

For: State and County Offices

**Referral of FLP Debt to Treasury Offset Program (TOP)
and Cross-Servicing for Accounts Involved in Lawsuits**

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The Debt Collection Improvement Act of 1996 (DCIA) and the Debt Collection Act (DCA) require FSA to refer eligible delinquent farm loan debt to the U.S. Department of the Treasury (Treasury) for possible collection through the Treasury Offset Program (TOP) and cross-servicing program.

31 U.S.C. 3711(g)(2)(A)(i) states that debts that are in litigation are not referred for the cross-servicing program.

B Purpose

This notice provides:

- guidance concerning referral of debt to Treasury for cross-servicing and TOP for cases involved in lawsuits
- clarification on handling accounts in which borrowers may be named in more than 1 lawsuit.

C Contact

If there are any questions about this notice, contact Mary Durkin, LSPMD, at 202-720-1658.

Disposal Date	Distribution
January 1, 2005	State Offices; State Offices relay to County Offices

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2 Referral of Eligible Debt to TOP

A Referral

Referral of eligible debt to TOP will continue in all cases, except where OGC has advised that the debt should not be referred to TOP.

3 Cross Servicing

A *Pigford v. Veneman* Class Action Lawsuit

The *Pigford* lawsuit was certified as a class action. Therefore, delinquent FLP debt of African American borrowers will not be referred to Treasury for the cross-servicing program until final decisions are received through the court ordered Consent Decree process.

Eligible delinquent FLP debt will be referred to the cross-servicing program once the State Office has been notified of 1 of the following:

- final decision is issued under the Consent Decree process
- the borrower opted out of the lawsuit
- the borrower never became a member of the lawsuit by filing a claim or a late claim affidavit.

B *Keepseagle v. Veneman* Class Action Lawsuit

The *Keepseagle* lawsuit was certified as a class action lawsuit. However, the definition of the class has not been fully established. Therefore, delinquent FLP debt of Native American borrowers will only be referred to Treasury for the cross servicing program on a case-by-case basis. In some cases, the National Office and OGC have provided authorization to proceed with acceleration/foreclosure. In these cases, once all security has been liquidated, any eligible remaining loan balance will be referred to the cross-servicing program.

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3 Cross Servicing (Continued)

B *Keepseagle v. Veneman* Class Action Lawsuit

Each State Office will review delinquent accounts of Native Americans and take the following action.

IF the debt...	AND...	THEN...
is eligible for referral to cross-servicing, regardless of whether it has already been referred	authorization to proceed with acceleration/foreclosure has not been obtained	request authorization to refer the debt by sending a FAX to LSPMD, Attn: Gene Christie, at 202-690-0949.
was referred to cross servicing	and the National Office or OGC advises that the debt should not be referred	immediately process FSA-1956-22 to recall the debt from cross-servicing.

C Discrimination Lawsuits Not Certified as Class Actions

The following have not yet been certified as class action lawsuits:

Garcia v. Veneman
Love v. Veneman.

Delinquent FLP debt of plaintiffs named in the above lawsuits through the first amended complaints will not be referred to Treasury for the cross-servicing program until further notice. The names of these plaintiffs will be sent to each applicable State Office once this notice is issued.

Each State Office will review the list of names and take the following actions.

IF the borrower...	AND...	THEN...
is listed	the debt was referred to cross-servicing	immediately process FSA-1956-22 to recall the debt from cross servicing.
is not listed	is not a claimant in the other class action lawsuits	refer any eligible debt for cross-servicing.

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3 Cross Servicing (Continued)

D Nondiscrimination Lawsuits

The following **have not yet been** certified as class action lawsuits:

Stahl v. Veneman - about Shared Appreciation Agreements

McBride v. Veneman - about nonborrower entity offsets.

Delinquent FLP debt of plaintiffs or interested parties in the above lawsuits who are otherwise eligible for cross-servicing referral will be referred to Treasury until further notice.

E Borrowers Listed as Plaintiffs in Multiple Lawsuits

For borrowers who are listed in more than 1 lawsuit, State Offices shall follow the more restrictive policy.

Example: One person in a partnership is a class member of the *Keepseagle* lawsuit and another partner is a class member of the *Pigford* lawsuit. There has been no final decision on the *Pigford* claim. It is **not** necessary to contact the National Office according to paragraph 3 B. The delinquent FLP debt should not be referred for cross-servicing.