

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
TIMOTHY C. PIGFORD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
TOM VILSACK, Secretary,)	
United States Department of)	
Agriculture,)	
)	
Defendant.)	
_____)	
CECIL BREWINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
TOM VILSACK, Secretary,)	
United States Department)	
of Agriculture,)	
)	
Defendant.)	
_____)	

APPENDIX TO
MONITOR'S FINAL GOOD FAITH REPORT
REGARDING IMPLEMENTATION OF THE CONSENT DECREE

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Appendix 1

Court Orders Regarding the Consent Decree

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
100, 103	1/05/1999	Order	Grants preliminary approval of Consent Decree settlement; sets date for fairness hearing; approves procedures for notice of settlement to class members; vacates prior order certifying class and certifies class under Fed. R. Civ. P. 23(b)(3).
166	4/14/1999	Opinion	Approves Consent Decree as fair and reasonable resolution of claims of discrimination. <i>Pigford v. Glickman</i> , 185 F.R.D. 82 (D.D.C. 1999), <i>aff'd</i> 206 F.3d 1212 (D.C. Cir. 2000)
—	3/31/2000	Circuit Court Opinion	Affirms the Court's approval of the Consent Decree as fair and reasonable settlement of claims. <i>Pigford v. Glickman</i> , 206 F.3d 1212 (D.C. Cir. 2000)
629	6/27/2002	Memorandum Opinion and Order	Denies motions by individual class members for exclusion from the certified class; notes it is nearly two years past the deadline for opting out of the class; finds that class members provide no reason other than lack of individual service of process at the commencement of the action for missing the deadline to opt out of the class; finds the lack of notice, while unfortunate, is not a sufficient reason to permit opt outs after the established period. <i>Pigford v. Veneman</i> , 208 F.R.D. 21 (D.D.C. 2002)
665	9/11/2002	Memorandum Opinion and Order	Denies motions by several <i>pro se</i> members of the class to vacate the Consent Decree and remove lead Class Counsel. <i>Pigford v. Veneman</i> , 217 F. Supp. 2d 95 (D.D.C. 2002)
1087-1088	1/03/2005	Opinion and Order	Denies motions to modify the Consent Decree and to disqualify Class Counsel. Finding that more than 13,500 claimants had received relief the Court reviews arguments concerning the sufficiency of the awards; the lack of injunctive relief, the adequacy of notice; and implementation problems. The Court finds no ground to grant the relief requested. <i>Pigford v. Veneman</i> , 355 F. Supp. 2d 48 (D.D.C. 2005)
1416	9/10/2007	Memorandum Opinion and Order	Denies motion, and hundreds of similar motions received by the Court, regarding the Consent Decree. The motion papers contain incorrect and inaccurate information; the deadlines for filing a claim under the Consent Decree have passed and the claims process has been closed to new applicants for approximately seven years.

Appendix 2**Cash Relief, Debt Forgiveness, and Tax Relief by State****Statistical Report as of December 31, 2011**

State, Province, or Territory of Claimants' Residence	Number of Prevailing Claimants (Track A and Track B)	Total Cash Relief Paid (Track A and Track B)	Total Debt Forgiveness (Principal and Interest, Track A and Track B)	Total Payments Due as Tax Relief (Track A Credit Claims)
Alaska	2	\$ 100,000		\$ 25,000
Alabama	3,408	167,565,500	\$ 1,038,881	41,792,342
Arkansas	1,487	76,044,804	9,052,396	19,677,468
Arizona	5	250,000		62,500
California	155	8,284,600	8,016	1,913,990
Colorado	9	403,000	56	120,641
Connecticut	8	400,000		100,000
District of Columbia	13	680,000		150,000
Delaware	2	100,000		25,000
Florida	284	13,793,000	267,967	3,459,419
Georgia	2,002	111,297,904	6,402,776	25,178,282
Iowa	2	100,000		25,000
Illinois	179	8,956,000	200,189	2,238,363
Indiana	15	785,000	1,977,861	175,000
Kansas	30	1,500,000	83,531	393,392
Kentucky	64	3,165,500	139,317	831,077
Louisiana	587	29,277,000	3,954,100	7,856,459
Massachusetts	4	200,000		50,000
Maryland	44	2,162,000		550,172
Michigan	95	4,728,000		1,162,500
Minnesota	7	350,000	11,911	90,478
Missouri	91	4,571,000	1,679,638	1,388,217
Mississippi	3,150	159,481,352	13,763,110	41,016,395
North Carolina	1,381	74,045,486	3,544,166	17,370,697
Nebraska	6	300,000		75,000
New Jersey	34	1,706,000		425,000
New Mexico	3	150,000		47,913
Nevada	4	153,000		37,500

State, Province, or Territory of Claimants' Residence	Number of Prevailing Claimants (Track A and Track B)	Total Cash Relief Paid (Track A and Track B)	Total Debt Forgiveness (Principal and Interest, Track A and Track B)	Total Payments Due as Tax Relief (Track A Credit Claims)
New York	37	2,211,249		457,062
Ohio	33	1,693,000		387,500
Oklahoma	589	29,169,000	1,471,366	7,440,649
Pennsylvania	20	1,000,000		250,000
South Carolina	891	45,214,500	1,300,518	11,118,418
Tennessee	488	25,382,755	1,603,308	6,339,621
Texas	350	18,960,400	1,902,415	4,719,428
Utah	2	100,000		25,000
Virginia	186	10,632,780	2,578,829	2,671,140
Washington	3	150,000		37,500
Wisconsin	17	905,000		187,500
West Virginia	1	50,000		12,500
Ontario	1	50,000		12,500
Virgin Islands	33	1,250,000	58,224	324,171
Total	15,722	\$807,317,830	\$51,038,575	\$200,220,794

Appendix 3**Court Orders Referring Problems to Monitor**

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
366	11/17/2000	Order	Directs parties to notify the Monitor if they are aware of any attorney who seeks compensation for signing or preparing a Claim Sheet and Election Form. Directs the Monitor to notify the Court if, after investigation, the Monitor believes a fine and/or sanction if appropriate.
1253-1254	2/23/2006	Memorandum Opinion and Order	Refers individual class member's problem regarding an Amended Adjudicator decision to the Monitor for possible resolution; directs the Monitor to investigate and report to the Court on the subject of Amended Adjudicator decisions.
1312	8/07/2006	Memorandum Opinion and Order	Directs the Monitor to further investigate Amended Adjudicator decisions and attempt to resolve any problems regarding Amended Adjudicator decisions that changed a claimant's relief and any instances in which the Facilitator initially notified a claimant that he or she was eligible and then later notified that same claimant that the eligibility decision had been "amended."
1442	12/21/2007	Memorandum Opinion and Order	Orders the parties to pursue settlement discussions, with the assistance of the Monitor, regarding a motion filed by individual class members to obtain the proceeds of a supervised bank account. <i>Pigford v. Conner</i> , 2007 U.S. Dist. LEXIS 93473 (D.D.C. Dec. 21, 2007)
1549	4/21/2009	Order	Directs the Monitor to work with the parties to review and verify USDA's implementation of debt relief for all prevailing claimants who may be entitled to debt relief.
1667	7/28/2010	Order	Directs the Monitor to report on USDA's implementation of guidance from the Internal Revenue Service (IRS) for issuing Forms 1099-C to claimants who receive debt relief.

Appendix 4**Court Orders on Monitor Petition Process**

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
279	4/04/2000	Order of Reference	Sets forth rules for petitions for reexamination and for petition responses; authorizes the Monitor to accept supplemental information in petition process; describes requirements for Monitor letter directing reexamination.
303	7/14/2000	Stipulation and Order	Sets deadline for petitions for reexamination of Adjudicator Track A decisions and Arbitrator Track B decisions.
342	9/12/2000	Stipulation and Order	Specifies process for routing petitions to the non-petitioning party for a response; sets deadline of 60 days for responding party to file petition response.
359	11/07/2000	Order	Makes certain provisions of Second Amended Supplemental Privacy Act Protective Order applicable to the Monitor and to Monitor decisions.
635	7/18/2002	Stipulation and Order	Authorizes the Monitor to consolidate claimant and USDA petitions for review of the same decision; authorizes the Monitor to obtain information from USDA regarding a class member's debt in deciding petitions regarding debt relief.
693	10/29/2002	Order	Sets deadline for petitions by claimants from adverse Facilitator eligibility screening decisions; authorizes Monitor to accept supplemental information in petition process. <i>Pigford v. Veneman</i> , 227 F. Supp. 2d 157 (D.D.C. 2002)
770	3/24/2003	Stipulation and Order	Establishes process for Monitor to recuse herself from rendering decisions in on petitions where the Monitor determines her impartiality might reasonably be questioned; designates Kenneth Saffold, Office of the Monitor General Counsel, as Monitor for any claim in which the Monitor chooses to recuse herself.

Appendix 5**Information for Class Members on Petition Process**

Booklet Number	Date(s) Issued	Name of Booklet	Issues Addressed Include:
1	6/2000 Revised: 6/2002 6/2003	Questions and Answers About Monitor Review of Decisions Petition for Monitor Review Form	Who can ask the Monitor to review their case; how to ask for review; when can the Monitor direct a claim to be reviewed again; what papers can the Monitor review; who can see papers the Government has filed; is there a deadline for petitioning; what are the steps in the Monitor review process; can USDA ask the Monitor to review cases too; what actions USDA can take on loans while the Monitor is reviewing a claim; Petition for Monitor Review Form attached.
Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
3	8/14/2000 Revised: 10/01/2003	Deadlines for Petitions for Monitor Review	Petitions for review of decisions by the Adjudicator (Track A claims), and Arbitrator (Track B claims); the deadline for petitions was established in a July 14, 2000 Court Order; the deadline is firm, no extensions can be granted for any reason.
5	8/31/2000 Revised: 10/30/2002	Eligibility and Monitor Review	Monitor review of Facilitator denials of eligibility; deadline for petition for Monitor review; submitting additional documents with petition for Monitor review.
8	10/10/2000 Revised: April 20, 2002	Procedural Rules for the Track B Monitor Petition Process	General procedures for petitions; process for filing petition in Track B claim with designation of record; responding to petition with designation of record.

