UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice FLP-608

3-FLP, 5-FLP

For: State and County Offices

Guidance on Applications Submitted by *Pigford I* Claimants

Approved by: Deputy Administrator, Farm Loan Programs

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1 Overview

A Background

The Consent Decree 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 will be provided in the form of priority consideration for inventory property, FO, and farm OL; special considerations in loan processing; and reasonable technical assistance and service. These provisions apply to all prevailing claimants who were determined by an adjudicator or arbitrator to have a valid claim under the Consent Decree. Any claimant who prevailed on a claim under the civil action *Pigford vs. Vilsack* shall be accorded the rights given them by the Consent Decree.

Note: Consent Decree Stipulation and Order dated April 21, 2005, extended the deadline to seek injunctive relief in loan processing, purchasing of inventory property, and seeking technical assistance on an application. See subparagraph 2 A for clarification.

B Purpose

This notice provides:

- guidance on processing requests for priority consideration
- guidance on consideration of debts forgiven for borrowers, co-borrowers, and those otherwise legally liable on a past loan
- procedures for State and County Offices to follow when processing loan and inventory property purchase applications from prevailing credit claimants
- answers to frequently asked questions about processing requests received from prevailing claimants (Exhibit 1)
- FSA-2010 (Exhibit 2).

Disposal Date	Distribution
April 1, 2013	State Offices; State Offices relay to County Offices

1 Overview (Continued)

C Contacts

If there are questions about this notice:

- County Offices shall contact the State Office
- State Offices shall contact LMD at 202-720-1632.

2 Special Consideration Provisions of the Consent Decree

A Credit Claim Prevailing Claimants

In most cases, claimants who prevail on a credit claim under the Consent Decree 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

  - one direct FO and 1 OL

  Note: This right **must** be exercised no later than April 14, 2005, or 2 years **after** the date the prevailing claimant is complete in the Consent Decree claims process, whichever is later. The request for priority consideration **must** be submitted with the actual loan application or an applicant may request priority consideration on a pending loan application. The prevailing claimant **must** notify FSA, in writing, that this right is being exercised (Exhibit 2).

- any application for OL, FO, or for inventory property 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

  Note: This consideration applies to any loan request submitted by a prevailing claimant until April 14, 2005, or 2 years **after** the date the prevailing claimant is complete in the Consent Decree claims process, whichever is later, and is **not** limited to loans for which priority consideration is requested.

2 Special Consideration Provisions of the Consent Decree (Continued)

A Credit Claim Prevailing Claimants (Continued)

- FSA will provide technical assistance in connection with any application upon request

- technical assistance includes assistance from FLP employees who are acceptable to the applicant.

  Note: This consideration applies to any new loan request or pending loan application submitted by a prevailing claimant until April 14, 2006, or 2 years **after** the date the prevailing claimant is complete in the Consent Decree claims process, whichever is later, and is **not** limited to loans for which priority consideration is requested.

Claimants who were awarded priority consideration under the Consent Decree are identified in the ADPS "Approved Civil Rights Claim Priority Activity" database. Agency officials will use the database to determine whether an applicant is entitled to priority consideration for farm loan assistance. The date a prevailing claimant's right to priority consideration and "light most favorable consideration" expires is listed in ADPS. See the ADPS manual, Chapter 22 for instructions on accessing the database. Prevailing claimants **must** meet all regulatory requirements for loans. Debt forgiven under the Consent Decree shall **not** have any adverse impact on future loan requests.

The Consent Decree requires that priority consideration be requested in writing. FSA-2010 shall be provided to applicants upon request.

Note: Applicants exercising priority consideration are **not** required to use FSA-2010 (Exhibit 2). Any written request is acceptable as long as it states what is being requested.

B Farm Programs Benefits and Prevailing Claimants

Prevailing claimants whose claim involved only farm programs benefits, for example disaster and ECP and no loan programs, are entitled to "light most favorable" and technical assistance according to subparagraph A. Noncredit claimants are **not** entitled to priority consideration.

