

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, *et al.*,
Plaintiffs,
v.
TOM VILSACK, Secretary,
United States Department of
Agriculture,
Defendant.

Civil Action No.
97-1978 (PLF)

CECIL BREWINGTON, *et al.*,
Plaintiffs,
v.
TOM VILSACK, Secretary,
United States Department
of Agriculture,
Defendant.

Civil Action No.
98-1693 (PLF)

MONITOR'S REPORT REGARDING IMPLEMENTATION OF
THE CONSENT DECREE FOR THE PERIOD OF
JANUARY 1, 2008, THROUGH DECEMBER 31, 2008

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	CLAIMS PROCESSING STATISTICS.....	3
	A. Eligibility	3
	<i>Table 1: Statistical Report Regarding Eligible Claimants</i>	6
	B. Track A	6
	<i>Table 2: Statistical Report Regarding Track A Claims</i>	8
	C. Track B.....	8
	<i>Table 3: Statistical Report Regarding Track B Claims</i>	10
III.	RELIEF STATISTICS.....	11
	A. Debt Relief.....	12
	<i>Table 4: Statistical Report Regarding Debt Relief</i>	13
	B. Tax Relief.....	14
	<i>Table 5: Statistical Report Regarding Tax Relief for Track A Credit Claims</i>	15
	C. Total Monetary Relief for Track A and Track B Claims.....	15
	<i>Table 6: Statistical Report Regarding Total Track A Monetary Relief</i>	15
	<i>Table 7: Statistical Report Regarding Total Track B Monetary Relief</i>	16
	<i>Table 8: Statistical Report Regarding Total Track A and Track B Monetary Relief</i>	17
	D. Cash Relief by State.....	17
	<i>Table 9: Statistical Report Regarding States With 100 or More Prevailing Claimants</i>	18
	E. Injunctive Relief.....	18
	<i>Table 10: Statistical Report Regarding Priority Consideration Injunctive Relief</i>	21
IV.	COURT ORDERS	21
	<i>Table 11: Court Orders</i>	22
V.	MONITOR’S ACTIVITY AND OBSERVATIONS	23
	A. Reporting — Paragraphs 12(a) and 12(b)(i) of the Consent Decree	23
	1. Reporting Directly to Secretary of Agriculture	23
	2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant’s Counsel.....	24
	B. “Resolving Any Problems” — Paragraph 12(b)(ii) of the Consent Decree	24
	C. Reexamination of Claims — Paragraph 12(b)(iii) of the Consent Decree	26
	<i>Table 12: Statistical Report Regarding Petitions for Monitor Review</i>	27

1. Petitions for Review of Facilitator Screening Decisions	27
2. Petitions for Review of Adjudicator Decisions	28
<i>Table 13: Statistical Report Regarding Track A Petitions and Adjudicator Reexamination Decisions</i>	29
3. Petitions for Review of Arbitrator Decisions.....	29
<i>Table 14: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions</i>	30
<i>Table 14: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions</i>	31
D. Calls to Toll-Free Telephone Number — Paragraph 12(b)(iv) of the Consent Decree	31
VI. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES	33
A. Claims Processing.....	33
1. Late-Claim Requests.....	33
<i>Table 15: Statistical Report Regarding Late-Claim Requests</i>	37
2. Amended Adjudicator Decisions	37
B. Relief for Successful Class Members	39
1. Debt Relief Implementation Review Process	40
2. Tax Relief and IRS Forms 1099	44
<i>Table 16: Responsibility for IRS Forms 1099</i>	45
C. Wind-Down Process	47
VII. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE	47