Appendix 6

Court Orders on Claimant Petitions and Petition Registers

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
303	7/14/2000	Stipulation and Order	Sets deadline of 120 days for petitions for reexamination of Adjudicator Track A decisions and Arbitrator Track B decisions.
363	11/08/2000	Order	Establishes and defines Register of Petitions. <i>Pigford v. Glickman</i> , 2000 U.S. Dist. LEXIS 16374 (D.D.C. Nov. 8, 2000), <i>suspended Pigford v. Veneman</i> , 144 F. Supp. 2d 16 (D.D.C. 2001)
438	5/15/2001	Memorandum Opinion and Order	Extends deadlines for Class Counsel to file materials in support of or to withdraw petitions listed on Registers; requires reports on progress and defines schedule of fines if deadlines are not met. <i>Pigford v. Veneman</i> , 143 F. Supp. 2d 28 (D.D.C. 2001)
451	6/28/2001	Memorandum Opinion and Order	Requires Facilitator to provide information to claimants subject to a USDA petition for reexamination; requires Class Counsel to notify the Facilitator of any decisions not to file a response to the USDA petition. <i>Pigford v. Veneman</i> , 148 F. Supp. 2d 31 (D.D.C. 2001)
801	6/02/2003	Opinion and Order	Denies plaintiffs' motion for relief for approximately 350 claimants whose petitions for Monitor review were deemed untimely filed by the Facilitator. <i>Pigford v. Veneman</i> , 265 F. Supp. 2d 41 (D.D.C. 2003), <i>rehearing denied</i> , 307 F. Supp. 2d 43 (D.D.C. 2004), <i>aff'd Pigford v. Johanns</i> , 416 F.3d 12 (D.C. Cir. 2005), <i>cert. denied</i> , 547 U.S. 1035 (2006)
892	3/10/2004	Opinion and Order	Imposes sanctions on Class Counsel in accordance with May 15, 2001 Opinion and Order regarding petition register filings. <i>Pigford v. Veneman</i> , 307 F. Supp. 2d 51 (D.D.C. 2004)

Appendix 7**Year-by-Year Statistical Report Regarding Petitions for Monitor Review¹**

Cumulative Statistical Report as of:	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008	End of 2009	End of 2010
Timely Petitions for Monitor Review									
A. Number of Petitions for Monitor Review	5,160	5,401	5,617	5,668	5,701	5,707	5,768	5,848	5,848
1. Claimant Petitions	4,560	4,727	4,901	4,938	4,945	4,950	4,974	4,981	4,981
2. Government Petitions	600	674	716	730	756	757	794	867	867
Monitor Decisions									
B. Petition Decisions Issued by Monitor	1,743	2,725	3,310	4,189	5,243	5,688	5,701	5,794	5,847
1. Total Number of Petitions Granted	676	1,218	1,510	2,049	2,627	2,904	2,914	2,936	2,941
a. Claimant Petitions Granted	631	1,162	1,439	1,971	2,508	2,776	2,784	2,805	2,809
b. Government Petitions Granted	45	56	71	78	119	128	130	131	132
2. Total Number of Petitions Denied	1,067	1,507	1,800	2,140	2,616	2,784	2,787	2,858	2,906
a. Claimant Petitions Denied	609	1,040	1,319	1,622	2,011	2,157	2,160	2,169	2,171
b. Government Petitions Denied	458	467	481	518	605	627	627	689	735

¹ These statistics are provided by the Facilitator.

Appendix 8

Sample Claim Sheet and Election Form

Pigford, et al., v. Glickman; Civil Action No. 97-1978 D.D.C. (PLF)
Brewington, et al., v. Glickman; Civil Action No. 98-1693 D.D.C. (PLF)

CLAIM SHEET AND ELECTION FORM

Do not submit a photocopy of this form.

If you need another form, please call 1-800-646-2873.

DO NOT WRITE IN THIS AREA

Sample

Please type or print clearly.

PART I: CLAIMANT INFORMATION

Farmer's Name [First, Middle, Last]

(Area Code) Home Number

Spouse's Name [First, Middle, Last]

(Area Code) Business Number

Street Address

(Area Code) Fax Number

City

State

Zip

Farmer's Social Security Number

Farmer's Date of Birth

If you are making this claim on behalf of an estate or a deceased person, check this box, and identify the estate or deceased person. ☐

PART II: CLASS MEMBER QUALIFICATION

- | | Yes | No | |
|----|--------------------------|--------------------------|--|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | Are you an African American who farmed, or attempted to farm, at anytime between January 1, 1981, and December 31, 1996? |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | Between January 1, 1981, and December 31, 1996, did you apply to participate in a federal farm program with USDA? |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | Between January 1, 1981, and July 1, 1997, did you file a complaint of discrimination against USDA concerning treatment that you received in that application process? |

With respect to this third question, place an "X" next to each category below which describe(s) the proof that you have that you filed a complaint of discrimination.

You must attach to this Claim Sheet documentation ("proof") for each item you check. If you do not attach proof, your claim may be rejected.

- 3A. ☐ A copy of the discrimination complaint the claimant filed with USDA, or a copy of a USDA document referencing the discrimination complaint.
- 3B. ☐ A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of the claimant's family and which (1) states that the declarant has first-hand knowledge that the claimant filed a discrimination complaint with USDA; and (2) describes the manner in which the discrimination complaint was filed.
- 3C. ☐ A copy of correspondence from the claimant to a member of Congress, the White House, or a state, local, or federal official averring that the claimant has been discriminated against.
- 3D. ☐ A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of the claimant's family, which states that the person has first-hand knowledge that, while attending a USDA listening session, or other meeting with a USDA official or officials, the claimant was explicitly told by a USDA official that the official would investigate that specific claimant's oral complaint of discrimination.

PART III: ELECTION OF TRACK A OR TRACK B

Please check one box below to elect the form of settlement you wish to pursue. Once you have elected a form of settlement, your decision will be final and not subject to change. Because this decision has important consequences, you may wish to discuss your options with a lawyer.

- ☐ **TRACK A – ADJUDICATION**
You establish by substantial evidence that discrimination occurred and receive a liquidated settlement (injunctive relief, debt relief, \$50,000 cash, and tax payment).
- ☐ **TRACK B – ARBITRATION**
Your case will be determined at a future hearing by an arbitrator in a one-day binding arbitration.

PART IV: AGREEMENT TO SETTLE AND DECLARATION OF STATEMENTS

I understand that the answers to the questions above are being relied upon by the United States Government in determining my right to relief under the Equal Credit Opportunity Act and/or the Administrative Procedure Act. I elect to settle my claim in the manner indicated above and consent to allow the government to audit my file. I declare under penalty of perjury that the above answers are true and correct.

Signature of Farmer

Date

I have assisted the farmer whose name is stated above in filling out this Claim Sheet and Election Form. I declare under penalty of perjury that: (1) I believe the statements contained herein to be true; and (2) I have not and will not require the farmer to compensate me for assisting him/her.

Signature of Attorney

Date

If you have elected the Track A Adjudication process, you must complete the Track A – Adjudication Claim Affidavit part of this Claim Package.

If you have elected the Track B Arbitration process, you do not need to complete the rest of this Claim Package. You will receive a notice soon from the arbitrator's office on what to do next.

To be eligible to participate in the settlement, you must send this Claim Package postmarked no later than 180 days from the date on which the Court approves the Consent Decree to:

Claims Facilitator
P.O. Box 4390
Portland, OR 97208-4390

If you have questions on how to complete your Claim Package or how to obtain the services of a lawyer at no cost to you, please call the Claims Facilitator toll free at 1-800-646-2873.

PART V: TRACK A – ADJUDICATION CLAIM AFFIDAVIT

Only complete this affidavit if you have elected to settle your claim under the Track A – Adjudication option.

The Consent Decree requires that you meet the following requirements in order to be entitled to relief under Track A:

- A. In cases in which a class member's discrimination complaint concerns an **Equal Credit Opportunity Act (meaning credit or loan) matter**, the class member must show that:
- (1) he owned, leased, or attempted to own or lease farm land;
 - (2) he applied for a specific credit transaction at a USDA office between 1/1/81 and 12/31/96;
 - (3) the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and
 - (4) USDA's treatment of the loan application led to economic damage to the class member.
- B. In cases in which a class member's discrimination complaint concerns a non-credit program benefit, the class member must show that:
- (1) he applied for a specific non-credit benefit program at a USDA county office between 1/1/81 and 12/31/96 and
 - (2) his application was denied or approved for a lesser amount than requested, and that such treatment was different than the treatment received by specifically identified, similarly situated white farmers who applied for same non-credit benefit.

In order to qualify for settlement benefits, you must answer the following questions and complete the personal narrative at the end of the package. For some answers, additional written explanations are required. These answers are followed by blank lines for you to use.

**If you need additional space, please attach your own paper.
Clearly mark all attachments with your name and social security number.**

1. Between January 1, 1981, and December 31, 1996, which of the following apply?

☐ Owned farm land? ☐ Leased farm land? ☐ Attempted to own or lease farm land?

State the location and size of the land you owned, leased, or attempted to own or lease.

2. Between January 1, 1981, and December 31, 1996, for what type of specific federal farm program did you apply?

☐ Operating Loan ☐ Farm Ownership Loan

☐ Emergency Loan ☐ Conservation Loan

☐ Non-credit Benefit Program (identify the specific program): _____

3. Complete only the sections below that describe the treatment you received from USDA between 1/1/81 and 12/31/96.

A) Loan or Benefit Application Denied; Loan or Benefit Was Approved, but Funds Were Provided Late; or Loan or Benefit Was for Less Than Requested

Explain for what loan or program benefit you applied and what USDA decided on your application.

B) Loan Encumbered by Restrictive Conditions

Explain the conditions/restrictions applied to your loan or program benefit. (For example, excessive collateral requested, supervised loans, etc.)

NOT VALID
Sample
FOR SUBMISSION

C) USDA Did Not Provide Appropriate Loan Services

Explain in detail.

D) Disparate Treatment

Identify, with respect to each type of treatment described in paragraphs (A), (B), and (C) above about which you complain, the name and address of each white farmer who was situated similarly to you; and state in detail the specific manner in which your treatment was different from the treatment accorded each such white farmer.

For (A).

For (B).

For (C).

NOT VALID
FOR SUBMISSION
Sample

4.

NARRATIVE STATEMENT

If you are asserting an ECOA claim, explain below, in your own words, the relationship between the act or acts of discrimination which you allege above and how you suffered economic damages.

NOT VALID
FOR SUBMISSION
sample

I understand that this affidavit, any statement made herein, and the answers to these questions are being relied upon by the United States Government in determining my right to relief under the Equal Credit Opportunity Act and/or the Administrative Procedure Act. I declare under penalty of perjury that the above answers are true and correct. I elect to settle my claim in the manner indicated above and consent to allow the government to audit my file.

Signature of Farmer

Date

I have assisted the farmer whose name is stated above in filling out this affidavit. I state, under penalty of perjury, that: (1) I believe the statements contained herein to be true; and (2) I have not and will not require the farmer to compensate me for assisting him/her.

Signature of Attorney

Date

Pigford, et al., v. Glickman; Civil Action No. 97-1978 D.D.C. (PLF)
Brewington, et al., v. Glickman; Civil Action No. 98-1693 D.D.C. (PLF)

DECLARATION

TO BE FILLED OUT BY A PERSON WHO IS NOT A MEMBER OF THE
CLAIMANT'S FAMILY

Sample

Instructions: You are being asked to fill out this form in support of a farmer who is filing a claim as part of the Black Farmers' class action lawsuit against the U.S. Department of Agriculture (USDA).

Step One: Please make sure that the name in the space below is the name of the person whose claim you are supporting.

I submit this declaration in support of the claim of _____ ("claimant") under the settlement agreement of Pigford v. Glickman, the Black Farmers' class action lawsuit, and hereby declare that:

Step Two: **You need only complete ONE of the two SECTIONS below.** Please look carefully at the top of page 2 of the Claim Sheet and Election Form of the person whose claim you are supporting. If he/she checked Box 3B, please complete "SECTION 1" below only. If he/she checked Box 3D, please complete "SECTION 2" only. If you need additional space, please attach your own paper. Clearly mark all attachments with your name and SSN.

SECTION 1: TO SUPPORT NUMBER 3B ON THE CLAIM SHEET

- (a) I am not a member of the claimant's family; AND
(b) I have first-hand knowledge that the claimant filed a discrimination complaint with USDA; AND
(c) The manner in which the discrimination complaint was filed was as follows:

— OR —

SECTION 2: TO SUPPORT NUMBER 3D ON THE CLAIM SHEET

- (a) I am not a member of the claimant's family; AND
(b) I have first-hand knowledge that the claimant, while attending (check at least one box)

☐ a USDA listening session in _____
(City, State)

☐ a meeting in _____ with a USDA official or officials,
(City, State)

was explicitly told by a USDA official, _____
(Name(s) of Official(s)) (Title(s) of Official(s))
that the official(s) would investigate the specific claimant's oral complaint of discrimination.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature

Date

Printed Name

Social Security Number

Street Address

City, State

Zip

Appendix 9

Sample Late Claim Affidavits

Tracking #«TRACKING»

«NAME1»

PIGFORD, ET AL. v. GLICKMAN

AFFIDAVIT IN SUPPORT OF PETITION TO FILE A LATE CLAIM

[Please complete one of the three sections below.]