3 Implementing the Consent Decree Provisions

A Notifying Prevailing Claimants

All claimants will be notified by the adjudicator or arbitrator about the outcome of their claim. Prevailing credit claimants will be notified about how to proceed when exercising priority consideration. **No action by State or County Offices is necessary**.

B Notifying Prevailing Farm Program Benefits Claimants

Claimants who prevailed, but whose claim only involved farm program benefits are **not** entitled to priority consideration. These claimants will be notified by the adjudicator or arbitrator about the outcome of their claim.

C Monitor Petitions and Injunctive Relief

A prevailing claimant may **not** obtain injunctive relief within 120 calendar days of the date of their initial adjudicator or arbitrator decision. This court-ordered delay in implementing injunctive relief will enable FSA or a prevailing claimant to request a monitor review of the initial decision, if necessary. Requests for injunctive relief will be accepted, but not processed during the 120-calendar-day period **after** the adjudicator or arbitrator decision. Any applications submitted during the 120-calendar-day period will be handled according to normal processing procedures.

D Priority Consideration in Loan Processing

Applications in which priority consideration is exercised shall be handled according to the following.

- Regardless of other incomplete applications on file in the County Office, the authorized agency official will immediately take action to process the priority consideration application.

- To the extent practicable, an office appointment or farm visit will be scheduled to occur within 5 workdays of receiving Exhibit 2 to provide technical assistance to the applicant.

- If at any time in the processing of a priority consideration application an appointment is needed to complete documents, or any other action necessary to complete the application arises, this shall take precedence over any other incomplete application on file in the County Office.

3 Implementing the Consent Decree Provisions (Continued)

D Priority Consideration in Loan Processing (Continued)

- All communication with applicants exercising priority consideration will be by telephone unless the applicant indicates a preference for written communication exclusively.

  Note: All conversations about application information will be confirmed in writing within 3 workdays. Every effort will be made to avoid processing delays because of mailing.

- If at any time while a priority consideration application is incomplete 5 workdays pass while awaiting information from the applicant, on the sixth workday the authorized agency official responsible for the application will:

  - contact the applicant by telephone 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 within 3 workdays.

- When an appraisal, environmental assessment, or other service **must** be obtained from non-FSA sources, the authorized agency official responsible for the application, to the extent practical, will require that if the outside source has multiple requests pending from FSA, the outside source performs the next service on matters related to the application on which priority has been requested.

- When a priority application is determined to be complete according to 3-FLP, paragraph 42 and subparagraph 43 A, a final decision **must** be made within 3 workdays and the applicant notified according to 3-FLP, Part 15. No nonpriority completed applications shall have a final decision until a decision has been made on completed priority applications. If 2 complete priority applications are pending at the same time, they shall be acted upon in the order received.

- Prevailing claimants, who submit a written request for priority consideration without an application, should be cautioned that submitting the written request without an application will **not** preserve their rights to priority consideration beyond the injunctive relief expiration date. Under the *Pigford* Consent Decree, prevailing claimants receive priority consideration on a specific loan request. The priority consideration request should **not** be accepted unless it is accompanied by a signed application or the prevailing claimant has a loan request pending.

3 Implementing the Consent Decree Provisions (Continued)

D Priority Consideration in Loan Processing (Continued)

- If a prevailing claimant wants to submit an application for a loan to be used months or years in the future:
  - **remember** that FSA **cannot** refuse to accept the application
  - the authorized agency official should explain to the applicant:
    - the requirements for a complete application
    - that FSA procedures specify application timeframes that **must** be met
    - that unless they are able to complete the application within the specified timeframes, the application will be withdrawn
    - the availability of technical assistance.

E Priority Consideration for Loan Funding

Prevailing claimants shall 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 these funds are available. If a State Office's remaining SDA allocation is insufficient to immediately fund a priority consideration loan, SED shall immediately forward the claimant's name, amount, type of loan request, and date of initial application to LMD by FAX to 202-720-6797. Once additional funding is available, the subject applicant will be the first to receive funding, regardless of how many other applications have earlier initial application dates. If there are multiple priority consideration applications awaiting funds, the applications will be funded according to the earliest initial application date.

