

# Monitor Update: Injunctive Relief in *Pigford v. Vilsack*

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**This is not a USDA publication.**

## Injunctive Relief in *Pigford v. Vilsack*

### **I. Introduction and the Monitor's Role**

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Vilsack*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

### **II. Only a Brief Summary**

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

### **III. Eligibility for Injunctive Relief**

#### **A. Must Prevail in Track A or Track B**

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

#### **B. Credit vs. Noncredit Claims — the Difference Matters**

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

#### **C. What Law Applies for Injunctive Relief**

##### **1. Consent Decree**

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a

remedy for class members—the Consent Decree is to be liberally construed. A liberal construction 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.

## **2. *USDA Regulations and Light Most Favorable***

The regulations governing USDA loan programs must be met in providing injunctive relief to class members. For example, in order to get a loan from USDA, the farmer must still meet USDA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies when a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

## **IV. Types of Injunctive Relief**

Injunctive relief falls under two main categories—priority consideration and technical assistance.

### **A. Priority Consideration — Three Types**

The Consent Decree provides for priority consideration for three types of USDA benefits.

#### **1. *Inventory Property***

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. USDA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

#### **2. *Farm Ownership Loan***

Priority consideration for one USDA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

#### **3. *Farm Operating Loans***

Priority consideration for one USDA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

#### **4. *How Priority Consideration Works***

Several general rules apply to priority consideration.

##### **a. *Request in Writing***

Priority consideration must be requested from USDA in writing.

##### **b. *One-Time Basis***

Priority consideration is available on a one-time basis.

***c. Credit Claims Only***

Priority consideration is available only to those who had credit claims.

**B. Technical Assistance and Service**

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

***1. Credit and Noncredit Claims***

Technical assistance is available both for those with credit claims and noncredit claims.

***2. Must Be Requested***

The class member must request the technical assistance and service. Class members should consider making this request in writing.

***3. Qualified and Acceptable USDA Employees***

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

**V. Getting a USDA Loan**

**A. Eligibility and Priority Consideration**

Priority consideration does not mean that getting the loan is automatic. USDA eligibility requirements continue to apply.

**B. Debt Forgiveness and Loan Eligibility**

Many class members will have problems getting a loan because of past debt forgiveness.

***1. General Rule — No USDA Direct Loan if Debt Forgiveness***

As a general rule, applicants who have had USDA debt forgiveness that resulted in a loss to USDA cannot get a USDA direct loan.

***a. Defining Debt Forgiveness***

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of a USDA debt. It also includes the discharge of a debt to USDA as a result of bankruptcy. In addition, it includes a loss paid by USDA on a guaranteed loan.

***b. Exceptions to the General Rule***

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what USDA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

### **2. Debts Forgiven Under Pigford — or Affected by Discrimination**

Many class members had outstanding USDA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another USDA loan. Further, if a class member is entitled to debt forgiveness on a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another USDA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see "Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants."

### **C. Creditworthiness**

An applicant must be creditworthy to be eligible for a USDA loan. Credit history can be taken into account when USDA considers the creditworthiness of the applicant. USDA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

### **D. Other Requirements for USDA Loans**

USDA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

### **E. Where to Go for Assistance**

The Monitor's Office has issued an Update that provides information for class members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for *Pigford* Claimants."

## **VI. Deadlines for Injunctive Relief**

Deadlines for applying for various kinds of injunctive relief are different from each other. Each type of injunctive relief—and its deadlines—are explained below.

### **A. Technical Assistance Injunctive Relief — April 14, 2006, and Possibly Later**

The deadline for using technical assistance injunctive relief has two parts.

First, there is a deadline of April 14, 2006, for prevailing class members to use technical assistance injunctive relief.

Second, each prevailing class member has at least two years from the date on which the class member completed the *Pigford* claims process to use technical assistance injunctive relief. The meaning of the phrase "completed the *Pigford* claims process" is explained below.

In other words, the deadline for using technical assistance injunctive relief is either April 14, 2006, or two years after the date on which the prevailing class member completed the *Pigford* claims process—whichever is later.