CATEGORY 1: HURRICANE FLOYD

I, _____, reside and/or farm in one of the North Carolina counties declared by the
(insert your name)
federal government to be a disaster area as a result of Hurricane Floyd.

I, _____, was unable to submit my claim before the October 12, 1999 deadline because
(insert your name)
of this disaster.

CATEGORY 2: HOMEBOUND

I, _____, became homebound due to illness and/or physical disability, and remained
(insert your name)
homebound, during the time-period beginning on August 12, 1999, and ending on October 12, 1999.

CATEGORY 3: OTHER EXTRAORDINARY CIRCUMSTANCES BEYOND YOUR CONTROL

[*Please note that “extraordinary circumstances” does not include “I did not know about the case” or “I did not know about the deadline.” It means you were prevented from completing the forms on time by unique circumstances over which you had no authority.]

I, _____, did not file a claim before the October 12, 1999 deadline because of the
(insert your name)
following circumstances which were beyond my control (use additional paper, if necessary):

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature

Date

Date _____

Appendix 10
Monitor Updates on Eligibility

Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
2	8/14/2000	Cured Defective Claims	Court order setting deadline for cures of defective claim forms filed on or before October 12, 1999 deadline for filing a claim; what is a “defective” claim form; deadline of July 14, 2000 for correcting any defective forms filed on or before the October 12, 1999 deadline; option of requesting permission to file late claim for claimants who did not file corrected forms by the July 14, 2000 deadline
5	8/31/2000 Revised: 10/30/2002	Eligibility and Monitor Review	What is eligibility; what proof meets eligibility requirement for filing a discrimination complaint between January 1, 1981 and July 1, 1997; Facilitator decides eligibility; Monitor can review Facilitator denials of eligibility; if not found eligible, no right to participate in Consent Decree claims process

Appendix 11**Monitor Updates on Deadlines for Filing a Claim**

Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
1	8/14/2000 Revised: 10/1/2003	Late Claim Deadline	Court order setting deadline for request for permission to file a late claim; what is a “late claim;” how late claims are allowed; Arbitrator decisions to grant or deny permission to file a late claim; Arbitrator reconsideration of denials; deadline of September 15, 2000 for requesting permission to file a late claim
11	11/27/2002	Understanding Who is Part of the <i>Pigford</i> Case	Describes three groups of people: (1) people who are in the case filed a claim sheet on or before October 12, 1999 or were granted permission to file a “late claim” after that date; (2) people who might get into the case filed a request for permission to file a late claim by the September 15, 2000 deadline and their request remains pending a decision by the Arbitrator; and (3) people who cannot get into the case include those who filed a late claim request after September 15, 2000.
13	6/28/2004	The <i>Pigford</i> Case is Closed: No One Can Get Into the Case If They Did Not Apply by Deadlines	The <i>Pigford</i> case is closed; no one can get into the case; the deadlines for a timely claim (October 12, 1999) and for requesting permission to file a late claim (September 15, 2000) are passed; Anyone who missed these deadlines cannot get into the case.

Appendix 12**Court Orders on Requests for Permission to File a Late Claim**

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
239	12/20/1999	Order	Delegates to Arbitrator the authority to decide requests to file a late claim under paragraph 5(g) of the Consent Decree.
303	07/14/2000	Stipulation and Order	Sets deadline of September 15, 2000 for submitting requests for permission to file a late claim; sets deadline for those who are granted permission to file a late claim to file a Claim Sheet and Election Form.
560	11/26/2001	Memorandum Opinion and Order	Denies motions for Court review of decisions by the Arbitrator to deny paragraph 5(g) requests for permission to file a late claim; states that the Arbitrator has established a reconsideration policy and that the authority to decide late-claims requests has been fully delegated to Arbitrator.
614	5/10/2002	Order	Declines to consider individual's request to file a late claim; directs all putative claimants to review the terms of paragraph 5(g), as interpreted by the Court and the Arbitrator; indicates that all requests to file a late claim are to be directed to the Arbitrator. <i>Pigford v. Veneman</i> , 201 F. Supp. 2d 139 (D.D.C. 2002)
804	06/04/2003	Memorandum Opinion and Order	Denies plaintiffs' motion to reopen all late claims due to allegations of mail delays.
1168 1171 1172 1173	8/09/2005	Order	Denies motions by individual class members seeking to hold the Arbitrator in contempt for denying requests for permission to file a late claim under paragraph 5(g); the Court has delegated the authority to decide late-claims requests to the Arbitrator and the Court has previously found the Arbitrator's processes are more than sufficient to ensure paragraph 5(g) is properly and justly applied.

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
1201	9/19/2005	Order	Denies requests by fourteen named class members who filed identical "Motion for Contempt" letters with the Court, requesting that the Arbitrator be held in contempt for denying their petitions to file a late claim. The Court's Order reiterates that the Arbitrator's decision regarding any late-claim petition is final and not subject to review by the Court.
1554	5/07/2009	Stipulation and Order	Stipulation and Order regarding the claims of certain individuals whose petitions to file a late claim under paragraph 5(g) of the Consent Decree were approved by the Arbitrator. The Court's Order directs the Claims Facilitator to promptly send a Claim Sheet and Election Form to the thirteen claimants identified by Tracking Number in Exhibit A to the Stipulation and Order. The Order indicates that the process for review of petitions under paragraph 5(g) of the Consent Decree is complete and no additional Claim Sheet and Election Forms will be sent to any other late-claim petitioners.

Appendix 13**Class Membership Eligibility and Claim Sheet Questions**

Consent Decree Class Membership Definition	Claim Sheet Question(s)
All African American farmers who: (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996	<p>Part II: Class Member Qualification</p> <p>1. Are you an African American who farmed, or attempted to farm, at anytime between January 1, 1981, and December 31, 1996?</p> <ul style="list-style-type: none"> • Yes • No
(2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA's response to that application; and	<p>2. Between January 1, 1981, and December 31, 1996, did you apply to participate in a federal farm program with USDA?</p> <ul style="list-style-type: none"> • Yes • No
(3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.	<p>3. Between January 1, 1981, and July 1, 1997, did you file a complaint of discrimination against USDA concerning treatment you received in that application process?</p> <ul style="list-style-type: none"> • Yes • No <p>Claim Sheet requires check mark for type of proof of prior discrimination complaint attached to Claim Sheet:</p> <p>3A. A copy of a written complaint or a USDA document referencing the complaint;</p> <p>3B. A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of the claimant's family and who has first-hand knowledge of a written complaint</p> <p>3C. A copy of correspondence from the claimant to a member of Congress, the White House, or a state, local, or federal official averring that the claimant has been discriminated against or</p> <p>3D. A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of the claimant's family and who has first-hand knowledge of an oral complaint at a listening session or other meeting with a USDA official or officials in which the claimant was explicitly told by a USDA official that the official would investigate the specific claimant's oral complaint</p>

Consent Decree Class Membership Definition	Claim Sheet Question(s)
Exception to prior complaint requirement for claimants who can show that extraordinary circumstances beyond the claimant's control prevented them from complaining of discrimination between January 1, 1981 and July 1, 1997	Claimants who check "No" in response to question 3 must fill out Supplemental Information Form Adjudicator evaluates "tolling" (whether extraordinary circumstances beyond the claimant's control prevented the claimant from filing a complaint)

Appendix 14

Sample Supplemental Information Form

Pigford, et al., v. Glickman; Civil Action No. 97-1978 D.D.C. (PLF)
Brewington, et al., v. Glickman; Civil Action No. 98-1693 D.D.C. (PLF)

SUPPLEMENTAL INFORMATION FORM

March 27, 2012

«NAME1»

Claim #«CLAIMNUMBER»

«NAME2»

«ADDRESS1»

«ADDRESS2»

«CITYSTATEZIP»

**THIS IS AN IMPORTANT DOCUMENT.
YOU MAY NEED LEGAL ASSISTANCE.**

We have received the Claim Sheet and Election Form submitted by you in the Black Farmers' Settlement. After preliminary review, we found that your claim has not met all eligibility criteria.

In Part II: Class Member Qualification you stated that you did not file a complaint of discrimination against USDA concerning treatment that you received in that application process between January 1, 1981 and July 1, 1997 (question #3). Based on this answer, your claim is not eligible to proceed to settlement. If you have made a written or an oral complaint of discrimination after July 1, 1997, **you could be entitled to relief by demonstrating that:**

- (1) you have actively pursued your judicial remedies by filing a defective pleading during the applicable statute of limitations period;
- (2) you were induced or tricked by the USDA's misconduct into allowing the filing deadline for the applicable statute of limitations period to pass; or
- (3) you were prevented by other extraordinary circumstances beyond your control from filing a complaint in a timely manner, provided that excusable neglect shall not qualify as extraordinary circumstances.

If you feel you still qualify for the settlement under the terms outlined above, you must answer the two (2) questions below, and return this Supplemental Information Form together with the documentation required if you answer "Yes" to Question 1, and **return it within thirty (30) days to: Claims Facilitator; P.O. Box 4390; Portland, OR 97208-4390.**

QUESTION 1

Did you file a complaint of racial discrimination against the USDA after July 1, 1997 concerning treatment that you received in your application process? ☐ Yes ☐ No

If yes, you must return this form along with one or more of the following:

- (1) A copy of the discrimination complaint you filed with USDA after July 1, 1997, or a copy of a USDA document referencing the discrimination complaint.

- Case 1:97-cv-01978-PLF Document 1812-1 Filed 04/01/12 Page 30 of 72
- (2) A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of your family and which (i) states that the person has first-hand knowledge that you filed a discrimination complaint with the USDA after July 1, 1997, and (ii) describes the manner in which the discrimination complaint was filed.
- (3) A copy of correspondence written after July 1, 1997, from you to a member of Congress, the White House, or a state, local, or federal official averring that you have been discriminated against.
- (4) A declaration executed pursuant to 28 U.S.C. § 1746 by a person who is not a member of your family stating that the person has first-hand knowledge that, while attending a USDA listening session after July 1, 1997, or other meeting with a USDA official or officials, you were explicitly told by a USDA official that the official would investigate your oral complaint of discrimination.

QUESTION 2

Why did you not file a complaint until after July 1, 1997? You must explain in detail.

Sample

I understand that the answers to the questions above are being relied upon by the United States Government in determining my right to relief under the Equal Credit Opportunity Act and/or the Administrative Procedure Act. I consent to allow the government to audit my file. I declare under penalty of perjury that the above answers are true and correct.

Signature of Farmer

Date _____

Farmer's Social Security Number

I have assisted the farmer whose name is stated above in filling out this Claim Sheet and Election Form. I declare under penalty of perjury that: (1) I believe the statements contained herein to be true; and (2) I have not and will not require the farmer to compensate me for assisting him/her.

Signature of Attorney

Date _____

Printed Name of Attorney

(Area Code) Phone Number

DO NOT FORGET TO ATTACH PROOF IF YOU ANSWERED “YES” TO QUESTION 1.

