

Monitor Update: Injunctive Relief: A New Order Changes the Deadlines

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I. Introduction

The Judge in the *Pigford* case issued an Order on April 21, 2005. The Judge's Order was agreed to beforehand by both of the parties—the government and class counsel—and it is legally binding. The main point of the Order is to change some of the deadlines for *Pigford* class members who want to use injunctive relief. This Update explains how those changes work.

Any person who objects to the Order has until May 23, 2005, to submit those objections to the Judge.

II. Types of Injunctive Relief

There are several different types of injunctive relief in the *Pigford* case. The new Order affects the deadlines for the availability of each type.

A. Deadlines Are Important

Each form of injunctive relief described below has a deadline. The deadlines are explained later in this Update. Prevailing class members only have the right to injunctive relief within the deadline for that type of relief. For some prevailing class members, deadlines for all types of injunctive relief except technical assistance injunctive relief have already passed.

B. "Technical Assistance" Injunctive Relief

All applicants to USDA's loan programs have the right to some technical assistance. Technical assistance injunctive relief means that prevailing class members who are attempting to get operating loans and farm ownership loans and inventory property are entitled to get technical assistance from a qualified USDA employee who is acceptable to the class member.

C. "Light Most Favorable" Injunctive Relief

Light most favorable injunctive relief means that prevailing class members have the right to have all applications for farm ownership loans, for operating loans, and for inventory property viewed in the light most favorable to the class member.

D. "Priority Consideration" Injunctive Relief

Priority consideration injunctive relief means that prevailing class members who won on a credit claim have the right to priority consideration for one operating loan, one farm ownership loan, and for one effort to purchase, lease, or acquire USDA inventory property.

E. More Information on How Injunctive Relief Works

A different Monitor Update, Update No. 4, explains the various types of injunctive relief in more detail. Update No. 4 is available on the Monitor's web site and is also available by calling toll-free to the Monitor phone line at 1-877-924-7483.

III. 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

The new Order sets a deadline for the use of technical assistance injunctive relief.

1. Originally — No Deadline

The Consent Decree did not set a deadline for exercising the right of technical assistance injunctive relief.

2. New Order Sets Deadline of April 14, 2006 — and Possibly Later

The new Order sets a deadline for technical assistance injunctive relief. The new deadline has two parts.

First, the Order sets a deadline of April 14, 2006, for prevailing class members to use technical assistance injunctive relief.

Second, each prevailing class member will have 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

The new Order changes the deadlines for all forms of priority consideration injunctive relief. This includes priority consideration for operating loans, for farm ownership loans, and for inventory property. It also changes the deadline for the use of light most favorable injunctive relief.

1. Original Deadline — April 14, 2004

In the Consent Decree, light most favorable injunctive relief and priority consideration injunctive relief were set to be available for every application a prevailing class member submitted within five years of the date of the Court's Consent Decree order. The Consent Decree went into effect on April 14, 1999. Originally, therefore, these forms of injunctive relief were effective through April 14, 2004.

2. USDA Extensions to the Deadline — to April 14, 2005, and Possibly Beyond

USDA made two changes to the deadline. These changes extended the availability of light most favorable injunctive relief and priority consideration injunctive relief.

First, in 2003, USDA announced that it had decided to extend the availability of injunctive relief by one year—to April 14, 2005.

Second, in March 2005, USDA announced that each prevailing class member will have at least one year from the date of his or her final decision date on which he or she prevailed to use light most favorable injunctive relief and priority consideration injunctive relief.

3. New Order — Further Extension for Some Class Members

The new Order changes the deadline for light most favorable injunctive relief, and for priority consideration injunctive relief, for many class members.

First, the Order makes mandatory the availability of light most favorable injunctive relief and priority consideration injunctive relief through April 14, 2005.

Second, the Order requires that each prevailing class member have 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”

According to the new Order, part of the deadline for using injunctive relief hinges on when the prevailing class member completed the Consent Decree claims process.

According to the new Order, 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, and Class Member Prevails — 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. The class member then prevailed in the reexamination by the Adjudicator or the Arbitrator.

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.

IV. Priority Consideration and Actual Applications

The Consent Decree required prevailing class members seeking priority consideration to submit written notice of the request to USDA. The new Order adds to this requirement. It says that 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. This requirement is similar to the procedure that USDA had already set for honoring the right to priority consideration.

V. Waiting Period for Injunctive Relief

According to the new Order, 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. According to the new Order, 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.

VI. Posting of the Judge's Order and Notice to the Class

Copies of the Judge's Order must be posted in a conspicuous place in every county office of USDA's Farm Service Agency. In addition, the Order requires the Monitor to send each class member who has prevailed in either an Adjudicator or Arbitrator decision issued through April 21, 2005, written notice of the contents of the Order.

VII. Objections to the Order — May 23, 2005 Deadline

Any person who wishes to object to any aspect of the Judge's Order must submit his or her objections to the Court in writing no later than 30 calendar days from the entry of the Order. Since the Order was entered on April 21, 2005, objections to the Order must be submitted by May 23, 2005.