UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, D.C. 20250

Notice FLP-151

For: State and County Offices

Priority Consideration for Prevailing Claimants

Approved by: Deputy Administrator, Farm Loan Programs

Carolyn B. Cooksie

1 Overview

A Background

The Consent Decree entered into between the Government and plaintiffs in the class action suit *Pigford vs. Glickman* and approved by the United States District Court specifies injunctive relief in the form of special considerations in loan processing. These provisions apply to all prevailing claimants, that is, all those who were determined by an adjudicator or arbitrator to have a valid claim under the decree. Many prevailing claimants under the civil action *Pigford vs. Glickman* will be submitting applications for loans or proposing to purchase inventory property. Any claimant who prevailed on a claim under the civil action *Pigford vs. Glickman* shall be accorded the rights given them by the Consent Decree.

B Purpose

This notice:

- provides direction to State and County Offices about the procedures to follow when processing loan and inventory property purchase applications from prevailing claimants under the civil action *Pigford vs. Glickman* who apply for new loans
- provides frequently asked questions about prevailing claimants, Exhibit 1
- obsoletes Notice FLP-150.

C Contact

If there are questions about this notice:

- County Offices shall contact the State Office
- State Offices shall contact either of the following:
  - James Radintz, Director, LMD at 202-720-1632
  - Mike Hinton, Chief, LMD at 202-720-1472.

Disposal Date	Distribution
June 1, 2001	State Offices; State Offices relay to County Offices

2 Provisions of the Consent Decree

A Special Considerations

Claimants who prevail on a credit claim under the Consent Decree generally are entitled to the following.

- Priority consideration, on a 1-time basis, for:
  - purchase, lease, or other acquisition of inventory property to the extent permitted by law
  - 1 direct ownership loan and 1 operating loan.

  Note: This right must be exercised no later than April 4, 2004. The prevailing claimant must notify USDA **in writing** that this right is being exercised, Exhibit 2.

- Any application for purchasing an inventory property, operating loan, or ownership loan will be viewed in a light most favorable to the applicant and the amount and terms of the loan will be the most favorable permitted by law and regulations. This is not connected only to the loans for which priority consideration is requested, and applies to any loan request submitted by a prevailing claimant until April 4, 2004.

- **Prevailing claimants must meet all regulatory requirements for loans**, except that any debt forgiven under the Consent Decree shall not have any adverse impact on future loan requests.

- Upon request of the applicant, FSA will provide technical assistance and service in connection with any application. This includes assistance from qualified USDA employees who are acceptable to the applicant. This is not connected only to the loans on which priority consideration is requested, and applies to any loan request submitted by a prevailing claimant through April 4, 2004.

Claimants who prevailed, but whose claim involved only farm programs benefits, for example, disaster and emergency conservation program, and no loan programs, are only entitled to favorable consideration and technical assistance as set out above. Those claimants are not entitled to priority consideration. These claimants will be notified by a letter from the National Office, and State Offices will be provided with a list of "limited benefit" prevailing claimants.

Continued on the next page

3 Implementation of the Consent Decree Provisions

A Notifying Prevailing Claimants

All claimants will be notified by the adjudicator or arbitrator if they prevailed on their claim. A database of prevailing claimants is accessible through the automated data processing system (ADPS). Refer to ADPS manual, Chapter 22 for instructions.

The National Office will send prevailing claimants who prevailed on a credit claim a letter informing them of how to proceed, Exhibit 3. No action by the State or County Offices is necessary, as this letter is included for information and reference **only**.

B Priority Consideration for Loans

The Consent Decree requires that priority consideration be requested in writing. Copies of a form letter to request priority consideration have been sent to prevailing claimants, Exhibit 2, with the notification letter sent by the National Office. Applicants exercising priority consideration are not required to use this form. Any written request is acceptable as long as it states what is being requested. Additional copies of the form letter may be furnished to applicants upon request.

Applications in which priority consideration is exercised shall be handled as follows.

- Regardless of other incomplete applications on file in the County Office, the loan official will immediately take action to process the priority application.
- To the extent practicable, an office appointment or farm visit, as applicable, will be scheduled to occur within 5 business days of receipt of the written notice of exercise of priority.
- At any time in the processing of a priority application, a need for an appointment to complete documents, conduct an appraisal, or any other action necessary to complete a priority application, shall take precedence over any other incomplete application on file in the processing office.
- All communications with applicants exercising priority consideration will be by telephone unless the applicant indicates a preference for written communication exclusively. All conversations about application information will be confirmed in writing. Every effort will be made to avoid processing delays because of mailing.

