treatment.⁴¹

i. Figures

According to the most recent United States Census data, 74% of the United States population is white, and 26% of the U.S. population are people of color.⁴² Yet 97% of farm landowners are white, and 96% of farm owner-operators are white.⁴³ People of color farmers are more likely to be farm tenants or farm laborers: 13.6% of farm tenants are people of color, and 62% of farm laborers are people of color.⁴⁴

The 2012 Census of Agriculture reported black farm operators owned or partially owned under 2.5 million acres of farmland.⁴⁵ White operators, by contrast, own over 500 million acres

³⁹ “The average American farmer...is white, male, and 58 years old.” Olivia Paschal, “A Boost for Young, Diverse Farmers,” *The Atlantic*, updated December 16, 2018, <https://www.theatlantic.com/politics/archive/2018/12/farm-bill-funds-programs-new-and-diverse-farmers/578260/>. According to the 2012 Census of Agriculture, 19.4% of farms in the United States have principal operators over the age of 65, who control 23.8% of the nation’s farmland. 47.3% of farmland is operated by a principal operator 55 or older, while farm operators under 35 control only 3.3%. USDA National Agricultural Statistics Service, “Table 69: Summary by Age and Primary Occupation of Principal Operator,” 2012, accessed February 13, 2019, https://www.nass.usda.gov/Publications/AgCensus/2012/Full_Report/Volume_1,_Chapter_1_U.S./st99_1_069_069.pdf. In October 2017, the National Sustainable Agriculture Coalition predicted 100 million acres of farmland would change hands within the subsequent five years. National Sustainable Agriculture Coalition, “An Agenda for the 2018 Farm Bill” (Washington, DC: October 2017), 7.

⁴⁰ Notably, the 2018 Farm Bill responded to land access concerns, establishing permanent funding for the Beginning Farmer and Rancher Development Program to fund technical training, business planning and farmland access and the 2501 Program providing outreach and assistance to farmers of color and indigenous farmers. Additionally, it improved credit access and farmland affordability through new easement programs which protect farm real estate from being sold to non-farmers and institutional investors. Andrew Bahrenburg, Holly Rippon-Butler, and Erin Foster West, “A Farm Bill for the Future,” National Young Farmers Coalition, updated December 12, 2018, <https://www.youngfarmers.org/2018/12/farmbillforthefuture/>.

⁴¹ Discrimination in loan making and unfair loan terms impacts farmers’ credit and leads to burdensome farm debts, for instance. Landowners of color are also particularly vulnerable to land loss due to heir’s property law, forced partition sales, and intergenerational land loss.

⁴² Megan Horst and Amy Marion. “Racial, Ethnic and Gender Inequities in Farmland Ownership and Farming in the U.S.,” *Agriculture and Human Values* 36, no. 1 (March 2019), 7.

⁴³ Data on farm landowners are for non-operating landowners. Only 2.9% of non-operating landowners are people of color and 3.9% of farm owner-operators are people of color. Horst and Marion, 7.

⁴⁴ Horst and Marion, 7.

⁴⁵ The census reported 2,447,543 acres of farmland in 30,293 farms were owned or partially owned by black farm operators. 22,505 farms with black operators were fully owned, and 7,782 farms with black operators were partially

of farmland across the country. Black-owned and operated farms have historically been concentrated in the Southeastern U.S. In 1997, 15 Southern states contained 97% of all black farms.⁴⁶

ii. Black Land Loss in the 20th Century

Despite the federal government's failure to deliver on its post-Civil War promise of 40 acres of land for formerly enslaved persons,⁴⁷ by 1910, African American farmers had acquired 16 million acres of farmland.⁴⁸ In 1920, the number of black farm operators peaked close to a million, at which point African American farmers constituted 14% of farmers in the U.S.⁴⁹ By 1997, this number had decreased to 18,451, just 1% of the national population.⁵⁰ Between 1920 and 1997, farms operated by African Americans decreased by 98%, compared with a 65.8% decline for white farmers.⁵¹

The population of farmers has decreased dramatically in the 20th century for all farmers regardless of race,⁵² attributable in part to economic trends including farmland consolidation and acreage expansion.⁵³ However, the *rates* at which black and white farm operators have lost land vary significantly.⁵⁴ There is widespread agreement that the loss of black farmers and black-

owned. Black operators rented or leased a total of 1,197,746 acres of farmland in 10,860 farms. White operators owned or partially owned 511,967,676 acres of farmland in 1,884,955 farms and rented or leased 342,883,215 acres of farmland in 642,120 farms. "Table 60. Selected Farm Characteristics by Race of Principal Operator: 2012 and 2007," USDA National Agricultural Statistics Service, accessed April 14, 2019, https://www.nass.usda.gov/Publications/AgCensus/2012/Full_Report/Volume_1,_Chapter_1_US/st99_1_060_060.pdf.

⁴⁶ Spencer D. Wood and Jess Gilbert, "Returning African American Farmers to the Land: Recent Trends and a Policy Rationale," *The Review of Black Political Economy* 27, no. 4 (March 2000): 44.

⁴⁷ Special Field Orders No. 15, Headquarters Military Division of the Mississippi, January 16, 1865, Orders & Circulars, Series 44, Adjutant General's Office, Record Group 94, National Archives.

⁴⁸ Tyler and Moore, "Plight of Black Farmers," 1.

⁴⁹ The 1920 census reported 925,710 African American farm operators. Wood and Gilbert, "Returning African American Farmers to the Land," 45.

⁵⁰ Wood and Gilbert, 45.

⁵¹ Wood and Gilbert, 45.

⁵² Graddy-Lovelace, "The Coloniality of U.S. Agricultural Policy," 84.

⁵³ Such consolidation, however, was not inevitable nor racially neutral. Nathan Rosenberg highlights how New Deal-era policies including crop subsidies and the creation of the Agricultural Adjustment Administration played an important role in the loss of black-owned small-scale farms. Rosenberg and Stucki, "The Butz Stops Here," 14. See also Pete Daniel, *Breaking the Land: The Transformation of Cotton, Tobacco, and Rice Cultures Since 1880* (Champaign, IL: University of Illinois Press: 1985), 170.

⁵⁴ Rosenberg and Stucki note that between 1930 and 1950, while the number of farmers declined 14 percent, black farmers declined by 37 percent. Rosenberg and Stucki, "The Butz Stops Here," 14. Wood and Gilbert conclude that by any metric, black land loss has been more severe throughout the past century than for white landowners. Wood and Gilbert, "Returning African American Farmers to the Land," 45.

owned farmland cannot be explained by economic trends alone, but have been influenced heavily by histories of racism and discrimination in agricultural programs.⁵⁵ Inequality in agricultural lending and assistance remains a problem. Farmers of color receive only one percent of crop subsidies and 0.2 percent of conservation dollars distributed by USDA.⁵⁶

Land loss is not reducible to individual acts of racism and discrimination alone, but also connected also to historical trends, policies and evaluation mechanisms which favor large farmers. While Alec Hickmott argues that historically, economic modernization policies excluded rural Southern, black communities from benefitting from American agriculture's organizational shifts,⁵⁷ institutional practices and incentive structures favoring larger farmers were still driving inequality at the end of the 20th century.

Field employees' performance ratings are often based on measurement systems that favor large, wealthy landowners. County loan officers are rewarded based on the total number of acres served by program dollars, for having low default rates, and for dispensing all the funds allocated to them—a performance management system that rewards service to large, financially sound producers while working against small and minority farmers. USDA's policy statements support the idea of helping low-income and socially disadvantaged farmers. However, its management practices include performance measurement systems that actually do the opposite.⁵⁸

Coupled with nonapparent disciplinary action to punish civil rights violations⁵⁹ and a dearth of incentives and resources for civil rights improvements,⁶⁰ policies disfavoring minority farmers continued to shape agricultural landscapes and ownership inequality.

⁵⁵ In particular, the Farm Home Administration (FmHA) and Farm Services Agency (FSA) county offices subjected black farmers to more processing delays, lost paperwork, loans denials and supervised loans than their white counterparts. Civil Rights Action Team, "Civil Rights at the United States Department of Agriculture," 15. Hinson and Robinson explain the impact of tax laws, credit access, partition sales, foreclosures and eminent domain in precipitous declines in black-owned land. Hinson and Robinson, "We Didn't Get Nothing," 289.

