

Injunctive Relief

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Chapter Two

Types of Injunctive Relief

Current as of April 1, 2005

I. Introduction

The following sections describe the four types of injunctive relief that are available to prevailing claimants—those who prevailed in Track A or Track B claims.

II. Technical Assistance and Service

Under the Consent Decree, USDA must provide a prevailing claimant with reasonable technical assistance and service.¹ This assistance is in addition to the technical assistance required by USDA regulations.

A. All Prevailing Claims

Technical assistance from USDA is available to all prevailing claimants, whether they prevailed on a credit claim or on a noncredit claim.²

B. All Operating and Farm Ownership Loans, All Inventory Applications

Technical assistance injunctive relief applies every time a prevailing claimant applies for a direct farm operating loan, for a direct farm ownership loan, or for inventory property. It is not available only on a one-time basis; nor is it limited only to applications on which priority consideration is requested.³

¹ Consent Decree ¶ 11(d). This paragraph states:

In conjunction with any application for a farm ownership or operating loan or for inventory property submitted by a claimant who prevails under ¶¶ 9 or 10, above, USDA shall, at the request of such claimant provide the claimant with reasonable technical assistance and service, including the assistance of qualified USDA employees who are acceptable to the claimant, in connection with the claimant's preparation and submission of any such application.

² See Consent Decree ¶¶ 9(a)(iii)(D), 9(b)(iii)(B), 10(g)(iii); USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 3 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 3 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2-3 (July 21, 2003) (obsolete March 3, 2005). These notices are very similar to prior notices. See USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2-3 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 3 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 3 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for

C. Must Request Technical Assistance and Service

The claimant must request the technical assistance and service injunctive relief.⁴ Although it is a good idea to get things in writing, there is no requirement that the request for technical assistance injunctive relief be in writing.

D. Qualified and Acceptable to Claimant

The technical assistance and service must come from qualified USDA employees who are acceptable to the prevailing claimant.⁵ According to a USDA Notice, prevailing claimants may request that a different employee be assigned to assist them if the staff in the State or County Office is not acceptable.

E. Preparation and Submission of Applications

Technical assistance injunctive relief applies to the prevailing claimant's preparation of an application and the submission of an application. This assistance covers the full range of application activity: helping fill out the application form to developing a farm plan, verifying debts, locating specialists for advice, and all other aspects of the application process.⁶ Once a claimant has submitted an application, USDA must offer assistance to the claimant.⁷

Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

⁴ Consent Decree ¶ 11(d).

⁵ Consent Decree ¶ 11(d). USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 3, 9 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 3, 8 (March 3, 2005) (obsolete March 29, 2004); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2, 8 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2, 7 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2, 7 (August 18, 2000) (expired June 1, 2001).

⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 9 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 8 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 8 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 7 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 7 (August 18, 2000) (expired June 1, 2001).

⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 9 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 8 (March 3, 2005) (obsolete March 29, 2005).

F. No Deadline for Technical Assistance in Consent Decree

The Consent Decree does not set a deadline for exercising the right of technical assistance injunctive relief.⁸ This is in contrast to other forms of injunctive relief.⁹

G. Heirs, Entities, and Assignment

An FSA Notice explains how FSA will handle injunctive relief when it concerns the heirs of a claimant, if the claimant is part of an entity, or if the claimant seeks to assign the right of injunctive relief. The following three sections explain how FSA will handle these questions.

1. No Heir Right to Injunctive Relief

If the claimant has died, the right to injunctive relief does not pass on to the claimant's heirs.¹⁰

2. Injunctive Relief Cannot Be Assigned

A claimant may not assign his or her right to injunctive relief to another person.¹¹ An example of assignment would be if a prevailing claimant sought to give his or her right to injunctive relief to someone else.

3. Entities Possible

It is possible that an entity—such as a corporation or a partnership—could use the right of injunctive relief held by one of its members.¹²

H. Technical Assistance for All Applicants and Borrowers

USDA is required to provide assistance to all applicants and borrowers—not just *Pigford* claimants.¹³

⁸ Consent Decree ¶ 11(d).

⁹ Consent Decree ¶ 11(a). USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2-3 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005).

¹⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007). Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to technical assistance injunctive relief.

¹¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007). Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to technical assistance injunctive relief.

¹² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007). USDA says that it will make this determination on a case by case basis, but has not explained what factors will be taken into account in making this decision. Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to technical assistance injunctive relief.

¹³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 3, 9 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 8 (March 3, 2005) (obsolete March 29, 2005).

III. Most Favorable Light, Most Favorable Amount and Terms

Under the Consent Decree, when a prevailing claimant applies for a farm ownership loan, for an operating loan, or for inventory property, his or her application must be viewed in the light most favorable to the claimant.¹⁴ Further, the amount and terms of any loan must also be the most favorable permitted by law and USDA regulations.¹⁵

A. Credit and Noncredit Claims

Light-most-favorable injunctive relief is available to all claimants, whether they prevailed on a credit claim or on a noncredit claim.¹⁶

B. All Operating and Farm Ownership Loans, All Inventory Applications

Light-most-favorable injunctive relief applies every time a claimant applies for an operating loan, for a farm ownership loan, or for inventory property.¹⁷ It is not available only on a one-time basis, and it is not limited to the applications on which priority consideration is requested.