Appendix 15

Court Orders on Decisions Regarding Eligibility

Title of Order	Date Filed	Title of Order	Issues Addressed Include:
303	07/14/2000	Stipulation and Order	Sets forth instructions regarding claim packages that were timely filed, but defective.
693	10/29/2002	Order	Outlines data from the Facilitator on class membership screening activity as of August 6, 2002; sets 120-day deadline for claimants who filed completed claim packages and who received an adverse Facilitator screening decision on their eligibility to petition for Monitor review; requires the Facilitator to establish a reconsideration process for claimants who cannot petition for Monitor review and who were rejected because they failed to timely complete a claim package after notice and an opportunity to cure any defects.
1312	8/07/2006	Memorandum Opinion and Order	Requires the Monitor to investigate any instances in which the Facilitator initially notified a claimant that he or she was eligible to participate in the claims process but later notified that same claimant that the eligibility decision had been “amended” and that the claimant was no longer eligible. The Court directs the Monitor to attempt to resolve any problems regarding class members who may have received amended notification from the Facilitator resulting in the denial of the putative class members’ opportunity to participate in the claims process. <i>Pigford v. Veneman</i> , 2006 U.S. Dist. LEXIS 54212 (D.D.C. Aug. 7, 2006)
1557	5/12/2009	Memorandum Opinion and Order	Denies the motion of a Track A claimant who had petitioned the Monitor for review of an Adjudicator decision denying the claimant relief. The Claimant requested the Court clarify the Monitor’s authority to consider information presented by USDA regarding the validity of a Declaration the claimant had submitted to establish the claimant’s eligibility. The Court found that the Monitor had not “reversed” the Facilitator’s decision on eligibility, but, instead, had considered USDA’s challenge to eligibility in deciding whether a fundamental miscarriage of justice would occur if the claimant’s petition for reexamination was denied.

Appendix 16**Court Orders on Foreclosure and Sale of Property**

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
938	6/08/2004	Order	Denies motion by individual class members to delay USDA foreclosure proceedings on their farm property. The class members prevailed on a Track A claim and received debt relief for Operating Loans and Emergency Loans received from 1981 through 1984. The foreclosure action by USDA was based on delinquent debt that was not subject to <i>Pigford</i> debt relief, because it was incurred prior to 1981. (The Court of Appeals dismissed the class members' appeal of this decision on January 24, 2005 for failure to prosecute).
1170	8/09/2005	Order	Denies motion by individual class member for a preliminary injunction to prevent sale by USDA of inventory property previously owned by class member. The class member argued the sale would violate paragraph 7 of the Consent Decree, which limits USDA's right to dispose of foreclosed real property formerly owned by a class member while the class member's claim is pending in the claims process. USDA opposed the motion on the ground that paragraph 7 applied only to foreclosed real property, and the property at issue was voluntarily conveyed by the class member to USDA. The Court denied the motion for reasons stated on the record at the hearing on the motion.

Appendix 17**Monitor Update for Class Members Regarding USDA Farm Program Debt**

Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
6	8/31/2000 Revised: 10/1/2003	Freeze on USDA Acceleration and Foreclosures	Actions USDA has agreed not to take on debt owed by claimants while claims are pending a petition or reexamination decision; who benefits from the freeze; what actions are covered—acceleration, foreclosure, and disposal of inventory property; what actions are not subject to the freeze - USDA offsets of payments to repay delinquent debt; when the freeze begins and ends.

Appendix 18**Track A Credit Claim Elements and Claim Sheet Questions**

Paragraph 9(a) Elements	Claim Sheet Question(s)
A. The claimant owned, leased, or attempted to own or lease farm land	<p>1. Between January 1, 1981 and December 31, 1996, which of the following apply?</p> <ul style="list-style-type: none"> ▪ Owned farm land? ▪ Leased farm land? ▪ Attempted to own or lease farm land? <p>State the location and size of the land you owned, leased, or attempted to own or lease</p>
B. The claimant applied for a specific credit transaction at a USDA county office during the period from January 1, 1981 through December 31, 1996	<p>2. Between January 1, 1981 and December 31, 1996, for what type of specific federal farm program did you apply?</p> <ul style="list-style-type: none"> ▪ Operating Loan ▪ Farm Ownership Loan ▪ Emergency Loan ▪ Conservation Loan
C. The loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers	<p>3. A) Loan . . . Application Denied; Loan . . . Was Approved, but Funds Were Provided Late; or Loan . . . Was for Less Than Requested. Explain for what loan . . . you applied and what USDA decided on your application.</p>
	<p>3. B) Loan Encumbered by Restrictive Conditions. Explain the conditions/restrictions applied to your loan or program benefit. (For example, excessive collateral requested, supervised loans, etc.)</p>
	<p>3. C) USDA Did Not Provide Appropriate Loan Services Explain in Detail.</p>
	<p>3. D) Disparate Treatment. Identify, with respect to each type of treatment . . . about which you complain, the name and address of each white farmers who was similarly situated to you; and state in detail the specific manner in which your treatment was different from the treatment accorded each white farmer</p>
D. USDA's treatment of the loan application led to economic damage to the class member	<p>4. . . . explain below, in your own words, the relationship between the act or acts of discrimination which you allege above and how you suffered economic damages.</p>

Appendix 19**Track A Non-Credit Claim Elements and Claim Sheet Questions**

Paragraph 9(b) Elements	Claim Sheet Question(s)
A. The claimant applied for a specific non-credit benefit program at a USDA county office between January 1, 1981 and December 31, 1996	2. Between January 1, 1981 and December 31, 1996, for what type of specific federal farm program did you apply? ▪ Non-credit Benefit Program (identify the specific program)_____
B. The application was denied or approved for a lesser amount than requested, and . . . such treatment was different than the treatment received by specifically identified, similarly situated white farmers who applied for the same non-credit benefit	3. D) Disparate Treatment. Identify, with respect to each type of treatment . . . about which you complain, the name and address of each white farmers who was similarly situated to you; and state in detail the specific manner in which your treatment was different from the treatment accorded each white farmer

Appendix 20
Year-by-Year Statistical Report Regarding Track A Claims²

Statistical Report as of:	Aug. 28, 2000		End of 2001		End of 2002		End of 2003		End of 2004		End of 2005	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
A. Eligible Class Members	21,069	100	21,541	100	21,774	100	22,276	100	22,391	100	22,415	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99	21,595	99	22,098	99	22,218	99	22,243	99
C. Cases in Track B (Arbitrations) ³	191	1	177	1	179	1	178	1	173	1	172	1
Adjudication Completion Figures												
D. Adjudications Complete	18,347	88	21,324	~100	21,547	~100	21,678	98	22,168	~100	22,240	~100
E. Adjudications Not Yet Complete	2531	12	40	~0	48	~0	420	~2	50	~0	3	~0
Adjudication Approval/Denial Rates												
F. Claims Approved by Adjudicator	11,083	60	12,848	60	12,987	60	13,260	61	13,676	62	14,257	64
G. Claims Denied by Adjudicator ⁴	7,264	40	8,476	40	8,560	40	8,418	39	8,492	38	7,983	36
Adjudication Approvals Paid/Not Paid												
H. Approved Adjudications Paid	7,143	64	12,285	96	12,690	98	12,968	98	13,300	97	13,916	98
I. Approved Adjudications Not Yet Paid	3,940	36	563	4	297	2	292	2	376	3	341	2
J. Cash Relief Paid to Class Members for Track A Credit Claims ⁵	\$357,150,000 ⁶		\$614,250,000		\$624,750,000		\$638,350,000		\$654,550,000		\$685,300,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims	—		\$1,284,000		\$1,284,000		\$1,287,000		\$1,269,000 ⁷		\$1,326,000	

² These statistics were provided by the Facilitator.

³ The decrease in the number of Track B claims is a result of claimants converting their claims, with the consent of the Government, to Track A.

⁴ The decrease in denials is a result of decisions being overturned on reexamination.

⁵ This figure includes only the \$50,000 cash relief award in Track A credit cases. It does not include debt relief or tax payments for Track A credit claims.

⁶ This figure includes both credit and non-credit payments as of August 28, 2000, as reported in the Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of March 1, 2000 through August 31, 2000.

⁷ The cumulative dollars reported by the Facilitator for non-credit payments (\$3,000 per successful claim) decreased from the amount reported as of the end of 2003 due to the Facilitator's reconciling of payment data from USDA for non-credit claims.

Appendix 20

Year-by-Year Statistical Report Regarding Track A Claims (continued)

Statistical Report as of:	End of 2006		End of 2007		End of 2008		End of 2009		End of 2010	
	Number	%	Number	%	Number	%	Number	%	Number	%
A. Eligible Class Members	22,440	100	22,691	100	22,719	100	22,721	100	22,721	100
B. Cases in Track A (Adjudications)	22,269	99	22,519	99	22,547	99	22,549	99	22,551	99
C. Cases in Track B (Arbitrations) ⁸	171	1	172	1	172	1	172	1	170	1
Adjudication Completion Figures										
D. Adjudications Complete	22,268	~100	22,271	99	22,505	99	22,547	~100	22,551	100
E. Adjudications Not Yet Complete	1	~0	248	1	42	1	2	~0	0	0
Adjudication Approval/Denial Rates										
F. Claims Approved by Adjudicator	14,751	66	15,237	68	15,596	69	15,635	69	15,645	69
G. Claims Denied by Adjudicator ⁹	7,517	34	7,034	32	6,909	31	6,912	31	6,906	31
Adjudication Approvals Paid/Not Paid										
H. Approved Adjudications Paid	14,494	98	15,079	99	15,408	99	15,537	99	15,608	99
I. Approved Adjudications Not Yet Paid	257	2	158	1	188	1	98	1	37	1
J. Cash Relief Paid to Class Members for Track A Credit Claims ¹⁰	\$714,900,000		\$745,300,000		\$759,800,000		\$765,850,000		769,400,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims	\$1,254,000 ¹¹		\$1,299,000		\$1,467,000		\$1,512,000		1,515,000	

⁸ The decrease in the number of Track B claims is a result of claimants converting their claims, with the consent of the Government, to Track A.

⁹ The decrease in denials is a result of decisions being overturned on reexamination.

¹⁰ This figure includes cash relief awards in Track A credit cases only. It does not include debt relief, tax relief, awards for non-credit claims, or awards or settlements in Track B cases.

¹¹ The cumulative dollars reported by the Facilitator for non-credit payments decreased from the amount reported as of the end of 2005 due to the Facilitator's internal reconciliation of paid non-credit claims for certain claimants who prevailed on both credit and non-credit claims.

Appendix 21**Year-by-Year Statistical Report Regarding Adjudicator Reexamination Decisions¹²**

Statistical Report as of:	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008	End of 2009	End of 2010
Reexamination Decisions Issued by Adjudicator	39	301	664	1,355	1,957	2,606	2,868	2,893	2,904
1. Reexamination Decisions After Claimant Petition Granted by Monitor	39	291	631	1,295	1,880	2,494	2,743	2,766	2,776
a. Claimant Prevailed on Reexamination	39	279	571	1,189	1,704	2,229	2,437	2,456	2,464
b. Claimant Did Not Prevail on Reexamination	0	12	60	106	176	265	306	310	312
2. Reexamination Decisions After Government Petition Granted by Monitor	0	10	33	60	77	112	125	127	128
a. Government Prevailed on Reexamination	0	10	31	52	68	102	113	113	113
b. Government Did Not Prevail on Reexamination	0	0	2	8	9	10	12	14	15

¹² These statistics are provided by the Facilitator.

Appendix 22

Constructive Application Principles Agreement

"Constructive Application" Principles

Background

The Consent Decree refers only to applications, and does not recognize attempts to apply:

- A. Paragraph 2(a), "Class Definition," states as an element that the claimant "applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program"
- B. Paragraph 9(a)(i)(B) [Track A Adjudications] includes the requirement that the claimant show that "he applied for a specific credit transaction at a USDA county office" See also paragraph 9(b)(i)(A).
- C. The parties agree that "attempts to apply" by themselves are not included in the Class Definition, but recognize the concept of "constructive application."

