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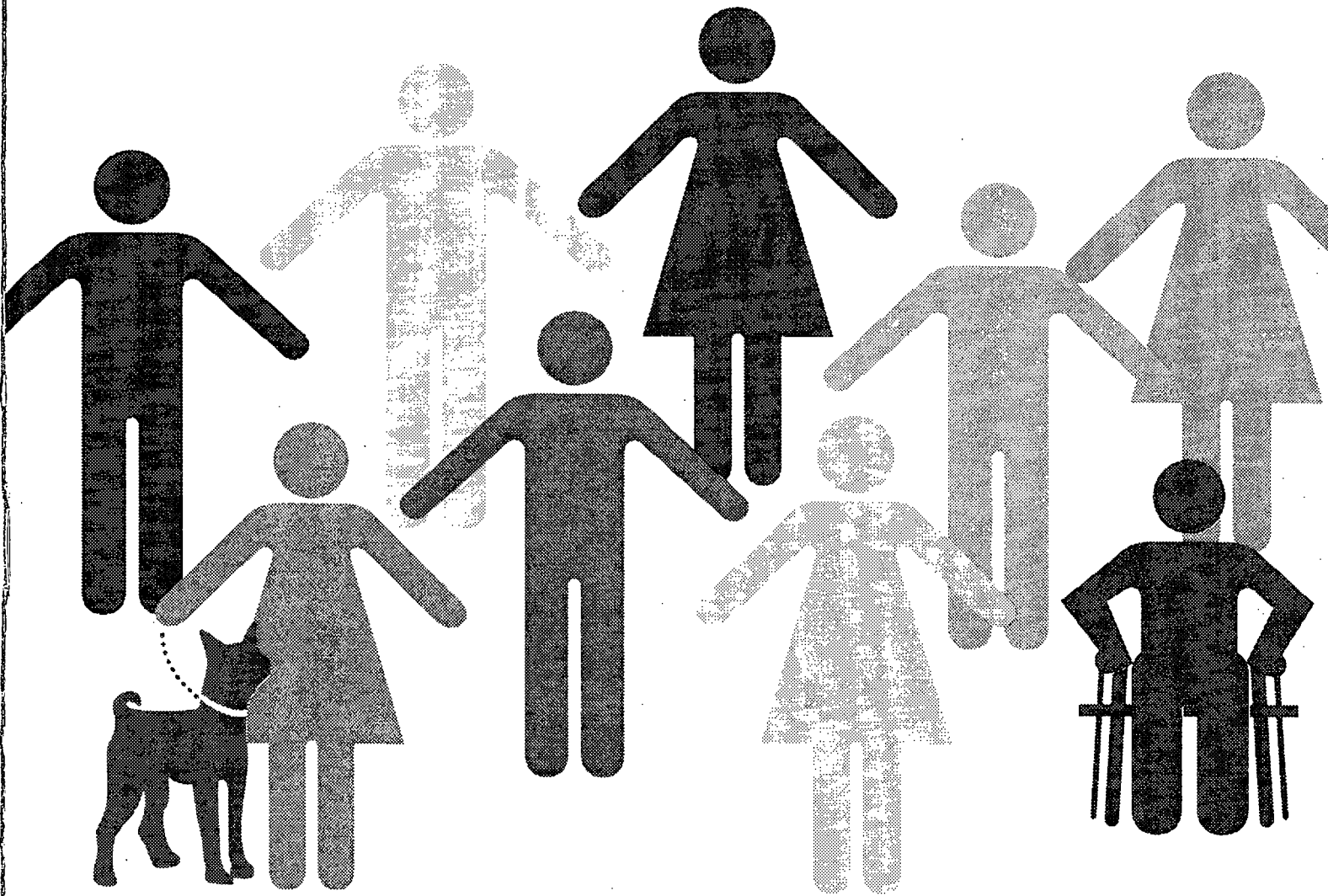


United States
Department of
Agriculture

April 2000

Commitment to Progress

*Civil Rights at the United States
Department of Agriculture*





NEWS RELEASE

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NEW REPORT DETAILS SUBSTANTIAL CIVIL RIGHTS PROGRESS AT USDA

WASHINGTON, May 5, 2000 – Agriculture Secretary Dan Glickman today released a new report that demonstrates significant successes in USDA's efforts to improve its civil rights practices and outreach efforts. The report, entitled "Commitment to Progress," documents measurable progress in hiring and lending, program outreach, customer service, and implementation of a landmark settlement with African American farmers.