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B Priority Consideration for Loans (Continued)

- If at any time while a priority application is incomplete and 5 business days pass while awaiting information from the applicant, on the 6th business day the FSA staff member responsible for the application will:
  - contact the applicant by phone to advise that the necessary information has not been received
  - offer assistance in obtaining the information to complete the application.

  Note: The results of this contact will be documented, and a letter confirming the conversation sent to the applicant.

- When an appraisal, environmental assessment, or other service must be obtained from non-FSA sources, the FSA staff member responsible for the application will assure that, if the outside source has multiple requests pending from FSA, that the outside source performs the next service on matter related to the application on which priority has been requested.

- When a priority application has been determined to be complete, a final decision must be made within three business days and the applicant notified according to applicable regulations. No non-priority, completed applications shall have a final decision until a decision has been made on any completed priority application. If two complete priority applications are pending at the same time, they shall be acted upon in the order received.

Prevailing claimants shall also receive priority for funding when a loan on which priority consideration was requested is approved. By definition, prevailing claimants are SDA's and shall receive SDA targeted funds to the extent such funds are available. If a State Offices remaining SDA allocation is insufficient to immediately fund a loan associated with a priority consideration request, SED shall immediately forward the claimant's name, amount and type of loan request, and date of application to the National Office, LMD for funding. If loan funds are not available, LMD will provide additional guidance to SED on how to proceed.

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3 Implementation of the Consent Decree Provisions (Continued)

C Priority Consideration for Inventory Property

By law, qualified beginning farmers have first priority to purchase FSA inventory property. A prevailing claimant must be a qualified beginning farmer to receive priority consideration over other beginning farmers who bid on inventory property. If a claimant does not qualify as a beginning farmer, the claimant will not receive priority over other beginning farmers. If the property is not sold to a beginning farmer, a prevailing claimant will have priority, and may purchase the property at the appraised value before it is put up for public bids.

Farm Loan Chiefs (FLC's) shall provide current lists of inventory property to State and County Offices to provide to prevailing claimants upon their request. Alternatively, FLC's may develop a procedure to assure that any prevailing claimant who requests a list of inventory properties in the State receives the list on a timely basis. FSA will also provide public notice of inventory property for sale as required by law. Qualified FSA employees will offer and, if requested, provide assistance to prevailing claimants in completing the necessary documents to submit a bid on FSA inventory property.

D Viewing Applications in a Light Most Favorable

In applying applicable regulations, FSA loan officials have some discretion in processing a loan application. When applying judgement to eligibility and credit factors in a loan application submitted by a prevailing claimant, loan officials shall view these factors in a way that would be most beneficial to the applicant. In other words, where there is a legitimate issue as to an item in the application, the prevailing claimant shall receive the benefit of the doubt when a judgment call is made within FSA procedures and regulations.

When there is an issue that would affect if a loan can be made:

- borderline or marginal decisions shall be made in favor of the applicant
- loan officials will be prudent and reconsider their assumptions
- the rationale for all conclusions about factors such as yields, prices, expenses, debt repayment history, and similar components of the credit decision, must be thoroughly documented in the loan file.

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D Viewing Applications in a Light Most Favorable (Continued)

However, viewing loan factors "in a light most favorable" does not mean using any assumptions necessary, no matter how unrealistic or unreasonable, to justify determining an applicant eligible for a loan.

Examples: Farmer Smith has had corn yields over the last 5 years of 100, 105, 110, 115, and 120 bushels per acre for a 5 year average of 110 bushels per acre. The county average is 120 bushels per acre. Farmer Smith needs a corn yield of 125 bushels to generate a positive cash flow. Under light most favorable, the 125 bushels per acre could be used even though it is higher than his 5 year average or the county average. His yield has gone up 5 bushels per acre for each of the last 5 years so a yield of 125 bushels could be made this year.

Using the same information from above but 135 bushels an acre is needed for a positive cash flow. In this case, the yields of 135 bushels per acre could not be used because the yield is higher than any other indicators of what he could reasonably expect to receive.

Exceptions to debt forgiveness limitations are as follows.

- Loans written off at the direction of the adjudicator (Track A) or an arbitrator (Track B) are not considered debt forgiveness.
- This includes loans previously written off or debt settled by FSA or FmHA but identified by Track A or Track B as having involved discrimination. These loans are identified in a prevailing claimant's record in the tracking system.

