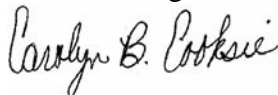


For: State and County Offices

Servicing of *Pigford* Claimants and National Office FLP Programmatic Review

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The *Pigford v. Johanns* class action lawsuit has affected how FSA services delinquent FLP loan accounts. This notice continues guidance established in previous FLP notices (most recently Notice FLP-371).

B Purpose

This notice:

- provides guidance on:
 - servicing *Pigford* claimants whose claims have recently been closed and who are delinquent on their FLP debt
 - sending new 1951-S loan servicing notices to delinquent *Pigford* claimants with recently closed claims whose accounts have **not** been accelerated
 - selling inventory property that was previously owned by a claimant.

C Contact

County Offices shall contact the State Office with any questions. State Offices shall contact:

- James Rowe, LSPMD, at 202-720-4572, for questions about this notice and the review process
- Polly Anderson, LSPMD, at 202-720-2558, for questions about the notification of final decisions
- Craig Nehls, LSPMD, at 202-720-0628, for inventory property issues.

| Disposal Date | Distribution |
|---------------|--|
| April 1, 2008 | State Offices; State Offices relay to County Offices |

2 Servicing Actions for Closed *Pigford* Claims

A Identifying Closed *Pigford* Claims

A claim is considered closed when a final decision has been issued. A final decision on a claim occurs in any of the following circumstances:

- the adjudicator issues a decision and the claimant does not request a Monitor review within the 120-calendar-day specified time frame
- the adjudicator issues a decision on the claim, the claimant requests a Monitor review, and the Monitor issues a decision not to refer the claim to the adjudicator for re-examination
- the adjudicator issues a decision on the claim, the claimant requests a Monitor review, the Monitor issues a decision to refer the claim to the adjudicator for re-examination and the adjudicator issues a new decision on the claim.

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2 Servicing Actions for Closed *Pigford* Claims (Continued)

B County Office Action

Upon receiving notification that the claim of a delinquent *Pigford* claimant has been closed, the County Office will service the account according to the following procedure.

- **Pre-acceleration cases.**

- **For borrowers with no pending servicing request whose accounts are ready for acceleration,** send a new notification of the availability of loan servicing in accordance with FmHA Instruction 1951-S, section 1951.907. The decision on the *Pigford* claim may have improved borrowers' financial condition and could affect their ability to qualify for FSA assistance.
- **For delinquent borrowers whose 1951-S servicing has not been concluded,** contact the borrowers to determine whether they want to continue with the existing 1951-S loan servicing application or receive a new notification of the availability of 1951-S loan servicing. The guide letter in Exhibit 1 will be used to contact these borrowers.
- **For borrowers** who do **not** return Exhibit 1 within 15 calendar days, continue processing the pending application.

Note: If the borrower has a NAD appeal pending and the County Office does **not** receive notification of a new hearing date within 45 calendar days of sending Exhibit 1, notify NAD that:

- the borrower's *Pigford* claim is closed
 - FSA requests that NAD continue the appeal.
- **For borrowers who return Exhibit 1, begin the loan servicing process again** by sending a new notification of the availability of loan servicing according to FmHA Instruction 1951-S, section 1951.907.

Note: After all 1951-S servicing rights have been concluded and before acceleration of any *Pigford* claimant, submit the borrower's case file with a completed FSA-580 and FSA-581 to the State Office requesting National Office review. These accounts must be reviewed by the State Civil Rights Review Group before acceleration and submission to the National Office.

- **Pre-foreclosure cases.**

For cases that have been accelerated, except cases held by the Department of Justice, submit the borrower's case file with a completed FSA-580 and FSA-581 to the State Office, requesting National Office review.

