

For: State and County Offices

Using Court Action Pending (CAP) Flags

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A

Background

The policy of not accelerating and foreclosing security of Farm Loan Programs (FLP) borrowers who are members of the *Pigford v. Veneman* class action lawsuit has been in effect since 1999. As a result, there are numerous delinquent accounts where all loan servicing options have been exhausted under FmHA Instruction 1951-S, and the accounts are at the point of acceleration or foreclosure.

Claims and late claim affidavits from potential class members continue to be evaluated through the court ordered Consent Decree process. Many class members whose claims of discrimination were denied by the Adjudicator still have the opportunity to petition to the Monitor in an effort to receive approval of their claims.

A letter was recently sent to State Offices that have accounts flagged as CAP to ensure that the flag is being used properly according to FmHA Instruction 1951-S, Exhibit O. Based on the responses from State Offices, and corrections reportedly made when reviewing all of their CAP accounts, FLP is confident that the CAP flag is being established correctly. However, in some cases, State Offices need to be more vigilant about removing the CAP flag once court action is no longer pending.

Example: A case is referred to the Office of General Counsel/Assistant U.S. Attorney to obtain a deficiency judgment. Once the judgment is obtained and the case has been referred back to USDA, court action is no longer pending. Therefore, the CAP flag needs to be removed.

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Disposal Date April 1, 2003	Distribution State Offices; State Offices relay to County Offices
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Notice FLP-227

1 Overview (Continued)

B

Purpose

This notice:

- provides guidance about using CAP flags for those accounts that are at the point of acceleration or foreclosure but acceleration or foreclosure cannot take place because the borrowers are members or late claimants (whose applications have not yet been reviewed) for membership in the *Pigford v. Veneman* class action lawsuit
 - reminds State Offices that the CAP flag must be removed when court action is no longer pending.
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Contacts

Direct questions about this notice as follows:

- County Offices shall contact the State Office
 - State Offices shall contact Mary Durkin, LSPMD at 202-720-1658.
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2 Action

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State Office Action

State Offices shall:

- monitor notifications from the Consent Decree Action Team about debts canceled according to the Consent Decree and the February 7, 2001, Stipulation and Order to ensure that the CAP flag is removed when all delinquent loans are canceled or restructured following loan cancellation
- ensure that the CAP flag is placed on all delinquent FLP accounts belonging to members or late claimants for membership in the *Pigford v. Veneman* class action lawsuit once all possibilities for loan servicing under FmHA Instruction 1951-S have been exhausted and the accounts are processed to the point of acceleration or foreclosure
- monitor all CAP cases (Pigford and non-Pigford) in their respective States to ensure that flags are placed and removed according to FmHA Instruction 1951-S, Exhibit O.

Further guidance will be provided at a later date on resuming acceleration and/or foreclosure actions after the total number of class members and the final disposition of their claims is known.