Definition

"Constructive application" is defined as having the following elements:

- A. The claimant contacted an appropriate USDA office (usually his/her county USDA office) or employee of that office, and stated that he/she wanted to apply for a particular loan or benefit.
- B. A USDA employee or employees refused to provide loan or benefit application forms, or otherwise actively discouraged the claimant from applying.
Examples include:
 - 1. Stated that there were no funds available, and therefore no application would be provided.
 - 2. Stated that there were no application forms available.
 - 3. Stated that the office was not then accepting or processing applications.

Supporting Statements or Evidence

- A. For Track A claims, in addition to meeting the definition of "constructive application," Part V of the claim sheet and election form ("Adjudication Claim Affidavit") should include specific facts which support a conclusion that the

claimant made a bona fide effort to obtain funds for farming purposes, such as:

1. The year in which he/she applied and the general time period within that year (e.g., late fall, early spring, sometime in January, February, or March);
 2. The type and amount of loan for which he/she was applying;
 3. How he/she planned to use the funds, i.e., did he/she identify crops, equipment, acreage, etc.; and
 4. The claimant's plans for a farm operation were consistent with farming operations in that county/area in that year.¹
- B. For Track B claimants, the evidence adduced responds to the four elements in A above, and in addition provides testimony or documents to corroborate the assertion that the claimant contacted a USDA official to participate in a federal farm program or programs, and that he/she had a farm plan which listed specific crops, equipment, and acreage.

¹ In addition to meeting this definition, a Track A claimant must establish the elements set forth in paragraph 9(a)(i) of the Consent Decree, including that specifically identified similarly situated white farmers were afforded better treatment on contemporaneous applications for the same loan or benefit program, i.e., that the similarly situated white farmers did not encounter similar barriers to the application process. "Contemporaneous" is defined as relating to the same time period within the crop year (e.g., late fall, early spring, or a specific month).

Appendix 23**Monitor Updates on Track A**

Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
7	10/20/2000	Claimant and Claimant Attorney Access to USDA Documents	Questions from claimants and claimants' counsel about access to USDA documents in individual claims; USDA documents are confidential and protected from disclosure by a Second Amended Supplemental Privacy Act Protective Order issued in the case, if claimants sign a copy of the Protective Order they may obtain USDA information about themselves, such as documents from the claimants' own Farmers Home Administration (FmHA) files; if counsel who are unaffiliated with Class Counsel sign a copy of the Protective Order they may obtain USDA information about the claimants they represent and any white farmers identified by the claimants; the Protective Order requires that USDA information be maintained as confidential.
9	3/6/2001 Revised 10/01/2003	Noncredit Claims - \$3,000 for Each Prevailing Class Member	The difference between credit claims and noncredit claims; Consent Decree provision that claimants who prevail in noncredit claims are to receive the amount of the benefit that was wrongly denied; Class Counsel and the government have agreed that deciding the amount of the benefit wrongly denied in each case would be difficult, if not impossible; Class Counsel and the government have therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single \$3,000 payment from USDA.

Appendix 24
Court Orders on Track A

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
304	7/14/2000	Second Amended Supplemental Privacy Act Protective Order	Amends prior Protective Orders governing procedures for handling confidential information; authorizes the government to release confidential information to the Adjudicator for purposes of the adjudication of individual claims; authorizes the Adjudicator to use confidential materials in decisions subject to specific conditions set forth in the order; authorizes the release of decisions to the class member whose claim is the subject of the decision and specified other individuals to be used only in this action.
1166	8/09/2005	Order	Denies motion by individual class member seeking to hold Adjudicator in contempt for denying class member's Track A claim; the Consent Decree states the Adjudicator's decision is final, subject only to a petition for Monitor review; the Court does not have the authority to review the Adjudicator's decision.
1169	8/09/2005	Order	Denies motion by individual class member seeking to hold the Adjudicator in contempt for denying his Track A claim after the Monitor directed reexamination of the claim; under the Consent Decree, the Adjudicator's reexamination decision is final and the Court lacks jurisdiction to review the Adjudicator's reexamination decision.
1253	2/23/2006	Memorandum Opinion and Order	Denies without prejudice the motion of individual class members to enforce the Consent Decree to obtain the \$50,000 cash relief and other relief that corresponds to a prevailing credit claim awarded in a November 1, 1999 decision. The claimants received an Amended decision on February 29, 2000 which awarded non-credit relief. The Court refers the matter to the Monitor to attempt to resolve under paragraph 12(b)(iii) of the Consent Decree. <i>Pigford v. Johanns</i> , 2006 U.S. Dist. LEXIS 6685 (D.D.C. Feb. 23, 2006)

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
1254	2/23/2006	Memorandum Opinion and Order	Orders the Monitor to investigate and report to the Court regarding “Amended” Adjudicator decisions, including, among other things: (1) how many Adjudicator decisions have been amended such that the Amended decision resulted in substantive changes to the relief awarded in the initial Adjudicator decision; and (2) what relief, if any, class members actually received from the government. <i>Pigford v. Johanns</i> , 2006 U.S. Dist. LEXIS 6686 (D.D.C. Feb. 23, 2006)
1296	6/30/2006	Stipulation and Order	Approves an agreement by the parties regarding certain “Conservation Loan” claims in which class members received Amended Adjudicator decisions. The Stipulation and Order reinstates the original Adjudicator decisions for certain class members, subject to the government’s right to file a petition only as to whether the claimant is entitled to credit or non-credit relief.

Appendix 25
Track B Claims Process

Paragraph 10 Process Steps	Paragraph 10 Deadline
Hearing Notice, setting deadlines for hearing and pre-hearing process	10 days after Arbitrator receives claim package
Hearing Notice Deadlines	
List of Witnesses and statement describing testimony	90 days prior to hearing
List of Exhibits and copy of exhibits	90 days prior to hearing
Discovery period	45 days prior to hearing
Written Direct Testimony	30 days prior to hearing
Notice of Witnesses to be Cross-examined	21 days prior to hearing
Memoranda Addressing Legal and Factual Issues	21 days prior to hearing
Arbitration Hearing	120-150 days from date of Hearing Notice
Written Arbitrator Decision	30-60 days after hearing date

Appendix 26
Year-by-Year Statistical Report Regarding Track B Claims¹³

Statistical Report as of:	Sept. 18, 2000	End of 2001	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008	End of 2009	End of 2010
A. Eligible Track B Claimants	177	235	236	237	238	239	240	241	241	241	241
B. Track B Cases Settled	11	57	61	71	69 ¹⁴	71	71	71	71	72	75
C. Track B Cases Converted to Track A	27	50	54	55	62	64	65	65	65	65	68
D. Track B Cases Withdrawn	5	6	6	6	9	9	9	9	9	9	9
Arbitrations Complete/Not Complete											
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105	98	95	95	96	96	95	89
F. Final Arbitration Decisions Issued	15	51	71	77	81	87	90	91	91	91	86
G. Final Arbitration Decisions Not Yet Issued	119	71	44	28	17	8	5	5	5	4	3 ¹⁵
Arbitration Results											
H. Claimant Prevailed Before Arbitrator	2	8	15	17	18	19	22	23	23	25	27
I. Average Award to Prevailing Claimants	\$580,500	\$531,373	\$560,309	\$545,686	\$551,587	\$526,626	\$499,057	\$476,679	\$476,679	\$985,046	\$972,909
J. Government Prevailed Before Arbitrator	13	43	56	60	63	68	68	68	68	66	59
Posture of Decisions in Which Government Prevailed											
K. Cases Dismissed Before Hearing	10	28	34	38	40	44	44	44	44	44	40
L. Full Hearing, Finding of No Liability	3	15	22	22	23	24 ¹⁶	24	24	24	22	19

¹³ These statistics are provided by the Arbitrator for the columns for September 18, 2000, through the end of 2005; the Facilitator provided the statistics for the columns through the end of 2006, 2007, 2008, and 2010.

¹⁴ This number is lower than the prior year's number because the Arbitrator learned that reports that some cases had settled were in error.

¹⁵ These statistics include claims in which the Arbitrator had not yet issued an initial final decision and claims in which a final decision remained pending after a petition for reexamination was granted.

¹⁶ This number includes a claim in which the decision was signed by the Arbitrator on November 30, 2005, but the decision was not postmarked until January 4, 2006.

Appendix 27
Court Orders on Track B

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
266	3/01/2000	Order	Delegates to Arbitrator the authority to stay or extend deadlines with the consent of the parties in Track B claims.
269	3/09/2000	Order	Denies claimant motion for review of Track B procedures; rules that issues regarding Track B claims may only be presented to the Arbitrator or by petition for review by Monitor. <i>Pigford v. Glickman</i> , 2000 U.S. Dist. LEXIS 15106 (D.D.C. Mar. 9. 2000)
303	7/14/2000	Stipulation and Order	Sets deadline for petitioning for Monitor review of Arbitrator decisions under Track B; states that any party who receives a wholly or partially adverse decision under Track B shall file only one petition for Monitor review.
304	7/14/2000	Second Amended Supplemental Privacy Act Protective Order	Amends prior Protective Orders governing procedures for handling confidential information; authorizes the government to release confidential information to the Arbitrator for purposes of the arbitration of individual claims; authorizes the Arbitrator to use confidential materials in decisions subject to specific conditions set forth in the order; authorizes the release of decisions to the class member whose claim is the subject of the decision and specified other individuals to be used only in this action.
589	1/17/2002	Memorandum Opinion and Order	Rules that the Arbitrator has the authority to revise the deadlines in Track B proceedings and that such authority is implicit in the terms of the Consent Decree and supported by general principles of judicial discretion so long as justice requires the revisions and provided that the burden on the Government is not so great as to outweigh the interest of the claimant in fully presenting his or her claim (the Court of Appeals reversed this Order on June 21, 2002 and remanded for further proceedings). <i>Pigford v. Veneman</i> , 182 F. Supp. 2d 50 (D.D.C.), <i>rev'd and remanded</i> , 292 F.3d 918 (D.C. Cir. 2002)

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
590	1/17/2002	Memorandum Opinion and Order	Grants in part and denies in part USDA's motion for enforcement of the Second Amended Supplemental Privacy Act Protective Order and for sanctions; finds Class Counsel violated the Protective Order by providing several hundred Track A files to <i>pro bono</i> counsel representing sixteen Track B claimants, directs <i>pro bono</i> counsel to seek from the Government the release of any additional protected files that <i>pro bono</i> counsel may be entitled to receive; holds that the issue of sanctions for the release of files will be decided at such time as the Court can consider all pending requests for sanctions. <i>Pigford v. Veneman</i> , 182 F. Supp .2d 53 (D.D.C. 2002)
-	6/21/2002	Circuit Court Opinion	Court of Appeals finds that Class Counsel's failure to meet critical Track B deadlines amounts to an "unforeseen obstacle" that makes the Consent Decree deadlines "unworkable;" but that the remedy provided in the District Court's January 17, 2002 Order was not suitably tailored; remands to the District Court for further proceedings, including a suitably tailored remedy that preserves the essence of the parties' bargain under the Consent Decree: for farmers, an opportunity to have their individual claims pursued by competent counsel; and for the Government, the benefit of the Consent Decree's tight deadlines. <i>Pigford v. Veneman</i> , 292 F.3d 918 (D.C. Cir. 2002)
1041	11/08/2004	Memorandum Opinion and Order	Rules that the relief the Court of Appeals granted in its June 21, 2002, opinion relating to Track B arbitration deadlines is available only to claimants represented by Class Counsel; orders that Track B deadlines may not be modified, absent the parties' consent, for claimants who chose to be represented by attorneys other than Class Counsel. <i>Pigford v. Veneman</i> , 344 F. Supp. 2d 149 (D.D.C. 2004)
1133	5/05/2005	Memorandum Opinion and Order	Denies motions by named class members seeking an order directing the Arbitrator to permit extension of Track B deadlines; states that a class member seeking relief from Track B deadlines must demonstrate both that he or she was represented by Class Counsel and that Class Counsel's conduct caused him or her to miss Track B deadlines.