⁵⁶ In 2007, 1% of crop subsidy payments went to farmers of color, while 99% went to white farmers. In 2002, white farmers received \$1.4 billion in direct payments for conservation, while farmers of color received less 0.2% that amount. Robert Zabawa, Tasha M. Hargrove, Ntam Baharanyi and Richard A. Levins, *Shut Out: How US Farm Programs Fail Minority Farmers* (Boston, MA: Oxfam America, 2007), 5. 90% of USDA crop subsidies go to rice, cotton, corn, wheat and soybeans growers, markets that have historically excluded black farmers. Center for Social Inclusion, "Regaining Ground: Cultivating Community Assets and Preserving Black Land" (New York: 2011): 11-12.

⁵⁷ Alec Fazackerley Hickmott, "Black Land, Black Capital: Rural Development in the Shadows of the Sunbelt South, 1969–1976," *The Journal of African American History* 101 no. 4 (September 1, 2016): 508-509.

⁵⁸ Civil Rights Action Team, "Civil Rights at the United States Department of Agriculture," 8.

⁵⁹ "Civil Rights at the United States Department of Agriculture," 9.

⁶⁰ "Civil Rights at the United States Department of Agriculture," 11-12.

iii. Documenting Discrimination

A number of studies commissioned by Congress and the USDA have extensively documented discrimination in farm programs. In 1965, a report assessing the Farmers Home Administration (FmHA), Soil Conservation Service and Agricultural Stabilization and Conservation Service assistance programs found that low-cost credit programs intended to address the problem of farm tenancy benefitted white sharecroppers but not African Americans⁶¹ due to white-dominated committees⁶² and funding disparities,⁶³ and found “USDA had been a catalyst in the decline of minority farming.”⁶⁴ In 1982, the U.S. Commission on Civil Rights called attention to low numbers of African American FmHA committee members⁶⁵ and found that “longstanding discrimination in USDA programs and a lack of effective procedures for ensuring civil rights enforcement contributed to a decline in farms operated by African-American farmers.”⁶⁶ In 1997, a Civil Rights Action Team report found farmers of color still perceived USDA employees and programs with pronounced mistrust⁶⁷ due to experiences of exclusion among other significant problems, such as services disfavoring limited-resource farmers.⁶⁸ Even

⁶¹ United States Commission on Civil Rights, “Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture” (Washington, D.C.: 1965), 58.

⁶² “In counties where Negroes [sic] constitute a majority of low-income farmers, the absence of Negroes [sic] from the committee structure has seriously handicapped the development of full participation by Negroes in the new and growing agricultural economy.” “Equal Opportunity in Farm Programs,” 62.

⁶³ “Equal Opportunity in Farm Programs,” 70. The report concluded, “it should be a matter of national concern that the gap between Negro [sic] and white rural residents in the South has decreased during the very period when the programs of the Department were helping thousands of rural white families to achieve substantial gains in income, housing and education.” “Equal Opportunity in Farm Programs,” 100.

⁶⁴ “Equal Opportunity in Farm Programs,” 41.

⁶⁵ “Between 1979 and 1980, the number of black committee members fell 39.8% nationwide.” The report recommended efforts be taken to improve representation. United States Commission on Civil Rights, “The Decline of Black Farming in America: A Report of the United States Commission on Civil Rights” (Washington, D.C.: February 1982), 188.

⁶⁶ Stephen Carpenter, “The USDA Discrimination Cases: Pigford, In Re Black Farmers, Keepseagle, Garcia, and Love,” 17 *Drake J. Agric. L.* (2012), 8.

⁶⁷ Farmers in this report believed USDA participated in a “conspiracy to strip black farmers of their land.” Civil Rights Action Team, “Civil Rights and the United States Department of Agriculture,” 6.

⁶⁸ “Some problems of inequitable delivery of services stem from program rules and legislation that—intentionally or not—have the effect of disqualifying limited resource customers from USDA programs. Eligibility requirements limit the participation of limited-resource customers while complicated forms and program regulations discourage participation.” “Civil Rights and the United States Department of Agriculture,” 31.

so, a 2011 report found that many USDA employees still did not recognize the problem of inequitable program delivery.⁶⁹

After decades of evidence of repeated patterns of discrimination in farm program administration, the department has been slow, if unable to correct the structural problems such evidence exposes. Though USDA claims as its title “the People’s Department,”⁷⁰ its services have been shown to favor white farmers and landowners, and efforts to address the problem have not yet comprehensively corrected it.

iv. The Rise of Black Farmers?

While recent census data continues to depict significant disparity in farmland controlled by black versus white farmers, the 2012 Census of Agriculture does report increases in acreage and number of farms both owned and leased by black farmers.⁷¹ This data, along with increases in the reported number of black farmers, has allowed some to claim that situations for black farmers have improved since Secretary Vilsack’s “new era of civil rights.”⁷² In 2014, the USDA reported a 12% increase in black farm operators and a 9% increase in black principal operators.⁷³ Does such evidence indicate that the situation for black farmers is improving?

Scholars have expressed criticism with census data collection processes, analysis and reporting, highlighting methodological problems and inconsistencies which have both under-

⁶⁹ Jackson Lewis LLP, “United States Department of Agriculture Independent Assessment of the Delivery of Technical and Financial Assistance: ‘Civil Rights Assessment Report’” (New York: March 2011), viii. Based on interviews with 30 community organizations, the report recommended better diversity and inclusion program implementation, internal publication of USDA discrimination accusations and penalties, reframing “outreach” models, and the publication of corrective action plans. “Civil Rights Assessment Report,” xii. The report found persistent barriers to equitable delivery of Rural Development, Natural Resources Conservation Program, and FSA programs including lack of knowledge of rural development programs, eligibility requirements and assistance, staff representation, and insufficient outreach, geographic barriers, and subjective decision-making processes which allowed discrimination at local levels. “Civil Rights Assessment Report,” xxii.

⁷⁰ United States Department of Agriculture, “About the U.S. Department of Agriculture: What We Do,” accessed March 26, 2019, <https://www.usda.gov/our-agency/about-usda>.

⁷¹ Increases are from 2007 census data. This data also shows decreases in each of these categories for white farmers between the 2007 and 2012 census years. United States Department of Agriculture National Agricultural Statistics Service, “Black Farmers: Up 12% since 2007; most live in Southern States: 2012 Census of Agriculture Highlights,” updated September 2014, https://www.nass.usda.gov/Publications/Highlights/2014/Highlights_Black_Farmers.pdf.

⁷² See *Yes! Magazine*’s article on USDA’s improved allyship with black farmers, which claimed, “the number of Black farmers in the United States is suddenly growing again...up about 15% from 10 years earlier” and that “policy changes at USDA seem to be driving the recovery.” Sylvia A. Harvey, “For Decades, the USDA Was Black Farmers’ Worst Enemy. Here’s How It Became an Ally,” accessed February 19, 2019, <https://www.yesmagazine.org/people-power/the-resurgence-of-black-farmers-20160708>.

⁷³ Harvey.

counted and artificially inflated the number of black farms and farmers in Census of Agriculture data.⁷⁴ Trendlines may be more attributable to increased accuracy in data collection, as historically, census data has struggled to paint a comprehensive or accurate picture of African American farmland ownership.⁷⁵

C. The *Pigford* Cases

In August 1997, two suits brought against the USDA by black farmers under the Equal Credit Opportunity Act – *Pigford v. Glickman* and *Brewington v. Glickman* – alleged racial discrimination by local county committees administering USDA farm loans and assistance.⁷⁶ These farmers, and many others throughout prior decades, claimed to have experienced discrimination leading to foreclosure and financial ruin. This was due to loan denials, but also to delayed or supervised loans and debt restructuring.⁷⁷ The class of farmers included in the *Pigford* settlements, though not representative of the total number who experienced discrimination by USDA, sought compensation for USDA’s failure to address program discrimination complaints between 1983 and 1998, a period during which the USDA Office of Civil Rights division was dysfunctional, resulting in a backlog of unprocessed program complaints.⁷⁸

When a class action and settlement decree was approved by Judge Paul L. Friedman in 1999, it opened up two tracks for financial relief. Track A required a lower burden of proof and

⁷⁴ When the USDA National Agricultural Statistics Service (NASS) replaced the United States Census Bureau in 1997 as the agency responsible for performing the agricultural census, land tenure data became more accurate as NASS made an effort to include more minority farmers. Gilbert, Sharp, and Fezin, “The Loss and Persistence of Black Owned Farms and Farmland,” 4; Jess Gilbert, Spencer D. Wood, and Gwen Sharp, “Who Owns the Land: Agricultural Land Ownership by Race/Ethnicity,” *Rural America* 17 no. 4 (2002), 58.