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2 Servicing Actions for Closed *Pigford* Claims (Continued)

C State Office Action

State Offices shall:

- prepare a cover letter requesting National Office review and consent to proceed with acceleration and/or foreclosure
- forward the case file and cover letter to the National Office, with completed FSA-580 and FSA-581
- send the case file using Federal Express to:

USDA/FSA/DAFLP/LSPMD
1250 MARYLAND AVE SW SUITE 500
WASHINGTON DC 20024
202-690-6834.

D National Office Action

The National Office shall:

- review the case file for regulatory compliance to ensure that all servicing and appeal rights were properly administered before further consideration of acceleration and/or foreclosure
- provide written guidance to the State Office for each case after completing the review.

3 Servicing Actions for Pending *Pigford* Claims

A Acceleration and Foreclosure

Until individual claims are closed through the court-ordered Consent Decree process, the policy of not accelerating or foreclosing against claimants remains in effect. Do **not** take acceleration or foreclosure action until a claim has been closed and the National Office review has been conducted according to subparagraph 2 D.

SED's must receive National Office concurrence on a case-by-case basis before accelerating loans and foreclosing on security that belongs to African American farmers who are not currently claimants under the Consent Decree but may have a late claim affidavit pending with the Arbitrator.

Note: Where there is potential fraud in borrowers' loan relationships with FSA, for example, conversion, the cases would generally be referred to OIG with copies to OGC. In cases where the borrowers are claimants, continue to refer the particulars of the situations to OIG with copies to OGC, including any applicable information about the claimant's status under the Consent Decree.

B Inventory Property

The policy of not selling inventory property formerly owned by claimants that was acquired through foreclosure remains in effect. If the property was not acquired through foreclosure, SED's shall request and receive National Office concurrence on a case-by-case basis before advertising and again before selling inventory property previously owned by a claimant.

Further guidance will be provided when concurrence is no longer necessary for the sale of inventory property.

C Appeal Hearing Pending

A claimant may have an appeal hearing in suspension pending closure of their claim. When FSA is notified that the claim has been closed, FSA should notify the Appeal Hearing Officer of the name of the claimant and whether the claimant prevailed or was denied. For prevailing claimants also provide the type of relief awarded by the adjudicator, such as cash, return of offset, loan cancellation, etc., and the amount of the relief.

Guide Letter for Borrowers in *Pigford v. Johanns* Class Action

[Claimant Name]
[Claimant Address]

Claim #: [Claim #]

Dear [Claimant]:

The Farm Service Agency (FSA) has been informed that your claim under *Pigford v. Johanns* has been closed. Unfortunately your closed *Pigford* claim did not cure your FSA delinquent loan accounts.

Please insert the applicable paragraph.

FSA will promptly make a decision on your pending loan servicing application once it has all the information. However, if you prefer, you may request a new loan servicing application and close the existing application. If you wish to receive a new “Notice of Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers” with attachments, you must sign, date, and return this letter to your local office within 15 calendar days. If FSA does not hear from you within the 15 calendar days, it will make a decision on your pending servicing application. Please note that even if FSA will be processing the pending servicing application, it may need to request updated financial information from you.

FSA’s decision to deny loan servicing has not been finalized. You requested an appeal from the National Appeals Division (NAD) and the appeal is pending. We will be contacting NAD and requesting that it resume the appeal. However, if you prefer, you may request a new loan servicing application and close the existing application. If you wish to receive a new “Notice of Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers” with attachments, you must sign, date, and return this letter to your local office within 15 calendar days. Please note that even if FSA will be processing the pending servicing application, it may need to request updated financial information from you.

Guide Letter for Borrowers in *Pigford v. Johanns* Class Action (Continued)

If you have any questions, please contact our office at *(telephone number)*.

Sincerely,

Farm Loan Manager

Borrower Action

I want to begin the loan servicing process again and I understand that my pending application will be withdrawn. Please close any current application for servicing and send me a new "Notice of Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers". If I have an appeal pending with the National Appeals Division (NAD), I will notify NAD immediately to withdraw my appeal.

Note: If you submit a new loan servicing application and FSA denies it, you will have the opportunity to request a new appeal.

Borrower's signature and date: _____