UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

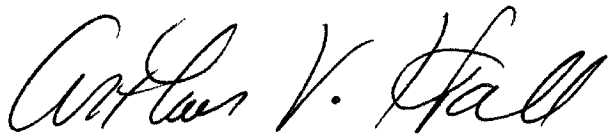
Notice FLP-197

1951-C

For: State and County Offices

Collecting Farm Loan Programs (FLP) Debt by Administrative Offset for *Pigford v. Glickman* Claimants

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A Background

FSA is required to pursue offset against delinquent borrowers according to 31 U.S.C. 3716(c)(6). Neither the *Pigford v. Glickman* Consent Decree (Consent Decree) nor the adjudicator decisions address the issue of offsets against claimants. Claimant status does not bar FSA from pursuing offset of Federal payments to delinquent borrowers. However, if a claimant prevailed on a credit claim, FSA determined it would refund any offsets taken between January 1, 1999, and the date of the adjudicator's decision.

In addition, section 845(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2001 (2001 Appropriations Act), enacted on October 28, 2000, requires that market loan assistance payments and loan deficiency payments (LDP's), which would otherwise be paid to a delinquent FSA borrower, be paid directly to FSA and credited on the delinquent borrower's account.

Note: See 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, which require delinquent borrower's tax refunds to be offset.

Continued on the next page

Disposal Date	Distribution
August 1, 2001	State Offices; State Offices relay to County Offices

1 Overview (Continued)

B
Purpose

This notice:

- renews policies in Notice FLP-145, which expired on February 1, 2001, regarding taking administrative offsets from delinquent claimants
- provides guidance for applying market loan assistance payments and LDP's to a delinquent claimant's account
- applies to delinquent claimants who:
  - have pending credit claims
  - prevailed on a credit claim
  - were denied on a credit claim.

C
Contact

If there are any questions about this notice, State Offices shall contact either of the following:

- Veldon Hall, Director, LSPMD, at 202-270-4572
- Polly Koehn at 202-720-2558.

2 Action

A Administrative Offset of Federal Payments

Administrative offset will be pursued against claimants who are delinquent and have a pending Consent Decree claim according to RD Instruction 1951-C, sections 1951.102 and 1951.103. If the claimant prevails, offsets taken between January 1, 1999, and the date of the adjudicator's decision will be refunded. However, if the claimant remains delinquent after the refund, future offsets will be taken after providing a new notice of the intent to offset by either RD Form Letter 1951-C-1 or 1951-C-2.

In cases in which claimants were denied and are delinquent, offsets will continue to be taken according to RD Instruction 1951-C, sections 1951.102 and 1951.103.

All Consent Decree claimants have the opportunity to request the Monitor to review the adjudicator's decision on their claim. During the Monitor's review period, FSA will continue to offset any Federal payments according to regulations. If the denied claim is later approved, after reconsideration directed by the Monitor, offsets will be refunded from January 1, 1999, until the date the claim is ultimately approved.

See Exhibit 1 for a guide letter to respond to a claimant's inquiry of offset of their Federal payment.

B Obtaining Market Loan Assistance Payments and LDP's

The 2001 Appropriations Act, section 845(b) requires that market loan assistance payments and LDP's made by the Commodity Credit Corporation to a producer shall be credited toward any delinquent debt owed by the producer to FSA. Since these payments are not being offset under RD Instruction 1951-C, a notice of intent to take the payments is not required. Actions taken by FSA to obtain these payments are not considered appealable. The procedure is an automatic credit required by the 2001 Appropriations Act, section 845(b). However, review rights to the National Appeals Division must be provided. Market loan assistance payments and LDP's will be refunded to prevailing Consent Decree claimants within the same guidelines as provided for administrative offset payments.

See Exhibit 2 for a guide letter to respond to a claimant's inquiry of market loan assistance payments and LDP's taken and applied on their delinquency.

Guide Letter for Administrative Offset

Dear [Claimant]:

This is in response to your inquiry concerning offsets taken as a result of your delinquent Farm Service Agency (FSA) farm loans.

Neither the *Pigford v. Glickman* Consent Decree nor the adjudicator decisions address the issue of administrative offsets. However, in cases where claimants prevail on a credit claim, the Department of Agriculture has decided to refund offsets taken between January 1, 1999, and the date of the adjudicator's decision. Under this policy FSA will not refund offsets which are taken after the date the adjudicator approved your claim. These new offsets involve the delinquency remaining after FSA implements the adjudicator's decision. In cases where claimants do not prevail (even if Monitor review has been requested), offsets will continue to be taken in accordance with the regulations at 7 CFR Subpart 1951-C. If your claim is approved after directions by the Monitor, offsets will be refunded from January 1, 1999, until the date the claim is ultimately approved. Again, FSA will not refund offsets taken after the date the adjudicator ultimately approved the claim.

FSA is unable to refund your offset at this time. Your situation does not fit within the standards for receiving a refund. (State the reason. Examples: Your claim was denied. The offset was taken after the date the adjudicator approved your claim. The offset was taken prior to January 1, 1999.)

If your loans continue to be delinquent, payments scheduled to be made to you will be offset in accordance with FSA regulations. We encourage you to continue working with your local Farm Loan Manager to resolve your delinquent loans. If you are unable to resolve your delinquent status, and object to FSA's intent to offset, you may review the Agency's records and appeal the decision. Please see the enclosed notice for your rights. **(Attach completed RD Form Letter 1951-C-1 or 1951-C-2.)**

We hope that you find this information helpful.

Sincerely,

Farm Loan Chief

Guide Letter for Market Loan Assistance Payments and LDP's Taken

Dear [Claimant]:

This is in response to your inquiry concerning payments taken as a result of your delinquent Farm Service Agency (FSA) farm loans.

Neither the *Pigford v. Glickman* Consent Decree nor the adjudicator decisions address the issue of administrative offsets. However, in cases where claimants prevail on a credit claim, the Department of Agriculture has decided it will refund payments taken between January 1, 1999, and the date of the adjudicator's decision. Under this policy FSA will not refund payments which are taken after the date the adjudicator approved your claim. These new payments involve the delinquency remaining after FSA implements the adjudicator's decision. In cases where claimants do not prevail (even if Monitor review has been requested), payments will continue to be taken. If the claim is approved after directions by the Monitor, payments will be refunded from January 1, 1999, until the date the claim is ultimately approved. Again, FSA will not refund payments taken after the date the adjudicator ultimately approved the claim.

FSA is unable to refund your payment at this time. Your situation does not fit within the criteria for receiving a refund. (State the reason. Examples: Your claim was denied. The payment was taken after the date the adjudicator approved your claim. Your FSA Farm Programs payment is a Market Loan Assistance payment and/or Loan Deficiency Payment. Section 845(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, requires FSA to automatically credit your delinquent FSA account for the 2001 fiscal year, instead of making the payment to you.)

If your loans continue to be delinquent, payments scheduled to be made to you will be taken in accordance with FSA regulations. We encourage you to continue working with your local Farm Loan Manager to resolve your delinquent loans. If you are unable to resolve your delinquent status, and object to FSA's intent to take your payments, you may review the Agency's records and ask NAD to review the decision. Please see the enclosed notice for your rights.

We hope that you find this information helpful.

Sincerely,

Farm Loan Chief