



**Statement of Phillip L. Fraas  
For the Hearing on H.R. 558 and H.R. 899 on June 21, 2007**

Mr. Chairman and members of the Subcommittee, my name is Phillip L. Fraas, and I practice law in Washington, D.C. I have worked on the *Pigford* case since late April 1997 when Tim Pigford called asking me to assist him in his discrimination case against the U.S. Department of Agriculture.

It is an honor and privilege to testify before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the Committee on the Judiciary on these important legislative proposals. I would like to talk about H.R. 899, the Pigford Claims Remedy Act of 2007.

As a preliminary matter, let me say that I support any legislation that will ensure that every person that meets the *Pigford* class definition gets a fair opportunity to have their complaint against the Department of Agriculture heard and resolved.

As I read H.R. 899, it would accomplish that end, and do so by giving to certain *Pigford* claimants the right to have the merits of their claims determined by a Federal court in a civil cause of action.

The bill specifies that the *Pigford* claimants who would be given this right are those that I refer to as "late filers." That is, they are persons who sought permission to participate in the *Pigford* settlement, but did so after the deadline for the submission of completed claim packages that was set out in the consent decree memorializing the settlement of the case: 180 days after the April 14, 1999, issuance of the consent decree, or October 12, 1999.

Under the bill, the late filer would be given the right to have adjudicated the claim that he or she made in filing a complaint of discrimination as described in the definition of the *Pigford* class: a discrimination complaint filed on or before July 1, 1997, regarding USDA's treatment of his or her farm credit or benefit application.

In that regard, I believe the bill should be amended to cover cases where the complaint was made orally at a listening session or the complaint does not cover all instances of discrimination the person has suffered at the hands of USDA. In such cases, the claimant should have the right to spell out the nature of the claim in detail using the *Pigford* claim form.

H.R. 899 does not set any deadlines of its own for filing of the civil action, so I believe the generally applicable six-year statute of limitations for suits against the Federal Government would apply.

The bill is very short, just establishing the cause of action, and by doing so creates for itself three significant advantages:

1. it would not impel an action by the Department of Agriculture that could be scored by the Congressional Budget Office as incurring new budget outlays, making the bill subject to "pay go" strictures;
2. it does not invade the jurisdiction of any other committee of the House, and as a result could be moved more expeditiously to the floor for passage; and
3. it avoids a constitutional Separation of Powers problem that might arise should it attempt to modify the terms of the *Pigford* consent decree.

That being said, I believe additional language should be added to the bill that would not negate those three advantages but that are necessary to make it a better fit to the needs of the late filers.

The bill should clarify that claims heard by the Federal courts would be subject, at the request of the claimant, to the "substantial evidence" burden of proof applicable to claims prosecuted under the *Pigford* settlement in return for the claimant accepting the standard Track A relief provided for in the *Pigford* settlement. This would put late filers on an equal footing with the original *Pigford* claimants; and it is important to do so, not only as a matter of fairness, but in recognition of the fact that many of the *Pigford* claims involve events that occurred as far back as 1981. With claims so old, documentation gets lost and witnesses disappear, making the standard "preponderance of the evidence" burden of proof an almost insurmountable obstacle to many injured farmers seeking *Pigford*-type relief.

The last thing that hard-pressed African-American farmers need is to be given hope that they will have their complaints resolved in the manner of *Pigford*, but then find out that, unlike the original *Pigford* claimants, they will have to spend thousands on legal fees and wait years for adjudication under a

standard that is inappropriate for their claim. And, why should this sub-group within the *Pigford* class be forced to re-litigate the *Pigford* case? An equitable variation of *res judicata*—recognizing what the *Pigford* settlement has already settled—should be made to apply here.

Also, in a similar vein, it would be appropriate for the bill to clarify that the claims of those who elect the Track A-type process would be handled by the courts as original *Pigford* claims were handled—as a paper-only review (under the “substantial evidence” standard) of the filled-out claim form in light of any relevant documentation submitted by the Department of Agriculture.

Both of these changes would be consonant with the provision already in the bill now expressing the intent of Congress that the bill “be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each *Pigford* claim denied that determination.”

There are other ways to improve the bill—such as by facilitating claimants’ access to information on similarly situated white farmers or by imposing a moratorium on foreclosures against claimants while their cases are pending. However, I would not encourage the adoption of those improvements if they would subject the bill to “pay-go” problems.

Mr. Chairman, the Committee on the Judiciary has before it a wonderful opportunity to ensure equal justice to all farmers who meet the *Pigford* class definition and, in doing so, to send the strong message that Congress will not tolerate any discrimination against minority farmers in the administration of the Department of Agriculture programs. I urge the Committee to seize that opportunity and report out H.R. 899 with appropriate revisions as I have described.

Thank you for your time and attention.