

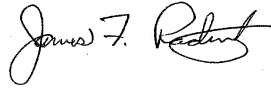
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Direct Loanmaking
3-FLP (Revision 2)**

Amendment 26

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 45 G has been amended to provide reference for guidance on processing loan applications for Pigford I claimants.

Subparagraph 65 A has been amended to provide reference for guidance on processing loan applications for Pigford I claimants.

Subparagraph 91 E has been amended to make minor edits.

Subparagraph 95 A has been amended to clarify appraisal/evaluation requirements.

Subparagraph 227 A has been amended to update uses and remove the term “rural” from Youth loan.

Subparagraph 228 A has been amended to update the instructions for a Youth Loan applicant’s borrower training requirement.

Subparagraph 248 A has been amended to clarify appraisal/evaluation requirements for EM loans.

Exhibit 2 has been amended to update the definition of Rural Youth.

Exhibit 14 has been added for guidance on processing loan applications for Pigford I claimants.

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45 Processing Loan Applications (Continued)

C Processing of Complete Application

[7 CFR 764.53] Upon receiving a complete loan application, the Agency will:

[7 CFR 764.53(a)] Consider the loan application in the order received, based on the date the application was determined to be complete; and

[7 CFR 764.53(b)] Provide written notice to the applicant that the application is complete.

The authorized agency official must notify the applicant in writing within 10 calendar days after receiving the complete application using FSA-2307.

Note: Use DLS to record the date the application was determined to be complete.

[7 CFR 764.53(d)] Except for CL requests, if based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program as specified in 762.110(h) of this chapter (2-FLP, paragraph 72).

D Applicant Withdraws Application

The applicant may request that a loan application be withdrawn at any time during the loanmaking process.

If the applicant makes the request:

- in writing, the authorized agency official will send FSA-2306 and withdraw the application
- by phone, the authorized agency official will send FSA-2306 to the applicant that, per their request, the loan application will be withdrawn unless the applicant contacts the County Office within 10 calendar days of the date of FSA-2306.

Note: The authorized agency official shall maintain withdrawn applications according to 25-AS.

E Reactivating Withdrawn Application

A withdrawn application may not be reactivated. The applicant must file a new application.

Notes: Any information in the withdrawn file that is still current may be included with the new application. Information less than 90 calendar days old, unless noted otherwise, is considered current.

--Information that does not change, such as college transcripts, will be considered current and should be used as part of any future application.--

45 Processing Loan Applications (Continued)

F Loan Processing When Civil Rights Complaint Has Been Filed

The filing of a civil rights complaint does not stop loan processing activity. If an application for assistance has been filed, that request must be processed according to FSA instructions.

Because failure to advise an applicant of their ineligibility may be considered an adverse action in itself, the authorized agency official should timely process all applications, in those instances where a discrimination complaint is filed, and notify the applicant of the decision. The authorized agency official must fully explain to the applicant the basis for the unfavorable eligibility or feasibility decision according to paragraph 356.

G Priority Consideration for Prevailing Claimants

--See Exhibit 14 for guidance on processing loan applications for claimants.--

46-60 (Reserved)

65 Credit History

A General Requirement

[7 CFR 764.101(d)] The applicant must have acceptable credit history demonstrated by debt repayment.

In the case of an entity, the applicant and all members of the entity must have an acceptable credit history.

[7 CFR 764.101(d)(1)] As part of the credit history the Agency will determine whether the applicant will carry out the terms and conditions of the loan, and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

The authorized agency official may determine that an applicant has not acted in good faith if the applicant:

- deliberately falsifies information
- intentionally omits information relevant to the loan decision
- does not make every reasonable effort to meet the conditions and terms of any previous FSA loan
- failed to make reasonable effort to resolve delinquencies with other lenders
- *--failed to file Federal tax returns when it appears that sufficient income was generated to require a tax filing.--*

Note: Applicants who provide false information may also be subject to civil and/or criminal prosecution and should be referred by the authorized agency official to OIG.

[7 CFR 764.101(d)(2)] When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

65 Credit History (Continued)

A General Requirement (Continued)

FSA will not consider the following as debt forgiveness for loanmaking purposes:

- debt reduction through a conservation easement or contract
- any debt written off as part of the resolution of a discrimination complaint against FSA, including debt written off in conjunction with the *Pigford Consent Decree or Keepseagle* settlement.

