

# Monitor Update: Debt Relief for Prevailing Class Members

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**This is not a USDA publication.**

## Debt Relief for Prevailing Class Members

### **1. Introduction**

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief claimants will receive.

### **2. Debt Relief Available Only for Successful Credit Claims**

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the claimant's effort to get a farm loan from USDA. For example, if a claimant claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the claimant made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the claimant's effort to obtain some other benefit from USDA. For example, if a claimant claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the claimant made a noncredit claim.

### **3. Legal Authority for Debt Relief**

Debt relief for claimants who prevail on a credit claim is based on several legally binding documents.

#### **a. Consent Decree**

The Consent Decree provides that a claimant who prevails on a credit claim receives a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of a prevailing credit claim.

#### **b. February 7, 2001 Stipulation and Order**

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that discusses the details regarding the debt discharge that claimants will receive in credit cases. The Stipulation and Order is based on an agreement that was reached by the government and Class Counsel. According to the Stipulation and Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Stipulation and Order.

### **c. February 22, 2008 Opinion and Order**

On February 22, 2008, Judge Paul L. Friedman signed an Opinion and Order that interprets certain Consent Decree provisions regarding debt relief.

### **d. USDA Agreement**

USDA has agreed that the principles outlined in this Monitor Update are consistent with how USDA implements debt relief to prevailing claimants.

## **4. Debts to Be Discharged**

Certain USDA debts will be discharged as a result of the *Pigford* settlement. The question of which loans will be forgiven can be complicated. The following sections explain debt forgiveness in some detail.

### **a. Debts Affected by Discrimination**

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged. For example, if the Adjudicator found discrimination in the late funding of the claimant's 1984 Operating Loan, the 1984 Operating Loan that was affected by discrimination qualifies for *Pigford* debt relief.

Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. In general, a loan is of the same type if it was incurred under the same loan program. The Operating (OL) Loan Program is one USDA program, the Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

### **b. Some Debts Incurred After the Discrimination Occurs**

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. If, after the date of discrimination, the claimant incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged.

For example, if the Adjudicator found that USDA discriminated against the claimant in denying a Farm Operating Loan in 1994, and USDA then made a Farm Operating Loan to the claimant in 1995, the 1995 Operating Loan will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

### **c. Loans Made After December 31, 1996—No Debt Discharge**

In general, loans made after the end of the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree.

For example, if a claimant received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

If, however, a loan application was filed before the end of the class period, and the loan resulting from that application closed after the end of the class period, the loan may be discharged.

For example, a claimant might have submitted a loan application in November 1996 for a Farm Ownership Loan, and, based on that application, received a Farm Ownership Loan in May 1997. If the Adjudicator found discrimination in the making of the May 1997 Farm Ownership Loan, that loan would be forgiven even though the loan was made after the end of the class period.

**d. Rescheduling, Reamortization, and Defining When a Debt Is Incurred**

As is noted above, the date on which a loan was incurred is important for figuring the right to debt relief in *Pigford*. For *Pigford* debt relief purposes, a loan is considered "incurred" at the time the loan was originally made, not at the time a loan was rescheduled or reamortized.

For example, if the only discrimination found by the Adjudicator was in the making of an Emergency Loan in 1992, the 1992 Emergency Loan would normally be discharged, as would Emergency Loans made from 1992 through the end of the class period. If USDA rescheduled the 1992 Emergency Loan in 1998, for the purposes of *Pigford* debt relief, the loan was still incurred in 1992, and would be forgiven. If the Emergency Loan had been originally incurred by the claimant in 1998, it would not normally be forgiven.

It is also possible for a loan to have been incurred before the class period, and later rescheduled during the class period.

For example, if the only discrimination found by the Adjudicator was in the making of an Operating Loan in 1984, the 1984 Operating Loan would normally be discharged, as would Operating Loans made from 1984 through the end of the class period. If the claimant had also received an Operating Loan in 1979 that was rescheduled in 1986, for the purposes of *Pigford* debt relief, the loan was incurred in 1979 and would not be forgiven because it was incurred before the discrimination occurred.

**e. Some Debts Incurred at the Same Time as the Discrimination**

If the claimant incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged.

For example, if the Adjudicator found that discrimination occurred in the late funding of a claimant's one-year 1990 Operating Loan for annual production purposes, that loan would normally be forgiven under *Pigford*. If, on the same day that the claimant received the one-year Operating Loan, he or she also received a seven-year Operating Loan for the purchase of equipment or livestock, the seven-year Operating Loan incurred at the same time as the one-year Operating Loan would be forgiven even if the Adjudicator did not specifically discuss that loan.

