

# Frequently Asked Questions

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Questions

**1. What are *Pigford* and the Consolidated Case?**

*Pigford* refers to *Pigford v. Glickman*, a class-action case filed in 1997 on behalf of African-American farmers, asserting systemic race discrimination by the United States Department of Agriculture (USDA) in the administration of the Department’s credit and benefit programs. The parties reached a settlement of the case, which was approved by the U.S. District Court in April 1999. The *Pigford* Settlement Agreement established a claims process that required claims to be submitted by October 12, 1999 or September 15, 2000 for extraordinary circumstances.

The Consolidated Case refers to the *In re Black Farmers Discrimination Litigation*, a second litigation, also filed on behalf of African-American farmers who asserted race discrimination by the United States Department of Agriculture (USDA) in the administration of the Department’s credit and benefit programs. This case was filed in 2008, following passage of the 2008 Farm Bill, which provided a cause of action for farmers who had failed to obtain a recovery in the *Pigford* case because they had filed late claims. The Consolidated Case was settled as a class action in 2010, and the U.S. District Court approved the Settlement Agreement in October 2011. The Consolidated Case Settlement Agreement established a claims process that required claims to be filed by May 11, 2012. Subsequently, the deadline

for filing claims for certain categories of claimants was extended to October 12, 2012. Read more about the details of the [Settlement Agreement here](#).

## **2. What is the Black Farmers Discrimination Litigation (BFDL) Cy Pres Fund?**

Under the terms of the Consolidated Case Settlement Agreement approved by the U.S. District Court, to the extent that settlement funds remained undistributed following the final deadline for successful claimants to cash their settlement checks, such remaining funds were to be treated as cy pres funds (disbursed by the Court in a manner set forth in the Settlement Agreement). The time for successful claimants to negotiate their Consolidated Case settlement checks has now passed, and there remains approximately \$12 million dollars of settlement funds available for distribution to eligible Cy Pres Beneficiaries as established by the Settlement Agreement (as amended).

According to the Consolidated Case Settlement Agreement, a Cy Pres Beneficiary must be a tax exempt nonprofit organization, other than a law firm, legal services entity, or educational institution, that is providing agricultural, business assistance, and/or advocacy services, including assistance under *Pigford* and the Consolidated Case, to African-American farmers and/or ranchers.

The Consolidated Case Settlement Agreement provides that Lead Class Counsel may recommend to the U.S. District Court organizations to receive BFDL Cy Pres Funds and the allocation of such funds. The Court is responsible for making final determinations of the reasonable payment to be made to Cy Pres Beneficiaries of the BFDL Cy Pres Funds. Lead Class Counsel expect to recommend to the Court that BFDL Cy Pres Funds be used to strengthen and empower the African-American farming community in the United States by supporting the stability, growth, and resiliency of 501(c)(3) nonprofit organizations that are currently providing meaningful agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers. Lead Class Counsel expect to recommend to the Court that the BFDL Cy Pres Funds be distributed in two distinct phases: BFDL Cy Pres Phase I Grants and BFLD Cy Pres Phase II Grants.

## **3. What are BFDL Cy Pres Phase I Grants?**

Lead Class Counsel expect to recommend to the Court that:

- Up to one-third of total BFDL Cy Pres Funds (approximately \$4 million dollars) be eligible for disbursement through Cy Pres Phase I Grants;
- Such Cy Pres Phase I Grants be distributed for the purpose of stabilizing and/or growing the capacity of nonprofit organizations that have both a historic (prior to December 31, 2012) and a current record of providing meaningful agricultural, business assistance,

and/or advocacy services, including (but not limited to) assistance under *Pigford* and the Consolidated Case, to African-American farmers and/or ranchers operating in the rural/non-urban United States;

- Cy Pres Phase I Grants address the immediate needs of eligible nonprofit organizations, and can be used for general operating and project support; and,
- Cy Pres Phase I Grant recipients be approved by the end of 2017.

#### **4. Who is eligible to apply for Cy Pres Phase I Grants?**

Eligible applicants for Cy Pres Phase I Grants must meet all of the following criteria:

- Be a 501(c)(3) nonprofit organization, or an organization with a 501(c)(3) fiscal sponsor relationship;
- Have historically (defined as before December 31, 2012) provided meaningful agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers operating in rural/non-urban areas of the United States; and,
- Currently provide meaningful agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers operating in rural/non-urban areas of the United States.