*--This includes any debt forgiveness on eligible loans that occurred before the Keepseagle Settlement Agreement signed on October 29, 2010.

Note: See Exhibit 14 for guidance on processing loan applications for claimants.--*

- prior debt forgiveness that has been repaid in its entirety
- prior debt forgiveness on a youth loan, if circumstances were beyond the applicant's control.

Notes: Debt forgiven on any nonyouth loan debt will still be considered in determining applicant's credit worthiness.

Determination that debt forgiveness was beyond the applicant's control should have been made and documented at the time of debt forgiveness approval.

Notes: In the majority of cases under Chapter 11 of the Bankruptcy Code, the debt is discharged when the plan is confirmed (see 11 U.S.C. § 1141 (d) for exceptions to automatic discharge). In Chapter 12 and 13 cases, the discharge normally occurs, in 3 to 5 years, by court order. Debt forgiveness occurs when an applicant has completed all payments according to the plan and the unsecured FLP claim is written off. At that point, the applicant will be ineligible for most additional loans according to paragraphs 132, 172, 202, and 242. Specifically, according to paragraphs 132, 172, 202, and 242, the applicant may be eligible for annual production loans, but no other type of assistance.

An applicant who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan. Therefore, as long as the applicant remains current on the plan they may be eligible to receive annual production loans as outlined above. However, this status changes if the applicant subsequently becomes delinquent on any loans covered by the plan, including non-FSA loans. The denial for failure to comply with an approved bankruptcy plan is appealable. See 1-APP for further instruction.

91 Security Requirements (Continued)**E Requirement to Obtain Liens on all Non-essential Assets**

[7 CFR 764.103(e)] The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section (subparagraph C). This requirement does not apply to down payment loans, CL, ML, or youth loans.

This requirement is intended to provide FSA with a security interest in assets that are not essential to the farming operation, but which the applicant cannot or will not convert to cash to reduce credit needs or outstanding obligations. This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.

For FO, OL, and EM, the value of nonessential assets is:

- not included as part of the 150 percent additional security requirement, except CL

Note: The value of the nonessential asset may be included in the adequate security value calculation, if necessary for the applicant to meet the 100 percent collateral requirement.

- established according to subparagraph 95 B.

For CL, the applicant is only required to pledge enough nonessential assets to meet the 150 percent requirement.

F Securing Multiple Loans

[7 CFR 764.104(d)] The same real estate may be pledged as security for more than one direct or guaranteed loan.

[7 CFR 764.105] The same chattel may be pledged as security for more than one direct or guaranteed loan.

92 Real Estate Security

A Overview

Real estate security includes land and permanent structures, including fixtures that can be described on the security instrument, such as bins, silos, and gutter cleaners. It also includes items that are considered part of the farm and ordinarily pass with the title to the farm. These items include assignments of leases and leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, mineral rights, and royalties from mineral rights.

Different lien positions on real estate are considered separate and identifiable security.

B Agency Lien Position

[7 CFR 764.104(a)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

Each prior lienholder must sign FSA-2319 before loan closing, when real estate will serve as security necessary to meet the adequate security requirement in subparagraph 91 B.

Note: The lien will be taken on the security even if FSA-2319 is not obtained.

[7 CFR 764.104(a)(1)] The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

[7 CFR 764.104(a)(2)] Prior lienholders agree to notify the Agency prior to foreclosure;

In some States, a prior lienholder may be able to foreclose the security instrument without providing junior lienholders notice of the foreclosure proceedings. In that case, any prior *--lienholder must complete FSA-2319.--*

* * *

[7 CFR 764.104(a)(3)] The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

The applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate.

[7 CFR 764.104(a)(4)] Equity in the collateral exists.

94 Exceptions to Security Requirements (Continued)

G ST Loans

[7 CFR 764.106(f)] On marginal land and timber that secures an outstanding ST loan.

FSA is statutorily prohibited from taking additional liens on property securing an ST loan.

H Documenting Exceptions

When security is not taken for any of the mentioned reasons, the authorized agency official
--must document the decision in FBP.--

95 Appraisals and Values

A Adequate Security

[7 CFR 764.107(a)] The value of real estate will be established by an appraisal completed in accordance with §761.7 (1-FLP) of this chapter, except that for ML's for FO purposes, the appraisal requirement may be satisfied by an evaluation by an authorized agency official that establishes the value of the real estate.

