Injunctive Relief

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Chapter One

Introduction

This series aims to help class members in the African-American farmers' lawsuit understand their right to injunctive relief. Officially known as *Pigford v. Veneman* and *Brewington v. Veneman,* the lawsuit is a nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA).[1] The lawsuit resulted in a settlement, and, as a part of the settlement, class members are given the right to injunctive relief.

I. Role of the Monitor

The Office of the Monitor exists as a result of the settlement in the lawsuit. The Monitor is independent of the parties and was appointed by the federal court judge who handled the case. Part of the Monitor's job is to help class members who have difficulty getting their injunctive relief. Anyone with questions for the Monitor's Office may call toll-free: 1-877-924-7483.

II. What Injunctive Relief Is Available

In general, injunctive relief is the remedy a party gets in a lawsuit that is in addition to, or separate from, damages. For example, for a successful Track A claimant in this case, injunctive relief is in addition to the $50,000 payment, the debt forgiveness on certain USDA debts, and the payments made on behalf of class members for income taxes. In the Consent Decree, injunctive relief means three things. Each of the following types of injunctive relief is explained in more detail in Chapter Two of this series.

A. Technical Assistance

All prevailing class members are entitled to technical assistance and service from employees of USDA.[2] This means that, if asked, government officials must help applicants understand and complete the paperwork necessary for obtaining farm operating loans, farm ownership loans, and inventory property. Technical assistance must be from a USDA employee who is both qualified and acceptable to the class member.

B. Most Favorable Light

All prevailing class members are entitled to have certain applications for loans and inventory property viewed in the light most favorable to having them approved.[3]

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[1] *Pigford v. Glickman,* Civ. No. 97-1978 (PLF), and *Brewington v. Glickman,* Civ. No. 98-1693 (PLF). The court's opinion and the Consent Decree can be found at http://www.dcd.uscourts.gov. The Monitor maintains a web site as well at http://www.pigfordmonitor.org.

[2] Consent Decree ¶ 11(d).

[3] Consent Decree ¶ 11(c).

In addition, once prevailing class members are determined to be eligible for an operating loan or a farm ownership loan, the amount and terms of any loan must be the most favorable they can be and still meet the requirements of the law and USDA regulations.[4]

C. Priority Consideration

Class members who prevail on credit claims may request priority consideration for one direct operating loan—known as an OL Loan—and one direct farm ownership loan—known as an FO loan.[5]

1. Priority Consideration for Inventory Property

Prevailing class members receive priority consideration on a one-time basis for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property.[6]

2. Priority Consideration for Operating Loan

Prevailing class members receive priority consideration for one USDA direct operating loan—known as an OL Loan.[7]

3. Priority Consideration for Farm Ownership Loan

Prevailing class members receive priority consideration for one USDA farm ownership loan—known as an FO Loan.[8]

III. Eligibility for Injunctive Relief

Eligibility for injunctive relief depends on the following two factors. For a more detailed explanation of eligibility for injunctive relief, see Chapter Two.

A. Prevail in Either Track A or Track B

In order to be eligible for injunctive relief, a person must be a class member who has filed a claim under either Track A or Track B of the Consent Decree settlement and who has prevailed on that claim. To prevail, in legal terms, means to win on the main issues in a legal action. To prevail on a claim under the Consent Decree means that the Adjudicator or Arbitrator found in favor of the class member. In this case, in other words, farmers who received a favorable result in either Track A or Track B for a discrimination claim are eligible for injunctive relief.

B. Some Injunctive Relief for All Successful Claimants

All class members are entitled to two types of injunctive relief.

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4 Consent Decree ¶ 11(c).

5 Consent Decree ¶ 11(b). These loans are made by an agency within USDA known as the Farm Service Agency (FSA). The farm loans that were once made by the Farmers Home Administration (FmHA) are now made by the Farm Service Agency (FSA).