⁷⁵ A study in Delta County, Mississippi found that 27% of farmers were excluded from the 1997 census when only farmers who earned more than \$1,000 in agricultural sales per year were included. Since farms operated by people of color tend to be smaller, such definitional changes influence their representation in the U.S. census more significantly. Wood and Gilbert, “Returning African American Farmers to the Land,” 56-58. Nathan Rosenberg discusses the significance of zero-sales farmers and farmers earning less than 1,000 dollars in annual agricultural sales in Census of Agriculture data and the policies it generates. Women, minorities, and beginning farmers are disproportionately likely to be zero-sales operators, but zero-sales farms have not been included in publicly available U.S. census data as a sales category. While such farms play a significant role in the U.S. agricultural landscape, USDA programs have historically targeted high-visibility farmers who participate in commercial agricultural markets. Nathan A. Rosenberg, “Farmers Who Don’t Farm: The Curious Rise of the Zero-Sales Farmer,” *Journal of Agriculture, Food Systems, and Community Development* (October 2017): 1-9.

⁷⁶ Tadlock Cowan and Jody Feder, “The *Pigford* Cases: USDA Settlement of Discrimination Suits by Black Farmers” (Washington, D.C.: Congressional Research Service, May 29, 2013), 1.

⁷⁷ Cowan and Feder, 1.

⁷⁸ Cowan and Feder, 2.

allowed claimants up to \$50,000 in cash and debt relief. Track B required a higher burden of proof and enabled farmers higher levels of compensation based on proven harm. Ultimately, 15,645 of 22,721 (69%) of eligible class members had adjudications approved through the Track A process. 104 farmers (52%) prevailed using Track B, totaling \$1.06 billion in cash relief, tax payments, and debt relief.⁷⁹

A decade after *Pigford I*, a second settlement process known as *Pigford II*⁸⁰ addressed the large number of denied or disqualified claimants, late claims, notification failures and issues with representation in the first settlement process.⁸¹ \$100 million in mandatory spending for late claimants was made available through a 2008 Farm Bill provision, and an additional \$1.25 billion required congressional approval.⁸² Like *Pigford I*, *Pigford II* contained two settlement tracks and issued a moratorium on farm foreclosures for farmers with open claims.⁸³ As of April 2016, 33,346 claims had been made and 18,310 approved. \$1.09 billion had been paid to claimants in direct payments, debt relief, or on behalf of claimants to the Internal Revenue Service in tax payments.⁸⁴

The *Pigford* cases, and *Pigford II* in particular, ignited significant political controversy. Representative Steve King (R-IA) strongly opposed *Pigford II*,⁸⁵ calling it both a fraud and reparations for slavery in disguise.⁸⁶ Mainstream and right-wing media outlets alike reported critically on the large sum of money allocated to settling claims made on questionable grounds⁸⁷

⁷⁹ Cowan and Feder, 7.

⁸⁰ After multiple separate lawsuits were filed, claims were consolidated in a single case: *re Black Farmers Discrimination Litigation*, commonly known as *Pigford II*. Cowan and Feder, 7.

⁸¹ Cowan and Feder, 5.

⁸² After multiple failed attempts, the Claims Resolution Act of 2010 (H.R. 4783) passed the Senate and was signed by President Obama in December 2010 as the Food, Conservation and Energy Act § 14012. Cowan and Feder, 5.; Bunbury, “Forty Acres and a Mule,” 1238.

⁸³ Cowan and Feder, “The *Pigford* Cases,” 9.

⁸⁴ “In re Black Farmers Ombudsman,” accessed April 3, 2019, <http://inreblackfarmersombudsman.com/>

⁸⁵ Steve King, “King Offers Amendment to Protect Taxpayers from Billion Dollar Pigford Fraud,” Congressman Steve King, Representing the 4th District of Iowa, updated November 30, 2010, <https://steveking.house.gov/media-center/press-releases/king-offers-amendment-to-protect-taxpayers-from-billion-dollar-pigford>.

⁸⁶ See “Probe Pigford Fraud,” *Investor’s Business Daily*, updated July 21, 2011, <http://bit.ly/1cxeBrc>.

⁸⁷ Sharon LaFraniere, “U.S. Opens Spigot After Farmers Claim Discrimination,” *The New York Times*, updated October 19, 2018, <https://www.nytimes.com/2013/04/26/us/farm-loan-bias-claims-often-unsupported-cost-us-millions.html>.; Lee Stranahan, “New Obama ‘Pigford’ Farmers Settlements Designed for Fraud,” *Breitbart*, updated September 25, 2012, <https://www.breitbart.com/politics/2012/09/25/new-obama-farmers-settlements-designed-for-fraud/>.

and considered the disparity between numbers of claimants and black farmers reported by the census indicative of fraud.⁸⁸

III. Interview Analysis and Results

Literature review and historical research reveals mixed analysis of the *Pigford* settlements and their aftermath. Some cite *Pigford* as the most successful civil rights litigation in recent decades⁸⁹ and a “significant first step” in correcting an egregious history of civil rights violations.⁹⁰ Many attest to concerted efforts USDA has taken in response to *Pigford* to address discrimination internally within the Department.⁹¹ However, many severely criticize the settlements⁹² and point to persistent problems with discrimination. Such problems were elucidated in nine semi-structured interviews discussing firsthand and lived experiences with the settlements.

In the following pages, I present results from interview data in four categories. First, I discuss participants’ assessment of the *Pigford* cases. Then, I address participants’ reaction to purported cultural change within USDA since the *Pigford* settlements. Third, I present common themes which characterized nine original interviews. I conclude by highlighting policy recommendations offered by respondents.

A. Assessing *Pigford*

Pointing to a variety of factors, all participants interviewed for this study acknowledged that the *Pigford* settlements themselves were not adequate to resolve problems African American

⁸⁸ The New York Times reported that for 16 zip codes in Alabama, Arkansas, Mississippi and North Carolina, the number of claimants exceeded the total number of farm operators of any race. LaFraniere, “U.S. Opens Spigot.” Amidst the controversy, Andrew Breitbart released video footage accusing USDA Rural Development director and *Pigford* leader Shirley Sherrod of reverse racism, after which Secretary Vilsack fired her. Vilsack later obtained the full video transcript, exonerated Sherrod, and offered her a new position in USDA. Sherrod declined. Graddy-Lovelace, “The Coloniality of U.S. Agricultural Policy,” 85.

⁸⁹ Carpenter, “The USDA Discrimination Cases.”

⁹⁰ Fraas, “The Pigford Settlement.”

⁹¹ For example, Horst and Marion cite the creation of the USDA Office of Advocacy and Outreach, a number of Socially Disadvantaged Farmer and Rancher and microloan programs, increased minority representation on FSA boards and efforts to engage people of color in land use planning and resource distribution. Horst and Marion, “Racial, Ethnic, and Gender Inequities in Farmland Ownership,” 5.

⁹² *Pigford* has been criticized for excluding too many potential claimants, requiring burdensome paperwork or information about similarly situated white farmers to which claimants lacked access. Bunbury, “Forty Acres and a Mule.”

farmers have faced and continue to confront. Participants connected the failures of Pigford to persistent land loss, delays in funding distribution, undelivered promises of the settlement agreement and improper communication of the settlement’s terms.

When asked whether the *Pigford* settlements adequately compensated farmers who experienced discrimination, most participants agreed: “not at all.”⁹³ One described *Pigford* as a “slap in the face” and a “joke.”⁹⁴ Participants testified to *Pigford*’s minimal impact in improving the situation of black farmers. According to one source who continues to work with black farmers in the Southeast through legal advocacy, *Pigford* had no impact on farm viability, and most claimants wish they would not have filed.⁹⁵ This sentiment was repeated frequently and by other legal advocates. One claimed, “the people who were happiest—did best under *Pigford*—were those who opted out, and had administrative lawsuits decided rather than the *Pigford* process.”⁹⁶ This participant claimed *Pigford* “essentially failed black rural communities.”⁹⁷ When asked about *Pigford*’s long-term impacts, this participant responded: “If you ask me overall has the black community, black farmer and black landownership improved as a result of *Pigford*? I would say no.”⁹⁸

Multiple participants mentioned the persistent problems of discrimination and land loss after *Pigford*. Land loss was still acknowledged as a significant problem, and participants cited current examples of discrimination leading to land loss via the same discriminatory practices that gave rise to *Pigford*.⁹⁹ One participant, who had conducted thirty qualitative interviews evaluating the impacts of the *Pigford* settlements after working with farmers at USDA, claimed that despite reported increases in the number of black farmers nationally, “almost all significant

⁹³ Interview participant #1, interview by Emma Lietz Bilecky, January 4, 2019.

⁹⁴ Interview participant #1.

⁹⁵ Interview participant #1.