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
1262	3/23/2006	Memorandum and Order	Denies a motion to set aside the Arbitrator's decision in a Track B claim, or in the alternative, to order a new hearing on the claim. The Court's Order notes that the claimant had filed a petition for Monitor review, which remained pending at the time of the Court's Order. <i>Pigford v. Johanns</i> , 421 F. Supp. 2d 130 (D.D.C. 2006)
1505	11/14/2008	Memorandum Opinion and Order	Grants the renewed motion of an individual claimant for attorney's fees and costs for a successful Track B claim; discusses the criteria for award of reasonable fees and costs to a prevailing party under the Equal Credit Opportunity Act (ECOA). <i>Pigford v. Schaefer</i> , 2008 U.S. Dist. LEXIS 111833 (D.D.C. Nov. 14, 2008)
1554	5/07/2009	Memorandum Opinion and Order	Denies the motion of an individual claimant who prevailed in the Track B claims process but did not receive any economic damages award. In the motion filed with the Court, the claimant asserted that the Arbitrator and Monitor erred in considering certain evidence presented by USDA regarding economic damages. The Court denied the claimant's motion, ruling that the Consent Decree did not permit the Court to be involved in decisions about scheduling and management of individual claims.

Appendix 28
Court Orders on Cash Relief

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
225	9/29/1999	Stipulation and Order	Specifies process for Facilitator to issue cash relief payments to class members who prevail on Track A credit claims.
400	2/07/2001	Stipulation and Order	Indicates parties believe that determining the amount of noncredit benefits that individual class members were denied would be difficult if not impossible in each individual case; parties set amount of cash relief at \$3,000 per class member for claimants who prevail on one or more noncredit claims.
487	8/29/2001	Order	Exempts the non-credit claims of one class member from the \$3,000 cash relief limitation established by the February 7, 2001 Stipulation and Order.
577	12/14/2001	Order	Denies motion to show cause regarding delayed payment of seven prevailing Track A claims; notes the Government has made significant progress in paying prevailing Track A claims.

Appendix 29
Individual Track B Damage Awards¹⁷

	Amount of Award
1	\$52,000
2	\$77,321
3	\$100,000
4	\$116,533
5	\$164,465
6	\$172,000
7	\$269,525
8	\$277,115
9	\$302,291
10	\$411,249
11	\$427,363
12	\$507,955
13	\$544,400
14	\$557,800
15	\$594,444
16	\$594,794
17	\$595,323
18	\$615,090
19	\$616,600
20	\$625,566
21	\$651,903
22	\$750,048
23	\$780,000
24	\$849,046
25	\$879,921
26	\$1,093,500
27	\$1,447,917
28	\$9,091,318
29	\$12,789,162

¹⁷ These statistics are provided by the Facilitator for Track B damage awards as of the end of 2011. In one claim, a petition for Monitor review remained pending as of the end of 2011.

Appendix 30
Court Orders on Debt Relief

Court Docket Number	Date Filed	Title of Order	Issues Addressed Include:
400	02/07/2001	Stipulation and Order	Defines debt relief for prevailing class members as (1) all debts which were identified by the Adjudicator or Arbitrator as having been affected by discrimination, and (2) all debts in the same loan program(s) as the “affected by” loan(s) incurred at the time of or after the first event upon which a finding of discrimination is based, except that loans will not be forgiven if they were the subject of separate litigation in which there was a final judgment. <i>Pigford v. Glickman</i> , 2001 U.S. Dist. LEXIS 2003 (D.D.C. Feb. 7, 2001)
1455 & 1456	2/21/2008	Order and Opinion	Denies motions filed by individual class members and the estates of class members regarding debt relief. The loans at issue originated prior to the date of discrimination identified in the Adjudicator’s decisions and were “incurred” when the class members first became liable to repay them, not when they were restructured or subject to a shared appreciation agreement. USDA must provide information regarding the loans underlying a shared appreciate agreement, but may enforce the agreement as to loans that are not subject to <i>Pigford</i> debt relief. <i>Pigford v. Schaefer</i> , 536 F. Supp. 2d 1 (D.D.C. 2008)
1549	4/21/2009	Order	Directs the Monitor to work with the parties to review and verify USDA’s implementation of debt relief for all prevailing claimants who may be entitled to debt relief.
1667	7/28/2010	Order	Directs the Monitor to report on USDA’s implementation of guidance from the Internal Revenue Service (IRS) for issuing Forms 1099-C to claimants who receive debt relief.

Appendix 31**Year-by-Year Statistical Report Regarding Debt Relief¹⁸**

Statistical Report as of:	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008	End of 2009	End of 2010	As of Mar. 30, 2012
A. Total Amount of Debt Forgiven (Principal and Interest)	\$21,930,937	\$22,657,917	\$26,093,911	\$30,291,397	\$33,313,408	\$41,529,287	\$42,936,326	\$48,290,848	\$53,328,610
B. Debt Forgiven for Track A Claimants	\$19,583,425	\$20,253,962	\$23,191,245	\$26,626,924	\$29,635,934	\$37,447,673	\$38,594,172	\$40,761,125	\$43,933,246
C. Debt Forgiven for Track B Claimants	\$2,347,512	\$2,403,955	\$2,902,666	\$3,664,473	3,677,474	\$4,081,614	\$4,342,154	\$7,529,723	\$9,395,363
D. Number of Track A Claimants Who Received Debt Forgiveness	228	239	268	307	319	344	351	370	402
E. Number of Track B Claimants Who Received Debt Forgiveness	25	25	17 ¹⁹	18	18	19	20	24	28
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$85,892	\$84,745	\$86,535	\$86,733	\$92,903	\$108,860	\$109,955	\$110,165	\$109,287
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$93,900	\$96,158 ²⁰	\$170,745	\$203,582	\$204,304 ²¹	\$214,822	\$217,108	\$313,738	\$335,549

¹⁸ These statistics are provided by USDA.

¹⁹ USDA reported to the Monitor that the number of Track B claimants who received debt relief decreased in 2005 because USDA discovered that the number of Track B claimants reported for prior years had included claimants who did not actually receive debt relief.

²⁰ The average amount of Track B debt relief increased in 2004 even though the number of Track B claimants who received debt relief remained the same as in 2003. This is because one Track B claimant who had been awarded debt relief prior to 2004 was awarded additional debt relief in calendar year 2004.

²¹ The average amount of Track B debt relief increased in 2007 even though the number of Track B claimants who received debt relief remained the same as in 2006. This is because one Track B claimant who had been awarded debt relief prior to 2007 was awarded additional debt relief in calendar year 2007.

Appendix 31 (continued)**Statistical Report on Debt Relief Review**

Statistical Report as of:	March 30, 2012
A. Number of Claimants Who Received Debt Forgiveness as a Result of Debt Relief Review	169
B. Amount of Debt Forgiven (Principal and Interest) as a Result of Debt Relief Review	\$6,826,664
1. Amount of Track A Debt Forgiveness	\$5,762,897
2. Amount of Track B Debt Forgiveness	\$1,967,007
C. Amount of Payment Refunds as a Result of Debt Relief Review	\$2,868,907
D. Amount of Offset Refunds as a Result of Review	\$538,467
E. Amount of Payments Reapplied to Non- <i>Pigford</i> Loans as a Result of Debt Relief Review	\$114,535
F. Amount of Offsets Reapplied to Non- <i>Pigford</i> Loans as a Result of Debt Relief Review	\$45,242

Appendix 32

Monitor Updates on Debt Relief

Update Number	Date(s) Issued	Name of Update	Issues Addressed Include:
10	3/19/2001 Revised: 7/11/2010	Debt Relief for Prevailing Class Members	Who qualifies for debt relief under the Consent Decree; substantive rules for determining debts to be discharged; debt forgiveness in prevailing loan servicing claims; loans excluded from debt relief; rules for refunds of payments made after the date of a prevailing decision; defining an initial prevailing decision for purposes of debt relief; rules for refunds of offsets taken to repay farm program loans; correcting mistakes in the implementation of debt relief; debt forgiveness and future participation in USDA loans or servicing programs.
14	6/28/2004	No Adverse Effect: Future Loans and Future Loan Servicing for Prevailing Class Members	Debts forgiven under <i>Pigford</i> Consent Decree will not adversely affect a claimant's eligibility for future USDA loans and loan servicing programs; how other, non- <i>Pigford</i> debt forgiveness, such as a write-down or write-off, may render a borrower ineligible for a new USDA direct or guaranteed loan; examples of <i>Pigford</i> debt forgiveness and loan eligibility decisions; USDA's creditworthiness requirement for getting a new loan; examples of <i>Pigford</i> debt forgiveness and creditworthiness determinations; <i>Pigford</i> debt forgiveness and eligibility for future loan servicing.

Appendix 33

Sample Tax Information Sheet on USDA Settlement

Black Farmers' Settlement

Claims Facilitator

P.O. Box 4390

Portland, OR 97208-4390

Date

Name 1

Name2

Address

City, State, Zip

Claim #

Dear Claimant:

The attached information is being provided that might be of assistance to you and your tax preparer as you file tax returns on benefits you received in the 2008 settlement of your claim under the Consent Decree in the Black Farmer case against the US Dept. of Agriculture (USDA).

This information is based on guidance previously provided by the Internal Revenue Service (IRS) to help claimants correctly report benefits received in the settlement of their claims under the Consent Decree. These guidelines have been updated for the 2008 tax year and the attachment is a copy of the updated guidelines.

Further, you should know that in addition to the \$47,000 you received in 2008, a payment of \$12,500 (an amount equal to 25% of the \$47,000 and the \$3,000 you received earlier) will be deposited to your IRS account in early 2009 to be available to apply against your Federal tax liability on the total \$50,000. On top of that, money also will be deposited in your IRS account if you had USDA debt cancelled under your settlement-in an amount equal to 25% of the debt principal written off. The amounts deposited in your IRS account are taxable income that will have to be reported when you file your taxes for 2009.

These tax deposits might not be made to your IRS account until March or April 2009. Therefore, if you file your 2008 tax return in January or February 2009, it is possible that the IRS will not yet have a record of the tax deposit, and might send you a tax bill. If that happens, the problem can be corrected by contacting Class Counsel at toll-free 1-866-492-6200.

You also should know that the settlement does not include tax payments to state governments to cover state tax liabilities you might incur on your benefits.

To discuss any other specific issues or questions that come to mind when you read this letter or the 2008 guidelines, you are encouraged to contact Class Counsel at toll free 1-866-492-6200.

Sincerely,

David J. Frantz

Phillip L. Fraas

Rose Sanders

CLASS COUNSEL

TAX INFORMATION ON USDA SETTLEMENT

Based on guidelines previously issued by the Internal Revenue Service (IRS), we are providing the following information to assist you in preparing and filing your 2008 individual income tax return. This information sets forth the procedures for reporting any settlement award items received during tax year 2008 on your 2008 federal income tax return (IRS Form 1040, Individual Income Tax Return).

Cash Payment

The USDA cash payment of \$47,000 you received in 2008 is considered taxable farm income for 2008. Income of this nature is reported on line 10 of Schedule F, Profit or Loss from Farming, and is subject to self-employment tax if you were engaged in the business of farming during the 2008 tax year. Please identify the payment on line 10 as "USDA Settlement". If you are reporting your settlement as farm income, you might be eligible to file a Schedule J, Farm Income Averaging.

Loan Cancellation Amounts

The amount of loan principal cancelled in 2008 is considered taxable farm income for 2008. Income of this nature is reported on line 10 of Schedule F, Profit or Loss from Farming, and is subject to self-employment tax if you were engaged in the business of farming in 2008. Identify this amount on line 10 as "USDA Settlement". If you are reporting your loan cancellation amount as farm income, you might be eligible to file a Schedule J, Farm Income Averaging.