6 Consent Decree ¶ 11(a).

7 Consent Decree ¶ 11(b).

8 Consent Decree ¶ 11(b).

1. Technical Assistance

All prevailing class members are entitled to technical assistance from USDA in their efforts to obtain future farm operating or farm ownership loans and to purchase, lease, or otherwise acquire inventory property.

2. Most Favorable Light

All prevailing class members are entitled to the right to have any application they file for an operating loan, a farm ownership loan, or inventory property viewed in the light most favorable to the class members and to have the most favorable amount and terms permitted by law and USDA regulations for any loan issued to them.

3. Credit vs. Noncredit — the Difference Matters for Priority Consideration

African-American farmers could make one of two types of claims in the lawsuit—either a credit claim or a noncredit claim.[9]

a. Credit Claims and Noncredit Claims

In general, a credit claim means a claim based on the class member's effort to get a farm loan of some type. A noncredit claim is a claim that is not based on an effort to get a farm loan but instead is based on the class member's effort to receive some other benefit from USDA. An effort to receive disaster payments, for example, could be the basis of a noncredit claim, but not a credit claim.

Those who prevail in a credit claim receive $50,000 under the Consent Decree. Those who prevail in a noncredit claim receive $3,000. The difference between credit claims and noncredit claims is also important because some parts of injunctive relief are available only for credit claims.

b. Credit Claims Result in Priority Consideration

Class members with prevailing credit claims get the right, on request, to receive priority consideration for one operating loan, one farm ownership loan, and one purchase, lease, or other acquisition of inventory property.[10]

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[9] All noncredit claims are considered under Track A. Consent Decree ¶ 5(d).

[10] See Consent Decree ¶¶ 9(a)(iii)(D) (injunctive relief for Track A credit claims), 9(b)(iii)(B) (injunctive relief for Track A noncredit claims), 10(g)(iii) (injunctive relief for Track B claims). See, as well, FSA Notice FLP-313, Priority Consideration for Prevailing Claimants (July 21, 2003); FSA Notice FLP-225, Priority Consideration for Prevailing Claimants (October 18, 2001) (expired July 21, 2004); FSA Notice FLP-151, Priority Consideration for Prevailing Claimants (August 18, 2000) (expired June 1, 2001).

IV. Injunctive Relief — What Law Applies

Understanding the shape of injunctive relief can be confusing. The information in this series is based on the following sources of information.

A. Consent Decree

The Consent Decree is a legally binding agreement that resulted from the lawsuit. It sets out the terms of the settlement that was agreed to by the parties. Those terms include the basic shape of injunctive relief. It is the Consent Decree, for example, that provides for priority consideration for USDA loans and inventory property.

B. FSA Regulations and Statutes

Regular Farm Service Agency (FSA) regulations continue to control certain parts of a class member's right to injunctive relief.[11] The basic eligibility rules for USDA programs are not, in general, changed by the Consent Decree. For example, FSA regulations say that in order to receive an FSA loan, a borrower must be creditworthy. The Consent Decree does not eliminate this creditworthiness requirement. Similarly, FSA inventory property regulations provide for a priority in certain cases for some beginning farmers. The Consent Decree does not eliminate this beginning farmer priority.

C. Liberal Construction of Consent Decree

Finally, although the statutes and regulations governing FSA programs must be met in providing injunctive relief to class members, the Consent Decree says that in light of the purpose of the Consent Decree—to provide a remedy for class members—the Consent Decree is to be liberally construed to support that purpose.[12]

The important part of this aspect of the Consent Decree is the term "liberal construction." Although not defined in the Consent Decree, the term liberal construction is often used in the law. In legal terms, liberal means to be generous or free in giving. The opposite of liberal, in legal terms, is to be strict or narrow-minded.

A liberal construction of the Consent Decree in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

V. Dealing With FSA and Its Regulations

Several aspects of injunctive relief—in particular getting an FSA loan and getting inventory property—are not automatic. As a result, class members must generally act first to fill out an application for an FSA program. In dealing with FSA, the following general points are notable.