"I have no higher priority as Secretary than improving USDA's record on civil rights and ensuring that all our employees and customers are treated with fairness, dignity and respect," said Glickman. "This report shows that our efforts are having a real impact on USDA's programs and people. However, this is not a victory lap, it is a progress report, one that we intend to build on in the coming years."

In April 1999, USDA entered into a class action settlement with African-American farmers, providing compensation and closure for those who felt they were wronged by USDA in the past. To date, about \$207 million in payments have gone to nearly 4130 farmers. Glickman also announced a new website – www.usda.gov/da/consent.htm – to provide updated information on implementation of the settlement.

The report identifies USDA as the largest single lender for African American farmers. USDA significantly increased its farm lending to African American farmers, up by 67% from 1995 to 1999 for new loans. Overall, farm loans to women and minorities increased by 50% from 1997 to 1999. Progress in loan delivery included simplification of the loan process, faster loan processing and reducing barriers for minorities, women and small farmers.

Vastly expanded outreach efforts have paid off, according to the report. More elected minorities and women are serving and voting on USDA's County Committees. From 1998 to 1999, the number of women and minorities elected to committees increased by 28% and 30%, respectively. In addition to these elected members, USDA appointed nearly 1,675 women and minorities to County Committees in 1999.

USDA's workforce looks more like America than ever, and the Department's hiring practices have increased diversity. In 1999, minorities represented over 20% of USDA's total employment compared to 17% equivalent representation in the private sector. Minorities accounted for one out of four hires the Department made in 1999.

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More USDA funding and staffing has been dedicated to outreach. In 1999, Secretary Glickman appointed USDA's first farmworker coordinator to address issues facing farmworkers and migrant farmworkers. In 1999, USDA invested over \$100 million in Historically Black Colleges and Universities, primarily 1890's institutions. Native American farmers and tribal communities have also benefitted from new funding to improve the quality of life and promote economic development in their communities.

The report finds that the culture at USDA continues to change, with an increased emphasis on education, training and accountability on civil rights issues. Over 99% of the Department's workforce has completed civil rights training. Disciplinary actions continue to be taken against employees for discrimination or misconduct related to civil rights -- 94 such actions were taken from January 1998 to March 2000.

A recent survey showed 9 out of 10 USDA customers are satisfied with the service they received, with improvements reported over previous years.

News

For the report, go to website: www.usda.gov/news/civil/cr.html

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Remarks

As Prepared for Delivery

by

U.S. Secretary of Agriculture Dan Glickman on
Civil Rights 2000: A Continuing Journey
Washington, DC June 29, 2000

"Thank you Pearlie for your leadership and for your guidance on this very important subject.

"Good morning. Thank you all for coming. This was a good opportunity to get together because human relations and civil rights folks from all over the country were in town this week. I've called you all together to talk about the state of civil rights at *our* USDA-- the state of our efforts to foster good human relations at the people's department.

"Since we released our progress report on civil rights in May, I've been thinking about our effort -- what we set out to do, what we've achieved, what continues to haunt us and what more needs to be done.

"Sometimes people don't see civil rights as something that affects them. But if you look at civil rights as part of a larger issue -- human relations -- then it becomes more tangible to everyone. It's about how people get along and how people treat each other. It's not just about blatant acts of discrimination. It's about human understanding; it's about communicating; it's about taking a moment to grasp someone else's perspective who just sees things a little bit differently. Civil rights -- human rights -- begin and end with our personal conviction to treat each other with respect. How we treat each other defines who we are.

"The fact is that seven years ago civil rights wasn't a priority of this Department. And, quite frankly, when I was a member of Congress and on the House Agriculture Committee, USDA's civil rights issues weren't on the radar screen there either.

"So we began this journey together, and now, today, I want to take a measure of where we are and where we've yet to go.