Law firms, legal service entities, and educational institutions will not be eligible per the Consolidated Case Settlement Agreement.

#### **5. What is the timeline for Cy Pres Phase I Grants?**

The Request or Proposals for Cy Pres Phase I Grants opened on Monday July 31, 2017, and proposals will be due before 11:59 pm Eastern Time on Friday September 29, 2017. After the submission period ends, the Cy Pres Grants Team may contact applicants with questions regarding their proposals between October 23, 2017 and November 3, 2017. Please ensure a contact person is available during this timeframe, as a grant recommendation may be contingent on information gathered during this call. Lead Class Counsel hope to recommend that Cy Pres Phase I Grant recipients be approved by the end of 2017.

#### **6. What guidelines will be used to evaluate Cy Pres Phase I Grant proposals?**

Funding recommendations will be determined based on impact of current and past work, demonstration of organizational need, and availability of funds.

## 7. What types of support can be requested for Cy Pres Phase I Grants?

Applicants may request ONE of the following grant request options:

**General Operating Support.** Applicant organizations (including fiscally-sponsored organizations) seeking general operating support must demonstrate that the bulk of their organization's work is providing agricultural, business assistance, and/or advocacy services for African-American farmers and/or ranchers operating in rural/non-urban areas of the United States. These unrestricted funds may be used where most needed, whether that be salaries and overhead, supporting, expanding or starting a program, investing in technology, improving fundraising efforts, debt repayment, capital expenditures, or otherwise. Funds may NOT be used for re-granting or endowments. It is recommended that the maximum funding request for general operating support not exceed one-third of an applicant/sponsored organization's annual operating budget per year for two years.

Please note: if you are an eligible fiscally-sponsored organization that meets the criteria above for general operating support, you may apply for a general operating support grant based on your organization's work and budgets. If awarded a grant, your fiscal sponsor will be the legal grantee and responsible accordingly, including reporting the grant in its IRS Form 990. From the perspective of the fiscal sponsor, the award will technically be considered a project grant, as your organization is a project of your fiscal sponsor. However, from the perspective of your organization (as the fiscally-sponsored organization doing the work), the grant funds can be used for unrestricted, general operating support as indicated above. If you have any questions specific to this technical distinction, please feel free to contact the Cy Pres Grants Team.

**Project Support.** Applicant organizations (including fiscally-sponsored organizations) seeking project support must demonstrate that the project or program for which they are seeking funds is providing agricultural, business assistance, and/or advocacy services for African-American farmers and/or ranchers operating in rural/non-urban areas of the U.S. and that the project or program is having meaningful and measurable positive impact. These funds are restricted to project or program expenses for the eligible project or program. It is recommended that the maximum funding request for project support not exceed one-third of the annual project budget or projected annual project budget (for a new program) per year for two years.

**8. How do I determine if the “bulk” of my organization’s work is serving African-American farmers and/or ranchers operating in the rural/non-urban United States through agricultural, business assistance, and/or advocacy services?**

There are no pre-determined thresholds that will qualify or disqualify an organization from considering the bulk of their work serving African-American farmers and/or ranchers in rural/non-urban areas of the U.S. through agricultural, business assistance, and/or advocacy services. However, there are some questions an organization should consider before applying for general operating support:

- Does the organization explicitly address African-American farmers and/or ranchers in its mission statement?
- Was the organization founded to provide agricultural, business assistance, and/or advocacy services for African-American farmers and/or ranchers?
- Are African-American farmers and/or ranchers the majority of the organization’s constituency?
- Do agricultural, business assistance, and/or advocacy services make up most of the organization’s program budget (not including supporting services)?

**9. What types of activities are considered “agricultural, business assistance, and/or advocacy services” for the purpose of Cy Pres Phase I Grants?**

Agricultural services include, but are not limited to, technical assistance or training, farmer-to-farmer learning or networking (including projects that serve rural farmers through connections with urban farmers), cooperative training, organic/sustainable transition/support, and beginning farmer training.

Business assistance services include, but are not limited to, financial counseling, cooperative development, business planning, and marketing assistance.

Advocacy services include, but are not limited to, land acquisition, access to credit and capital, assistance with loan applications and appeals, policy advocacy/development, emergency assistance, disaster response, hotline services, coalition development (including projects that serve rural farmers through connections with urban farmers), mediation services and legal service projects.