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[11] Consent Decree ¶ 19. Specifically, the "performance of [duties] which would be inconsistent with federal statutes or federal regulations [is not required] . . . ."

[12] More specifically, the purpose of the Consent Decree is remedial. See prefatory remarks in the Consent Decree. A remedial consent decree is one that is intended to remedy wrongs or abuses.

A. Applications and Paperwork Are Important

Every FSA farm program has a written application that requires a fair amount of paperwork. Completing the paperwork is always required for someone to receive a benefit from an FSA program. The paperwork can be complicated. Class members should feel free to ask USDA employees to help them with this paperwork. The class member's right to this help—sometimes known as technical assistance—is discussed in Chapter Two.

Completing the application and paperwork is important. In many cases, there is a significant difference between a complete application and an incomplete application. Complete applications, for example, often receive priority for a loan or other services before an incomplete application.

B. Deadlines and Timeliness

Many FSA programs have deadlines. It is important to meet those deadlines.

In addition, many FSA program benefits go to people in the order in which they apply. In other words, in many cases, it is to an applicant's advantage to apply for a program earlier rather than later.

C. Documentation — Get Things in Writing

Many farmers are used to do doing business without a written record. From a legal point of view, this may be a mistake. In general, it is a good idea for class members to document every important contact they have with USDA and other lenders and creditors. In many cases, the farmer's records may be the only proof of what really happened.

Documenting dealings with FSA and other lenders can be done any number of ways. The following is only a suggestion.

1. Create a File at Home

Create a file at home. This is the place to put letters and other documents that come from or go to FSA.

2. Document Letters Sent

When a letter is written, a copy should always be kept. In addition, the applicant should send things to FSA by certified mail, return receipt requested. Certified mail forms are available at the post office. When certified mail, return receipt requested, is used, a postcard is attached to the back of the letter. When the Post Office delivers the letter to FSA, an FSA employee must sign the postcard to show that he or she received it. Then the post office will send the signed postcard back to the original sender. A farmer should keep this postcard in the file at home. It provides proof that FSA received the letter.

3. Create a Paper Record

Create a paper record of dealings with FSA. If a farmer calls an FSA employee and reaches an agreement with the employee on a certain point—for example, on whether an incomplete application for an operating loan is now complete—the farmer should document the phone call. This can be done by writing a short letter to the FSA office that confirms the phone call. For example, the letter might say:

> As you recall, we talked on the telephone yesterday. You told me that my application for an operating loan is now complete. If I do not hear from you in writing within five days, I will assume that my understanding of our conversation was correct.

In addition, a farmer should keep notes of talks the farmer has with FSA. It may help to keep a notebook by the phone and make a short note about the conversation whenever the farmer talks to FSA.

VI. Sources for This Series

In general, this series is based on the four sources: (1) the Consent Decree; (2) federal statutes that control USDA programs, USDA regulations (found in the Code of Federal Regulations, known as the C.F.R.); (3) internal Farm Service Agency (FSA) policy notices—often called FLPs; and (4) other official FSA publications.[13] When these sources are used, they are cited in the footnotes. Where the series relies on other sources, these are also cited in the footnotes. Anyone who would like a copy of these other sources should feel free to contact the Monitor's Office toll free at 1-877-924-7483.

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[13] This series assumes that FLPs are binding on USDA. The use of such policy notices and handbooks as official and binding is controversial. See, for example, Robert A. Anthony, *Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies Use Them to Bind the Public?,* 41 Duke Law Journal 1311 (1992); Robert A. Anthony, *"Interpretive" Rules, Rules and "Spurious" Rules: Lifting the Smog,* 8 Administrative Law Journal 1 (1994); and Christopher R. Kelley, *Notes on the USDA National Appeals Division Appeal Process,* 1999, Arkansas Law Notes 61 (1999).