C. Viewed in Light Most Favorable

Every application by a prevailing claimant for these USDA programs must be viewed by USDA in a light most favorable to the claimant.¹⁸ This applies to every aspect of the claimant's application.¹⁹ For example, when USDA is reviewing the claimant's farm plan, the

¹⁴ Consent Decree ¶ 11(c). The Consent Decree states:

Any application for a farm ownership or operating loan, or for inventory property submitted within five years of the date of this Consent Decree by any claimant who prevails under ¶¶ 9 or 10, will be viewed in a light most favorable to the claimant, and the amount and terms of any loan will be the most favorable permitted by law and USDA regulations. . . .

¹⁵ Consent Decree ¶ 11(c).

¹⁶ Consent Decree ¶¶ 9(a)(iii)(D), 9(b)(iii)(B), 10(g)(iii); USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 3 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2-3 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2-3 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2-3 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

¹⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 8 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005). See also USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (Oct. 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

¹⁸ Consent Decree ¶ 11(c).

¹⁹ FSA has issued a Notice that says:

When considering eligibility and credit criteria in a loan application submitted by a prevailing claimant, loan officials shall view the criteria in a way that would be most beneficial to the applicant. In other words, where there is a legitimate issue as to an item in the application, the prevailing claimant shall receive the benefit of the doubt within FSA procedures and regulations.

assumptions used for creating the plan should be viewed in a light most favorable to the claimant. Farm plans are discussed further in Chapter Four. To have an application viewed in the most favorable light does not, however, make the application an automatic success.²⁰ USDA requirements must still be met.

D. Most Favorable Amount and Terms of a Loan

When a prevailing claimant applies for an operating or farm ownership loan, the amount and the terms of the loan must be the most favorable permitted by law and USDA regulations.²¹ Terms that might be affected by this injunctive relief include loan interest rates, security requirements, and repayment periods. These terms are discussed more fully in Chapter Four of this series.

E. Five-Year Availability — and USDA Extensions

The timing of the availability for light-most-favorable injunctive relief can be confusing.

USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 6 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 6 (March 3, 2005) (obsolete March 29, 2005). See, as well, USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 6 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 6 (Oct. 18, 2001) (obsolete July 21, 2003).

²⁰ FSA has said that:

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 eligible for a loan. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 7 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 6 (March 3, 2005) (obsolete March 29, 2005). See, as well, USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 6 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 6 (Oct. 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 6 (August 18, 2000) (expired June 1, 2001).

The example FSA uses to illustrate a reasonable versus an unreasonable assumption involves corn yields. A farmer has a history of corn yields over the last five years of 100, 105, 110, 115, and 120 bushels per acre. The county average is 120 bushels per acre. The farmer needs a corn yield of 125 bushels to generate a positive cash flow and obtain a loan. Under the light most favorable, it is reasonable to assume the 125 bushels because the farmer’s yield has been increasing each year, even though this amount is higher than the county average and higher than the farmer has had in the past five years. FSA says it would not be reasonable to assume a yield of 135 bushels, however. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 7 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 6 (March 3, 2005) (obsolete March 29, 2005). See, as well, USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 6 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 6 (Oct. 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 6 (August 18, 2000) (expired June 1, 2001).

²¹ Consent Decree ¶ 11(c).

1. Original Deadline — April 14, 2005

In the Consent Decree, light-most-favorable injunctive relief was set to be available for every application a prevailing claimant submitted within five years of the date of the Court's Consent Decree order.²² The order went into effect on April 14, 1999. Therefore, originally, the light-most-favorable injunctive relief would have been effective through April 14, 2004.²³

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

USDA has made two changes to the deadline that have extended the availability of light-most-favorable injunctive relief.

- First, in 2003, USDA announced that it had decided to extend the availability of injunctive relief to April 14, 2005.²⁴
- Second, in 2005, USDA announced that each prevailing claimant will have at least one year from the date of his or her final decision date on which he or she prevailed to use light-most-favorable injunctive relief.²⁵

In other words, the deadline for using light-most-favorable injunctive relief is either April 14, 2005, or one year after the claimant's final decision—whichever is later.²⁶

A claimant's final decision is the decision that assured the claimant that he or she would prevail. For a Track A claim, this could mean a decision by the original Adjudicator, by the Monitor, or by either the Facilitator or Adjudicator in a reexamination. For a Track B claim, this could mean a decision by the original Arbitrator, by the Monitor, or by either the Facilitator or Arbitrator in a reexamination.

3. Defining Final Decision

For many class members, the deadline for using light-most-favorable injunctive relief hinges on when the class member received a final decision on his or her claim. For this purpose, the date of the final decision is the date on which the prevailing class member completed the Consent Decree claims process. The Consent Decree claims process includes the Monitor petition process and the Adjudicator and Arbitrator reexamination processes.

²² Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

²³ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

²⁴ USDA Announces Extension for Farmers in the *Pigford* Consent Decree to Seek Priority Consideration on New Loans, USDA News Release No. 0017.03 (January 16, 2003) (see <http://www.usda.gov/documents/NewsReleases/2003/01/0017.doc>). See, as well, USDA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 1 (July 21, 2003) (obsolete March 3, 2005).

²⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

²⁶ There is no definition for "final decision on which the claimant prevailed." USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

a. Track A Claim

For a Track A claim, this could mean an initial decision on the claim by the Adjudicator, a decision by the Monitor, or a decision by the Adjudicator on reexamination.

b. Track B Claim

For a Track B claim, this could mean an initial decision on the claim by the Arbitrator, a decision by the Monitor, or a decision by the Arbitrator on reexamination.

4. Must Submit Loan Request Before Deadline

USDA has issued a Notice explaining how it will implement the deadlines for injunctive relief. The deadline for light-most-favorable injunctive relief applies to a loan request.²⁷ In other words, the loan request must be submitted by the deadline. USDA rules do not say that a loan application must be complete by the deadline.

5. Incomplete Applications

According to USDA regulations, if a loan application is filed but the application remains incomplete for a certain period of time, USDA may withdraw the application. At that point, that application will no longer be considered. In such a case, a prevailing class member may have also used up one of his or her chances for priority consideration.

F. Written Request Not Required

Light-most-favorable injunctive relief does not require a request from the claimant. It should be applied automatically.²⁸ In order to make sure USDA applies this part of injunctive relief, however, claimants may want to include a written request with any application that states that the applicant prevailed on a claim in the *Pigford* lawsuit and that the applicant requests consideration with the most favorable light and most favorable terms.

G. Heirs, Entities, and Assignment

An FSA Notice explains how FSA will handle injunctive relief when it concerns the heirs of a claimant, if the claimant is part of an entity, or if the claimant seeks to assign the right of injunctive relief. The following three sections explain how FSA will handle these questions.

²⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

²⁸ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2-3 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2-3 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

1. No Heir Right to Injunctive Relief

If the claimant has died, the right to injunctive relief does not pass on to the claimant's heirs.²⁹

2. Injunctive Relief Cannot Be Assigned

A claimant may not assign his or her right to injunctive relief to another person.³⁰ An example of assignment would be if a prevailing claimant sought to give his or her right to injunctive relief to someone else.

3. Entities Possible

It is possible that an entity—such as a corporation or a partnership—could use the right of injunctive relief held by one of its members.³¹

IV. Priority Consideration for Inventory Property — But Purchase Not Automatic

Prevailing claimants receive priority consideration for the purchase, lease, or acquisition of USDA inventory property.³² Several important points can be drawn from this aspect of injunctive relief.

A. Credit Claim Only

Priority consideration for inventory property is available only to prevailing claimants with credit claims.³³

B. Priority Consideration

Prevailing claimants receive priority consideration for inventory property.³⁴ Priority consideration is not defined in the Consent Decree. The Consent Decree does say, however, that the priority consideration for inventory property is allowed to the extent permitted by law.

²⁹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007). Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to most favorable light injunctive relief.

³⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007). Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to most favorable light injunctive relief.

³¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007). USDA says that it will make this determination on a case by case basis, but has not explained what factors will be taken into account in making this decision. Although FSA's Notice is not completely clear on this point, it seems that this restriction applies to light-most-favorable injunctive relief.

³² Consent Decree ¶ 11(a).

³³ See Consent Decree ¶¶ 9(a)(iii)(D), 9(b)(iii)(B), 10(g)(iii); USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

³⁴ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

According to federal law, beginning farmers get the first chance to buy inventory property. If a prevailing claimant qualifies as a beginning farmer, he or she gets priority over other beginning farmers.³⁵ If the claimant is not a beginning farmer, her or she does not get priority over other beginning farmers. Claimants who are not beginning farmers do get priority, however, over other buyers who are not beginning farmers.

In general, inventory property may be bought at its appraised value. If there are no purchasers, the property is put up for a public bid.

C. One-Time Basis

Priority consideration for inventory property is available on a one-time basis.³⁶ This means, for example, that if a prevailing claimant buys a piece of inventory land using the priority consideration, he or she may not use the priority to buy inventory property a second time.

If a prevailing claimant has bought a piece of inventory land, the claimant can always buy more inventory property, but he or she may not use the priority consideration twice. Similarly, the claimant could buy inventory property without using the priority consideration and then later use the priority for an inventory purchase.

If the prevailing claimant uses the priority consideration but fails to get the inventory property, he or she does not get priority consideration again.

D. Purchase, Lease, or Acquisition

Priority consideration is for the purchase, lease, or other acquisition of inventory property. Although much inventory property is sold, in some cases the land is leased out to farmers.

E. Five-Year Availability — and USDA Extensions

The timing of the availability for priority-consideration injunctive relief can be confusing.

1. Original Deadline — April 14, 2004

In the Consent Decree, priority consideration for inventory property was set to be available for every application a prevailing claimant submits within five years of the date of the Court's Consent Decree order.³⁷ The order went into effect on April 14, 1999. Therefore, originally, the priority consideration for inventory property would have been effective through April 14, 2004.³⁸

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

USDA has made two changes to the deadline that have extended the availability of priority consideration for inventory property.

³⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 6 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

³⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

³⁷ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

³⁸ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

- First, in 2003, USDA announced that it had decided to extend the availability of injunctive relief to April 14, 2005.³⁹
- Second, in 2005, USDA announced that each prevailing claimant will have at least one year from the date of his or her final decision date on which he or she prevailed to use priority consideration for inventory property.⁴⁰

In other words, the deadline for using inventory property priority consideration is either April 14, 2005, or one year after the claimant's final decision—whichever is later.