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"Our accomplishments are varied, and I believe significant. We've increased farm loans to women and minorities. We're reaching out to minority owned businesses through various partnerships. And last year we awarded \$300 million in contracts to socially disadvantaged and minority firms – nearly 10% of the total. And right now we're in the midst of completing what may be the largest civil rights settlement in our nation's history – hundreds of millions of dollars -- to African American farmers.

"Part of solving the civil rights dilemma means having better representation of minorities and women. So, even while we've downsized USDA's workforce by 15% we've *increased* representation of women, African-Americans, Hispanics, Asian Pacific Islanders, American Indians. And we've got more minorities and women serving on county committees. But, while that's a good start, I want to see even more diversity.

"Our civil rights office has been expanded to not only deal with complaints – which I will talk more about later – but to reach out to minorities, and to train managers and employees in civil rights issues. And we are disciplining civil rights offenders – 94 cases in the last 18 months.

"We also need to consider the intangibles, the progress we've made that cannot be measured in numbers. Do people feel good about coming to work? Are they more comfortable here? I believe on balance things are far better than they've ever been, even four or five years ago. But frankly, it needs to get a whole lot better.

"Even so, what I will not stand for is anyone – whatever their perspective or beliefs, whatever side they're on – who disparages, in word or deed, the good work and good hearts of the vast majority of the people of USDA. That is just plain wrong.

"Civil rights and good human relations takes work, day in and day out. When it comes to people getting along with each other, our work is never finished. It's the kind of battle that needs to be fought over and over again. And, there are no easy answers. Someone once said that for every problem there is a simple and wrong solution. If there were a simple answer, I think we would have found it by now.

"It is clear that you can't make progress without a strong civil rights structure in place. But at times some employees and customers feel that too often this Department is drowning in process – that while discrimination continues to rear its ugly head, we're caught up in rules, regulations and procedures -- when what they want is action and answers.

"We all need to coexist. Putting reliable systems in place is important, but we cannot let process mute the need to understand the human element – the need for people to be heard and listened to. And we must not view our civil rights effort as a program to be completed in a finite time frame – implement it and then we're done – like making grants, disaster payments or putting out a forest fire.

"We should not be caught up only in process. Our employees and customers want and deserve actions and answers. We must be positive, constructive and work toward a better future. To do so means we need to be both tough and compassionate.

"Martin Luther King said, "We must combine the toughness of the serpent and the softness of the dove, a tough mind and a tender heart." For the tender heart, I would say we all need to pause and reexamine our own attitudes and those of our coworkers. We need to understand that civil rights is about human relations. We need to understand that even as most of us celebrate our diversity – the melting pot that is America – there are those who fear diversity and are threatened by others who are different. It's not fair, but it's a reality. We also need to understand that there are those who want to help, who want to change things, who want to solve these problems, whose hearts are in the right place, but they don't know how. We must show each other the way.

"For the toughness of the serpent I would say we need to strengthen our systems, our programs and civil rights enforcement. We need to set a benchmark, a baseline to which future managers, future Secretaries and future Administrations will be held accountable. However, establishing policy means nothing without meaningful execution. But because USDA is a very decentralized organization -- much more so than most federal agencies and departments -- it is the responsibility of every under secretary, every administrator, every manager in every county to ensure that the civil rights policies of this department are carried out.

"Let's be frank, there's going to be a new Secretary here next year, and another one sometime after that. I want you to know I'm going to sit down with my successor and I'm going to lay it out -- exactly what we've done, exactly where USDA is headed and the institutional structure that we've put in place to deal with civil rights. There is no turning back. The employees of USDA won't have it any other way. We have made it a policy that every employee and customer be treated fairly – we put civil rights at USDA on the map – we made civil rights enforcement a priority – and nobody can take that away. That is the standard we've set against which all future managers will be measured. But it is also a standard that every employee of the department and the next Administration must carry on.

"Today, I'm taking several actions to further enhance our ability to enforce civil rights and improve human relations.