**10. Can an organization submit more than one proposal?**

Organizations are only eligible to submit one grant proposal, and must choose between general operating support and project support.

If an applicant organization is the 501(c)(3) fiscal sponsor for an eligible sponsored organization, and also provides eligible services for African-American farmers and/or ranchers operating in rural/non-urban areas of the U.S. as part of their own programming, apart from that of the sponsored organization, then the fiscal sponsor organization may submit both a proposal on behalf of the sponsored organization as well as a proposal on behalf of their own organization. Fiscal sponsors whose only eligible work is carried out by the sponsored organization are not eligible to submit a second proposal on their own behalf.

#### **11. How do I calculate the maximum recommended funding request?**

General Operating Support - It is recommended that the maximum funding request for general operating support not exceed one-third of an applicant/sponsored organization's annual operating budget per year for the grant period (up to 24 months). For example, if an organization has an annual operating budget of \$600,000, the maximum recommended funding request for each year would be \$200,000, for a total of \$400,000 over a two-year grant term.

Project Support - It is recommended that the maximum funding request for project support not exceed one-third of the annual project budget, or projected annual project budget for a new program, per year for the grant period (up to 24 months). For example, if a project budget is \$60,000 annually, the maximum recommended funding request for each year would be \$20,000, for a total of \$40,000 over a two-year grant term.

#### **12. Can we start a new project?**

Lead Class Counsel expects to recommend that Cy Pres Phase I Grants be distributed for the purpose of stabilizing and/or growing the capacity of nonprofit 501(c)(3) organizations providing meaningful agricultural, business assistance, and/or advocacy services for African-American farmers and/or ranchers operating in rural/non-urban areas of the U.S. If your organization qualifies for Cy Pres Phase I Grants and had identified that the most effective way to stabilize and/or grow its capacity is through a new project or program, that new project or program may be eligible for funding. Please be advised that applicants seeking funds to begin a new project or program must effectively demonstrate that it is rooted in the meaningful services the organization has offered for African-American farmers and/or ranchers *and* builds upon the success it has demonstrated for African-American farmers and/or ranchers.

**13. Are any organizations excluded from funding?**

Law firms, legal services entities, or educational institutions cannot receive funding from the BFDL Cy Pres Funds per the Consolidated Case Settlement Agreement. Organizations that provide eligible legal/educational services as part of their work, but are not law firms, legal services entities, or educational institutions (as described below) may be eligible for Cy Pres Phase I Grants.

**14. Are any activities excluded from funding?**

Re-granting activities and endowments are not eligible uses of funds.

Re-granting activities include any situation in which the applicant organization is not the end user of grant funds (except in the technical case of fiscal sponsorship). For example, a project in which funds are distributed to other organizations, who will use the funds for their own programmatic work, is ineligible for Cy Pres Phase I Grants.

Additionally, any project in which money is being distributed to either an individual farmer and/or rancher or a group of farmers and/or ranchers is ineligible for Cy Pres Phase I Grants. For instance, if an organization has a fund that gives money directly to farmers to help them buy land, make business improvements, settle debts, etc., that project would be ineligible for Cy Pres Phase I Grants. However, if the organization provides services to help farmers and/or ranchers do those things (i.e. financial counseling, training, business planning assistance, etc.) that project or program may be eligible for Cy Pres Phase I Grants.

**15. Is my organization eligible even though it was not specifically involved in supporting Pigford claimants?**

Any nonprofit organization that provides agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers operating in rural/non-urban areas of the U.S. and within the eligibility requirements listed in Question #5 may be eligible for funding. An organization does not need to have provided direct assistance to claimants under *Pigford* or the Consolidated Case to be eligible.

**16. Can awards go to organizations that serve farmers and/or ranchers of different racial or ethnic groups than African-American?**

Organizations that serve African-American farmers and/or ranchers through agricultural, business assistance, and/or advocacy services as the bulk of their work may be eligible for a General Operating Support grant even if they also serve farmers and/or ranchers of different races/ethnicities than African-American.

Organizations that do not serve African-American farmers and/or ranchers through eligible services as the bulk of their work may be eligible for Cy Pres Phase I Grant funding, but they can only apply for a Project Support grant for the program or project that provides agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers. Farmers and/or ranchers of different races/ethnicities may also be served by the project or program.