### **B. Priority Consideration and Light Most Favorable Injunctive Relief**

All forms of priority consideration injunctive relief have a deadline. In addition, there is a deadline for the use of light most favorable injunctive relief.

The deadline for light most favorable injunctive relief, and for priority consideration injunctive relief, has two parts.

First, light most favorable injunctive relief and priority consideration injunctive relief were available through April 14, 2005.

Second, each prevailing class member has the right to these forms of injunctive relief for at least two years from the date on which the prevailing class member completed the *Pigford* claims process. The meaning of the phrase “completed the *Pigford* claims process” is explained below.

In other words, the deadline for using light most favorable injunctive relief and priority consideration injunctive relief is either April 14, 2005, or two years after the date on which the prevailing class member completed the *Pigford* claims process—whichever is later.

### **C. Defining “Completion of Consent Decree Claims Process”**

Part of the deadline for using injunctive relief hinges on when the prevailing class member completed the Consent Decree claims process.

Each class member completes the claims process at one of three possible points.

#### **1. If No Petition — Date of Decision Plus 120 Days**

Many prevailing class members prevailed in an adjudication or arbitration, and neither the government or the class member filed a timely petition to the Monitor.

In these cases, for the purposes of setting the deadlines for injunctive relief, the prevailing class member completed the claims process 120 calendar days after the date of the Adjudicator or Arbitrator decision.

#### **2. Petition Filed, Monitor Denies Reexamination — Date of Monitor Decision**

Some prevailing class members prevailed in either an adjudication or an arbitration, and either the government or the class member filed a timely petition to the Monitor. The Monitor then issued a decision that denied reexamination of the Adjudicator or Arbitrator decision.

In these cases, for the purposes of setting the deadlines for injunctive relief, the prevailing class member completed the claims process on the day the Monitor issued a decision that denied reexamination. The date of the Monitor decision letter is the day the Monitor issued the decision.

### ***3. Petition Filed, Monitor Grants Reexamination — Date of Reexamination Decision***

Many class members received either an Adjudicator or an Arbitrator decision, and either the government or the class member filed a timely petition. The Monitor then issued a decision that granted reexamination of the Adjudicator or Arbitrator decision.

In these cases, for the purpose of setting the deadline for injunctive relief, the prevailing class member completed the claims process on the date of the reexamination decision by the Adjudicator or Arbitrator. The date of the Adjudicator or Arbitrator decision letter is the day the Adjudicator or Arbitrator issued the decision.

## **VII. Priority Consideration and Actual Applications**

Prevailing class members seeking priority consideration must submit written notice of the request to USDA. In addition, a prevailing class member must either submit an actual application for inventory property or for a loan at the time of the request for priority consideration—or must have an application for inventory property or for a loan already pending with USDA.

## **VIII. Waiting Period for Injunctive Relief**

A 120-day waiting period exists for prevailing class members to use injunctive relief. The 120-day waiting period begins on the date of the initial Adjudicator or Arbitrator decision on which the class member prevailed. If a prevailing class member requests injunctive relief during the 120-day period, USDA must accept the request, but must also wait for the 120-day period to end before processing the injunctive relief request. Further, if the government files a timely petition for Monitor review, the request for injunctive relief may not be processed until the class member has completed the Consent Decree claims process. The definition of completing the Consent Decree claims process is explained above.

## **IX. If Injunctive Relief Efforts Fail**

If those seeking to use the injunctive relief described in this Update fail in their efforts, they have several options.

### **A. Contact the Monitor**

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

### **B. USDA Appeals**

Any USDA applicant—not just class members—who receives what is known as an adverse decision may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

### **C. Civil Rights Complaint**

Any persons—not just class members—may file discrimination complaints with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue S.W., Washington, DC, 20250-9410.

### **X. More Information on Injunctive Relief**

More detailed information about the injunctive relief is available on the Monitor's web site at [www.pigfordmonitor.org/injrelief/](http://www.pigfordmonitor.org/injrelief/). Any successful claimant who would like a copy of the detailed materials may call the Monitor's toll-free line at 1-877-924-7483.