***--Note:** Until CFR is amended, the following instructions will be followed:

When real estate is taken as security, the real estate appraisal requirement may be satisfied by an evaluation from a loan approval official when the amount of the loan to be secured by the real estate does not exceed \$50,000.--*

A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless significant changes in the market value of real estate have occurred in the area within the 1 year period.

Note: An acceptable evaluation for FO ML must:

- be included in the Farm Assessment of the FBP
- identify the location of the property
- provide a description of the property, including any improvements and its current and projected use
- provide confirmation that the property was physically inspected and the date of the inspection
- describe the analysis performed and supporting information used to determine the property's market value, including where information was obtained i.e. court house records, comparable sales, property tax assessments, etc,
- include an effective date of the evaluation and a signature of the preparer.

Note: See Exhibit 12 for additional guidance on how to complete an evaluation. The evaluation will be documented in FBP Farm Assessment's Type of Farming Operation.

If a DFO-ML is made in conjunction with a real estate loan from another lender, that lender's evaluation or appraisal may be used as a determination of the property's market value. A copy of the evaluation information or appraisal must be included in the loan file as documentation of the determination.

Note: See 1-FLP, subparagraph 141 G for additional information about using third party appraisals.

Section 3 Youth Loans**226 Youth Loan Application Process****A Application Requirements**

See paragraph 44 for complete youth loan application requirements.

B Youth Loan Exceptions to Operating Loan Requirements

The following requirements from 1-FLP, Part 8 do not apply to the Youth Loan program.

- Farm assessments are not required for youth loans.
- All new youth loans are automatically classified as a “3”.

Note: If a youth loan borrower reaches the age of majority and subsequently gets a direct OL and/or FO, all loans including any outstanding youth loans will be entered into FBP and classified based upon data collected.

- FSA-2037 and FSA-2038 will not be required except in complex cases where information provided on FSA-2301 is inadequate.

C Initial Meeting with Youth Loan Applicant

The authorized agency official should offer a preliminary meeting with the youth to discuss:

- the Youth Loan program, including authorized use of funds and eligibility requirements
- whether the youth has appropriate supervision
- the proposed plan.

227 Uses and Limitations

A Uses

[7 CFR 764.301] Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4-H, FFA, Tribal youth organizations, or a similar organization.

A youth loan provides an opportunity for a * * * youth to acquire experience and education in agriculture-related skills. The approved project must be related to the business of agriculture and must not be a noneligible enterprise. See Exhibit 2. Each project must be part of an organized and supervised program of work and must produce sufficient income to repay the loan.

The applicant must use youth loan funds only to pay the expenses associated with the approved project.

Note: The youth must be participating in an established organization that supports agricultural projects, such as 4-H, FFA, Tribal youth organizations, or a similar organization. The organization provides the structure, the adult supervision, and the expertise to help the youth plan and complete the project.

B Limitations

[7 CFR 764.303(a)] The applicant must comply with the general limitations established at § 764.102 (paragraph 74).

Loan funds may not be used to:

- purchase real estate or make real estate improvements
- refinance debts
- pay family living expenses, except as they relate directly to the approved educational project
- finance a personal vehicle.

Note: The applicant may use loan funds to make only very minor repairs to real estate, for example to fix a window or repair a shed, when the repair is directly related to the approved project.

227 Uses and Limitations (Continued)

C Maximum Loan Limit

[7 CFR 764.303(b)] The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed \$5,000.

The authorized agency official should not loan more than is necessary to successfully carry out the project or more than the projections show can be repaid.

228 Eligibility**A General**

[7 CFR 764.302] The applicant:

(a) Must comply with the general eligibility requirements established at §764.101(a) through (g) (paragraphs 62 through 67);

See subparagraphs B through F for OL Youth Loan program specific information. If different from the general eligibility in paragraphs 62 through 67, the information in this paragraph to be substituted for those portions.

A youth loan applicant:

- does not need to demonstrate managerial ability
- *--will satisfy the borrower training requirement by the project advisor's supervision--*
- does not need to operate a farm
- is not limited in the number of years in which loans may be closed.