⁹⁶ Interview participant #9, interview by Emma Lietz Bilecky, March 13, 2019, Charlotte, NC.

⁹⁷ Interview participant #9.

⁹⁸ Interview participant #9.

⁹⁹ One interviewee cited a North Carolina case of land loss involving a *Pigford* claimant as recently as 2018. Interview participant #1. Another cited a recent case concerning the use of supervised loans for black farmers in Louisiana (a vehicle FSA agents used historically to discriminate against black farmers). Interview Participant #9. A supervised loan required black farmers to seek approval for all purchases made with loan money from county agents, requiring significant time and effort exerted by farmers and allowing intentional delays for funding approval, forcing black farmers to miss important planting windows, etc. Recent foreclosures on black farmers in North and South Carolina were also cited. Interview participant #9.

farmers have lost land since *Pigford*.”¹⁰⁰ “*Pigford* did not help farmers hold onto their land,” this participant claimed, “They lost land.”¹⁰¹

While one participant claimed that many farmers who filed discrimination complaints decades ago still have not received financial compensation owed them,¹⁰² others cited the modesty of compensation compared to material harms suffered¹⁰³ and the long period of time elapsed since those harms as other reasons for *Pigford*'s inadequacy. Many farmers eligible to participate in the class (those who had brought complaints to the Office of Civil Rights between 1981 and 1996) were either deceased or had lost land by the time payments were distributed.¹⁰⁴ One farmer recounted his own family's story: “My parents who had fought for over 20 years to prove the discrimination...and died, never having received the settlement that the government had agreed to. And they both passed in 2001, and we finally settled with the government in 2011, and we ended up paying them.”¹⁰⁵ This participant further reflected: “These farmers had died, they were in nursing homes, they had had strokes...what is 50,000 dollars going to do?”¹⁰⁶

¹⁰⁰ “Significant,” in this case, connoted large and profitable. This participant described how census data reporting increases in the number of black farmers includes black farmers who farm small acreages but derive little to no benefit from farm-related income, thus remaining a marginal part of the agricultural economy. Recalling personal interview data, this participant claimed: “Of the 30 people we interviewed only one of the 30 have increased their landholdings since *Pigford*. Some of them have lost 90% of it.” Interview participant #8, interview by Emma Lietz Bilecky, February 27, 2019.

¹⁰¹ Interview Participant #8.

¹⁰² Interview participant #1.

¹⁰³ This shortcoming was also noted in the original opinion, which read, “putting a monetary value on the damage done to someone who has experienced discrimination at the hands of the government obviously is no easy matter, and it is probable that no amount of money can fully compensate class members for past acts of discrimination. It is quite clear, as the objectors point out, that \$50,000 is not full compensation in most cases.” *Pigford* 185 F.R.D., at 108. One participant shared that for many farmers, 50,000 dollars was not adequate even to cover penalties or interest incurred on debt from USDA loans. What farmers really wanted was not 50,000 dollars, but debt relief, this participant claimed. Interview participant #8. Another participant, describing the reaction of communities engaged in land loss prevention, stated, “the compensation that the A and B tracks provided just wasn't adequate, and they were still having problems accessing USDA programs, operating loans and acquiring...farm property to engage in farming.” Omari Wilson, Senior Staff Attorney, Land Loss Prevention Project, interview by Emma Lietz Bilecky, February 21, 2019, Durham, NC. Others reflected on the magnitude of land loss: “There are things that you cannot go back and undo.” Robert Bonnie, former Under Secretary for Natural Resources and Environment, USDA, interview by Emma Lietz Bilecky, February 12, 2019, Durham, NC.

¹⁰⁴ “The folk who got the 50,000 dollars were the people who had already been put out of farming. There were very few, I doubt if there were ten farmers who were still farming who actually received the 50,000 dollars.” Interview Participant #2, interview by Emma Lietz Bilecky, January 11, 2019, Tillery, NC. Another participant highlighted the problem of the division of settlement payments between heirs after farmers had died. Interview Participant #1.

¹⁰⁵ Interview Participant #2.

¹⁰⁶ Interview Participant #2.

In addition to the modestly of payments, many participants mentioned problems with their distribution which led to worse financial situations for farmers after the settlement. The issue of taxation on settlement income was frequently cited. Though the settlement terms provided an additional 25% of the settlement amount for farmers to be paid to the Internal Revenue Service,¹⁰⁷ participants expressed that the issue of taxation on settlement awards nonetheless led to foreclosures and financial hardship, either because state taxes were not covered¹⁰⁸ or, when claimants received debt relief, it was taxed as income.¹⁰⁹ These problems were attributed in part to poor communication with claimants in *Pigford I*.¹¹⁰ The issue of exacerbated debts was purportedly corrected in *Pigford II*.¹¹¹

Participants cited a number of administrative problems with the settlements. While many farmers expected to receive debt relief through the Track A and B settlement processes,¹¹² such relief was not widely administered.¹¹³ Though foreclosures in connection to debt on properties incurred by USDA loans should have stopped during claims processes,¹¹⁴ one participant testified that foreclosures on farmers with open discrimination complaints were still taking place during Vilsack's tenure.¹¹⁵ Another participant claimed that farmers did not receive the priority services or technical assistance also promised by *Pigford*.¹¹⁶ One participant explained that in

¹⁰⁷ *Pigford v. Glickman* 185 F.R.D. 82 (1999), at 96.

¹⁰⁸ *Pigford v. Glickman*, at 109.

¹⁰⁹ Additionally, many farmers no longer had their settlement payment by the time taxes were owed. Interview Participant #8.

¹¹⁰ "What happened was...They didn't get the debt write off...Even though the government paid the taxes on the 50,000, the farmers were not aware they had to claim...the 12,000 dollars...so basically, instead of saying you got 50,000 dollars you actually had to claim 62,000 because of the 12,000 that was paid to the IRS." Interview Participant #2.

¹¹¹ "So, a number of farmers got into deeper debt because they had to pay taxes on the money that they weren't prepared to take pay taxes on, the settlement money, that was corrected and *Pigford II*." Interview Participant #5 (land loss prevention advocate), interview by Emma Lietz Bilecky, February 20, 2019.

¹¹² One participant connected this expectation to precedents set by other civil rights cases and corrective measures which involved debt relief. Interview Participant #8

¹¹³ While the initial *Pigford* settlement estimated that the average claimant would have 100,000 dollars in debt from USDA, two sources acknowledged that very few claimants actually received debt relief (376 in *Pigford I* and *II*). Nathan Rosenberg, interview by Emma Lietz Bilecky, February 1, 2019, and Interview Participant #8. Another participant claimed, "although some [farmers] may have gotten their debt write down our liquidated, majority of them still are carrying humongous debts even post *Pigford* to this day." This participant blamed such debt on a "third - wave foreclosure crisis within the African American farm community..." Interview Participant #9.

¹¹⁴ *Pigford v. Glickman* 185 F.R.D. 82 (1999), at 97.

¹¹⁵ Bonnie, interview.

¹¹⁶ Interview Participant #8

Pigford II especially, settlements did not reach the right people (i.e. legitimate farmers):¹¹⁷ “I don't know who got paid but I know that a lot of active black farmers did not get paid, and still haven't been paid, and are still wrestling with their debt, and are still losing their farms. So, the promise of *Pigford* to those communities has done more damage than good.”¹¹⁸

Participants referenced criteria that made people ineligible to participate in the settlement as another problem.¹¹⁹ In some interviews, participants attributed failures of the settlement process to the case's legal representation.¹²⁰ While some administrative and procedural failures were corrected in *Pigford II*, which expanded the class to more claimants,¹²¹ criticisms of *Pigford* focused also on lasting structural and systemic issues. One participant acknowledged a persistent lack of support from USDA for black farmers.

There was no concerted effort to help rural black towns, for example, develop grants...no technical assistance to help them apply for grants and—from the USDA to assist them in reestablishing the footprint of farmers in their community, nor for the infrastructure...So I just feel that for those who lost land, there's not been any recovery...¹²²

Assistance programs created or implemented after *Pigford* for historically disadvantaged farmers were also seen as flawed or inadequate. One participant explained the way policy design meant to correct issues of exclusion following *Pigford* actually impeded redress.

There was no [injunctive] relief to hold USDA accountable to the assist farmers in getting preference to farmland, or even their...descendants...The children who grew up on the

¹¹⁷This participant found that many active farmers didn't get paid, and yet payments in *Pigford I* and *II* were administered to more individuals than there were black farmers according to the census. “And it may have reached folks whose granddaddy farms, but it's hard to say that, 33,000 plus the [7,000] that didn't get approved...I'll say, money went to someone who's not farming. That's clear.” Interview Participant #8.