"I'll begin with requiring greater accountability. There's a perception out there that some people can use the settlement process to avoid disciplinary action -- sort of like a no-fault divorce. No harm, no foul kind of thing. That's a problem and we have to fix it. We need to make sure that bad actors can't manipulate the system and manage to slip under the radar. But at the same time we don't want to deter people from using our settlement process to resolve claims. So today I'm announcing that all civil rights settlements will automatically be referred to agency human resources people who will decide what, if any, further action to take – with bigger cases kicked upstairs for review at the Department level.

"I want to take a moment to talk about performance evaluations. In theory, issues concerning civil rights and human relations are considered a critical element of these evaluations. But in fact, these areas are sometimes given cursory consideration. In many cases people have come to expect an outstanding or exceeds rating as an entitlement when it should be earned. I expect our managers to rigorously review evaluations of civil rights and human relations performance in the same way they review any other job requirement – from getting to work on time to getting the paper work done.

I also expect the most senior managers of our department to monitor this; and their oversight will be a part of their review process as well.

"Next, as the inspector general's report indicated, our Office of Civil Rights has been unable to handle the sheer volume of complaints. In fact, there are over 600 claims that haven't even gotten past the first step. So, today I am directing the Office of Civil Rights to hire outside contractors to review these claims and determine whether they should be moved to phase two -- investigation. We need to get this process moving, and if bringing in outside help is what we've got to do, then that's what we'll do.

"But taking action to more quickly resolve existing complaints is only addressing part of the problem. We need to find out why we're getting these complaints in the first place. I would expect that each agency would have investigated the reasons why this is happening, why there's a high concentration of complaints in some areas. So today I'm announcing an experiment. We are going to select three or four geographical areas from different agencies with high volumes of complaints where I will send an outside investigatory team with a mandate to get answers and report back directly to me. These will be outside, objective investigators brought in to find answers and hopefully offer up some solutions.

"One of the biggest concerns I'm getting from talking to managers and employees is that many minority employees feel that they are not being heard, that nobody cares, that they've got nowhere to air their grievances -- and that many employees fear that they may be subject to retaliation or reprisal. That tells me that our managers are not always doing their jobs, that our various agencies don't have the proper systems in place where people feel they can get some action. So employees grievances are sometimes left to fester. We need early intervention. Once again, this is not something that can be dealt with from high up. We also need everyone to understand that mediation and alternative dispute resolution can be very effective ways of resolving conflicts at early stages. Also, employee unions in many agencies have been effective in providing a structure for resolving problems before they fester. We need to pay attention to our employee representatives and we should renew our commitment to working with our Partnership Councils. But, most of all, this is an on-the-ground issue. Every agency, every county, every office needs to find a way to deal with issues of human relations before they get out of hand. This morning your under secretaries will be leading breakout sessions, where I'd like you to begin to explore ways that we can solve problems early.

"I also want to make sure that we continue to address employees concerns at the Department level. So we're going to expand a process that is already working in some areas. We already have two minority advisory committees, one representing Hispanics and one representing people with disabilities. They have worked out quite well -- giving these communities a voice and another place to go with their concerns. Today I'm announcing the formation of five more employee advisory committees -- one each for African Americans, Asian Americans and Pacific Islanders, Native Americans, women, and gays and lesbians. In addition, these seven advisory committees will each send two representatives to a Diversity Council which I will charter for the purposes of advising me on issues important to these groups.

"Deputy Secretary Rominger and I and some of my senior staff will attend the breakout sessions. Part of the agenda of these sessions is for you to give us feedback, to talk to us about the problems and the successes. I especially want you to share with us and among yourselves what is working and what you've tried. That's how we're going to advance our cause, step by step. But I don't look at these breakout sessions as some be-all end-all. They are part of a process, a process that I want to see all of us develop together.

"In closing, I want to remind you that we here at USDA are part of a greater whole -- that whole being our great nation. Next week, on Independence Day, we will celebrate some of our most cherished democratic values -- liberty, freedom, justice -- a good time perhaps to reflect on what I've talked about today. And it's worth noting that the problems we have at USDA are reflective of our society as a whole -- things are improving, but not fast enough. The Civil Rights Act was passed in 1964. Things are a whole lot better today than they were then, but there are still deeply entrenched, complex, emotional problems.