**f. Exception to Loan Program Rules—Switch Cases**

As is noted above, debt forgiveness in *Pigford* largely follows the loan programs that are available from USDA.

For example, in general, if an Adjudicator found discrimination in the making of an Operating Loan in 1990, the claimant will receive debt relief for Operating Loans received from 1990 through 1996. If the claimant also received a Farm Ownership Loan in 1990, but the Adjudicator did not

find discrimination in the making of a Farm Ownership Loan, the Farm Ownership Loan would generally not be eligible for debt relief.

An exception to this general rule occurs in what might be called "switch cases." In some cases, the Adjudicator or Arbitrator made an explicit finding of discrimination with respect to a specific loan, and USDA determines that the actual loan at issue was clearly from a different loan program and was simply misidentified by the Adjudicator or Arbitrator. In these cases, USDA will "switch" the finding to the correct loan program and implement debt relief based on the actual loan program in which the Adjudicator or Arbitrator found discrimination. In other words, if the Adjudicator or Arbitrator found discrimination in the making of a loan, but made a mistake in identifying the type of loan program in question, the loan will be forgiven even if the loan program was incorrectly identified. In these cases, the claimant will generally not receive debt forgiveness for the loan type that was mistakenly identified by the Adjudicator or Arbitrator.

For example, an Adjudicator may have found discrimination in the making of an Operating Loan in 1991, but it turns out that the only loan made to the claimant in 1991 was an Emergency Loan. If the facts establish that the loan referred to by the Adjudicator was actually an Emergency Loan, the remedy will be "switched" to the Emergency Loan and the Emergency Loan will be forgiven.

Similarly, an Adjudicator may have found discrimination in the making of a 1981 Farm Ownership Loan but in fact the loan at issue was a 1981 Emergency Loan for real estate purposes. If the 1981 Emergency Loan is the loan referred to by the Adjudicator, the debt relief would be "switched" to the Emergency Loan program.

As another example, if the Adjudicator found discrimination in the making of Emergency Loans from 1981 through 1984, but the claimant received Emergency Loans from 1981 through 1983 and received an Operating Loan in 1984, the remedy for 1984 will be "switched" to the Operating Loan program. In this case, the claimant's 1981, 1982, and 1983 Emergency Loans and 1984 Operating Loan were the subject of the finding that they were "affected by" discrimination and qualify for debt relief.

There are rare cases in which the Adjudicator found discrimination in the making of a loan in one loan program and USDA's records indicate that the claimant received two loans at the same time that were affected by the same act of discrimination.

For example, an Adjudicator may have found discrimination in the late funding of an Operating Loan in 1991. If the facts establish that the claimant's 1991 loan application resulted in both an Operating Loan and an Emergency Loan being made to the claimant, the remedy will be "switched" to include both the Operating Loan and the Emergency Loan and both loans will be forgiven.

In addition, once the remedy of loan forgiveness has been switched to a different loan program, the switch applies to debt forgiveness for loans in the same program that were made for the rest of the class period. Some USDA farm loan programs authorize the use of funds for a variety of purposes. Once the loan program is identified, however, the use of loan funds for particular purposes does not affect the eligibility of subsequent loans in the same loan program for *Pigford* debt relief.

For example, if debt relief is “switched” from the 1981 Operating Loan program to the 1981 Emergency Loan program, the claimant’s Emergency Loans received between 1981 and 1996 qualify for debt relief regardless of whether the Emergency Loans were used for operating or real estate purposes.

#### **g. USDA Forgives All Liability for Claimant**

In some cases the claimant will already have had the debt forgiven through USDA’s loan servicing or debt settlement regulations. When this happens, the claimant is sometimes still possibly liable to repay part of the debt. This can occur, for example, with a shared appreciation agreement that is signed after a debt write-down. If the original debt is forgiven under *Pigford*, the debt forgiveness applies to all claimant liability for that debt, including shared appreciation and other similar obligations.

