

SUPPLEMENTAL NOTICE RE: KEEPSEAGLE V. VILSACK

You are receiving this notice either because you were previously sent notice of the settlement of this case or because you made a claim in connection with this settlement. Please read this notice carefully. There are funds paid in settlement of this case that remain undistributed. This notice is to inform you that the Court is inviting input from Class Members on how those funds should be distributed and to let you know how and when you can provide that input.

Please note: As described in greater detail below, this concerns a revised proposal, different from the one described in the May 2015 notice. The revised proposal provides each Prevailing Claimant a supplemental payment of \$18,500 directly and \$2,775 paid to the IRS on their behalf, for a total supplemental award of \$21,275, with the balance of the funds being directed to nonprofit organizations to provide assistance designed to further Native American farming or ranching activities.

What is the Keepseagle case about? Who is in the Class?

The Keepseagle case claimed the USDA discriminated against Native Americans who applied for or tried to apply for farm loans or loan servicing. USDA denied the claims of discrimination.

The Class *includes* all Native American farmers and ranchers who:

- Farmed or ranched or attempted to farm or ranch between January 1, 1981 and November 24, 1999;
- Tried to get a farm loan or loan servicing from the USDA during that period; and
- Complained about discrimination to the USDA either on their own or through a representative during the time period.

The Class *does not include* individuals who:

- Experienced discrimination only between January 1 and November 23, 1997; or
- Complained of discrimination only between July 1 and November 23, 1997.

What happened in the case?

After more than a decade of litigation, the Parties reached a settlement in October 2010, which was publicized and then approved by the Court in April 2011. The settlement included programmatic relief, debt relief, and a claims process with two tracks (Track A, with payments of \$50,000 plus tax relief and Track B with payments capped at \$250,000). Notice of this claims process was issued, and meetings with Class Members who wished to file claims were held from May to December 2011. The deadline for submitting claims was December 27, 2011. A Court-appointed neutral determined which claims to grant and which to deny. Claimants were notified of the rulings, and checks were mailed to successful Claimants in 2012. Of the \$680 million paid to settle this case, approximately \$380 million remains undistributed.

What does the current agreement say about how the remaining funds are to be distributed?

The Settlement Agreement approved by the Court requires that the remaining funds be given to nonprofit organizations, other than a law firm, legal services entity, or educational institution, that have provided agricultural, business assistance, or advocacy services to Native American farmers between 1981 and November 1, 2010. The Settlement Agreement requires all funds to be distributed at one time in equal shares to organizations that were proposed by Class Counsel and approved by the Court.

What other options are available for distributing the remaining funds?

As described in the notice circulated in May 2015, there were competing proposals regarding distribution of the remaining funds, which required modification of the Settlement Agreement. In an opinion issued July 27, 2015, the Court rejected both proposals. Following that ruling, the Parties engaged in further discussion and have submitted a new compromise proposal to the Court. The Settlement Agreement requires that changes to its terms, such as those governing how to distribute the remaining settlement funds, must be agreed to by the Parties and approved by the Court.

The new proposal is a combination of the two prior proposals. First, each Prevailing Claimant would be paid \$18,500 directly and \$2,775 would be paid to the IRS on their behalf, for a total supplemental award of \$21,275. Next, remaining funds, including the interest earned (minus expenses and some money going to several of the named Plaintiffs as Class Representative service awards) would be distributed to help Native American farmers and ranchers through grants to nonprofit organizations, as the current agreement provides. But, the Agreement would be changed in the following ways: (1) Most of the unclaimed funds would be placed in a Trust that could disburse the funds over a 20-year period, rather than immediately; (2) Decisions on how to distribute the funds would be made by a board comprised of 14 Native American leaders with experience in agriculture, Native American issues, financial issues, and grantmaking, rather than by Class Counsel; (3) Recipients of grants from the settlement funds would be expanded to include certain educational institutions, tribal-sponsored organizations, and community development financial institutions; (4) The funds could be distributed to new nonprofit organizations serving Native American farmers and ranchers, not just to previously existing organizations; and (5) \$38 million would be distributed more quickly to the same types of organizations (so long as they existed prior to November 1, 2010) based on recommendations from Class Counsel that are approved by the Court.

Organizations receiving funds would be required to use the funds to provide business assistance, agricultural education, technical support, or advocacy services to Native American farmers and ranchers, including those seeking to become farmers or ranchers, to support and promote their continued engagement in agriculture.

The people nominated to head the Trust at the outset, whose appointment must be approved by the Court, are:

Name	Tribal Affiliation	Professional Affiliation	State of Residence
Sherry Black	Oglala Lakota	Senior Advisor for Partnership for Tribal Governance, National Congress of American Indians	Virginia
Charles Graham	Lumbee	State Representative, North Carolina General Assembly	North Carolina
Pat Gwin	Cherokee Nation	Director of the Cherokee Nation Seed Bank and Native Plant Center at the Cherokee Nation, sheep farmer	Oklahoma
Dr. Joseph Hiller	Oglala Sioux	Professor Emeritus, University of Arizona (College of Agriculture and Life Sciences), rancher	Nebraska
H. Porter Holder	Choctaw	Rancher, Vice Chair of Council on Native American Farming and Ranching	Oklahoma
Marilyn Keepseagle	Standing Rock Sioux	Rancher, lead plaintiff in <i>Keepseagle v. Vilsack</i>	North Dakota
Jim Laducer	Turtle Mountain Chippewa	Director, majority owner of Turtle Mountain State Bank	North Dakota
Paul Lumley	Yakama	Executive Director, Columbia River Inter-Tribal Fish Commission	Washington state
Claryca Mandan	MHA, Three Affiliated Tribes	Former Natural Resources Director, MHA, rancher	North Dakota
Elsie Meeks	Oglala Sioux	Former South Dakota State Director of USDA Rural Development, rancher	South Dakota
Monica Nuvamsa	Hopi	Executive Director, The Hopi Foundation	Arizona
Ross Racine	Blackfeet	Executive Director, Intertribal Agricultural Council	Montana
Michael Roberts	Tlingit	Executive Director, First Nations Development Institute	Colorado
Rick Williams	Oglala Lakota	Consultant to American Indian nonprofit organizations, recently retired from American Indian College Fund	Colorado

In addition, Plaintiffs nominate as initial Executive Director of the Trust Janie Hipp, a member of the Chickasaw tribe and Director of the Indigenous Food and Agriculture Initiative at the University of Arkansas School of Law.

The Class, USDA, and Marilyn Keepseagle have agreed to this compromise. The Court must still approve this option before it can be put into place and the funds distributed as proposed.

What happens next?

Class Counsel filed a motion asking the Court to approve the new proposal.

What the Court has ordered: The Court has scheduled a hearing for **February 4, 2016**, beginning at 10 a.m. EDT, to hear from the Parties and others with an interest in how the remaining settlement funds should be distributed. The hearing will be held in Courtroom 24A of the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001. If you submit your comments in writing (*see below*), the Court will consider your views even if you do not attend the hearing. If you attend the hearing, you will be provided a brief opportunity to speak to the Court.

How can I get more information?

The website www.indianfarmclass.com has copies of all the main court filings and additional information about this issue.

How can I share my views?

If you want to share your views about how the remaining settlement funds should be used, you may submit them in writing, addressed to the Court, with a postmark date no later than **January 20, 2016**.

Comments should be addressed to:

Chambers of the Honorable Emmet G. Sullivan
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, D.C. 20001

PLEASE DO NOT SUBMIT ANY NEW CLAIMS.