

# Draft Recommendations for the Distribution of CY PRES PHASE II Funds

**Presented to:** Black Farmer Discrimination Lawsuit Class Counsel

**Prepared by the:** Black Farmer Council, on behalf of Black Farmer Organizations

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## **Overview:**

Following completion of the claims process and payment of all successful claimants in the Black Farmers Discrimination Lawsuit (BFDL), approximately \$12 million remained in the BFDL settlement fund (called the “*cy pres* funds”). Pursuant to the settlement agreement, those funds may only be given to non-profit organizations which provide services with both a historic (prior to December 31, 2012) and a current record of providing 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. There were two distinct phases established for distribution of BFDL *cy pres* funds. In Phase I, four million dollars were awarded to non-profit organizations through a competitive process. This report provides a summary of recommendations to Class Counsel for the disposition of the remaining approximately \$8 million in BFDL *cy pres* funds (Phase II.)

In an effort to ensure that Phase II funds would have the maximum, long term impact, Class Counsel, with assistance from key Black farmer organizations, convened nearly 100 organizations, advocates and farmers in Atlanta, Georgia to discuss how to best utilize those funds. The meeting lasted two days. There was much discussion as well as deliberation throughout that period. The group developed a set of criteria to be the guiding principle for any recommendations to Class Counsel. It was agreed that the recommendations had to address the following eight categories in a way that provided adequate and sustainable resources for each:

1. Access to and ownership of land
2. Access to affordable capital
3. Access to markets
4. Technical assistance
5. Cooperative economic development
6. Advocacy
7. Farmer/landowner control
8. Philanthropy

Detailed discussions were held around each category with the goal to determine what issues should be addressed under each category. Over the course of the sessions, some dominant themes emerged for each category:

1. Access to and ownership of land
  - *Any structure should be able to provide financial assistance to purchase, lease and secure land. It should also help address problems related to heir's property.*
2. Access to affordable capital
  - *Any structure should be able to provide low or no interest loans*
3. Access to markets
  - *Any structure should be able to build the capacity of cooperatives, farmer organizations and individual farmers to develop and/or access markets.*
4. Technical assistance
  - *Any structure should be able to build the capacity of Black farmer organizations to provide technical assistance to Black farmers...*
5. Cooperative economic development
  - *Any structure should have as one of its guiding principles the role cooperatives play in locally controlled economic development and provide resources to advance cooperative development and organizing.*
6. Advocacy
  - *Any structure should be able to build the capacity of Black farmer organizations to advocate on behalf of Black farmers and landowners.*
7. Farmer/landowner control
  - *Any structure developed to receive and disburse funds should be owned by Black farmers and landowners and used solely for their benefit.*
8. Philanthropy
  - *Any structure must have grant making ability*

**Vision Statement:**

The following vision statement was developed to serve as the overarching guide for making any and all recommendations:

*“Black farmers play an integral role as successful business owners and economic contributors in an eco-system of partners, institutions and consumers of food that work to advance an equitable and accessible food system that supports healthy communities.*

*We envision a world where Black Farmers innovate and collaborate to experience economic prosperity and sustain their legacy of ownership across generations.”*

After one and a half days of discussions, speakers and presentations, the group realized that a) the task was too important and complicated for a two day conference and b) the task could not be accomplished by 100 organizations and individuals.

It was decided that a Black Farmer Council (BFC) would be elected from the group for on-going dialogue and follow-up work and would be tasked to develop recommendations that would be submitted to Class Counsel on behalf of the Black farmer organizations, advocates and individual farmers who attended the Atlanta conference.

The following eight members of the Black Farmer Council were elected without opposition:

1. Jifunza Wright-Carter
2. Shirley Sherrod
3. Tamara Jones
4. Barbara Norman
5. Calvin King
6. Cornelius Blanding
7. Tracey McCurty
8. Edward “Jerry “ Pennick

#### **Summary of BFC Meetings:**

Over a twelve month period BFC held eight meetings via teleconference and one in person meeting with a facilitator. The meetings were informed by both the explicit as well as the implicit will of the Atlanta conference. As much as possible, BFC utilized the vision statement and the categories to guide its deliberation. It quickly became apparent that the final recommendation had to be a structure that would address each of the above categories while not competing with existing farmer organizations for resources outside of CY PRES II.

As discussions progressed, BFC settled on the three possible structures below that could best accomplish the goals and vision set forth at the Atlanta conference:

1. Foundation

2. 501(c)3 Non-Profit Organization
3. New Structure

The following determinations were made:

- 1) A foundation is closely regulated and is more limited than a 501(c) 3 as to how it can raise and distribute funds.
- 2) A 501C (3) is a more effective legal structure than a private foundation. It does not go deeply into governance structure. It could be focused solely on social enterprise and therefore, not compete with other community organizations.

While both of these structures have their pros and cons, BFC determined that neither could effectively meet the needs of Black farmers and landowners as identified at the Atlanta conference. It was agreed that an alternative structure that had up to now not been available to or accessed by Black farmers and landowners was necessary. BFC shifted its focus to an "Other Financial Institution" to determine its suitability as a possible structure.

**Other Financial Institution (OFI):**

The Farm Credit Act defines what is commonly referred to as an "Other Financial Institution" or "OFI" as follows:

- any national or state bank
- trust company
- agricultural credit corporation
- incorporated livestock loan company
- savings institution
- credit union
- Or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

BFC agreed that an OFI comes closest to meeting the needs of Black Farmers for the following reasons:

- An OFI is assured access to bank funding and bank services;
- Farm Credit Banks are authorized to make loans and extend other financial assistance to any credit worthy OFI;
- An OFI can be structured to shield borrowers' collateral from investors/lenders;
- An OFI can qualify as a CDFI and/or preferred lender of USDA;

- An OFI could be structured and approved in a minimal amount of time and begin almost immediately to leverage funds;
- An OFI can be structured as a cooperative and thereby make grants, loans and emergency aid; and
- Foundations or non-profits can be set up under an OFI.

**Final Recommendation:**

Therefore, BFC recommends that the remaining CY PRES funds be used to establish an OFI that is an independent privately owned institution that is cooperatively owned by its customers; Black farmers, landowners, farmer owned cooperatives and other cooperatively owned agribusinesses. We believe that an OFI could fill the gaps left by the Black farmers lawsuit settlement by building a financial institution that has the capacity to create intergenerational, farm and land ownership as well as intergenerational wealth. Most importantly, an OFI can open doors that have been closed to Black farmers while empowering and increasing the capacity of Black farmer organizations to be better service providers and advocates.