**17. Can awards be used to serve African-American communities that include, but are not limited to, farmers and/or ranchers?**

The BFDL Cy Pres Funds must be disbursed in accordance with the terms of the Consolidated Case Settlement Agreement, which provides that awards must only be used to support tax-exempt nonprofit organizations that provide agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers. However, an organization that does broader work, but also currently provides and has historically provided meaningful eligible services to African-American farmers and/or ranchers operating in rural/on-urban areas of the U.S. may be eligible for a Project Support grant.

**18. How are farmers and ranchers defined for the purpose of Cy Pres Phase I Grants?**

A farm is defined by the USDA as any place from which \$1,000 or more of agricultural products, including both crops and livestock, were produced and sold or normally would have been sold during a year. A farm operator is defined as the person who runs the farm, making day-to-day management decisions. For the purpose of Cy Pres Phase I Grants, a farmer or rancher is a person that fits the USDA definition of a farm operator.

**19. What is a rural/non-urban area?**

A rural area is, by U.S. Census Bureau definition, any area that is non-urban. The U.S. Census Bureau defines an urbanized area as having a population of 50,000 people, and a density of 1,000 people per square mile. Organizations eligible for Cy Pres Phase I Grants must provide eligible services to African-American farmers and/or ranchers operating in rural/non-urban areas of the U.S. If farmers operating in urban areas are also served through eligible services for farmers operating in rural/non-urban areas of the U.S., the project or program may be eligible for Cy Pres Phase I Grants.

**20. I was a *Pigford* Class member. Can I receive an award?**

Only tax-exempt nonprofit organizations can receive BFDL Cy Pres Fund awards, per the Consolidated Case Settlement Agreement. Individuals are not eligible to receive grants directly.

**21. How much money will be awarded for Cy Pres Phase I Grants?**

Lead Class Counsel expect to recommend to the U.S. District Court that up to 1/3 of the total BFDL Cy Pres Funds (approximately \$4 million) be eligible for disbursement through Cy Pres Phase I Grants.

**22. If my organization has a fiscal sponsor, what are they required to provide and what should we provide?**

An organization with a fiscal sponsor is eligible to apply for Cy Pres Phase I Grants because of the 501(c)(3) tax-exempt status of its sponsor organization. The fiscal sponsor is required to provide its IRS Letter of Determination to verify its 501(c)(3) status. If awarded a Cy Pres Phase I Grant, the fiscal sponsor will be the legal grantee and is responsible accordingly, including reporting the grant in its IRS Form 990. Thus, the fiscal sponsor is required to sign the cover sheet, verifying that all information contained in the Cy Pres Grants Proposal Application is accurate to the best of their knowledge.

The fiscal sponsor also must provide an audit report for the most recently completed year. If it is not required to provide an annual audit, it must instead provide a Statement of Financial Position, Statement of Activities, and, if available, its Functional expenses, all from the most recently completed fiscal year.

The information in the Cy Pres Grants Proposal Application is to be completed from the perspective of the organization doing the work, that is, the sponsored organization. The sponsored organization is also asked to provide a Statement of Financial Position, Statement of Activities, and, if available, Functional Expenses for the most recently completed fiscal year. All additional required attachments, excluding the IRS Letter of Determination, should be provided by the organization doing the work, i.e. the sponsored organization.

**23. Are indirect expenses allowed to be covered in the application budget?**

Yes, indirect expenses (administrative and overhead costs) are an eligible use of funds.

**24. Over what period of time must award funds be spent? May we apply now for an award that will fund future work?**

The funding timeline for Cy Pres Phase I Grants is a maximum of 24 months, starting as early as January 2018 and ending in December 2019. Thus, the maximum recommended funding request should be based on a two-year budget.

**25. What reports are due at the end of the award period?**

Recipients will be required to submit reports at least once a year over the term of the grant. There is a possibility that reports will be requested more frequently. Reporting requirements will be communicated to successful applicants.