"Civil rights is not just a USDA issue. Corporations, schools, communities are all dealing with it. I'm reminded of a passage from the Book of Proverbs, "For as a man thinketh in his heart, so is he." In that sense, I believe that as a society we've come a long way, that we do treat each other better than we once did, that we are making progress at improving human relations. But the proverb reminds us that who we are and how we act is rooted deep down inside each and everyone of us. So in another sense, as human beings and how we treat each other we've got a long way to go.

"The work we do here is critical. We help our farmers and ranchers provide food security for our citizens unparalleled anywhere else in the world. Through programs like WIC and Food Stamps, we provide the life's basic essentials to people who have no other place to turn. Our firefighters throw themselves in harm's way to protect life and property. Our food safety inspectors, two of whom were murdered in the line of duty last week, ensure that the meat and poultry on American dinner tables is safe to eat.

"With all of these critical functions and more, some of them involving life and death, we simply cannot afford to allow civil rights problems to compromise the work we do here. So while this is about justice, it's also about our ability to meet our obligations to the American people.

"Each of us must make the commitment to go out and make this a better place to work and make this society a better place to live. There's nothing new in what I'm saying here. But civil rights -- and human relations in general -- is such a monumental struggle, that the message needs to be repeated -- we need to constantly renew our commitment. Attention to civil rights and human relations at USDA must be a part of our job every day, every hour, every minute. A USDA that shows the way on civil rights will not only be a better place to work...it will be a better-working place...one that is true to its name: the People's Department. Thank you."



Pigford v. Glickman: **Consent Decree in Class Action Suit by African American Farmers**

BACKGROUND AND CURRENT STATUS

Numbers Updated as of **June 22, 2000**

BACKGROUND

In 1997, a number of African American farmers consolidated their claims of racial discrimination in farm lending and benefit programs into one class action suit against the U.S. Department of Agriculture (USDA), *Pigford v. Glickman*. The class is defined as all African Americans who:

- farmed, or attempted to farm, between January 1, 1981, and December 31, 1996,
- applied to USDA during that time for participation in a Federal farm credit or benefit program and who believed they were discriminated against on the basis of race in USDA's response to that application, and
- filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of their credit or benefit application.

Claims Process:

On January 5, 1999, African American farmers and USDA entered into a five-year Consent Decree. On April 14, 1999, the Court approved the settlement and provided a framework which assigned tasks, and time frames, to specific parties to settle the claims. The decree provides for:

- a *Facilitator* (Poorman-Douglas Corporation) that determines if each case meets the class definition,
- an *Adjudicator* (Poorman-Douglas Corporation and JAMS-Endispute) that adjudicates "Track A" cases (see below for an explanation of "Track A" and "Track B"),
- an *Arbitrator* (Michael Lewis) who adjudicates "Track B" cases, and
- a *Monitor* (Randi Ilyse Roth) to ensure that the decree functions properly. The Court appointed the Monitor on January 18, 2000, and she began operations on March 1, 2000. Although the Adjudicator's decision is final, if the Monitor believes there has been an error in screening,

adjudication, or arbitration of a claim, that is likely to result in a "fundamental miscarriage of justice," the Monitor can direct a re-examination of the claim. The Monitor will make regular reports to the Court, as well as attempt to informally resolve disputes.

Each of these parties operates independently of USDA.

Under the Consent Decree framework, claimants determined by the Facilitator to be members of the class could choose one of two "tracks" for processing their claims.

Track A:

Under **Track A**, the claimant completes a claim form, which is submitted to the Adjudicator. The Adjudicator's decision is based on the claim submitted by the claimant and any information submitted by USDA pertaining to the claim. This is the more streamlined track and most of the claimants -- 19,707 to date -- have chosen it. Even though the deadlines have passed, the number of Track A claims may increase, as some claims which the Facilitator found to be incomplete or late are being reviewed by the Arbitrator.

- Those who meet the class definition and who provide written "substantial evidence" of credit discrimination to the Adjudicator, receive a blanket payment of \$50,000, plus additional relief in the form of forgiveness of their debt on loans affected by discriminatory conduct, and some offset of tax liability.
- Those with written "substantial evidence" of non-credit discrimination do not receive the \$50,000 payment, but instead receive the amount of the benefit that was wrongly denied, provided funds are available for this purpose.