¹¹⁸ Interview Participant #8.

¹¹⁹ Interview 7, Participant A, interview by Emma Lietz Bilecky, February 22, 2019.

Another participant testified to the problem of ineligibility from his own experience: “I filed as a litigant in *Pigford* and I was successful because I had records, I had documents, I had dates, I had the whole thing. They told me I was not a farmer.”¹¹⁹ Interview Participant #2.

¹²⁰ Particularly in *Pigford I*. One participant called *Pigford* a “lawyer's lawsuit,” referencing the lack of input farmers had in *Pigford I*. Interview 2. Another claimed the class council did not properly consult the appropriate interest groups. “There were some farm interest groups that had - but they were not at the table doing the implementation, it was primarily lawyers. And they...did not put emphasis on debt relief program benefits.” Interview Participant #8.

¹²¹ Note, however, that such expansion had administrative issues of its own, did not reach the right farmers, and administered very little debt relief. Rosenberg, interview, and Interview Participant #8.

¹²² Interview Participant #9.

farms who are now adults...could not qualify for new and beginning farmer loans because they were not farming for 10 or more years...And so while we did get relief, in terms of monetary relief, going to a lot of farmers, the failure of all of this was that it did not assist farmers to re-enter into agriculture themselves as continuing farmers or their descendants as new and beginning farmers.¹²³

Some participants spoke to the positive impacts *Pigford* settlements, though they acknowledged their limitations. One participant affirmed that in the Track B settlement process, “people who were severely damaged, many of them were made whole.”¹²⁴ One participant shared a story of a farmer regaining his land because of *Pigford*.¹²⁵ Another participant spoke of non-financial outcomes, including “a glaring exposure, of the inequities in USDA up to that point” that “puts folks on notice that you can’t continue to get away with this kind of discriminatory behavior, that there’s somebody watching.”¹²⁶ Conversely, one participant acknowledged a difficulty accompanying the case’s public prominence: “To some extent, it may be negative, in that some folks feel that having paid \$2 billion dollars they've taken care of the problem”¹²⁷ when there is still work to be done.

Overall, participants’ assessments of the *Pigford* settlements highlighted procedural and administrative failures,¹²⁸ poor communication, the inadequacy of settlement payments, and insufficient measures to address persistent structural discrimination. Criticism targeted both poor execution owing to bureaucratic and procedural failures, but also a number of problems the case did not address. In their evaluation of the cases, participants described the settlement process not merely as inadequate compared to harms suffered, but as contributing to further land loss. One participant actually blamed the settlements for having “stripped farmers of land.”¹²⁹ When asked if the situation for African American farmers improved following *Pigford*, seven of ten participants gave negative assessments. Many connected the *Pigford* proceedings to persistent land loss after the settlement, explaining how income taxes and failure to deliver on promises or

¹²³ Interview Participant #9.

¹²⁴ Interview Participant #5.

¹²⁵ Interview 7, Participant A. Though this outcome was rare, according to other interviews.

¹²⁶ Interview Participant #5. Notably, this was one of *Pigford*’s intended outcomes, though its success is debated. *Pigford v. Glickman* 185 F.R.D. 82 (1999), at 111.

¹²⁷ Interview Participant #8.

¹²⁸ Including delays in funding distribution, unclear communication of the settlement’s terms, failure to deliver on the settlement’s promises, and problems with distribution, even after *Pigford II*. Interview Participants #1 and #2.

¹²⁹ Interview Participant #1. This was due in part to taxation and in part under-administered debt forgiveness farmers expected. Interview Participant #8 and Rosenberg, interview.

adequately communicate terms of the agreement led to more land loss.¹³⁰ In interviews, participants expressed that *Pigford* “negatively impacted black farm owners and landowners,”¹³¹ “failed black rural communities,”¹³² and provided a perception that problems were solved when in fact, they continued.¹³³

B. Cultural Transformation at USDA

Interviews also assessed whether participants witnessed positive changes within USDA since the *Pigford* settlements, and more specifically, whether Secretary Vilsack’s efforts to achieve cultural transformation and civil rights reform had noticeable impacts for black farmers and advocates who work with USDA. Each interview asked questions to determine whether participants perceived cultural change at USDA after *Pigford*, if the situation for black farmers who work with USDA improved after *Pigford* and if participants believed USDA could reform in the future.

In general, assessment of cultural change resulting from and following *Pigford* was negative or the process what considered slow. Three participants pointed to a lack of civil rights enforcement and accountability allowing the continuation of problems *Pigford* sought to correct.¹³⁴ Participants expressed discontent that officers accused of discrimination did not lose their jobs. One mentioned that many officials who had discrimination complaints filed against them in *Pigford* still hold positions at FSA county offices and have not been reprimanded.¹³⁵ Another explained,

USDA has a history of paying settlements with discriminatory practices against people, but nobody ever loses their job. So, you...pay out this money, but the people who are in many cases doing or participating in discriminatory practice aren't removed from that position. So, you know, it's likely to happen again.¹³⁶

¹³⁰ Interview Participants #1 and #2.

¹³¹ Rosenberg, interview.

¹³² Interview Participant #9.

¹³³ Interview Participant #2.

¹³⁴ Interview Participant #1, #2, and Rosenberg, interview.

¹³⁵ Interview Participant #1.

¹³⁶ Interview Participant #5. This issue was also mentioned in Interview 7, Participant A.

Efforts to improve accountability were seen as weak and ineffective. Describing efforts to improve accountability within local FSA offices, one participant recounted,

They could have told these Southern white boys, “you cannot do that.” The language is ‘you may,’ it is not you *will*, you *may* write off, you may write down. And then the local boys decide who’s going to get written off, who’s going to get write down and so, it doesn’t work. And when people complain, you ought to investigate and rectify, which they never did.¹³⁷

Socially disadvantaged farmer and rancher programs, meant to improve minority land access, were also seen as insufficiently monitored and in need of improved accountability.¹³⁸

The policy’s a lot better than the implementation and the department is not done a good job at following up with implementation. Once in a while, Congress will hold a hearing and point out that they're not doing it. Once in a while the [Government Accountability Office] will do something. The [Inspector General] does very little...in terms...of holding the Department accountable...But I would say the answer would be no, in my opinion, the department itself has not [improved] services as a result of *Pigford*...They have responded to some extent to the Farm Bills that have directed that they do it...Those who got settlements should have received - since the agreement states they would receive increased services - they didn't get it.¹³⁹

Some acknowledged the importance of Vilsack’s cultural transformation efforts.¹⁴⁰ Yet another participant relayed criticism of USDA cultural transformation programming for failing to improve accountability and instead compounding problems of discrimination: “All the [cultural transformation] training did was teach people how to discriminate...in a more subtle way, without getting in trouble.”¹⁴¹ This was connected to a perceived pattern of civil rights reform at USDA, which hid discrimination more than it addressed it: “the Civil Rights Department at the

¹³⁷ Interview Participant #2.

¹³⁸ This was qualified by an acknowledgement of improvements regarding documentation within the past five years, for instance, requirements for receipt of service for all inquiries and interactions between farmers and FSA offices. Interview Participant #9. Improved documentation measures, including electronic documentation, was also cited in Interview 7, participant A.

¹³⁹ Interview Participant #9. Interview Participant #8 also compared Farm Bill measures to address equity with USDA initiatives, showing preference for the former.

¹⁴⁰ Bonnie, interview.

¹⁴¹ Rosenberg, interview.

USDA from the very beginning was there to cover up discrimination rather than address it, and this culture has stayed with the agency for the past 50 years.”¹⁴²

Two of ten participants cited the persistent lack of programs and policies designed to help black farmers as reasons stifling cultural change. One participant claimed no more help was given to black farmers after *Pigford* than before *Pigford*.¹⁴³ A participant who worked closely with the USDA Office of Civil Rights attested: “No, I haven't seen any progress as a result of *Pigford*,” citing poor implementation of provisions designed to improve transparency and accountability.¹⁴⁴ Another cited the minimal increases in the share of loans distributed to black farmers as evidence of little progress.¹⁴⁵

While cultural transformation initiatives following *Pigford* sought to improve minority representation within USDA¹⁴⁶ and FSA county offices, many participants viewed such efforts as minimally successful. Though one former USDA employee confirmed that the administration closely monitored hiring practices after *Pigford*,¹⁴⁷ others doubted the impacts of such efforts. In some cases, ‘representation’ was seen as more symbolic than effective. Two participants explained that representation does not necessarily guarantee voice or decision-making power on majority white committees,¹⁴⁸ expressing a need for additional measures to ensure decision-making power and influence are distributed.