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3 Implementation of the Consent Decree Provisions (Continued)

E
Technical Assistance From a USDA Employee Acceptable to the Applicant

FmHA Instruction 1910-A, section 1910.4(b) requires that FSA loan officials provide assistance as necessary to applicants in completing an application. In addition, a prevailing claimant will be offered assistance upon receipt of a loan application. This assistance will cover the full range from helping fill out the application form to developing a farm plan, verifying debts, and locating specialists for advice on new or improved enterprises, and all other aspects of the loan application process. The employee providing the technical assistance must be acceptable to the applicant. Prevailing claimants may request that SED's assign a different employee to assist them if the qualified staff in the State or County Office is not acceptable.

F
Denial of Requests by Prevailing Claimants

Denial of a request for priority consideration for which the applicant does not qualify, for example, a second request for priority consideration for OL, does not require appeal rights but is subject to a review by NAD for a determination if the decision is otherwise appealable. Claimants may also ask the Court-appointed settlement monitor for a review of the Agency determination. The monitor will provide all claimants with instructions as to how to request a review. Notification of denial of assistance based upon normal regulatory requirements, delinquency on a Federal debt, inadequate security, or lack of repayment ability, will be completed according to applicable regulations subject to communication requirements in this notice.

Frequently Asked Questions and Answers

Questions and Answers
How can I verify that someone is a prevailing claimant? Claimants can be verified through the ADPS Civil Rights database. See subparagraph 3 A for additional guidance.
Is a handwritten request for priority consideration acceptable? Yes, as long as the request is in writing and states what is being requested, such as priority for OL, FO, or inventory property, it is acceptable.
A prevailing claimant applied for OL and EM loan assistance and requested priority consideration. How should the EM application be processed since priority does not apply to EM applications? Although the EM loan does not get priority per se, both applications should move forward at the same time according to the OL processing priority.
A claimant's daughter has applied for an FO loan and submitted a written document assigning her father's priority consideration to her together with a written request for priority consideration. Does she receive priority consideration? No. Rights under the Consent Decree cannot be transferred or assigned. Process the application in the normal manner according to regulations.
Can the heirs of a deceased prevailing claimant receive priority consideration? No. If a claimant is deceased, the entitlement to the special considerations in the Consent Decree is gone.
Should the $50,000 or other settlement amount and elimination of FSA debt be considered in determining a prevailing claimant's eligibility? Prevailing claimants must be eligible for the loan requested. Therefore, the test for credit applies. The settlement payment and forgiveness of FSA debt might enhance a prevailing claimant's financial condition to the point that commercial credit may be available, with or without an FSA guarantee. Remember that while the forgiven FSA debt may have a positive effect on the applicant's financial condition, the forgiveness will not be considered in evaluating creditworthiness.

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Frequently Asked Questions and Answers (Continued)

Questions and Answers
If an application under priority consideration is rejected or withdrawn, has the applicant used their one time priority for that type of loan? If an application under priority consideration is rejected, the claimant has used their priority consideration for that type of loan. In the case of withdrawal, if the applicant requests the application be withdrawn, it is to be assumed the request for priority consideration is withdrawn as well. The claimant can request priority consideration again. However, if the Agency withdraws the application, for example as the result of a failure to respond to a letter requesting additional information, the priority consideration for that type of loan has been exercised and cannot be used again. If there are questions in a specific case, obtain guidance from the contacts listed in this Notice.
Can an entity applicant exercise priority consideration on behalf of one of its members? Possibly. OGC has advised that because each entity is different, an OGC determination will be necessary on a case-by-case basis. State Offices should contact the National Office for guidance in these situations.
Can an applicant withdraw a request for priority consideration, and if so, at what point in the process is the priority consideration considered irrevocable? An applicant may withdraw a request for priority consideration at any time until the loan application on which priority consideration was requested, is determined to be complete. When an application is determined to be complete, the applicant has received priority consideration in loan processing and cannot withdraw the request.

