

Monitor Update: No Adverse Effect

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This is not a USDA publication.

No Adverse Effect: Future Loans and Future Loan Servicing for Prevailing Class Members

A. Introduction

According to the Consent Decree in the *Pigford* case, debt forgiveness required by the Consent Decree will not “adversely affect” a claimant’s eligibility to participate in a USDA loan program or a USDA loan servicing program. This Monitor Update is intended to explain how the no adverse effect part of the Consent Decree works for claimants.

B. Two Types of USDA Debt Forgiveness — Consent Decree and Non-Consent Decree

Many claimants have had USDA debt forgiven, or they will have USDA debt forgiven in the future. There are several different ways that a claimant might receive debt forgiveness, and the difference can be important for the future.

1. Debt Relief Under *Pigford*

As part of the Consent Decree, USDA must discharge many outstanding debts owed by successful claimants. According to the Consent Decree, debts that were incurred under, or affected by, a USDA program that was the subject of the Adjudicator’s or Arbitrator’s finding of discrimination on credit claims are to be forgiven. A Court Order explains the debt forgiveness rules in more detail. In addition, if the Adjudicator or Arbitrator finds discrimination regarding a particular loan, a claimant is also entitled to discharge of any debt of that loan type incurred at the time of the earliest event on which there is a finding of discrimination through December 31, 1996.

Claimants who have questions about what debts should be forgiven may call the Monitor’s toll-free number, 1-877-924-7483. Callers may also request Monitor Update 10, which explains debt relief.

2. Other USDA Debt Forgiveness

The Consent Decree is not the only way that claimants may have received debt forgiveness from USDA. USDA regulations require debts to be forgiven under certain conditions. In addition, a bankruptcy court can give relief from a USDA debt. One way or another, many claimants have had debt written off outside of the Consent Decree process.

3. Why the Difference Is Important — Future Dealings With USDA

The difference between Consent Decree debt forgiveness and other USDA debt forgiveness is important. The Consent Decree says that debt forgiven because of the Consent Decree shall not adversely affect the eligibility of a claimant who wants to participate in a USDA loan program or a USDA loan servicing program. Other forms of USDA debt forgiveness can make a claimant not eligible for a USDA loan or for USDA loan servicing. The following sections of this Update explain how the difference in the type of debt forgiveness can affect a claimant.

C. Debt Forgiveness and Getting a USDA Loan

Debt forgiveness can affect a borrower's right to a future USDA loan.

1. General Rule — Debt Forgiveness and Future USDA Loans

Applicants who have had USDA debt forgiveness outside of the Consent Decree process may be ineligible by law for a new USDA direct or guaranteed loan. Debt forgiveness, for this purpose, includes the write-down or write-off of a USDA debt. Although there are some exceptions to the rule, in general the majority of applicants who received a write-down from USDA will normally not be eligible for a future USDA loan.

2. Consent Decree Debt Forgiveness and Future USDA Loans

The general rule is changed by the Consent Decree.

a. Debt Discharged Due to Consent Decree

A debt discharged because of the Consent Decree will not hurt a claimant's eligibility for another USDA loan.

Example:

Suppose a claimant got a farm ownership loan in 1994. As a result of the Adjudicator decision, USDA discharged the rest of the loan. This discharge does not affect the claimant's eligibility for a new loan.

b. Debt Write-Down of Loan Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would often mean that the claimant would not be eligible for a new USDA loan. If, however, discrimination was found in a loan that was previously written down or written off, this earlier debt forgiveness will not hurt the claimant's eligibility for another USDA loan.

Example:

Suppose a claimant got an operating loan in 1990 and, due to payment problems, USDA wrote off part of that debt in 1995. If the Adjudicator found that there had been discrimination in the making of the 1990 operating loan, the fact that the claimant had that write-down in 1995 could not affect the claimant's eligibility for a future USDA loan.

c. Subsequent Debt in Same Program Written Down and Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. This type of write-down also cannot hurt the claimant's eligibility for another FSA loan.

Example:

Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. The 1991 loan had been paid in full, and the balance due on the 1994 loan had been forgiven through FSA's debt write-down process in 1998. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan cannot affect the claimant's eligibility for a future USDA loan.

D. Getting a Loan and USDA's Creditworthiness Test

Creditworthiness can affect a borrower's right to a future USDA loan.

1. The General Rule — Creditworthiness and Future USDA Loans

As a general rule, an applicant must be creditworthy to be eligible for a USDA loan. Credit history is taken into account when USDA considers the creditworthiness of the applicant. Credit history includes the applicant's past loan history with USDA. Therefore, if an applicant has had difficulty making payment on USDA loans in the past, he or she might not meet the USDA creditworthiness requirement for a future USDA loan.