Three participants gave qualified responses when assessing USDA’s cultural transformation. One acknowledged positive steps to address civil rights as well as a more acute awareness of discrimination within the Department of Agriculture at large, but also a need for continued improvements and regained trust.¹⁴⁹ Two acknowledged that some progress had been made, citing heightened exposure of USDA’s history of discrimination and ongoing surveillance

¹⁴² Rosenberg, interview.

¹⁴³ Interview Participant #2.

¹⁴⁴ This participant mentioned service tracking for socially disadvantaged farmers since the 2002 Farm Bill as a positive improvement but did not credit the Department for its implementation. Interview Participant #8.

¹⁴⁵ Rosenberg, interview.

¹⁴⁶ Bonnie, interview.

¹⁴⁷ Bonnie, interview.

¹⁴⁸ Interview Participant #2.; “They tried to do things like trying to put one black on the committee. Whatever. But that does matter if it's a committee of three or four, if the votes will be 3 to 1 and the results will be the same.”¹⁴⁸ Interview Participant #8.

¹⁴⁹ “Is there still a distrust from the outside? Absolutely, and it’s going to be these for quite some time;” “I worked with USDA for eight years, great place, there are great people there. There’s more work to be done.” Bonnie, interview.

of USDA practices as positive outcomes, but expressed that such changes did not necessarily guarantee civil rights reform.¹⁵⁰ One provided a searing criticism, explaining that improved information and exposure failed to effect substantial change in representation or institutional culture.

Everyone knew that USDA were discriminating against black farmers, it was completely clear on the record, courts...had judged that they discriminated against black farmers. USDA did absolutely nothing...They didn't move the people that were – the loan officers that were...discriminating. They didn't hire black people to work with...black farmers...The share of FSA employees that were black actually went down during the...Vilsack administration...There was no concerted effort to increase the amount of loans or even address the discrimination... They took absolutely zero disciplinary actions as a result of discrimination against black farmers.¹⁵¹

In addition to enforcement and accountability failures, the challenge of cultural transformation was connected to USDA's institutional culture and biases. Participants spoke to a persistent culture of farming which favors larger, white farmers.¹⁵²

I think one of the things that USDA could do is to recognize that many of the black farmers are small farmers and many of USDA's programs are geared towards large, corporate farmers. And they will argue with you that they're not, but in the practical application of it, they are, so they need to address that.¹⁵³

One researcher traced this systemic discrimination in agricultural policy to the New Deal, describing how policies to support small farmers did not survive due to racism against smaller, black farmers in the 1950s and 60s South.¹⁵⁴ This legacy has had lasting effects on the Department of Agriculture, influencing which farmers and programs continue to receive federal priority today. Some traced the problem of discrimination in loan assistance to the mechanization of the agricultural industry and its lasting impacts. One recounted that prior to agricultural mechanization, when loans were not universally required, farmers were more autonomous and discrimination less impactful.

¹⁵⁰ Interview Participants #1, #5, and Wilson, interview.

¹⁵¹ Rosenberg, interview.

¹⁵² Rosenberg, interview, and Interview Participant #5.

¹⁵³ Interview Participant #5.

¹⁵⁴ Rosenberg, interview.

Before you had equipment...you could farm as much land as you had kids. But when they got mechanized, you needed loans to buy equipment and...the system was segregated to the extent that the Department - decisions were made by white committees, out in the counties, and they took care of themselves, their family and friends, blacks happen not to be one of the above, and we didn't get anything.¹⁵⁵

The need for loans and agricultural assistance was connected to the high entry costs of farming, which were seen as persistent barriers to land access.¹⁵⁶ Another perceived, institutionalized barrier to land access for black farmers included burdensome paperwork requirements for loans and documentation many small, limited resource farmers are unable produce.¹⁵⁷ “And this is something that's a problem with USDA, across the board. They require so much paperwork. And it...becomes challenging because there's so much. I think they need to figure out different ways to streamline things.”¹⁵⁸ Additionally, one wondered whether disenchantment functions to discourage new complaints:

In North Carolina, we have seen a dip in discrimination complaints being filed. But that's not to say that discrimination is not happening. It's just that people are disenchanted with filing complaints... And it could be because they don't feel like the Office of Civil Rights is doing what they need to do to assist the farmers. So, there's still systemic-wide issues with the Office of Civil Rights and their inability, it seems, to manage caseload and investigate. And I don't know if that's a function...of being under-resourced, or a lack of will, right?¹⁵⁹

Participants acknowledged paperwork requirements for participation in USDA programs as well as biases which favor large farmers within USDA as persistent structural barriers to USDA's cultural change. One former USDA employee spoke to the administrative costs of conservation programs making participation easier and more viable for larger farmers and landowners.¹⁶⁰ Some advocates saw recent minority participation in USDA programs as more

¹⁵⁵ Interview Participant #8.

¹⁵⁶ Interview Participants #2, #5, and #8 all cited the high entry costs of farming as a related problem.

¹⁵⁷ Interview 7, Participant A also cited burdensome paperwork requirements as making claimants in *Pigford* ineligible.

¹⁵⁸ Interview 7, Participant A.

¹⁵⁹ Interview Participant #9.

¹⁶⁰ Larger farmers benefit more from conservation payments due to higher acreages, and USDA's transaction costs are lower when working with fewer, larger landowners. Bonnie, interview.

accidental than intentional and only minimally effective in helping black farmers succeed.¹⁶¹ Socially disadvantaged farmer programs, sometimes attributed to a changing culture at USDA, were seen as too broad, too little prioritized, and too underfunded to substantially assist black farmers.¹⁶²

One participant claimed progress toward cultural transformation was slow due to the Department's failure to take civil rights seriously.¹⁶³ This participant noted the issue of oversight, claiming that the department was not currently including civil rights performance in evaluating its employees.¹⁶⁴ Farmers' perceptions of the culture of USDA still prevents their participation in USDA loan and assistance programs. One participant who works closely with farmers of color to provide technical assistance and loan access shared that many farmers "will go to other places to get loans, they do it out of pocket, they work with the land grant institution, but they will not go to USDA. And just, you know, it's at the point, I don't even try anymore."¹⁶⁵ Four participants were explicitly negative in their assessment of USDA's discriminatory history and culture.¹⁶⁶ Multiple participants acknowledged that farmers still perceive USDA as a "good old boys club,"¹⁶⁷ or "the last plantation."¹⁶⁸ Five cited some positive changes in the culture of USDA while still acknowledging the need for further improvements.¹⁶⁹

When asked if USDA can change in the future, participants expressed varying degrees of optimism. Some said no,¹⁷⁰ while others cited the prevalence of persistent structural racism.¹⁷¹

¹⁶¹ "You can't pursue an outcome you're not intentionally driving towards. So, it's almost as if whether or not the farmer maintains their land access, or their land tenure, utilizing these programs is almost a happenstance, when - but it's touted, as if this is the purpose of it." Interview 7, Participant B (land loss prevention advocate), interview with Emma Lietz Bilecky, February 22, 2019.

¹⁶² One participant mentioned the problem of heightened competition for scarce funding and assistance. According to this source, programs could be better to specifically target black farmers: "But because the program bandwidth...has been extended to a large degree away from like direct technical assistance to socially disadvantaged farmers. And because it has increased its reach, I believe that you will not see that many grants going to historic organizations that have been doing this work." Interview Participant #9.

¹⁶³ Interview Participant #8.

¹⁶⁴ Interview Participant #8.

¹⁶⁵ Interview Participant #5.

¹⁶⁶ Interview Participants #1, #2, #8 and Rosenberg, interview.

¹⁶⁷ Interview Participants #2, #5.

¹⁶⁸ Rosenberg and Bonnie, interviews.

¹⁶⁹ Interview Participant #9, Interview 7, Participant A, Bonnie and Wilson, interviews.

¹⁷⁰ Interview Participant #2.

¹⁷¹ Interview 7, Participant 1.

Others believed USDA could change with time,¹⁷² serious effort,¹⁷³ or with the right strategy, leadership and political will.¹⁷⁴ Multiple participants attested to the importance of dedicated leadership due to the massive and disparate nature of the department¹⁷⁵ and expressed doubt that change would happen under the current administration or without the right administrative leadership.¹⁷⁶ All participants spoke to the persistent difficulty of civil rights reform and cultural change within USDA.

C. Common Themes

Three themes characterized all interviews: mistrust, disrespect, and the difficulty of cultural change. Mistrust has sustained despite USDA efforts to support farmers who experienced discrimination. It became clear throughout interviews that this case is about more than the period the case addressed: it represents a history of unfair treatment of farmers of color. Regaining this trust is no simple task.