### **5. Debt Forgiveness and Loan Servicing**

In cases concerning a prevailing claim based upon loan servicing, USDA will discharge loans that were in effect at the time of the loan servicing application or were the subject of the loan servicing request, when the Adjudicator or Arbitrator specifically provided for such discharge. “Loan servicing” as used here means various types of loan restructuring available to eligible farm loan borrowers. These include, but are not limited to: primary loan servicing options previously found in Code of Federal Regulations, Title 7, Part 1951, subpart S, such as rescheduling, reamortization, consolidation, limited resource interest rates, deferrals, write-downs, and net recovery buyouts; preservation loan servicing opportunities, such as homestead protection, credit sales, and leaseback/buyback; debt settlement options previously found in Code of Federal Regulations, Title 7, Part 1956, such as adjustment, compromise, cancellation, and charge off; and other options, including, disaster set aside, subordinations, and the release of valueless liens.

The parties are not in agreement with respect to the appropriate debt relief in cases concerning a prevailing claim based upon loan servicing when the Adjudicator or Arbitrator did not specifically identify the loans to be discharged. In this latter situation, a claimant should contact class counsel or the Monitor’s office for assistance.

### **6. Debts Not to Be Forgiven—Older Lawsuits**

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed.

For example, if a claimant was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the claimant, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

### **7. Refunds of Voluntary Payments**

Claimants sometimes make voluntary payments on loans that are subject to discharge under the Consent Decree. In most cases, voluntary payments that a *Pigford* claimant paid on a debt that was later forgiven under *Pigford* will not be refunded. However, USDA will refund voluntary

payments made after the date of the initial prevailing decision that gave the claimant the right to debt relief on the loan on which voluntary payments were made.

**a. Most Common Cases—No Refund**

In most cases, the claimant will not receive a refund of payments he or she made.

For example, if a claimant received an Operating Loan in 1993 and made payments on that loan in 1994 and 1995, those payments will not be refunded even if under *Pigford* the 1993 Operating Loan became eligible for forgiveness.

**b. Refunds for Payments After Adjudicator or Arbitrator Decision**

Payments made by the claimant after the claimant won the right to debt relief in an Adjudicator or Arbitrator decision will generally be refunded. However, such refunds might be applied to other delinquent debt that is outstanding at the time of the refund but that is not subject to discharge under the Consent Decree.

**c. Defining When an Adjudicator or Arbitrator Decision Takes Effect**

As noted above, the date the claimant won the right to debt relief in an Adjudicator or Arbitrator decision is important for deciding whether the claimant will get a refund of a payment made on a debt. Because many Adjudicator and Arbitrator decisions were the subject of a petition to the Monitor, and in some cases were amended by the Adjudicator without a petition, defining when a claimant prevailed on certain debt relief can be complicated.

*(1) Claimant Prevails, No Petitions*

If a claimant prevailed on a claim in his or her Adjudicator decision and neither side petitioned the decision to the Monitor, the claimant qualified for debt relief on the date of that Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination with respect to USDA's 1995 Operating Loan program and neither party petitioned the Monitor on the decision, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

*(2) Claimant Prevails, USDA Petition Denied by Monitor*

If a claimant prevailed on a claim in his or her Adjudicator decision and a USDA petition was denied by the Monitor, for debt relief purposes, the claimant prevailed on the date of the original Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination with respect to USDA's 1995 Operating Loan program, USDA petitioned the Monitor, but the petition was denied, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

*(3) Claimant Prevails, USDA Petitions, Monitor Directs Reexamination, but Adjudicator Reaffirms Claimant Win*

If a claimant prevailed on a claim in his or her Adjudicator decision, and a USDA petition to the Monitor resulted in the Monitor sending the decision to the Adjudicator for reexamination, but the Adjudicator reaffirmed the original decision, the claimant qualified for debt relief on the date of the original Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in USDA's 1995 Operating Loan program, USDA petitioned the Monitor, the Monitor sent the decision back to the Adjudicator, and the Adjudicator issued a reexamination decision in 2005 that reaffirmed the Adjudicator's original decision, including a finding of discrimination with respect to the claimant's 1995 Operating Loan, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

*(4) Claimant Loses, Claimant Petitions, Monitor Directs Reexamination, and the Adjudicator Finds Discrimination in the Reexamination Decision*

If a claimant originally lost a claim in his or her Adjudicator decision, but petitioned to the Monitor, and the Monitor sent the decision back to the Adjudicator for reexamination, the claimant may not have prevailed in an Adjudicator reexamination decision until a long time after the original adjudication. In this case, the claimant's loans did not qualify for debt relief until the later Adjudicator reexamination decision in which the claimant won.