2. Claimant Creditworthiness and Future USDA Loans

If the claimant had an outstanding debt discharged by the Consent Decree, in many cases the farmer will have missed payments on the debt and the debt will have been delinquent. Under the USDA regulations, missing payments on a USDA loan, being delinquent on a USDA loan, and so forth could make the farmer ineligible for another loan.

a. Loan Affected by Discrimination and Future USDA Loan Decisions

The Consent Decree says that the forgiveness of debt because of the Consent Decree shall not affect the claimant's eligibility for a new loan. As a result, if a loan is forgiven because of the Consent Decree, any problems the claimant may have had with that loan in the past, such as missed payments or late payments, should not affect the claimant's creditworthiness for the purpose of getting a new USDA loan.

Example:

Suppose a borrower received an operating loan in 1996 and became delinquent on the loan in 2001. The Adjudicator found discrimination in the

making of the 1996 operating loan. The farmer's delinquency on the loan cannot be considered a creditworthiness problem for the farmer when USDA is considering making the claimant a new loan.

b. Subsequent Debt in Same Program Is Forgiven Due to Consent Decree

The same result is true for any debt that is forgiven because of the Consent Decree.

Example:

Suppose a claimant received two operating loans: one in 1994 and one in 1996, and both loans still had a balance. If the Adjudicator found discrimination in the making of the 1994 loan, both loans would be forgiven under the Consent Decree. USDA may not consider payment problems for either loan as a factor in a decision about the making of a new loan.

c. Subsequent Written Off Debt in Same Program Is Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. Payment problems for the loan that is now forgiven cannot affect the creditworthiness of the claimant.

Example:

Suppose a claimant got two operating loans: one in 1994 and one in 1996. The claimant paid the 1994 loan in full, but the agency wrote off the 1996 loan because the claimant had been unable make the payments on that note. If the Adjudicator found discrimination in the making of the 1994 loan, the 1996 loan would also be forgiven under the Consent Decree—except that there is no balance left on the 1996 loan. Any payment problems the claimant had in the past on the 1996 loan would not affect the claimant's future creditworthiness if he or she tried to get a new loan from USDA.

E. Eligibility for Future Loan Servicing

Farmers who have borrowed from USDA sometimes have difficulty making loan payments, or have other problems meeting the requirements of the loan. In such cases, USDA is required to provide borrowers with the chance for what USDA calls loan servicing. If the borrower is eligible, USDA loan servicing can provide a number of ways to help the farmer stay on the land. If the borrower meets certain criteria, the loan servicing can include, for example, a reduced interest rate, a restructuring of the loan, or other measures that help the borrower. The right to future loan servicing—including future write-downs—is affected by past USDA loan servicing.

1. General Rule — Debt Forgiveness and Future Loan Servicing

The eligibility rules for loan servicing take into account the borrower's previous experience with USDA. For example, in general, USDA cannot provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct loan.

2. Claimant Debt Forgiveness and Future Loan Servicing

a. Debt Discharged Because of Consent Decree

In many cases, USDA cannot, by law, provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct or guaranteed loan. USDA regulations contain some limited exceptions to this rule, but for many people USDA rules will prevent a borrower with debt forgiveness from getting certain kinds of loan servicing in the future. A debt discharged under the Consent Decree, however, will not hurt the claimant's eligibility for future USDA loan servicing.

Example:

Suppose a claimant got a farm ownership loan in 1992, the Adjudicator found that USDA had discriminated in making the loan, and, as a result of the Adjudicator decision, USDA discharged the remainder of the loan. This discharge does not affect the claimant's eligibility for loan servicing in the future.

b. Debt Write-Down in Loan Affected by Discrimination, Later Forgiven Due to Consent Decree

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would normally mean that the claimant might not be eligible for future loan servicing. If, however, discrimination was found in a loan that was written down or written off before the Adjudicator's decision but after the date of the discriminatory event, this debt forgiveness will not hurt the claimant's eligibility for future loan servicing.

Example:

Suppose a claimant got an operating loan in 1989 and, due to payment problems, USDA wrote off part of that debt in 1991. If the Adjudicator found that there had been discrimination in the making of the 1989 operating loan, the fact that the claimant had a write-down in 1991 should not affect the claimant's eligibility for future USDA loan servicing.

c. Subsequent Debt in Same Program Had Debt Write-Down, Later Forgiven Due to Consent Decree

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no more left for the claimant to pay because of a USDA write down. This write-down cannot affect the claimant's right to future loan servicing.

Example:

Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. Suppose a balance remained on the 1991 loan, but nothing was left to be paid on the 1994 loan because USDA forgave the loan in 1995. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent

Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan would not affect the claimant's right to future loan servicing.

F. Consent Decree Discharge Can Never Harm Claimant

This Update provides a few examples of the no adverse effect rule found in the Consent Decree. The rule may apply in other ways not illustrated by these examples. The most important rule is that discharge of debt because of the Consent Decree should never harm the claimant in his or her future dealings with the USDA.

G. More Information

For more information call the Monitor's office at 1-877-924-7483 or write to the Monitor at P.O. Box 64511, St. Paul, MN 55164-0511. The Monitor also has a website: www.pigfordmonitor.org.