Experiences of discrimination are connected to painful perceptions of disrespect also. Black farmers have been marginalized in U.S. agriculture, and their contributions have not been sufficiently acknowledged. *Pigford* was not only a “slap in the face,”¹⁷⁷ it was one instance in a long series of such offenses. One participant recounted with pain his experience being perceived as an illegitimate farmer when filing as a class member in *Pigford I*.¹⁷⁸ Black farmers have been made invisible in U.S. agriculture for many of the reasons cited above: exclusion from policy and programs, preference given to larger, white farmers and failures to substantially assist farmers whose material realities are determined by histories of mistreatment, discrimination and exclusion. In addition, participants spoke to the negative depiction of black farmers in the national media following *Pigford II*. Right-wing and mainstream media outlets, including the New York Times, accused claimants of fraud.¹⁷⁹ Claimants were seen as “money grubbers” and

¹⁷² Bonnie and Wilson, interviews.

¹⁷³ Rosenberg, Wilson, and Bonnie, interviews.

¹⁷⁴ Bonnie, interview.

¹⁷⁵ Bonnie, interview.

¹⁷⁶ Interview Participant #8 and Rosenberg, interview.

¹⁷⁷ Interview Participant #1.

¹⁷⁸ “I had records, I had documents, I had dates, I had the whole thing. They told me I was not a farmer.” Interview Participant #2.

¹⁷⁹ Rosenberg, interview.

illegitimate recipients of the repayment *Pigford* provided.¹⁸⁰ Such a portrayal compounded the disrespect black farmers already felt, exacerbated by census data reporting which in some ways erased black farmers and their stories of land loss.¹⁸¹

Finally, cultural change is exceedingly difficult, and so far, unaccomplished. Participants expressed both that change takes time, but also that problems are deeply embedded. After a history of repeated failures and unkept promises, some advocates attested to farmers' persistent unwillingness to participate in USDA programs.¹⁸² Another farmer communicated that efforts to enroll black farmers in conservation programs failed to consider the cultural importance of farming traditions.¹⁸³ Respondents expressed cultural change would require more than merely creating new programs to help black farmers achieve economic viability, but also consulting and responding to communities to respect their stories, meet their needs and regain trust.

D. Policy Recommendations

Respondents offered a number of policy recommendations for improving accountability, achieving programmatic reform, and elevating the priority of civil rights to improve relations between black farmers and USDA. When asked what USDA can do to better, most acknowledged a need for accountability and enforcement, including punishing those who discriminated or firing those who had discrimination claims filed against them.¹⁸⁴ Others pointed to a need for increased oversight to ensure that provisions and services to help minority farmers such as loan application assistance and modified criteria for loan applications were properly implemented.¹⁸⁵ One suggested monitoring the share of loans actually distributed to black farmers,¹⁸⁶ and another that USDA work to “measure what matters” for farmers on the ground,

¹⁸⁰ Interview Participant #1.

¹⁸¹ Interview Participant #8 spoke to the discrepancy between farmers who failed to receive compensation and farmers counted in the census, noting that *Pigford's* reportedly successful claimants may have been non-farmers. As discussed earlier, underrepresentation in census data has been a significant problem for the visibility, equitable treatment and support of black farmers. The way census data has been interpreted in popular commentary contributes to patterns of delegitimization and erasure as it optimistically claims improvements farmers may not perceive. See Rosenberg, “Farmers Who Don’t Farm.”

¹⁸² In her work with black farmers, one advocate aims to improve perceptions both of black farmers and USDA assistance programs, highlighting the contributions of black farmers and taxpayers to help them understand that they, too, deserve government benefits. Interview Participant #5.

¹⁸³ Interview Participant #2.

¹⁸⁴ Interview Participants #1, #2, and Rosenberg, interview.

¹⁸⁵ Interview Participant #1, and Bonnie, interview.

¹⁸⁶ Rosenberg, interview.

considering not only individual farmers' needs but the systems and local economies which support them.¹⁸⁷ Finally, participants cited the need for further investigation.¹⁸⁸ One suggested the Department of Justice perform an independent investigation and audit FSA.¹⁸⁹

Other recommendations targeted programmatic reform. Some pointed to the need for increased assistance, such as increases in cost share for conservation programs, community outreach, improved technical assistance programs¹⁹⁰ and financial competency workshops for farmers.¹⁹¹ Others suggested making programs more user-friendly and better tailored to small farmers.

But we've got to make the programs more user-friendly. We've got to make people who work with USDA understand that everybody is not from the same cultural background and/or experience, you know, and, and do some sort of programmatic design that will allow small farmers to take a risk to change a crop to buy new equipment... When a tractor can cost \$400,000, and you're a subsistence farmer, meaning that, you know, you make enough to breakeven every year, how are going to afford to buy a new tractor that costs more than your house?¹⁹²

One suggested that the government actually make land available to farmers to buy or rent,¹⁹³ and another that USDA consider how it can replace income streams lost with land.¹⁹⁴ While some merely suggested USDA follow through on promises made and better implement programs designed to support black farmers, for instance, by tracking services provided to socially disadvantaged farmers, others suggested USDA creatively consider how to support to rural towns and community groups it has not traditionally supported.¹⁹⁵ Treating programs which support small and minority farmers as vital to the national agricultural economy and not merely as handouts was also suggested.¹⁹⁶

¹⁸⁷ Interview 7, Participant B.

¹⁸⁸ Interview Participant #1, and Rosenberg, interview.

¹⁸⁹ Interview Participant #1.

¹⁹⁰ Interview Participant #5.

¹⁹¹ Interview Participant #9.

¹⁹² Interview Participant #5.

¹⁹³ Rosenberg, interview.

¹⁹⁴ Interview Participant #9.

¹⁹⁵ Interview Participant #9.

¹⁹⁶ "Main Street is important for big business. We need small businesses to keep the economy going. We need the small farms to keep the agricultural economy going. And we've got to come to terms with that. And we've got to create some – and I'm not talking about handout programs or anything like that – but we've got to make the programs more user-friendly." Interview Participant #5.

Overall, participants recommended continuing to prioritize civil rights at the department and promoting people committed to cultural transformation,¹⁹⁷ though they recognized sustaining buy-in and a vision of transformation remains a challenge as administrations change. Advocates highlighted the need for better listening, representation of affected communities within the department¹⁹⁸ as well as new and creative leadership.¹⁹⁹

IV. Discussion

Disappointment expressed over the *Pigford* settlement process was not surprising in light of extensive literature and commentary on the issue. In some ways, the settlement agreement anticipated such disappointments. The text of the initial *Pigford* case itself acknowledges the limits of financial compensation offered. *Pigford* could not wholly correct discrimination at USDA—that was too big a task, according to Judge Friedman.²⁰⁰ What it *did* intend was for the billions of dollars paid to black farmers to “serve as a reminder to the Department of Agriculture that its actions are unacceptable” and “deter it from engaging in the same conduct in the future.”²⁰¹

In some ways, *Pigford II* corrected some of the procedural and administrative errors participants cited in interviews. Even still, mistrust persists. As many problems continued even after 2010, however, indicates that they cannot be resolved by, as one respondent put it, simply “[throwing] all that money at it.”²⁰² Such problems are deeply embedded. A symbolic settlement agreement serving as a “reminder” of a discriminatory history is indeed important, but it is no guarantee of structural change. Problems are reproduced not only by racist individuals, but also by institutional culture. If USDA neglects to transform its leadership but also fails to consider the ways in which its criteria of evaluation, programming, funding allocations, measures of success, and the kinds of policy solutions it imagines contribute to root problems, it may fail to adequately address them.

¹⁹⁷ Bonnie, interview.

¹⁹⁸ Wilson, interview.

¹⁹⁹ Interview Participant #9.

²⁰⁰ “The court cannot guarantee class members that they will never experience discrimination at the hands of USDA again, and the consent decree does not purport to make such a guarantee.” *Pigford v. Glickman* 185 F.R.D. 82 (1999), at 111.

²⁰¹ *Pigford v. Glickman*, at 112.

²⁰² Interview Participant #8.

Addressing discrimination and approaching institutional reform are complex goals which require more than merely identifying and extricating racist actors. If the *Pigford* settlements are to be understood as appropriate compensation for institutional racism against black farmers in U.S. agriculture, they must be coupled with a wider movement initiating institutional reform at USDA. Attention must be paid, then, not only to compensatory, redistributive, or reparative metrics, but also to cultural mores, patterns of behavior, values expressed by institutional representatives, perceptions of change held by advocates and community-based organizations and USDA client (farmer) attitudes. Policy analysis assessing structural change must consider not only individual behaviors and funding distribution, though these, too, are important, but also legal contexts,²⁰³ geographic environments and institutional biases in evaluating the authenticity and permanence of cultural change.