B Debt Forgiveness

The applicant:

[7 CFR 764.302(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

C Age

The applicant:

[7 CFR 764.302(c)] Must be at least 10 but not yet 21 years of age at the time the loan is closed.

246 Security Requirements (Continued)

B Lack of Adequate Security

[7 CFR 764.355(c)] Notwithstanding the requirements of paragraph (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106 (paragraph 94);

If the applicant is an entity, all members also must pledge all assets, both personal and business, as collateral.

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years, and

Net farm income is determined by subtracting all cash farm expenses from all farm income reported on Schedule F and other related schedules of the applicant's Federal income tax returns.

Positive net cash farm income is determined by analysis of the applicant's tax records for the 5 years immediately preceding the disaster year. If the applicant has been farming less than 5 years, a positive net cash farm income must have been achieved in 50 percent or more of the years farmed.

Note: If depreciation is shown on Schedule F, it is not a cash expense and must not be included as an expense.

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

247 Real Estate Security Requirements

A Title Clearance Requirements

[7 CFR 764.355(d)] For loans over \$25,000, title clearance is required when real estate is taken as security.

[7 CFR 764.355(e)] For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

248 Appraisal and Valuation Requirements

A Establishing Values for Real Estate

SED may issue a State supplement waiving the real estate appraisal requirement for an applicant receiving only an EM. The State supplement shall:

- establish the conditions under which the requirement to obtain an appraisal may be waived, which must apply to all applicants
- *--require the loan approval official to establish an estimated value when the loan to be secured by the real estate does not exceed \$50,000
- require that someone, other than the loan approval official, who has been delegated authority by SED based on adequate experience and knowledge of methods for evaluating security values, establish the estimated value of security if over \$50,000--*
- establish procedures allowing an applicant to dispute the estimated value of security by having an appraisal completed, at their expense, by an appraiser meeting the qualification requirements in 1-FLP, paragraph 145.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required reports in this handbook.

Reports Control Number	Title	Reporting Period	Submission Date	Negative Reports	Reference
RPT-1-00-FLP 09-2	SDA Loan Review Summary	Annually	By October 31 each year	Required	355

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Appendix to Form for AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification		42
AD-3030	Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants		42
CCC-10	Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents		91, 416, Ex. 6
CCC-36	Assignment of Payment		418
CCC-37	Joint Payment Authorization		418
CCC-452	NAP Production and Yield Report		244
CCC-452 Manual	NAP Actual Production History and Approved Yield Record		244
CCC-502A	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-502B	Farm Operating Plan for Payment Eligibility Review for a Joint Venture or General Partnership		42
CCC-502C	Farm Operating Plan for Payment Eligibility Review for Corporations, Limited Partnerships or Other Similar Entities		42
CCC-502D	Farm Operating Plan for Payment Eligibility Review for an Estate or Trust		42
CCC-502EZ	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-902E	Farm Operating Plan for an Entity 2009 and Subsequent Program Year		42
CCC-902I	Farm Operating Plan for an Individual 2009 and Subsequent Program Years		42
DS-1350	Certification of Report of Birth		Ex. 9

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
FS-240	Consular Report of Birth		Ex. 9
FS-545	Certificate of Birth		Ex. 9
FSA-570	Waiver of Eligibility for Emergency Assistance		113
FSA-850	Environmental Screening Worksheet		45
FSA-2001	Request for Direct Loan Assistance		41, 42, 43, 45, 62, 66, 68, 371, 416, Ex. 8
FSA-2002	Three-Year Financial History		42, 472
FSA-2003	Three-Year Production History		42, 472
FSA-2004	Authorization to Release Information		42
FSA-2005	Creditor List		42
FSA-2006	Property Owned and Leased		42
FSA-2007	Cosigner Application and Agreement		42, 371, Ex. 6
FSA-2008	Recorded Security Instruments (Chattel)		433
FSA-2014	Verification of Income		42
FSA-2015	Verification of Debts and Assets		42, 242
FSA-2026	Promissory Note		Text, Ex. 6
FSA-2027	Supplemental Payment Agreement		135, 204
FSA-2028	Security Agreement		91, 416, 419, Ex. 6
FSA-2029	Real Estate Mortgage or Deed of Trust		3, 92, 398, Ex. 4
FSA-2037	Farm Business Plan Worksheet (Balance Sheet)		42, 226
FSA-2038	Farm Business Plan Worksheet (Projected/Actual Income and Expense)		42, 226
FSA-2040	Agreement for the Use of Proceeds/Release of Chattel Security		419, Ex. 6
FSA-2041	Assignment of Proceeds from the Sale of Products		93, 418
FSA-2042	Consent to Payment of Proceeds from the Sale of Products		93, 418
FSA-2043	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest		93, 418
FSA-2044	Assignment of Income From Real Estate Security		92
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		354

