

**FACT SHEET ABOUT
KEEPSEAGLE, et al. v. VILSACK
Native American Farmers & Ranchers' Class-Action Lawsuit Against the
U.S. Department of Agriculture for Decades of Discrimination in Farm Loans**

This case charges the USDA with denying thousands of Native American farmers and ranchers the same opportunity to obtain farm loans that USDA routinely provided to white farmers, causing Native Americans to lose billions of dollars in credit. The case also brings to light USDA's failure to maintain its civil-rights office and, specifically, USDA's failure to accept or investigate the many civil-rights complaints filed by Native American farmers and ranchers.

WHEN DID THIS CASE BEGIN? It was filed in November 1999 in the U.S. District Court for the District of Columbia, which is in Washington, D.C.

WHO IS A MEMBER OF THIS CLASS? The Court has ruled that this case may proceed as a class action. You are a member of the class and a participant if at any time **between 1981 and 1999:**

1. You are Native American and have been farming or ranching, and
2. You, or someone on your behalf, complained in writing or orally, about discrimination in farm-loan programs, and
3. You tried to obtain a loan or servicing of a loan from the USDA.

WHAT'S THE STATUS OF THE CASE? After years of work, plaintiffs and USDA have completed the fact finding process called discovery. The court has not yet set a trial date, but we hope one will be set soon. However, on December 4, 2009, at the request of the USDA, the Court stayed the litigation (i.e., put it on hold) for two months, so that the parties can focus on negotiating a settlement agreement. That stay has been extended through mid-April 2010. Plaintiffs have already obtained over two million pages of documents from USDA and data on who received loans and debt servicing from USDA, when the loans were issued, and their amounts.

- The documents reveal the widespread, harsh, and offensive discrimination that USDA committed against Native Americans over several decades.
- An expert who spent 27-years in the USDA's Economic Research Service has used USDA's own data to determine that there have been large differences in the amount of money loaned to white and Native American farmers that suggest the presence of discrimination.
- USDA officials and employees have also given testimony, as have Native American farmers and others, which show that USDA operated its farm loan programs in a discriminatory way.

WHAT DO THE PLAINTIFFS WANT FROM THIS CASE? **The plaintiffs seek:**

1. To change the way USDA makes loan and debt-servicing decisions, so that decisions are fair and that Native American applicants have an equal chance to obtain loans and debt servicing.
2. To ensure that all applicants for loans and debt servicing get the technical assistance they need from USDA to prepare applications for loans and debt servicing that have a fair chance of success.
3. The payment of money to members of the class who were improperly denied loans or debt servicing by the USDA at any time between 1981 and 1999, to compensate for the revenues that would have been earned had the rancher or farmer received his fair share of loan or debt servicing.

WHAT EVIDENCE OF DISCRIMINATION EXISTS IN THIS CASE? While the volume of evidence in this case is too large to list in detail, it is summarized here.

1. **USDA and other government agencies have issued formal reports that find USDA's loan and debt servicing programs have not been equally accessible to Native Americans as to white farmers and ranchers.** These reports, published after thorough investigations, also find that USDA's civil-rights office has been ineffective at least since the early 1980s, and that civil-rights complaints were lost, destroyed, or simply not investigated.

In the words of the USDA and the former Secretary of Agriculture:

- "Minority farmers lost significant amounts of land and potential farm income as a result of discrimination by [USDA] programs" and there are disparities between "non-minority loan processing and American Indian loan processing."¹
- "The civil rights problems at USDA have been a long time in the making. Some of them are a result of regulatory requirements, some of poor policies, some of benign neglect, and some of program officials who have allowed personal bias to influence their decisions."²
- "The process for resolving program complaints has failed" and there is an absence of accountability for civil-rights compliance "throughout USDA's massive field structure."³

2. **USDA's highly subjective rules about who should receive loans and debt servicing permitted local decision-makers to favor their friends and family, and to discriminate against Native Americans, rather than treat all applications equally as the law requires.**

3. **USDA's own data shows Native Americans received less loan and debt-servicing money from USDA than they should have received.** Patrick O'Brien, an expert in agricultural economics and a 27-year veteran of USDA's Economic Research Service, concluded that:

- Native American farmers received only half the USDA loans *and* half to two-thirds of the loan servicing agreements they should have received from 1981 to 2007, contributing to a "cumulative \$ 3 billion shortfall" in the credit.⁴
- As a result, Native American farmers suffered actual economic damages of well over \$1 billion.⁵ In addition, they likely suffered even more in non-economic harm from the destruction of families, the loss of a way of life and emotional injury, all caused by the systemic denial of equal access to credit and the exposure to discrimination.

4. **USDA employees referred to Native Americans in demeaning and stereotyped ways, revealing bias against Native Americans.**

WHAT CAN YOU DO TO HELP THE CASE? If you want more information about this case, you may call us toll free at 1-888-822-0844 or check our website, <http://www.cohenmilstein.com/cases.php?CaseID=95>

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¹ Civil Rights Action Team, U.S. Department of Agriculture, *Civil Rights at the United States Department of Agriculture* (1997) ("CRAT Report"), at 21, 30.

² Letter From Dan Glickman, Secretary of Agriculture, to Edward I. Koch, Sept. 8, 1997, at 1.

³ CRAT Report at 31, 47.

⁴ Final Expert Rebuttal Report of Patrick M. O'Brien, November 2009 ("O'Brien Final Rebuttal Report"), at 2-3, 5-7; Expert Rebuttal Report of Patrick M. O'Brien, July 2009 ("O'Brien July Rebuttal Report"), 48.

⁵ O'Brien Final Rebuttal Report at 6-7.

