

# Monitor Update: Freeze on USDA Acceleration and Foreclosures

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Update 006

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**This is not a USDA publication.**

## Freeze on USDA Acceleration and Foreclosures

### 1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to “freeze” some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

### 2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

#### ***a. Acceleration***

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a \$100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA’s right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

***b. Foreclosure***

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

***c. Inventory property***

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

***d. Other USDA actions—not covered***

Other actions that USDA may take on the debt are not covered by the freeze.

**3. Who can benefit from the freeze?**

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

**4. For the freeze to apply, claimant must petition for Monitor review**

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

***a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000***

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

***b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision***

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

***c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.***

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

***d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision***

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

**5. When the freeze begins and ends**

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

**6. Freeze does not stop administrative offsets—but refunds possible**

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

## **7. After the freeze ends**

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

## **8. More information**

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.