**26. Who are the parties involved in the process and what are their roles?**

The U.S. District Court for the District of Columbia approved the Settlement Agreement in the Consolidated Case and has the ultimate responsibility for the approval of all BFDL Cy Pres Grants. Lead Class Counsel has represented the Plaintiff Class throughout the litigation. They are the law firms of *Chestnut, Sanders, Sanders, Pettaway & Campbell, LLC; Morgan & Morgan, PA; and Coffey Burlington P.L.* Lead Class Counsel are overseeing the BFDL Cy Pres Funds process, assuring its compliance with the Settlement Agreement and the Court's rulings, and have the responsibility under the Settlement Agreement to make recommendations to the Court regarding the awards. The Court is responsible for making all final decisions for how the funds will be disbursed. Lead Class Counsel has engaged Farm Aid as the technical consultant for the process and as an advisor. Farm Aid has not and will not receive any BFDL Cy Pres Funds. Any reimbursement Farm Aid receives will be drawn from the remains of an administrative fund established for the claims settlement process of the Consolidated Case. Farm Aid brings more than 30 years of experience in funding and partnering with farm service organizations across the country, including numerous African-American agricultural nonprofits. Under the direction of Lead Class Counsel, Farm Aid is responsible for helping design the RFP, collecting and processing all proposals, communications with applicants, review of proposals, monitoring of awards, and record keeping.

**27. When are Cy Pres Phase I Grant proposals due?**

Proposals and all required enclosures are due by 11:59 p.m. Eastern Time on Friday, September 29, 2017.

**28. On what schedule will Cy Pres Phase I Grants be distributed?**

The U.S. District Court has the responsibility to approve all Cy Pres Phase I Grants and will determine on what schedule awards will be issued to grantees. Lead Class Counsel expects to recommend that funds be distributed to grantees on an annual basis for the maximum grant period of 24 months.

**29. When will Cy Pres Phase I Grant recipients be announced?**

Lead Class Counsel expects to recommend that awards be announced by the end of 2017.

**30. Will all eligible applicants receive Cy Pres Phase I Grant funding?**

Lead Class Counsel cannot guarantee that all eligible applicants will receive funding. It is anticipated that requests may exceed available funds.

**31. If I have additional questions about Cy Pres Phase I Grant eligibility, the proposal process or the proposal website, how can I get answers?**

Applicants who need technical assistance can receive help through three methods. The Cy Pres Grants Team can answer questions pertaining to eligibility, the application, and the proposal process. We will not be able to advise on the application scope, budget, written content, or so forth. If you need help understanding the proposal process, technical assistance is available through the following methods:

- A technical assistance webinar outlining eligibility requirements and the proposal process was held on August 8, 2017. Links to the recording can be found at [blackfarmercase.com/CyPres.aspx](http://blackfarmercase.com/CyPres.aspx)
- Questions can be answered by email by sending them to [Administrator@BlackFarmerCyPres.com](mailto:Administrator@BlackFarmerCyPres.com)
- Questions can be answered by telephone by dialing 617-229-6483. If someone is not available to answer, calls going to voicemail will be handled in the order in which they are received.

**32. What will happen to the information and documents submitted during the Cy Pres process?**

All information and documents will become part of the *In re Black Farmers Discrimination Litigation* case records. As such, it is likely that they will eventually become public records.

### **33. Can awards be renewed?**

Counsel expects to recommend that approximately \$4 million in Cy Pres Phase I Grants be distributed on a one-time basis for the purpose of stabilizing and/or growing the capacity of nonprofit organizations with a historic (prior to December 31, 2012) and current record of providing meaningful agricultural, business assistance, and/or advocacy services, including (but not limited to) assistance under *Pigford* and the Consolidated Case, to African-American farmers and/or ranchers operating in the rural/non-urban United States.

Lead Class Counsel expect to recommend that the remaining approximately \$8 million dollars of the BFDL Cy Pres Funds be disbursed through Cy Pres Phase II Grants. Eligibility requirements for Cy Pres Phase II Grants may be different than those for Cy Pres Phase I Grants.

### **34. What Are Cy Pres Phase II Grants?**

Following the Court's final decision on distribution of Cy Pres Phase I Grants, Lead Class Counsel expect to recommend to the U.S. District Court that:

- The remaining approximately \$8 million dollars of the Cy Pres Funds be disbursed through Cy Pres Phase II Grants;
- Eligible nonprofit organizations need to demonstrate a current record of providing meaningful agricultural, business assistance, and/or advocacy services to African-American farmers and/or ranchers, and demonstrate a strong plan for future effectiveness.

Note: Eligibility requirements may be different than those for Cy Pres Phase I Grants. The process for Cy Pres Phase II Grants has not yet been determined.

Any organization interested in contributing to the design of the Cy Pres Phase II Grant process is invited to complete and return the Cy Pres Phase II Visioning Document in the Supplemental documents section of [www.blackfarmercase.com/CyPres.aspx](http://www.blackfarmercase.com/CyPres.aspx)