3. Defining Final Decision

For many class members, the deadline for using light-most-favorable injunctive relief hinges on when the class member received a final decision on his or her claim. For this purpose, the date of the final decision is the date on which the prevailing class member completed the Consent Decree claims process. The Consent Decree claims process includes the Monitor petition process and the Adjudicator and Arbitrator reexamination processes.

a. Track A Claim

For a Track A claim, final decision could mean an initial decision on the claim by the Adjudicator, a decision by the Monitor, or a decision by the Adjudicator on reexamination.

b. Track B Claim

For a Track B claim, final decision could be an initial decision on the claim by the Arbitrator, a decision by the Monitor, or a decision by the Arbitrator on reexamination.

4. Must Exercise Before Deadline

A prevailing claimant must exercise his or her right to priority consideration for inventory property before the deadline.⁴¹ Exercising, for this purpose, has not been defined by USDA.

³⁹ USDA Announces Extension for Farmers in the *Pigford* Consent Decree to Seek Priority Consideration on New Loans, USDA News Release No. 0017.03 (January 16, 2003) (see <http://www.usda.gov/documents/NewsReleases/2003/01/0017.doc>). See, as well, USDA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 1 (July 21, 2003) (obsolete March 3, 2005).

⁴⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

⁴¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

F. Information and Assistance

USDA rules say that the local office should keep information on inventory properties and give prevailing claimants who request it lists of inventory properties in the state.⁴²

In addition, USDA employees must offer prevailing claimants help in completing the paperwork needed to bid on inventory property, and must provide the help if the claimant asks for it.⁴³

G. Notification in Writing

In order to exercise the right for priority consideration for inventory property, the prevailing claimant must notify USDA in writing.⁴⁴ A handwritten request for priority consideration is acceptable.⁴⁵

H. Funds for Purchase

The right to priority consideration for acquiring inventory land does not—by itself—mean that the prevailing claimant will get a USDA loan with which to buy the land. A claimant may be able to use USDA loans for this purpose, but it is possible to acquire the inventory property without using USDA financing. In addition, regulations allow the combination of a sale of inventory property and a USDA loan to finance the sale.

I. Heirs, Entities, and Assignment

An FSA Notice explains how FSA will handle injunctive relief when it concerns the heirs of a claimant, if the claimant is part of an entity, or if the claimant seeks to assign the right of injunctive relief. The following three sections explain how FSA will handle these questions.

1. No Heir Right to Injunctive Relief

If the claimant has died, the right to injunctive relief does not pass on to the claimant's heirs.⁴⁶

⁴² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 6 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005).

⁴³ USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5, Exhibit 2, at 1 (March 3, 2005) (obsolete March 29, 2005).

⁴⁴ Consent Decree ¶ 11(b).

⁴⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (August 18, 2000) (expired June 1, 2001).

⁴⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

2. Injunctive Relief Cannot Be Assigned

A claimant may not assign his or her right to injunctive relief to another person.⁴⁷ An example of assignment would be if a prevailing claimant sought to give his or her right to injunctive relief to someone else.

3. Entities Possible

It is possible that an entity—such as a corporation or a partnership—could use the right of injunctive relief held by one of its members.⁴⁸

V. Priority Consideration for a Farm Ownership Loan

Under the Consent Decree, prevailing claimants receive priority consideration for one USDA direct farm ownership loan—known as an FO loan.⁴⁹

A. Prevailing Credit Claims Only

Priority consideration for a farm ownership loan is available only to prevailing claimants with credit claims.⁵⁰

B. Priority Consideration — But Loans Not Automatic

A prevailing claimant receives priority consideration for a farm ownership loan.⁵¹ Priority consideration means the application will be acted on prior to other applications on file. Priority consideration also means priority for funding when a loan is approved.⁵² Priority

⁴⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

⁴⁸ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007). USDA says that it will make this determination on a case-by-case basis, but it has not explained what factors will be taken into account in making this decision.

⁴⁹ Consent Decree ¶ 11(b). The Consent Decree states:

USDA will provide each claimant who prevails under ¶¶ 9(a) or 10 with priority consideration for one direct farm ownership loan . . . at any time up to five years after the date of this Order. A claimant must notify USDA in writing that he is exercising his right under this agreement to priority consideration in order to receive such consideration.

⁵⁰ See Consent Decree ¶¶ 9(a)(iii)(D), 9(b)(iii)(B), 10(g)(iii), 11; USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

⁵¹ Consent Decree ¶ 11(b).

⁵² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 6 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 3-4 (August 18, 2000) (expired June 1, 2001).

consideration does not, however, mean that the claimant will always get the loan. In general, claimants must meet regulatory requirements for loans.⁵³ USDA's regulations regarding eligibility for farm ownership loans are discussed in Chapter Three of this series.

C. One-Time Basis

Priority consideration for a direct farm ownership loan is available on a one-time basis.⁵⁴ Several possibilities are covered by this rule.

- First, if a claimant gets a farm ownership loan using the priority consideration, he or she may not use the farm ownership loan priority a second time.
- Second, if the claimant uses the priority consideration for a farm ownership loan but fails to get the loan, he or she does not get priority consideration for a farm ownership loan again.
- Third, the claimant who uses his or her priority consideration may, however, get more direct farm ownership loans without the priority consideration—he or she simply may not use the priority consideration more than once.
- Fourth, a claimant could use a priority consideration for a farm operating loan and still have the right to get a one-time priority for a farm ownership loan.