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Quarantine

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in Section 2509 of the Food Agriculture, Conservation, and Trade Act of 1990).

Reasonable Rates and Terms

Reasonable rates and terms means those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The “similar period of time” of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

Related by Blood or Marriage

Related by blood or marriage means being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

Relative

Relative means the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.

*--Youth

Youth means a person who has reached the age of 10 but has not reached the age of 21 at the time the loan is closed.

Note: This definition is being amended to remove “rural” by the 2014 Farm Bill and is effective immediately. This change will be incorporated in a Farm Bill CFR, but is effective, as provided here, immediately.--*

Security

Security means property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security”.

Security Instrument

Security instrument means any document giving the Agency a security interest on real or personal property.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**Security Value**

Security value means the value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

SDA Applicant or Farmer

SDA applicant or farmer is an individual or entity who is a member of a socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

SDA Group

SDA group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

Softwood Timber (ST) Loans

ST loan means a loan that was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

Streamlined Conservation Loan (CL)

Streamlined CL means a direct or guaranteed CL made to eligible applicants based on reduced documentation.

Supervised Bank Account

Supervised bank account means an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.

United States (U.S.)

U.S. means any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.

Guidance on Processing Loan Applications for *Pigford I* Claimants

- A Background:** The Consent Decree (dated April 21, 2005) entered into between the Government and plaintiffs in the class action suit *Pigford vs Glickman*, currently known as *Pigford vs. Vilsack*, and approved by the U.S. District Court specifies that certain class-wide injunctive relief in the form of priority loan processing for direct farm operating (OL) assistance, direct farm ownership (FO) assistance or inventory property assistance would be available to prevailing claimants for a specific period of time.

With the exception of one specific case, all court-ordered timeframes to exercise priority consideration for loan processing under *Pigford I* have been concluded. The state involved with the remaining case will be advised as necessary.

- B State and County Office Officials:** Pursuant to the guidance in this Exhibit, applications will be processed according to the procedures in 3-FLP, Direct Loan Handbook. Prior guidance to FSA officials included instruction on processing loan applications for prevailing claimants who sought priority consideration for an OL, FO or inventory property were issued by notice. The language in the court-ordered Consent Decree(s) not only provided for priority consideration for an FO, OL or inventory property, but also provided:

- technical assistance from an employee acceptable to the applicant,
- guidance on consideration of debts forgiven for borrowers, co-borrowers, and those otherwise legally liable on a past loan debt to the Agency.

Claimants who were awarded priority consideration under the Consent Decree are identified in the Automated Discrepancy Processing System (ADPS) “Approved Civil Rights Claim Priority Activity” database. Agency officials will use the database to determine whether an applicant is a prevailing claimant and may be subject to the guidance contained in this Exhibit. Contained in the claimant’s record is the date of the prevailing claimant’s initial decision, whether the individual exercised those rights; any debt forgiven under the Consent Decree process and the deadline for when a claimant can exercise that priority consideration for injunctive relief. Note: Please remember that the rights under the Consent Decree cannot be transferred or re-assigned to someone who was not an original claimant. Additionally, heirs of deceased prevailing claimants are not entitled to special consideration under the Consent Decree.

Guidance on Processing Loan Applications for *Pigford I* Claimants (Continued)

The following guidelines are to be considered.