Track B:

Under **Track B**, those who believe they have evidence of extreme wrongdoing go before an Arbitrator to seek larger damages. Only 141 claimants have chosen Track B. Track B has a higher standard of proof ("preponderance of the evidence") than Track A, but provides for a tailored settlement based on individual circumstances, including a cash payment equal to actual damages, and forgiveness of outstanding USDA loans affected by discriminatory conduct.

Additional Relief:

Under terms of the decree, USDA is also required to provide additional help to claimants whose claims are upheld. This includes:

- Priority consideration on a one-time basis to buy, lease, or otherwise acquire property in USDA's inventory,
- Priority consideration for one direct farm ownership loan and one farm operating loan, and
- Technical assistance and services.

A request for additional relief must be in writing and signed within 5 years of the date of the decree (April 14, 1999). USDA must view all applications in a light most favorable to the claimant

and the amount and terms of any loan must be the most favorable permitted by law and USDA regulations. Applicants must, however, meet the eligibility requirements for the benefit requested.

Opting Out:

Claimants were not required to take part in the Consent Decree process. They were provided the opportunity to **Opt Out** of the class action suit, between April 14, 1999, and August 12, 1999. 233 farmers chose to opt out, and continue their individual cases in the administrative process or in court. To date, approximately 30 claimants have chosen to pursue discrimination cases with USDA.

CURRENT STATUS OF CASES

Total Claims Filed:

To date, the Facilitator has reviewed 20,701 claims filed under the Consent Decree. Of these, 19,707 Track A claims and 141 Track B claims were accepted for processing. The remaining 853 claims were rejected based on a determination that the claimant was not a member of the class.

Track A Claims:

To date, of the 19,707 claimants who have chosen Track A, USDA has submitted its responses on 19,630 (99.6%) to the Adjudicator. Of these, the Adjudicator has decided 16,212 cases so far:

- **9,817 cases (60.6 percent)** have been **upheld** -- decided in favor of the claimant.
- **6,395 cases (39.4 percent)** have been **denied**.

Once the Adjudicator has notified USDA of an approved decision, USDA has approximately 45 days to respond regarding the loans to be forgiven. Only loans identified by the Adjudicator are eligible for forgiveness. At the same time, the Department of Justice (DOJ), which is responsible for coordinating the payment of the financial settlement, sets the process in motion to issue a check. DOJ wires funds to the Facilitator, which sends the check to the claimant. USDA has no control over claim decisions and does not issue the check.

As of June 22, 2000, the Facilitator has mailed \$50,000 each in settlement to 5,483 claimants. **This totals over \$274 million.**

Because of the volume of claims to be paid, there has been some difficulty in coordinating the payments. In some cases, payments have been delayed. USDA, DOJ, and the Facilitator are working to solve these problems and all payments will be made as quickly as possible, with the goal of making payments within 90 days of the decision.

Track B Claims:

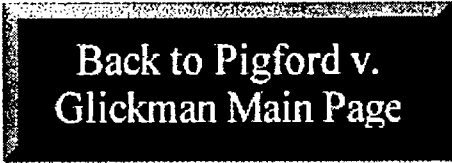
Of the 141 claimants who have chosen Track B, four cases have been tried before the Arbitrator. Two claimants have won their arbitration hearings, and two have lost. The Arbitrator has dismissed seven cases; two of these were dismissed with the consent of the claimant. Two cases have been

settled. Several other cases are in negotiation.

Loans Forgiven:

Of the 14,829 verified decisions for claimants as of June 22, 2000, the Adjudicator has identified 2,496 loans (951 claimants) for cancellation, and USDA is canceling 155 loans (103 claimants) that had remaining balances. These 155 loans represent **\$6,765,630** in principal and interest that has been forgiven. USDA has also returned **\$148,627** to others who had offsets taken to service delinquent accounts.

Secretary Glickman's policy on foreclosures is still in effect and is part of the Consent Decree: *No acceleration of loan repayment or foreclosure will take place on a claimant who has a claim pending.*



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