D. Withdrawal of Priority Consideration Request

Requests for priority consideration may be withdrawn.⁵⁵ This can happen in a couple of ways.

First, if the prevailing claimant withdraws his or her application for the loan, USDA will assume that the request for priority consideration was also withdrawn by the claimant.⁵⁶

⁵³ The central exception is connected to debt forgiven under the Consent Decree. See Consent Decree ¶¶ 9(a)(iii)(A), 10 (g)(ii).

⁵⁴ Consent Decree ¶ 11(b); USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

⁵⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁵⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3,

The prevailing claimant could, in such a case, request priority consideration again. If, however, USDA withdraws the application—for example, as a result of the claimant's failure to respond to a request from USDA for additional information—the priority consideration for that type of loan has been exercised and may not be used again.⁵⁷

Second, a prevailing claimant may withdraw a request for priority consideration at any time until the loan application on which the priority consideration was requested is determined to be complete.⁵⁸ In this case, the application remains on file but will not receive priority consideration. Once an application is complete, the applicant has received priority consideration in a loan processing and may not withdraw the request for priority consideration.⁵⁹

E. One-Time Basis Includes Denial

The one-time chance for farm ownership loan priority consideration is used even if the loan application results in a denial.⁶⁰

F. For Direct Farm Ownership Loans

Priority consideration is for USDA direct farm ownership loans. It does not apply to USDA guaranteed farm ownership loans. In a direct loan, USDA is the lender; in a guaranteed loan, a private lender makes the loan and USDA guarantees the loan.

2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁵⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁵⁸ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁵⁹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁶⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007);

G. Five-Year Availability — and USDA Extensions

The timing of the availability of priority consideration for farm ownership loans can be confusing.

1. Original Deadline — April 14, 2005

In the Consent Decree, priority consideration for farm ownership loans was set to be available for five years of the date of the Court's Consent Decree order.⁶¹ The order went into effect on April 14, 1999. Therefore, originally, the priority consideration for farm ownership loans would have been effective through April 14, 2004.⁶²

2. Extensions to the Deadline

USDA has made two changes to the deadline that have extended the availability of priority consideration for a farm ownership loan.

- First, in 2003, USDA announced that it had decided to extend the availability of priority consideration to April 14, 2005.⁶³
- Second, in 2005, USDA announced that each prevailing claimant will have at least one year from the date of his or her final decision date on which he or she prevailed to exercise priority consideration for a farm ownership loan.⁶⁴

In other words, the deadline for exercising priority consideration for a farm ownership loan is either April 14, 2005, or one year after the claimant's final decision—whichever is later.

3. Must Exercise Loan Right Before Deadline

A prevailing claimant must exercise his or her right to priority consideration for a farm ownership loan before the injunctive relief deadline.⁶⁵

FSA has issued a Notice that explains how it will implement this part of the Consent Decree. The following sections describe how FSA will view efforts to exercise priority consideration.

a. Request for Priority Consideration But No Application — No Effect

If a prevailing claimant submits a request for priority consideration for a farm ownership loan but does not have an application with FSA for a farm ownership

⁶¹ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

⁶² Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

⁶³ USDA Announces Extension for Farmers in the *Pigford* Consent Decree to Seek Priority Consideration on New Loans, USDA News Release No. 0017.03 (January 16, 2003) (see <http://www.usda.gov/documents/NewsReleases/2003/01/0017.doc>). See, as well, USDA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 1 (July 21, 2003) (obsolete March 3, 2005).

⁶⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

⁶⁵ USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

loan, FSA will not use the priority request on a loan application that is filed after the injunctive relief deadline.⁶⁶ In other words, a prevailing claimant may not preserve priority consideration for a farm ownership loan by filing a request for priority consideration now and waiting until after the injunctive relief deadline to file an application for a farm ownership loan.

b. Priority Consideration Is for a Specific Loan Request

Prevailing claimants receive priority consideration for a specific loan request.⁶⁷ FSA will not accept a priority consideration request for a farm ownership loan unless the claimant already has a farm ownership loan request pending, or the priority consideration request is submitted at the same time as a signed application for a farm ownership loan. FSA rules do not say whether the loan application must be complete at the same time—they only say that the application must be turned in and must be signed.

c. Incomplete Applications

FSA must accept any application for a loan.⁶⁸ If the application is not complete and is not completed with a certain amount of time, the application will be withdrawn by FSA. At that point, the application will no longer be considered by FSA. In addition, the prevailing class member may have used up his or her chance for operating loan priority consideration.

H. Notification in Writing

In order to exercise the right for priority consideration for a farm ownership loan, the claimant must notify USDA in writing.⁶⁹ USDA has provided a form that can be used to notify the agency that an applicant wants priority consideration.⁷⁰ This form is not required,

⁶⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

⁶⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

⁶⁸ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

⁶⁹ Consent Decree ¶ 11(b).

⁷⁰ See USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (August 18, 2000) (expired June 1, 2001).

however. A handwritten letter that states what is being requested—priority for a farm ownership loan—is acceptable under the terms of the Consent Decree.⁷¹

I. USDA Rules for Considering Applications

According to USDA, applications in which priority consideration has been requested will be handled as follows.