Loan cancellation amounts are not included in income if you were insolvent at the time the loan was cancelled or if the loan was qualified farm debt. If you meet these requirements, you must file Form 982 with Form 1040. To determine if you meet the requirements of either of these exclusions, see IRS Publication 908 and IRS Publication 225.

Tax Payments

The 25% tax payment to be made by the USDA on your behalf will be deposited directly with the IRS in early 2009 and applied to your 2008 account if you make note of it in your 2008 return. You should note this amount on Line 63, Estimated Tax Payment, on Form 1040, Individual Income Tax Return, for tax year 2008.

If you don't owe any taxes, you might be entitled to a refund due to the 25% tax payment. To receive a refund you might be entitled to, you should file a return within 3 years of the filing deadline for the 2008 tax year.

This tax payment is also considered taxable farm income and is eligible for farm income averaging. If you use the cash method of accounting, you should report it on your Form 1040 Schedule F for tax year ~~2009~~ because the payment is actually transferred to the IRS in 2009. You will receive a Form 1099MISC by January 31, 2010, showing this payment as miscellaneous income in 2009. This income is subject to self-employment tax if you were engaged in the business of farming in the year 2009.

If your 2008 tax return results in an overpayment, you may choose to have all or part of your overpayment applied to your 2009 tax return as an estimated tax payment. Use Line 74 of Form 1040 for 2008 to do this.

Appendix 34

IRS Office of Chief Counsel Memorandum:
***Pigford v. Schaefer* Debt Relief Issues**

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC: ITA:B05:JMAramburu

date: March 12, 2009

to: Special Counsel to the National Taxpayer Advocate

from: John M. Aramburu
Senior Counsel, Branch 5
(Income Tax & Accounting)

subject: Pigford v. Schafer: Debt Relief Issues

Issues

This memorandum addresses certain federal income tax issues raised by the settlement of Pigford v. Schafer, a class action lawsuit brought on behalf of African-American farmers against the United States Department of Agriculture (USDA). The claimants alleged discriminatory treatment, and the settlement provides, in part, for the forgiveness of certain USDA loans made to the claimants. This memorandum addresses the following issues:

- (1) The years in which claimants realize discharge of indebtedness income as a result of debt forgiveness;
- (2) The years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income;
- (3) Whether there could be reporting of "net" amounts on Forms 1099-C in cases where a decision resulted in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven; and
- (4) What obligation does USDA have to issue corrected forms for past years?"

Conclusions

This memorandum does not address whether an individual claimant can exclude any realized discharge of indebtedness income from gross income under section 108 of the Internal Revenue Code. That provision permits the exclusion of discharge of indebtedness income under various circumstances, including insolvency and when the forgiven debt is "qualified farm indebtedness," as defined by the statute. Nor do we address a claimant's duty to report as income amounts paid by USDA to compensate the claimant for tax liability arising from a cash award or debt forgiveness.

PMTA 2009-151

(1) Pigford claimants may realize discharge of indebtedness income in a number of tax years, as events occur that affect the amount of debt forgiven. In some cases, claimants may have deductible losses if debt previously considered forgiven and reported as income is reinstated.

(2) The years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income depends on the year in which the last event necessary to effectuate a discharge occurred. In this case, the events necessary to effectuate discharges of indebtedness occurred in a number of years, thus requiring information returns for a number of years.

(3) There should not be reporting of "net" amounts on Forms 1099-C. Where a decision resulted in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven, the full amount of the loan that is forgiven must be reported on Form 1099-C in the year in which the last event necessary to effectuate the discharge occurred. In cases where a loan is reinstated, there is no further reporting required for discharged debt that was reported on a Form 1099-C for a prior year.

(4) If Forms 1099-C reporting the discharges of indebtedness were filed incorrectly by the USDA, corrections should be submitted for returns filed within the last three calendar years.

Facts

A Consent Decree dated April 14, 1999, sets forth the terms of the settlement. It establishes two "tracks" for resolving claims. Section 9 describes "Track A." A claimant proceeding under Track A must demonstrate to an "adjudicator" that;

- (A) The claimant owned or leased, or attempted to own or lease, farm land;
- (B) The claimant applied for a specific credit transaction at a USDA county office during the period [1981-1996];
- (C) The loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and
- (D) USDA's treatment of the loan application led to economic damage.

If the adjudicator determines that a claimant has made the required showing, the Consent Decree provides for various forms of relief. The debt forgiveness component is described as follows: "USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the

subject of the ECOA [Equal Credit Opportunity Act] claim(s) resolved in the class member's favor by the adjudicator."

A court-appointed "Monitor" is charged with monitoring implementation of the Consent Decree and making reports to the Court. The Monitor also has the authority to "[d]irect the facilitator, adjudicator, or arbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice." Sec. 12(b)(iii) of the Consent Decree. Pursuant to an April 4, 2000, "Order of Reference," a 120-day period was instituted for the filing of petitions seeking Monitor review of decisions. The parties were given until July 2000 to petition for the review of decisions already issued.

Disputes arose among the parties regarding interpretation of the Consent Decree provision for debt relief for successful claimants. A February 7, 2001, Stipulation and Order resolved one such dispute. The parties agreed that claimants were entitled to forgiveness of not only that debt that was the subject of a discrimination claim decided in the claimant's favor, but also any subsequent debt incurred under the same loan "program" administered by the USDA. The agreement that such subsequent debt also should be forgiven has been referred to as the "forward sweep."

In 2008, the parties resolved another issue concerning the scope of debt relief. They agreed that the subsequent debt forgiven pursuant to the forward sweep should be considered forgiven as of the date the adjudicator or arbitrator's decision in favor of the claimant became final (rather than on the date of the agreement for a forward sweep). Thus, if a decision in favor of a claimant became final in February 2000, the amount of the subsequent debt forgiven should be its balance as of February 2000. This agreement necessitated the refund of certain payments made on the subsequent debt, as well as the refund of certain amounts collected through offset, e.g., by withholding government benefits. See Monitor Update No. 10.

Finally, the Monitor's office is currently engaged in a review of most or all decisions involving credit discrimination claims to ensure that the proper amount of debt relief has been awarded.

² Other relief awarded to qualifying Track A claimants includes a cash award of \$50,000 and tax deposits equal to 25% of the cash award and principal amount of the forgiven debt, respectively.

"Track B" is described in Section 10 of the Consent Decree. Decisions are made by an "arbitrator," rather than an adjudicator, and only after an evidentiary hearing. A Track B claimant is required to demonstrate the required discrimination by a preponderance of the evidence. The benefit to a claimant of pursuing this more rigorous process is the potential recovery of actual monetary damages under the ECOA, rather than the prescribed \$50,000 award provided to successful Track A claimants.

³ The USDA made loans under various programs, ~, Operating Loans, Farm Ownership Loans, and Emergency Loans.

Law- Issue (1)

Section 61(a)(12) of the Internal Revenue Code provides that gross income includes income from the discharge of indebtedness.

In United States v. Kirby Lumber Co., 284 U.S. 1 (1931), a corporation repurchased its bonds for an amount less than their par value. The Court held that this resulted in an accession to wealth because, to the extent of the difference, the corporation's assets had been released from a liability.

Regarding when a taxpayer realizes discharge of indebtedness income, the Tax Court stated in Cozzi v. Commissioner, 88 T.C. 435, 445 (1987):

The moment it becomes clear that a debt will never have to be paid, such debt must be viewed as having been discharged. The test for determining such moment requires a practical assessment of the facts and circumstances relating to the likelihood of payment. Brountas v. Commissioner, 74 T.C. 1062, 1074 (1980), supplemental opinion to 73 I.C. 491 (1979), vacated and remanded on other grounds 692 F.2d 152 (1st Cir. 1982), affd. in part and revd. in part on other grounds sub nom. CRC Corp. v. Commissioner, 693 F.2d 281 (3d Cir. 1982); see Bickerstaff v. Commissioner, 128 F.2d 366, 367 (5th Cir. 1942); Kent Homes Inc. v. Commissioner, 55 T.C. 820, 828-831 (1971), revd. on other grounds 455 F.2d 316 (10th Cir. 1972); Cotton v. Commissioner, 25 B.T.A. 1158 (1932). Any "identifiable event" which fixes the loss with certainty may be taken into consideration. United States v. S.S. White Dental Mfg. Co., 274 U.S. 398 (1927).

In Exchange Security Bank v. United States, 492 F.2d 1096 (5th Cir. 1974), a settlement agreement between the taxpayer and his creditor received judicial approval but was the subject of an appeal. The court held that the taxpayer realized discharge of indebtedness income in the year the settlement received judicial approval, notwithstanding the appeal, and that any reversal of the debt forgiveness would entitle the taxpayer to a loss deduction:

The right to receive cancellation of the debt accrued to appellants in March, 1959, and it was reaffirmed by the judicial order in August, 1959, Texas Trailercoach, Inc. v. C.I.R., 5 Cir., 1958, 251 F.2d 395. At that point it was determined with certainty that the debt could never be enforced, Koehring v. United States, 421 F.2d 715, 190 Ct. Cl. 898 (1970); Helvering v. Jane Holding Corp., 8 Cir., 1940, 109 F.2d 933, cert. denied, 310 U.S. 653, 60 S. Ct. 1102, 84 L. Ed. 1418 (1940). The faint possibility of required revival as a consequence of a future appeal to this Court did not change the actual realization of the gain, James v. United States, 366 U.S. 213, 81 S. Ct. 1052, 6 L. Ed. 2d 246 (1961); North American Oil Consolidated

v. Burnet, supra: Buder v. United States, 8 Cir., 1966, 354 F.2d 941.

Indeed, it is clear that if the debt had been revived, appellants would still have been required to report the realized income and subsequently claim the loss, United States v. Lewis, 340 U.S. 590, 71 S. Ct., 522, 95 L. Ed. 560 (1951).

Id. at 1099-1100.

Analysis - Issue (1)

Applying the foregoing principles to the instant situation, we conclude that Pigford claimants may realize discharge of indebtedness income in a number of tax years, as events occur that result in the forgiveness of debt. A discussion of those events follows.

Final Decision of Adjudicator/Arbitrator

Claimants realize discharge of indebtedness income when the adjudicator's or arbitrator's decision awarding debt relief becomes final, so long as there is some basis for identifying the loan(s) forgiven. If there has been no petition for Monitor review, a decision generally will be final after expiration of the 120-day period for filing a petition (or in July 2000 in the case of the earliest decisions). If a petition has been filed regarding a decision favorable to a claimant, the decision becomes final either when the petition has been denied by the Monitor or when the original decision to forgive debt has been upheld upon reexamination by the adjudicator or arbitrator.⁴ If a petition is filed regarding a decision denying relief to a claimant and the decision is reversed, discharge of indebtedness income is realized when the revised decision is rendered.⁵

While in Exchange Security Bank v. United States, 492 F.2d 1096, the court found there to be discharge of indebtedness income prior to final judicial affirmance of a court-approved settlement, the case is distinguishable in that there the parties had mutually agreed that debt would be forgiven. Here, pending Monitor review, there has been no agreement regarding the debt relief in an individual case.

On the other hand, any administrative delay in "implementing" a decision does not affect the year in which a claimant realizes discharge of indebtedness income. Once a decision becomes final, debt has legally been forgiven. The USDA would be under an obligation to return any amounts collected improperly due to administrative error, and,

⁴ Exceptions to this general rule would include instances in which the USDA demonstrates, prior to expiration of the 120-day period, that it will not contest a claimant-favorable decision.