Prevailing Claimant Priority Consideration Letter

Notification of Exercise of Priority Consideration under Consent Decree

TO: Farm Service Agency

_____ (Fill in the address where the loan application was or will be submitted)
_____

This memorandum constitutes written notification that I am exercising priority consideration granted to me in accordance with paragraph 11 of the Class Action Consent Decree. I am using my priority consideration for: **(Please see instructions below and mark one box below; a separate form must be used for each item in which priority is sought)**

☐ An operating loan

☐ An ownership loan

☐ Purchase or lease of farm property in FSA inventory

I am entitled to this consideration by virtue of my claim approved as follows:

Name: _____ Claim Number: _____

Address: _____
_____
_____

Phone: _____

I hereby exercise my priority as set forth above.

_____ _____
Claimant/Applicant signature date

Instructions

The Consent Decree under which your claim has been approved entitles you to priority consideration for the purchase or lease of one inventory property from FSA, one direct farm ownership loan, and one direct operating loan. YOU MUST EXERCISE YOUR RIGHT TO PRIORITY CONSIDERATION ON ANY OF THESE NO LATER THAN APRIL 14, 2004. The agreement requires that you request this priority in writing. Your use of this form is not required but it is designed to make it easy for you to request your priority consideration. If you do not use this form you must give FSA other written notice of your intent to exercise your priority. If FSA does not receive written notice of your exercise of priority, your application will be processed in the normal manner. You should note that priority consideration does not guarantee you will receive a loan. You must be otherwise eligible and qualified to receive the loan.

Marking the boxes- If you are applying for a loan to buy equipment or livestock, pay production expenses like seed, feed, fertilizer, and chemicals, OR pay general farm expenses and family living expenses, please mark the box for "An operating loan." If you are applying for a loan to buy a farm or farm land and/or build buildings on a farm please mark the box for "An ownership loan." If you wish to buy or lease a specific farm property owned by FSA, please mark the box for "Purchase or lease of farm property in FSA inventory."

Additional Help- If you need help filling out this form letter, a loan application, or any other forms needed to apply for a loan, please ask FSA staff- they are required to help you. If you have questions about your rights under the Class Action Consent Decree you should consult an attorney, FSA staff cannot give legal advice.

Prevailing Claimant Letter

Claim Number: XXXXX

Dear [insert claimant's name]

This letter is in follow-up to the final decision on your Track A claim under the Consent Decree in the *Pigford v. Glickman* class action, recently sent to you by the adjudicator, informing you that you prevailed on your claim. This letter outlines certain additional relief you are entitled to under the Consent Decree that was not set forth in the adjudicator's decision. Please note that the additional relief regarding farm loans only relates to new loan applications, and does not affect any existing loans you may have with the Farm Service Agency (FSA). If you have existing loans with FSA, you have received, or will receive shortly, a separate letter advising you of the impact of your claim on those loans.

Under the terms of the Consent Decree, you are entitled to priority consideration for one direct farm ownership loan, one direct farm operating loan, and the purchase or, in some very limited circumstances, the lease of one inventory property from the FSA at any time until April 14, 2004. You are entitled to request priority consideration once on each of the above before the date indicated. If you request priority on one of these, you may also request priority on one of the others at the same time or at a later date.

When you request priority consideration for an ownership or operating loan application, you can expect FSA to handle your application as follows:

Every effort will be made to process priority applications as quickly as possible and to schedule an office appointment or farm visit, as appropriate, within 5 business days of receipt of the written notice of exercise of priority. In order to expedite the processing of your application, all communications with you when exercising priority consideration will be by telephone, with written confirmation of the conversation to avoid delays due to mail time. If you prefer to communicate with FSA by mail or in person, please let your local FSA office know this. If you inadvertently do not provide the information FSA needs to process your application, FSA staff will contact you by phone, tell you what information is still needed, and offer to help you obtain the information to complete the application. When your application is determined to be complete, a final decision on approval will be made and you will be notified within a few days. If your application is approved, and adequate funds are available, your local FSA office will contact you to sign the necessary documents to close your loan. If your loan application is approved and funding is limited, you will receive priority in funding over other non-priority applicants. If your loan application is denied for any reason, you will receive a letter of explanation that will contain your program appeal rights.

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Prevailing Claimant Letter (Continued)

When you request priority consideration on an application for the purchase or lease of inventory property, you can expect FSA to handle your application as follows:

> Inventory property is farm land which FSA has obtained through voluntary conveyance or foreclosure. By law, qualified beginning farmers have first priority to purchase or in limited situations lease FSA inventory property. You must be a qualified beginning farmer to receive priority consideration over other beginning farmers who wish to bid on inventory property. If you do not qualify as a beginning farmer, you will not receive priority over other beginning farmers, but you will have priority over others who do not qualify as beginning farmers. In addition, if you are not a beginning farmer you will not be able to lease an inventory property. The local FSA office can provide you with a list of inventory farm properties, but in many areas, FSA does not own any farm property. FSA will also provide public notice of inventory property for sale as required by law. If you want to bid on an FSA inventory farm and need help, an FSA employee will assist you completing the necessary documents to submit a bid.