1. Take Action Immediately

USDA loan officials must immediately take action to process the priority application.⁷² USDA must do this even if there are other incomplete applications on file in the County Office.

2. Offer Assistance Within Five Days

USDA must offer technical assistance to the prevailing claimant by arranging a personal visit, if practicable, within five days of receiving written notice of the priority request.⁷³

3. Priority Over Other Applications

Within the local USDA office, work to complete priority consideration farm ownership loan applications must take priority over other applications already in the office.⁷⁴ This

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- ⁷¹ See USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (Oct. 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).
- ⁷² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 3 (August 18, 2000) (expired June 1, 2001).
- ⁷³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 3-4 (August 18, 2000) (expired June 1, 2001).
- ⁷⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003);

includes making appointments to complete paperwork, conducting an appraisal, or any other action that is needed to complete the priority consideration application.

4. Quick Communication

USDA must make every effort to avoid delays due to mail delivery when processing a priority consideration loan application.⁷⁵ When working with a prevailing claimant on a priority consideration farm ownership loan, therefore, USDA must communicate with the claimant by phone.⁷⁶ If the claimant wishes, USDA must instead communicate in writing.

5. Follow-up on Incomplete Applications

If a priority consideration loan application is not yet complete, and USDA has been waiting five business days for information from the prevailing claimant, USDA must take several actions to help make sure the application is completed.⁷⁷ First, on the next business day, USDA must contact the prevailing claimant by telephone to tell him or her that information needed for the application has not yet been received by USDA. Second, USDA must offer to help the claimant get information needed to complete the application.⁷⁸

6. Work on Outside Delays

In some cases, the delay in processing an application may be due to actions or services that are not performed by USDA employees. This might include, for example, an appraisal or an environmental assessment. In such a case, USDA must require that if the outside source has been asked to perform more than one service for USDA, the outside source should make the prevailing claimant's loan application the top priority.⁷⁹

USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

⁷⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

⁷⁶ Phone calls about applications must be confirmed in writing within three business days after the call. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

⁷⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

⁷⁸ The results of this call must be confirmed in writing to the claimant within three business days, and the USDA official must document the communication. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

⁷⁹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

7. Decision in Three Days

Once the application is complete, USDA will act on the prevailing claimant's application within three business days.⁸⁰ Completed priority consideration applications must receive a final decision from the local office before a decision is reached on any other application in the office.⁸¹

8. Priority Funding

Priority consideration applications receive priority for funding.⁸²

J. Heirs, Entities, and Assignment

An FSA Notice explains how FSA will handle injunctive relief when it concerns the heirs of a claimant, if the claimant is part of an entity, or if the claimant seeks to assign the right of injunctive relief. The following three sections explain how FSA will handle these questions.

1. No Heir Right to Injunctive Relief

If the claimant has died, the right to injunctive relief does not pass on to the claimant's heirs.⁸³

2. Injunctive Relief Cannot Be Assigned

A claimant may not assign his or her right to injunctive relief to another person.⁸⁴ An example of assignment would be if a prevailing claimant sought to give his or her right to injunctive relief to someone else.

⁸⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 5 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 5 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

⁸¹ If two complete priority consideration applications are waiting for a decision at the same time, USDA must first act on the one that was first received. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005).

⁸² Loans will be funded first with socially disadvantaged applicant (SDA) targeted funds. If the SDA allocation is not sufficient to immediately fund the loan, local officials are to contact the national office. When additional funding is available, the priority consideration loan application must receive the new funding before any other applications. USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 5 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 5 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

⁸³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

⁸⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

3. Entities Possible

It is possible that an entity—such as a corporation or a partnership—could use the right of injunctive relief held by one of its members.⁸⁵

VI. Priority Consideration for an Operating Loan

Prevailing claimants receive priority consideration for one USDA direct operating loan—known as an OL loan.⁸⁶

A. Prevailing Credit Claims Only

Priority consideration for a farm operating loan is available only to claimants with credit claims.⁸⁷

B. Priority Consideration — But Loans Not Automatic

A prevailing claimant receives priority consideration for a farm operating loan.⁸⁸ Priority consideration means the application will be acted upon prior to other applications on file. Priority consideration also means priority for funding when a loan is approved.⁸⁹ Priority consideration may not, however, always result in the claimant receiving a loan. In general, claimants must meet regulatory requirements for loans.⁹⁰ USDA's regulations regarding eligibility for farm operating loans are discussed in Chapter Three of this series.

⁸⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007). USDA says that it will make this determination on a case-by-case basis, but it has not explained what factors will be taken into account in making this decision.

⁸⁶ Consent Decree ¶ 11(b). The Consent Decree states:

USDA will provide each member who prevails under ¶ 9(a) or 10 with priority consideration for one . . . farm operating loan at any time up to five years after the date of this Order. A claimant must notify USDA in writing that he is exercising his right under this agreement to priority consideration in order to receive such consideration.

⁸⁷ See Consent Decree ¶¶ 9(a)(iii)(D), 10(g)(iii), 11; USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 3 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 3 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

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⁹⁰ The central exception is connected to debt forgiven under the Consent Decree. See Consent Decree ¶¶ 9(a)(iii)(A), 10(g)(ii).

C. One-Time Basis

Priority consideration for a direct operating loan is available on a one-time basis.⁹¹ Several possibilities are covered by this rule.