F Priority Consideration for Inventory Property

By law, qualified beginning farmers and SDA's have first priority to purchase FSA inventory property.

Note: SDA's were added to the priority list by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), §5302, enacted May 22, 2008.

A prevailing claimant **must** be a qualified beginning farmer or SDA to receive priority consideration. If a claimant does **not** qualify as a beginning farmer or SDA, the claimant will **not** receive priority over other beginning farmers and SDA's. However, according to the definition of priority consideration provided in the *Pigford* Consent Decree, Section 1 (k), if the property is not sold to a beginning farmer or SDA, a prevailing claimant will have priority and may purchase the property at the appraised value **before** it is put up for public bid.

3 Implementing the Consent Decree Provisions (Continued)

F Priority Consideration for Inventory Property (Continued)

FLC's shall follow 5-FLP, subparagraph 776 J to obtain current data on inventory properties. This information will be provided to prevailing claimants upon request. Alternatively, FLC's may develop a procedure to ensure 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. 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.

G Viewing Applications in a "Light Most Favorable"

When processing a loan application, authorized agency officials may exercise judgment in applying applicable regulations. When considering eligibility and credit criteria in a loan application submitted by a prevailing claimant, authorized agency officials shall view the criteria in a way that would be most beneficial to the applicant. Where there is a legitimate issue as to an item in the application, the prevailing claimant shall receive the benefit of the doubt 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
- authorized agency officials will be prudent when reconsidering 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.

Note: Viewing loan criteria in a "light most favorable" does **not** mean using any assumptions necessary, no matter how unrealistic or unreasonable, to justify determining an applicant's eligible for a loan.

Examples: Farmer Smith has had corn yields over the last 3 years of 110, 115, and 120 bushels per acre for a 3-year average of 115 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 Farmer Smith's 3-year average or the county average. The yield has gone up 5 bushels per acre for each of the last 3 years, so a yield of 125 bushels could be made this year.

Using the same information, assume 135 bushels an acre is needed for a positive cash flow. In this case, the yield of 135 bushels per acre could **not** be used because the yield is higher than any indicators of what Farmer Smith could reasonably expect to receive.

3 Implementing the Consent Decree Provisions (Continued)

H Claimants With Past Debt Forgiveness

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. The County Office shall consult the Approved Civil Rights Claim Priority Activity database in ADPS to determine whether an applicant is a prevailing claimant and to check for a list of the claimant's loans previously subject to discharge under the Consent Decree. However, it should be noted that because of policy changes during the claims process, the Approved Civil Rights Claim Priority Activity database does **not** have a complete list of all loans subject to discharge under the Consent Decree for every claimant.

  Note: This exception includes loans previously written off or debt settled by FSA or FmHA 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 OL's, 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 claimant 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 discharged. Since the 1983 and 1985 OL's 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.

- 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* 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.

3 Implementing the Consent Decree Provisions (Continued)

H Claimants With Past Debt Forgiveness (Continued)

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. The 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 loan application received that falls under the exceptions to debt forgiveness limitations should be sent to LMD for guidance and concurrence on whether the applicant is eligible. State Offices shall forward those applications by Express Mail to the following.

USDA FSA DAFLP LMD
1400 Independence Avenue SW
Room 3629 South Agriculture Building
Washington, DC 20250-0522

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

County Office will contact the State Office 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 has 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* debt relief, the County Office will contact the State Office for guidance **before** making an adverse decision on such an applicant.

State Offices will contact Ann Smith, LMD, at **ann.smith@wdc.usda.gov** for guidance. Requests shall include the applicant's name, claim number, and a brief explanation of the applicant's situation.

3 Implementing the Consent Decree Provisions (Continued)

I 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.

J Technical Assistance From a USDA Employee Acceptable to the Applicant

3-FLP, subparagraph 41 D requires that authorized agency officials provide assistance as necessary to all applicants in completing an application. In addition, authorized agency officials **must** offer assistance to a prevailing claimant when a loan application has been submitted. This assistance will cover the full range from helping fill out the application to developing a farm plan, and locating specialists 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 SED's assign a different employee to assist them if the staff in the State or County Office is **not** acceptable.