Here are some important points for you to know about priority consideration:

- Exercising your right to priority consideration does not guarantee that you will receive a loan. You must be eligible for the loan and meet the other requirements of the law and FSA regulations to receive a loan. The terms of the Consent Decree do not require FSA to make a loan to you. However, the decree requires that any loan application you submit to FSA be viewed in a light most favorable to you.

- If you have received a debt write-down on a loan which was not affected by the adjudicator's decision then you may only receive priority on a direct annual operating loan. The law prevents FSA from making farm ownership or long term operating loans to applicants who have had FSA or former Farmers Home Administration debts written down. Since loans for the purchase of an inventory property have the same requirements as a direct farm ownership loan you would not be eligible for a loan to purchase an inventory property.

- If you have received a debt forgiveness on a loan which was not affected by the adjudicator's decision then you will not be able to receive any further direct farm ownership or farm operating loans from FSA The law prevents FSA from making direct farm ownership or operating loans to anyone who has received debt forgiveness on an FSA or former Farmers Home Administration loan. Since loans for the purchase of an inventory property have the same requirements as a direct farm ownership loan you would not be eligible for a loan to purchase an inventory property.

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Prevailing Claimant Letter (Continued)

- However, if you have received a debt write-down or debt forgiveness on a loan not addressed by the adjudicator there may be other help available. If you reside in a declared disaster area and suffered disaster-related losses, you may qualify for an FSA emergency loan, provided you received only one debt write-down or debt forgiveness before April 4, 1996 and have had no debt forgiveness since that date.

- You may also qualify for an FSA Guaranteed OL loan if a lender is willing to lend you money with an FSA guarantee. Priority consideration does not apply to guaranteed or emergency loans but FSA will strive to assist you and process your application on a timely basis.

- FSA funding is subject to Congressional action. Your application will receive priority for funding over any non-priority applications if funds are limited. The Consent Decree does not guarantee that your loan will be funded. There is a possibility that FSA may not have funds available when your loan is approved. Since funding can be limited, it is crucial that your application be processed as soon as possible. Thus, it cannot be overemphasized that the faster you provide the information required to FSA, the more likely that your approved loan will be funded.

- The Consent Decree requires you to request priority consideration in writing. Copies of a form letter for you to use to request your priority right are enclosed. You are not required to use this form, but we encourage you to use it to avoid misunderstandings as to whether you are requesting priority consideration. If you choose not to use the form, you still must make your request for priority consideration on a given application in writing. An application for a loan or inventory property will not automatically be given priority consideration. Additional copies of the enclosed form are available from FSA.

- If you plan to request priority consideration on an ownership or operating loan application, it will benefit you to do so at the same time you submit your loan application or as soon as possible after you submit an application.

- If you want priority consideration for purchase of inventory property, you must request priority when you offer to purchase the property. Again, as in the case of priority on farm loan applications, priority will not be automatically provided because you prevailed on your claim. You must ask for the priority in writing.

- If you do not request priority consideration in writing, your application will be processed in the normal, first-come, first-served based upon the date the application was received by the office.

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Prevailing Claimant Letter (Continued)

The Consent Decree also provides that you are entitled to certain technical assistance from FSA in preparing and submitting any application for an ownership or operating loan or for the purchase or lease of inventory property (not just those on which you have exercised your right to priority consideration) until April 14, 2004. If you need assistance, please contact your local FSA office. A qualified FSA employee, acceptable to you, will assist you in completing the application form, understanding what additional information may be required to process your application, developing farm plans and other information for your loan request. Finally, on any application filed before the date indicated, the Consent Decree provides that FSA must review your application in a light most favorable to you.

If you have any questions, please contact your local FSA office. If, for any reason, you believe your right to priority consideration is not being honored or treated properly, or the FSA employee assigned to assist you is not acceptable, please contact the FSA State Executive Director whose name, address, and phone number appear below.

[insert SED name address and phone here]

Sincerely,

Carolyn B. Cooksie
Deputy Administrator
for Farm Loan Programs