- First, if a claimant gets an operating loan using the priority consideration, he or she may not use the operating loan priority a second time.
- Second, if the claimant uses the priority consideration for an operating loan but fails to get the loan, he or she does not get priority consideration for an operating loan again.
- Third, the claimant who uses his or her priority consideration may, however, get more direct operating loans without the priority consideration—he or she simply may not use the priority consideration more than once.
- Fourth, a claimant could use a priority consideration for a farm ownership loan and still have the right to get a one-time priority for an operating loan.

D. Withdrawal of Priority Consideration Request

Requests for priority consideration may be withdrawn.⁹² This can happen in a couple of ways.

First, if the prevailing claimant withdraws his or her application for the loan, USDA will assume that the request for priority consideration was also withdrawn by the claimant.⁹³

The claimant could, in such a case, request priority consideration again. If, however the agency withdraws the application—for example, as a result of the claimant's failure to

⁹¹ Consent Decree ¶ 11(b); USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 2 (August 18, 2000) (expired June 1, 2001).

⁹² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁹³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

respond to a request from USDA for additional information—the priority consideration for that type of loan has been exercised and may not be used again.⁹⁴

Second, an applicant may withdraw a request for priority consideration at any time until the loan application on which the priority consideration was requested is determined to be complete.⁹⁵ In this case, the application remains on file but will not receive priority consideration. Once an application is complete, however, the applicant has received priority consideration in a loan processing and may not withdraw the request for priority consideration.⁹⁶

E. One-Time Basis Includes Denial

The one-time chance for operating loan priority consideration is used even if the loan application results in a denial.⁹⁷

F. For Direct Operating Loans

Priority consideration is for USDA direct operating loans. It does not apply to USDA guaranteed operating loans. In a direct loan USDA is the lender; in a guaranteed loan, a private lender makes the loan and USDA guarantees the loan.

G. Five-Year Availability — and USDA Extensions

The timing of the availability of priority consideration for operating loans can be confusing.

⁹⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁹⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁹⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

⁹⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007).

1. Original Deadline — April 14, 2005

In the Consent Decree, priority consideration for operating loans was set to be available for five years of the date of the Court's Consent Decree order.⁹⁸ The order went into effect on April 14, 1999. Therefore, originally, the priority consideration for operating loans would have been effective through April 14, 2004.⁹⁹

2. Extensions to the Deadline

USDA has made two changes to the deadline that have extended the availability of priority consideration for an operating loan.

- First, in 2003, USDA announced that it had decided to extend the availability of priority consideration to April 14, 2005.¹⁰⁰
- Second, in 2005, USDA announced that each prevailing claimant will have at least one year from the date of his or her final decision date on which he or she prevailed to exercise priority consideration for an operating loan.¹⁰¹

In other words, the deadline for exercising priority consideration for an operating loan is either April 14, 2005, or one year after the claimant's final decision—whichever is later.

3. Must Exercise Loan Right Before Deadline

A prevailing claimant must exercise his or her right to priority consideration for an operating loan before the injunctive relief deadline.¹⁰²

FSA has issued a Notice that explains how it will implement this part of the Consent Decree. The following sections describe how FSA will view efforts to exercise priority consideration.

a. Request for Priority Consideration But No Application — No Effect

If a prevailing claimant submits a request for priority consideration for an operating loan but does not have an application with FSA for an operating loan, FSA will not use the priority request on a loan application that is filed after the injunctive relief deadline.¹⁰³ In other words, a prevailing claimant may not

⁹⁸ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

⁹⁹ Consent Decree ¶¶ 11(a), 9(a)(iii)(D), 10(g)(iii).

¹⁰⁰ USDA Announces Extension for Farmers in the *Pigford* Consent Decree to Seek Priority Consideration on New Loans, USDA News Release No. 0017.03 (January 16, 2003) (see <http://www.usda.gov/documents/NewsReleases/2003/01/0017.doc>). See, as well, USDA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 1 (July 21, 2003) (obsolete March 3, 2005).

¹⁰¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

¹⁰² USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 2 (March 3, 2005) (obsolete March 29, 2005).

¹⁰³ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

preserve priority consideration for an operating loan by filing a request for priority consideration now and waiting until after the injunctive relief deadline to file an application for an operating loan.

b. Priority Consideration Is for a Specific Loan Request

Prevailing claimants receive priority consideration for a specific loan request.¹⁰⁴ FSA will not accept a priority consideration request for an operating loan unless the claimant already has an operating loan request pending, or the priority consideration request is submitted at the same time as a signed application for an operating loan. FSA rules do not say whether the loan application must be complete at the same time—they only say that the application must be turned in and must be signed.

c. Incomplete Applications

FSA must accept any application for a loan.¹⁰⁵ If the application is not complete and is not completed with a certain amount of time, the application will be withdrawn by FSA. At that point, the application will no longer be considered by FSA. In addition, the prevailing class member may have used up his or her chance for operating loan priority consideration.

H. Notification in Writing

In order to exercise the right for priority consideration for an operating loan, the claimant must notify USDA in writing.¹⁰⁶ USDA has provided a form that can be used to notify the agency that an applicant wants priority consideration.¹⁰⁷ This form is not required, however. A handwritten letter that states what is being requested—priority for an operating loan—is acceptable under the terms of the Consent Decree.¹⁰⁸ Withdrawal must also be in writing.