K 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 seek an order by the court about FSA's determination about the alleged violation of the *Pigford* Consent Decree.

Notification of denial of assistance based upon regulatory requirements, for example, delinquency on a Federal debt, inadequate security, or lack of repayment ability, will be completed according to 3-FLP, Part 15, subject to communication requirements in this notice.

Frequently Asked Questions and Answers

Questions and Answers	
Q1.	**How can I verify that someone is a prevailing claimant?**
A1.	Claimants can be verified through the ADPS Civil Rights database. See the ADPS Manual, Chapter 22.
Q2.	**Is a handwritten request for priority consideration acceptable?**
A2.	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.
Q3.	**A prevailing claimant applied for OL and EM assistance and requested priority consideration. How should the EM application be processed since priority does not apply to EM applications?**
A3.	Although EM does not get priority, both applications should move forward at the same time according to the OL processing priority.
Q4.	**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?**
A4.	No. Rights under the Consent Decree cannot be transferred or assigned. Process the application in the normal manner according to regulations.
Q5.	**Can the heirs of a deceased prevailing claimant receive priority consideration?**
A5.	No. If a claimant is deceased, the entitlement to the special considerations in the Consent Decree ceases.
Q6.	**Should the $50,000 or other settlement amount and elimination of FSA debt be considered in determining a prevailing claimant's eligibility?**
A6.	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 and is not counted in eligibility.

Frequently Asked Questions and Answers (Continued)

Questions and Answers	
Q7.	**If an application under priority consideration is rejected or withdrawn, has the applicant used their 1 time priority for that type of loan?**
A7.	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 FSA 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 subparagraph 1 C.
Q8.	**Can an entity applicant exercise priority consideration on behalf of 1 of its members?**
A8.	Possibly. OGC has advised that because each entity is different, an OGC determination will be necessary on a case-by-case basis. If there are questions in a specific case, obtain guidance from the contacts listed in subparagraph 1 C.
Q9.	**Can an applicant withdraw a request for priority consideration, and if so, at what point in the process is the priority consideration considered irrevocable?**
A9.	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.

FSA-2010

Following is an example of FSA-2010.

This form is available electronically. *(See Page 2 for Privacy Act and Public Burden Statements.)*

FSA-2010 (05-03-10) **U.S. DEPARTMENT OF AGRICULTURE** Farm Service Agency Position 3

NOTIFICATION OF EXERCISE OF PRIORITY CONSIDERATION UNDER CONSENT DECREE

TO: Farm Service Agency
[FSA Office Name/Address]
[Office Address]
[City, State, Zip Code]

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: ***(See instructions below and mark 1 box below; a separate form must be used for each item in which priority is sought)***.

1. ☐ An operating loan.
2. ☐ An ownership loan.
3. ☐ Purchase or lease of farm property in FSA inventory.

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

4. Name: _____ 5. Claim Number: _____

6. Address: _____

7. Phone: _____

8. I hereby exercise my priority as set forth above.

A. Claimant/Applicant Signature B. 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 BY THE LATER OF APRIL 14, 2005, OR TWO YEARS AFTER THE DATE ON WHICH YOU ARE COMPLETE IN THE CONSENT DECREE CLAIMS PROCESS, WHICHEVER IS LATER. YOUR LOAN APPLICATION MUST BE SUBMITTED ALONG WITH YOUR PRIORITY CONSIDERATION REQUEST. YOU MAY ALSO REQUEST PRIORITY CONSIDERATION ON A PENDING LOAN APPLICATION. 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 consideration. 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 filing 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.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

FSA-2010 (Continued)

NOTE: *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a – as amended). The authority for requesting the information indentified on this form is the Consent Decree in Civil Action No. 97-1978, Pigford v. Vilsack and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to process priority consideration requests granted in accordance with the Consent Decree. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-14, Applicant/Borrower. Providing the requested information is voluntary. However, failure to furnish the requested information will result in an inability on the part of FSA to process this form to grant priority consideration under the Consent Decree for applicable farm loans, purchases, and leases.*

The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***