George Lipsitz's conception of *racialized space* is helpful to this analysis, as it describes the ways in which land ownership and distribution are not only a consequence of discrimination, but actually reproduce inequalities. Though Lipsitz discusses how segregated housing, land use policy, and tax codes which preserve intergenerational wealth within white families function to racialize urban and suburban landscapes in the United States by creating communities from which racial biases and identities emerge,²⁰⁴ his analysis can be applied to agricultural landscapes as well. "Largely because of racialized space," he writes, "whiteness in this society is not so much a color as a condition."²⁰⁵ Considering racialized processes of farmland ownership and agricultural wealth, we might consider a circular process through which rural agricultural land, too, becomes racialized.²⁰⁶ Agricultural land controlled by white Americans has shaped the

²⁰³ For instance, the problem of heir's property law in the Southeastern U.S.

²⁰⁴ "People of different races do not inhabit different places by choice. Housing and lending discrimination, the design of school district boundaries, zoning regulations, policing strategies, the location of highways and transit systems, and a host of tax subsidies do disastrous work by making places synonymous with races." George Lipsitz, *How Racism Takes Place* (Philadelphia, PA: Temple University Press, 2011), 6.

²⁰⁵ Lipsitz, 3.

²⁰⁶ Graddy-Lovelace argues that "racialization was used to justify extreme violence and oppression in the name of agricultural expansion and productivity. Driving these entrenched hegemonies have been the epistemic devaluations of indigenous, African diaspora, women-led and immigrant agrarian knowledges, which were capitalized upon while being formally disregarded and demeaned. Subjectivities of inferiority were leveraged against other subjected communities in colonialist 'divide and conquer' strategies. The expansionist project of removing' native people was underwritten by U.S. agricultural agendas and policies of wheat and livestock...U.S. agricultural policy has remained neocolonialist in subtle and overt ways. It festers in unjust work conditions all along the food chain. These injustices depend on and deepen constructed hierarchizations of ethnicity, gender, language and nationality/citizenship." Graddy-Lovelace, "The Coloniality of U.S. Agricultural Policy," 82.

U.S. economy from its founding, and plantation-style agricultural systems played a key role in the United States' rise to global economic power.²⁰⁷ Agricultural land has likewise served as a development tool pushing a kind of providential imagination westward with a particular class of white American farmers.²⁰⁸ As agricultural production became increasingly mechanized, agricultural "improvement" efforts tended to support white-owned farms and value certain forms of agricultural education over others.²⁰⁹ If agricultural institutions like USDA arise from and respond to an agricultural landscape shaped by values which have historically privileged white-owned farms and farmers, they may also reinforce them. The failure and relative weaknesses of policies designed to assist African American farmers,²¹⁰ then, are not accidental realities, but the consequences of institutional biases. Overt acts and hidden acts of racism which have driven land loss and shaped Southern agricultural landscapes in particular are not the primary cause of such biases; they are its result and defense.

In a parallel analysis of USDA discrimination against Latino immigrant farmers in the U.S., Laura-Anne Minkoff-Zern and Sean Sloat question the legitimacy of the USDA's "new era of civil rights." Citing James Scott's *Seeing Like a State*, they argue some forms of agrarian knowledge and practice are *illegible* to the state, as they "do not replicate state-sanctioned or dominant forms of farming."²¹¹ Marginalized forms of agricultural practice, they claim, are then deemed unworthy of funding.²¹² For Minkoff-Zern and Sloat, efforts to address institutionalized racism do not adequately acknowledge significant schisms of cultural misunderstanding,

²⁰⁷ See Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

²⁰⁸ See Jedediah Purdy, *After Nature: A Politics for the Anthropocene* (Harvard University Press, 2015), 129-133.; Horst and Marion note how the Homestead Acts redistributed land taken from Native Americans and low or no cost to U.S. citizens (thereby excluding indentured servants, recent immigrants, and slaves). The legislation ultimately reallocated 20% of U.S. (246 million acres) to nearly 2 million households between, mostly white, between 1863-1939. Horst and Marion, "Racial, Ethnic, and Gender Inequities in Farmland Ownership," 7.

²⁰⁹ Levi Van Sant discusses the way agricultural "improvement" projects promoted by the federal government and agricultural societies possessed a racialized bias for white-owned farms and were used as a tool of dispossession. See Levi Van Sant, "'Into the Hands of Negroes: Reproducing Plantation Geographies in the Carolina Lowcountry,'" *Geoforum* 77 (2016): 196-205.

²¹⁰ C.f. Thirteen African American Resettlement Communities were established by Franklin Delano Roosevelt's New Deal Resettlement Administration, creating pathways to landownership for many farmers of color in the South, for instance in Tillery, North Carolina. Jess Gilbert and Spencer Wood, "The New Deal State and Local African-Americans Remake Civil Society in the Rural South, 1935-2004," presented at the Rural Sociological Society Annual Meeting (Sacramento, CA: August 2004).

²¹¹ Particularly those interpreted as "unscientific." Minkoff-Zern and Sloat, "A New Era of Civil Rights?," 632.

²¹² Minkoff-Zern and Sloat, 633.

misrepresentation and historic erasure through which federal government policy persistently fails to comprehend and thus properly address and support the experience of minority farmers.²¹³

With the framework of legibility in mind, I return to a critical analysis of the *Pigford* cases and their lasting impacts as experienced by black farmers and landowners and those who have worked closely with them. When asked to evaluate *Pigford* and identify changes still required to approach justice for black farmers, interview participants identified misinformation, lack of accountability, bureaucracy, and insufficient financial assistance as characteristics of the settlement process. But participants also expressed mistrust of USDA, anger over sustained and ill-addressed injustices, deep disappointment over continuing land loss, and noted persistent structural barriers to cultural transformation.

Persistent discrimination in agriculture, I argue, owes itself not only to a lack of accountability or program design, but to USDA's perception of its own mission and purpose, determined by the farmers with whom it engages. Perhaps equity ought to begin with attention to and respect for farmers who have made vital contributions to the U.S. agricultural economy yet repeatedly have been rendered invisible by and excluded from it. If the problems the *Pigford* cases and their aftermath make clear relationships of distrust through repeated acts of marginalization, solutions are not only about compensation, though compensation and correcting mistakes are vital to justice efforts. It is through such efforts, moreover, that USDA must demonstrate its commitment to change. But as many participants noted, black farmers must also be shown respect, recognized, and valued within agricultural economies, even if their operations have historically resisted or been excluded from agriculture's dominant trends. Perhaps justice requires a reexamination of these agricultural economies themselves, the histories that have shaped them, and the lives and communities they have shaped in turn.

V. Implications

Equity is an important component of a sustainable and just agricultural economy. As one participant in this study put it, "the more people who have a stake in our agricultural system, the

²¹³ Citing the state's inability to legitimate accusations of discrimination in subsequent class action suits against the USDA, and the larger number of USDA programs tailored to large grain farmers, they argue that "government expectations of modernization largely function as gatekeepers to agricultural development and growth, despite individual and structural efforts to create inclusivity." Minkoff-Zern and Sloat, 636.

more people will be concerned with its results.”²¹⁴ In thinking about the future of agriculture, we must consider who has the power to shape it, which agricultural practices, communities and forms of knowledge are valued within it, and the danger of erasure.

Some participants expressed hope that the Department of Agriculture could undergo authentic cultural transformation, though so far this transformation has been only partial. USDA’s cultural transformation is at best, slow, and at worst, too disparate and misdirected to produce the kind of results for which it hopes. The success of reform, I argue, requires attention not only to individual instances of discrimination, but also to the many ways in which discrimination is institutionalized, not only by workplace culture and representation but also in the way policies continue to privilege some farmers and not others.

It is clear there is much work still to be done in USDA’s process of cultural transformation. To reform its institutional culture, USDA must demonstrate that it is *for* farmers of color and committed not only to making reparations, but also to enabling their full participation in agricultural economies and valuing their contributions, while continuing to work to understand the injustices it has perpetrated in so many different but interlocking ways. Policy and institutional culture shaped over decades of discrimination *lasts*. Changing structurally embedded problems is not simple, and many strategies will be required, including devoting renewed attention to USDA’s mission, values and purpose while following the lead of farmers, visionaries and advocates who stand up for those historically excluded from U.S. agriculture.

²¹⁴ Rosenberg, interview.

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