¹⁰⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

¹⁰⁵ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007).

¹⁰⁶ Consent Decree ¶ 11(b).

¹⁰⁷ See USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 2 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 2, Notification of Exercise of Priority Consideration under Consent Decree (August 18, 2000) (expired June 1, 2001).

¹⁰⁸ See USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, Exhibit 1,

I. USDA Considering Applications

According to USDA, applications in which priority consideration has been requested will be handled as follows.

1. Take Action Immediately

USDA loan officials must immediately take action to process the priority application. USDA must do this even if there are other incomplete applications on file in the local office.¹⁰⁹

2. Offer Assistance Within Five Days

USDA must offer technical assistance to the applicant by arranging a personal visit, if practicable, within five days of receiving written notice of the priority request.¹¹⁰

3. Priority Over Other Applications

Within the local USDA office, work to complete a priority consideration application must take priority over other applications already in the office.¹¹¹ This includes making appointments to complete paperwork, conducting an appraisal, or any other action that is needed to complete the priority consideration application.

at 1 (Oct. 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (August 18, 2000) (expired June 1, 2001).

¹⁰⁹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 3 (August 18, 2000) (expired June 1, 2001).

¹¹⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 3-4 (August 18, 2000) (expired June 1, 2001).

¹¹¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 4 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 4 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

4. Quick Communication

USDA must make every effort to avoid delays due to mail delivery when processing a priority consideration loan application.¹¹² When working with a prevailing claimant on a priority consideration loan, therefore, USDA must communicate with the claimant by phone.¹¹³ If the claimant wishes, USDA must instead communicate in writing.

5. Follow-up on Incomplete Applications

If a priority consideration loan application is not yet complete and USDA has been waiting five business days for information from the prevailing claimant, USDA must take several actions to help make sure the application is completed.¹¹⁴ First, on the next business day, USDA must contact the prevailing claimant by telephone to tell him or her that information needed for the application has not yet been received by USDA. Second, USDA must offer to help the claimant get information needed to complete the application.¹¹⁵

6. Work on Outside Delays

In some cases, the delay in processing an application may be due to actions or services that are not performed by USDA employees. This might include, for example, an appraisal or an environmental assessment. In such a case, USDA must require that if the outside source has been asked to perform more than one service for USDA, the outside source should make the prevailing claimant's loan application the top priority.¹¹⁶

¹¹² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

¹¹³ Phone calls about applications must be confirmed in writing within three business days after the call. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

¹¹⁴ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

¹¹⁵ The results of this call must be confirmed in writing to the claimant within three business days, and the USDA official must document the communication. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

¹¹⁶ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 4 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 4 (March 3, 2005) (obsolete March 29, 2005).

7. Decision in Three Days

Once the application is complete, USDA will act on the prevailing claimant's application within three business days.¹¹⁷ Completed priority consideration applications must receive a final decision from the local office before a decision is reached on any other application in the office.¹¹⁸

8. Priority Funding

Priority consideration applications receive priority for funding.¹¹⁹

J. Heirs, Entities, and Assignment

An FSA Notice explains how FSA will handle injunctive relief when it concerns the heirs of a claimant, if the claimant is part of an entity, or if the claimant seeks to assign the right of injunctive relief. The following three sections explain how FSA will handle these questions.

1. No Heir Right to Injunctive Relief

If the claimant has died, the right to injunctive relief does not pass on to the claimant's heirs.¹²⁰

2. Injunctive Relief Cannot Be Assigned

A claimant may not assign his or her right to injunctive relief to another person.¹²¹ An example of assignment would be if a prevailing claimant sought to give his or her right to injunctive relief to someone else.

¹¹⁷ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 5 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 5 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

¹¹⁸ If two complete priority consideration applications are waiting for a decision at the same time, USDA must first act on the one that was first received. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 5 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005).

¹¹⁹ Loans will be funded first with socially disadvantaged applicant (SDA) targeted funds. If the SDA allocation is not sufficient to immediately fund the loan, local officials are to contact the national office. When additional funding is available, the priority consideration loan application must receive the new funding before any other applications. USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, at 6 (March 29, 2005) (set to expire June 1, 2007); USDA FSA Notice FLP-381, Priority Consideration for Prevailing Claimants, at 5 (March 3, 2005) (obsolete March 29, 2005); USDA FSA Notice FLP-313, Priority Consideration for Prevailing Claimants, at 5 (July 21, 2003) (obsolete March 3, 2005); USDA FSA Notice FLP-225, Priority Consideration for Prevailing Claimants, at 5 (October 18, 2001) (obsolete July 21, 2003); USDA FSA Notice FLP-151, Priority Consideration for Prevailing Claimants, at 4 (August 18, 2000) (expired June 1, 2001).

¹²⁰ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

3. Entities Possible

It is possible that an entity—such as a corporation or a partnership—could use the right of injunctive relief held by one of its members.¹²²

¹²¹ USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 1 (March 29, 2005) (set to expire June 1, 2007).

¹²² USDA FSA Notice FLP-385, Priority Consideration for Prevailing Claimants, Exhibit 1, at 2 (March 29, 2005) (set to expire June 1, 2007). USDA says that it will make this determination on a case-by-case basis, but it has not explained what factors will be taken into account in making this decision.