For example, if an October 1, 1999 Adjudicator decision denied the claimant any relief, the claimant petitioned the Monitor, the Monitor sent the decision back to the Adjudicator, and the Adjudicator issued a reexamination decision in 2005 that resulted in forgiveness of a 1995 Operating Loan, USDA will refund payments by the claimant on the 1995 Operating Loan on or after the date of the Adjudicator reexamination decision in 2005. Payments made before the 2005 reexamination decision will not be refunded.

*(5) Reexamination Decisions That Do Not Affect Relief of a Particular Debt*

If a claimant originally prevailed in an Adjudicator decision that was later the subject of a petition, it will sometimes be the case that the petition and the later decisions based on the petition did not address the original finding that resulted in relief for a particular debt. In such a case, the loans identified in the original decision qualified for debt relief on the date of that initial prevailing Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in the making of a 1995 Operating Loan, the claimant might have petitioned the Monitor to seek a reexamination of the Adjudicator's refusal to find discrimination in the making of a 1982 Farm Ownership Loan. If the Claimant won the 1982 Farm Ownership Loan claim on reexamination and the 1995 Operating Loan claim was not disturbed by the petition process, the relevant Operating Loans qualified for debt relief on October 1, 1999, the date of the original prevailing Adjudicator decision. In this case, the relevant Farm Ownership Loans qualified for debt relief on the date of the Adjudicator's reexamination decision. USDA will refund payments made on the respective loans on or after the dates that the loans qualified for debt relief.

*(6) Claimant Prevails and Petitions on Debt Relief, Monitor Directs Reexamination to Correct Debt Relief*

If a claimant originally prevailed in an Adjudicator decision that, under the general debt relief rules of *Pigford*, would have provided debt relief, it will sometimes be the case that the claimant petitioned regarding the debt relief in question. If the Monitor sent the decision back to the Adjudicator for reexamination of debt relief, the Adjudicator's reexamination decision clarifying debt relief did not change the date that the claimant's loans qualified for debt relief. The claimant's loans qualified for debt relief on the date of the original prevailing Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in the making of a 1990 Operating Loan but did not award debt relief, the claimant might have petitioned the Monitor for debt relief on his outstanding 1990 Operating Loan. Although the Adjudicator specifically awarded Operating Loan debt relief for the first time in the reexamination decision, the claimant's 1990 Operating Loan qualified for debt relief on October 1, 1999, when the Adjudicator found discrimination in USDA's 1990 Operating Loan program. In this case, USDA will refund payments made by the claimant on or after October 1, 1999.

### **8. Refund of Offsets**

Many claimants have had "offsets" of payments that would usually have been paid to them by the federal government. Offsets can be taken for USDA farm program payments, as well as other federal payments, such as Social Security benefits and income tax refunds. Offset funds are applied to a borrower's debt to the government instead of being paid to the borrower.

Offsets are important for *Pigford* because some of the money offset by the federal government was applied to loans that were forgiven as a part of the lawsuit. USDA will refund offsets taken after January 1, 1999, as payment on any loans subject to discharge under the Consent Decree. Offsets taken before January 1, 1999, will not be refunded. However, such refunds might be applied to other delinquent debt that is outstanding at the time of the refund but is not subject to discharge under the Consent Decree.

### **9. Correcting Mistakes in Debt Relief**

USDA has agreed that if they mistakenly provided debt relief that was not due to a claimant, and also failed to provide the debt relief that was due to that claimant, USDA will notify class counsel about the mistake. USDA will also provide the claimant's loan records to class counsel and give class counsel the choice of whether USDA should implement the correct debt relief or allow debt relief to stand as implemented. In other words, once USDA has forgiven a debt through *Pigford*, USDA will not reverse the debt forgiveness and reinstate the debt unless the claimant's lawyer informs USDA that the claimant agrees to the change.

### **10. Debt Forgiveness and Future Participation in USDA Programs**

USDA agrees that debt forgiveness under *Pigford* will not affect the claimant's ability to participate in USDA farm loan programs—either in receiving or servicing a loan. This means, for example, that *Pigford* debt forgiveness will not affect the claimant's creditworthiness if the claimant seeks another loan with USDA.

### **11. More Information**

For more information about the February 7, 2001 Order, the February 22, 2008 Order, or for a copy of the Consent Decree or the Orders, please call the Monitor's office at the phone number listed below.

Anyone who has any question regarding debt relief should call the Monitor's office toll free at 1-877-924-7483.