⁵ Note that the date a decision becomes final for purposes of determining when a claimant realizes discharge of indebtedness income can differ from the date used for purposes of determining the amount of debt forgiven and whether payments subsequent to such date are to be refunded. The latter issue is addressed in Monitor Update No.1 O.

therefore, irrespective of the delay in implementing the decision, a claimant has an accession to wealth within the meaning of United States v. Kirby Lumber Co., 284 U.S. 1 (1931).⁶

Additional Debt Relief Under "Forward Sweep"

Claimants realized additional discharge of indebtedness income as the result of the February 7, 2001, Stipulation and Order, which provides for the forgiveness of subsequent loans made under the same program as the loan that is the subject of a discrimination finding. Prior to the order, there was neither an agreement nor an order that such debt be forgiven. Thus, it was reasonable to assume that this debt would be enforced. The additional debt relief was realized in tax year 2001.

Additional Debt Relief Under Agreement to Make "Forward Sweep" Retroactive

Claimants realized additional discharge of indebtedness income in 2008 as a result of the 2008 agreement to make the forward sweep retroactive to the date the adjudicator's or arbitrator's decision became final so that a refund of payments or offsets is required. Prior to this agreement, it was reasonable to assume that the additional balance of the subsequent debt on this earlier date would be enforced. The refund of payments and offsets pursuant to this agreement should be distinguished from the refund of payments and offsets necessitated by delays in implementing debt relief, Le. those necessitated by administrative error. As explained earlier, administrative delays in implementing debt relief are not relevant to the timing of discharge of indebtedness income.

Miscellaneous Realization Events

The modification of a decision (either as the result of a petition for Monitor review, a *sua sponte* review, or the current "global" review) can result in additional discharge of indebtedness income if additional debt is forgiven. Conversely, modification of a decision may result in a deductible loss if there is a reversal of previously awarded debt relief that has been included in gross income. See Exchange Security Bank v. United States, 492 F.2d at 1100.

Similarly, where review of a decision results in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven to reflect the true intent of the arbitrator or adjudicator, a claimant may deduct as a loss the amount of debt previously included in income under the discharge of indebtedness doctrine and should report as income the amount of the newly-forgiven debt. This assumes that no amount of the debt initially discharged qualified for exclusion from gross income in the year it

⁶ In certain cases, the amount of debt forgiven will include, in addition to the balance owed on the date of the decision, an additional amount representing amounts collected by offset but which the USDA will refund to the successful claimant. A USDA Notice FLP-145, dated July 31, 2000, states the agency's policy that where a claimant prevails on a credit claim, offsets made after January 1, 1999, will be refunded.

was discharged and that no amount of the reinstated debt would qualify for exclusion from gross income.

Law -Issues (2), (3), and (4)

Section 6050P of the Internal Revenue Code requires that an applicable entity report any discharges (in whole or in part) of indebtedness of any person in excess of \$600.

Section 1.6050P-1(a)(1) of the Income Tax Regulations provides that solely for purposes of the reporting requirements of section 6050P, a discharge of indebtedness is deemed to occur, except as otherwise provided in paragraph (b)(3) of this section, if and only if an identifiable event has occurred, whether or not an actual discharge of indebtedness has occurred on or before the date of the identifiable event.

Section 1.6050P-1(b)(2) provides that solely for purposes of section 6050P, with certain exceptions, a discharge of indebtedness occurs if one of the following eight identifiable events takes place:

(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);

(8) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);

(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;

(O) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;

(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section. See § 1.6050P-1T.

Treas. Reg. § 1.6050P-1(e)(9) provides that if discharged indebtedness is reported under this section, no additional reporting is required for the amount reported, notwithstanding that a subsequent identifiable event occurs. Further, no additional reporting or Form 1099-C correction is required if a creditor receives a payment of all or a portion of a discharged indebtedness reported under this section for a prior calendar year.

Section 8.09 of Rev. Provo2008-30, 2008-23 I.R.S. 1056, provides that, in general, filers should submit corrections for Form 1099-Cs filed within the last three calendar years.

Analysis - Issues (2), (3) and (4)

(2) Years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income.

Final Decision of Adjudicator/Arbitrator

The identifiable event that applies in this case is described in 1.6050P-1 (b)(2)(F), an agreement between an applicable entity and the debtor to discharge the indebtedness at less than full consideration. This identifiable event will not occur until the last event necessary to effectuate the discharge has occurred. See T.D. 8654, 61 FR 262 (January 4, 1996). In 1999, the USDA (an applicable financial entity) and the claimants (the debtors) agreed to the settlement of Pigford v. Schafer, which has resulted in the forgiveness of certain USDA loans made to the claimants. Consequently, the USDA must file information returns under section 6050P for any amounts of discharged indebtedness for which the last event to effectuate the discharge has occurred. In general, the last event to effectuate the discharge occurs upon the adjudicator's or arbitrator's final decision awarding debt relief.⁷

However, because section 6050P requires reporting of discharges "in whole or in part," there can be a series of amounts that require reporting on Forms 1099-C. The additional amounts of discharged indebtedness occurring subsequent to a final adjudicator or arbitrator decision are discussed below.

Additional Debt Relief Under "Forward Sweep"

⁷ As discussed earlier, a final decision awarding relief occurs in various circumstances. Generally, a claimant-favorable initial decision will become final when the period for petitioning the Monitor expires, unless a petition has been filed, in which case the decision will become final when the petition is denied or the initial decision is reaffirmed upon reexamination. In the case of initial decisions adverse to a claimant that are appealed, discharge of indebtedness will occur when, after reexamination, a decision favorable to the claimant is rendered.

Under the forward sweep, claimants realized additional discharge of indebtedness income as a result of the February 7, 2001, Stipulation and Order. Prior to the order, there was neither agreement nor an order that such debt be forgiven. Although the debt relief to the claimants originated with the settlement agreement between the USDA and the claimants, in the case of the forward sweep, the Stipulation and Order dated February 7, 2001, was the last event necessary to fix the claimant's right to receive this additional amount of debt relief. Accordingly, the identifiable event triggering the information reporting requirement for debt relief under the forward sweep occurred on February 7, 2001. Thus, calendar year 2001 is the year for which Forms 1099-C are required to report the debt relief under the forward sweep.

Additional Debt Relief Under Agreement to Make "Forward Sweep" Retroactive

The claimants realized additional discharge of indebtedness income as a result of the 2008 agreement to make the forward sweep retroactive to the date the adjudicator's or arbitrator's decision became final so that a refund of payments or offsets was required. Prior to this agreement, it was not clear that the additional balance of the subsequent debt on this earlier date was forgiven. Thus, in the case of additional debt relief under the agreement to make the forward sweep retroactive, the last event to effectuate the debt relief under such agreement did not occur until 2008. Accordingly, the identifiable event triggering the information reporting requirement under section 6050P for such additional debt relief occurred in 2008, and that is the year for which the USDA is required to issue Form 1099-C.

Miscellaneous Realization Events

There are also miscellaneous realization events that result in discharge of indebtedness income. Modifications, either as a result of a petition for Monitor review, a *sua sponte* review, or the current "global" review, can result in either additional discharge of indebtedness or a reversal of previously awarded debt relief. Similarly, a review of a decision can result in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven to reflect the true intent of the arbitrator or adjudicator. If a switch or modification results in a reversal of previous debt relief, a claimant may deduct a loss for the amount of debt previously included in income.

When a loan is reinstated as a result of a modification or switch, we conclude that no additional reporting is required. Section 6050P only requires reporting of discharges of indebtedness, not the incurrence or reinstatement of indebtedness. In addition, reporting under section 6050P is required only upon the occurrence of an identifiable event. Reinstatement of a loan is not one of the eight identifiable events. Further, section 1.6050P-1(e)(9) provides that if discharged indebtedness is reported under this section, no further reporting is required for the amount reported, notwithstanding that a subsequent identifiable event occurs. Likewise, there is no additional reporting by the USDA under section 6050P, or Form 1099-C correction required, if a creditor receives payment of all or a portion of the amount discharged. Thus, if the USDA reports debt

canceled for a claimant on Form 1099-C and subsequently that debt is reinstated, no additional reporting is required for that loan amount. The claimant nonetheless may be entitled to a loss in such situations if they have previously included the discharge of debt in income.

However, in the case of a modification or switch that results in additional discharge of indebtedness income, or if additional debt is forgiven where another loan is discharged, Form 1099-C is required for the year in which the identifiable event occurred for that additional or new discharge, i.e. the year in which the last event to effectuate the modification or switch occurs. The amount reported on the Form 1099-C in such cases is the total amount of debt canceled as a result of the modification or switch for each claimant.

(3) Whether there could be reporting of a "net" amount on Form 1099-C.

We conclude that there should not be a "net" reporting on Form 1099. As discussed above under "Miscellaneous Realization Events," in the case of modifications or switches that result in both additional discharge of debt and a reinstatement of a loan, each event should be treated separately. The additional debt discharged must be reported on a Form 1099-C in the year in which the last event to effectuate the modification or switch occurs. There is no further reporting required where cancelled indebtedness that has previously been reported on Form 1099-C is reinstated.

(4) What obligation does USDA have to issue corrected forms for past years?

The general rule is that corrections should be submitted for Forms 1099-C filed within the last three calendar years. See Rev. Proc. 2008-30. If Forms 1099-C reporting the discharges of indebtedness were filed incorrectly by the USDA, corrections should be submitted for returns filed within the last three calendar years.

Please call (202) 622-4960 if you have any further questions.

Appendix 35**Monitor Update on Federal Income Tax and Debt Relief**

Update Number	Date Issued	Name of Update	Issues Addressed Include:
16	8/27/2009	Federal Income Tax and Debt Relief	Tax payments for prevailing Track A claimants who receive <i>Pigford</i> debt relief; federal income tax reporting requirements for <i>Pigford</i> debt cancellation; IRS rules on when debt cancellation income is realized; IRS Forms 1099-C for <i>Pigford</i> debt relief; correcting a previously issued IRS Form 1099-C.

Appendix 36**Updates on Injunctive Relief and Resources for Class Members**

Update Number	Date Issued	Name of Update	Issues Addressed Include:
4	8/16/2000 Revised: 4/6/2005 5/18/2005	Injunctive Relief in <i>Pigford v. Vilsack</i>	Eligibility for injunctive relief; types of injunctive relief; requirements for getting a USDA loan; deadlines for technical assistance, priority consideration and “light most favorable” injunctive relief rights in obtaining USDA loans; options for class members who fail in their efforts.
12	2/ 3/2003 Revised: 6/13/2008	Resources for <i>Pigford</i> Claimants	Contact information for university and extension programs, farm advocacy groups, legal organizations, state departments of agriculture, and USDA resources that may be of help to class members.
15	5/5/2005	Injunctive Relief: A New Order Changes the Deadlines	Changes to injunctive relief deadlines for technical assistance, for priority consideration, and for “most favorable light” injunctive relief; defining when a class member completes the claims process for purposes of injunctive relief.

Appendix 37**Year-by-Year Statistical Report Regarding
Priority Consideration Injunctive Relief²²**

Cumulative Statistical Report as of:	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008	End of 2009	End of 2010
A. Farm Ownership Loans								
1. Number of Requests for Priority Consideration with Complete Application	56	75	124	125	125	125	126	126
2. Number of Applications Approved	15	21	29	29	29	29	29	29
B. Farm Operating Loans								
1. Number of Requests for Priority Consideration with Complete Application	112	138	210	215	217	218	218	218
2. Number of Applications Approved	39	52	72	75	75	76	76	76
C. Inventory Property								
1. Number of Requests for Priority Consideration	3	4	10	10	10	10	10	10
2. Number of Applications Approved	1	1	1	1	1	1	1	1

²² These statistics are provided by USDA.