(1) Technical Assistance with Applications

Provisions of the Consent Decree grant individuals prevailing under *Pigford I* with reasonable technical assistance in preparation and submission of any future applications submitted. Current agency guidelines included in 3-FLP, subparagraph 41 D language for providing technical assistance for all applications, regardless of their status as a class member of a settled court action. Authorized agency officials may upon request offer assistance to a prevailing claimant when a loan application has been submitted. This assistance will cover the full range of assisting with filling out the application to developing a farm plan, and locating specialist for advice on new or improved enterprises, and all other aspects of the loan application process. The authorized agency officials providing the technical assistance must be acceptable to the applicant. Prevailing claimants may request that SEDs assign a different employee to assist them if the staff in the State or County Office is not acceptable.

(2) Prevailing Claimants with Past Debt Forgiveness Submitting New Applications

Pursuant to the requirements of 3-FLP, subparagraph 65 A, the following guidelines will be considered for prevailing claimants.

The following are exceptions to debt forgiveness limitations:

- Loans written off at the direction of the adjudicator, arbitrator, or under the Consent Decree Stipulation and Order dated February 7, 2001, are not considered debt forgiveness. County office officials shall consult the ADPS Civil Rights Claim Priority Activity Database to determine whether an applicant is a prevailing claimant and to check for a list of the claimant's loans previously written off under the Consent Decree. County officials should also check the applicant's Direct Loan System (DLS) screen, if available.

Note: This exception includes loan previously written off or debt settled by FSA or the former Farmers Home Administration under agency servicing procedures, but if they still existed, would have been written off at the direction of the adjudicator, arbitrator, or under the Consent Decree Stipulation and Order dated February 7, 2001.

Example: The applicant had a 1982 FO and 1983 and 1985 OLs, all of which were written off in 1990. The adjudicator finds in favor of the claimant on a claim that discrimination occurred in relation to the 1983 OL. However, the claimants does not prevail on the 1982 FO. Under the Consent Decree Stipulation and Order dated February 7, 2001, any OL between 1983 and 1996 would be written off. Since the 1983 and 1985 OLs were already written off, neither of these write offs will be held against the claimant. However, write off of the 1982 FO on which the claimant did not prevail will be counted against the claimant and thus may make the claimant ineligible for certain future loans.

Guidance on Processing Loan Applications for *Pigford I* Claimants (Continued)

(2) Prevailing Claimants with Past Debt Forgiveness Submitting New Applications (Continued)

- Such prior Consent Decree debt forgiveness also **will not** adversely affect an applicant who was a co-borrower or who was otherwise legally liable on the previously forgiven loan. The applicant's *Pigford I* status is not relevant for this purpose.

Example 1: The applicant is the spouse of a deceased prevailing claimant who the adjudicator found in favor of with regard to a 1983 OL. The applicant was a co-borrower with the claimant on the 1983 OL, but did **not** file a Consent Decree claim in his or her own name. In 1990, the 1983 OL was debt settled. This debt settlement will **not** be held against the applicant.

Example 2: The applicant was the partner of a prevailing claimant who the adjudicator found in favor of with regard to a 1982 EM. The applicant was personally liable for the 1982 EM made to the partnership, but did **not** prevail on an individual claim. In 1992, the 1982 EM was debt settled. This debt settlement will **not** be held against the applicant.

Example 3: The applicant is the father of a prevailing claimant who the adjudicator found in favor of with regard to a 1983 OL. This applicant was **not** the primary borrower but co-signed the 1983 OL for his son, the prevailing claimant. In 1990, the 1983 OL was debt settled. This debt settlement will **not** be held against the applicant.

- Any debt forgiven under the Consent Decree, or previously written off debt that would have been written off had it still existed, will **not** be considered in evaluating creditworthiness on future loan applications.

County Office officials will contact the State Office, Farm Loan Programs section for guidance before making an adverse eligibility decision on any application from a prevailing claimant, when prior debt forgiveness is the basis for the adverse decision.

If the County Office officials have any reason to believe that an applicant was a co-borrower with a prevailing Consent Decree claimant or was otherwise legally liable for a loan that qualified for *Pigford I* debt relief, the County Office will contact the State Office for guidance before making an adverse decision on the application.

State Office officials will contact Ann Smith, LMD, at ann.smith@wdc.usda.gov for guidance on this matter. Request shall include the applicant's name, claim number, and a brief explanation of the applicant's situation pertaining to their debt forgiveness.

(3) Loan Term Limits for Prevailing Claimants

Loans received by prevailing claimants will count towards their term limits. This includes loans that were written off for those years in which discrimination was found to have occurred.