APPENDICES

Appendix 1	–	Statistical Report Regarding Track A Claims
Appendix 2	–	Statistical Report Regarding Track B Claims
Appendix 3	–	Statistics for Individual Track B Claimant Awards
Appendix 4	–	Statistical Report Regarding Debt Relief
Appendix 5	–	Statistical Report Regarding Prevailing Paid Claimants by State of Residence
Appendix 6	–	Statistical Report Regarding Priority Consideration Injunctive Relief
Appendix 7	–	List of Monitor Office Training Events and Meetings: January 1, 2008 – December 31, 2008
Appendix 8	–	Statistical Report Regarding Petitions for Monitor Review
Appendix 9	–	Statistical Report Regarding Adjudicator Reexamination Decisions
Appendix 10	–	Monitor Update No. 10, Debt Relief for Prevailing Class Members (revised July 11, 2008)

This is the eighth in a series of Monitor reports concerning the good faith implementation of the Consent Decree.¹ This report covers the period of January 1, 2008, through December 31, 2008. The report fulfills, in part, the Monitor's obligation to make periodic written reports on the implementation of the Consent Decree to the Court, the Secretary of Agriculture, Class Counsel, and counsel for the United States Department of Agriculture (USDA).²

I. EXECUTIVE SUMMARY

During calendar year 2008, the parties and the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) continued to work in good faith to implement the Consent Decree.

As part of the implementation process, the following cumulative milestones were reached, as of the end of 2008:

a. The Government provided a cumulative total of approximately \$1,019,011,073 in cash relief, estimated tax payments, and debt relief to successful claimants who prevailed under Track A or Track B of the Consent Decree claims process.

b. The Adjudicator issued Track A decisions in a cumulative total of 22,505 claims. The Adjudicator approved a cumulative total of 15,596 (approximately 69 percent) of the claims.³

c. The Arbitrator issued final decisions in a cumulative total of ninety-one Track B claims. The Arbitrator awarded damages in twenty-three of those claims.⁴ An additional seventy-one Track B claimants received payments in settlement of their claims and an additional sixty-five claimants converted their claims to Track A with the consent of the Government.

¹ The Monitor's prior reports are available on the Monitor's web site at <http://www.pigfordmonitor.org/reports/>.

² Paragraph 12(b)(i) of the Consent Decree requires the Monitor to make periodic written reports on the good faith implementation of the Consent Decree. A Stipulation and Order filed on March 24, 2003, orders the Monitor to report regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary. The Consent Decree and the Court's orders referenced in this report are available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/>.

³ This number includes both initial decisions and decisions on reexamination.

⁴ This number includes both initial decisions and decisions on reexamination.

d. The Monitor issued decisions in response to petitions for Monitor review in a cumulative total of 5,701 claims. The Monitor directed reexamination of a cumulative total of 2,914 (approximately 51 percent) of those claims.

e. The Adjudicator issued reexamination decisions in a cumulative total of 2,868 Track A claims. On reexamination, the Adjudicator granted relief to petitioning claimants in 2,437 cases and granted relief in response to a Government petition in 113 cases.

f. The Arbitrator completed review of the requests, filed under paragraph 5(g) of the Consent Decree, for permission to file a claim after the October 12, 1999 deadline for filing a Consent Decree claim package.

g. All of the neutrals (the Facilitator, the Adjudicator, the Arbitrator, and the Monitor) worked to complete the claims process for those claims that remained pending in 2008.

h. The parties, the Facilitator, and the Monitor worked together to ensure that prevailing claimants received the appropriate relief, including the payment of cash relief and the implementation of debt relief and tax relief.

The remainder of this report provides additional information regarding the parties' and the neutrals' implementation of the Consent Decree during calendar year 2008. Section II of this report provides claims processing statistics. Section III provides detailed information regarding the relief provided to prevailing claimants under the Consent Decree claims process. Section IV describes issues presented to the Court, including the significant Court Orders issued in 2008. Section V reports on the Monitor's activity and observations, including problems reported to the Monitor by class members, decisions issued as a result of petitions for Monitor review, and calls received on the Monitor's toll-free phone line. Section VI reports on significant Consent Decree implementation issues addressed by the parties and neutrals in 2008, including issues regarding the implementation of debt relief and tax relief for successful claimants. Section VII reports on the parties' continued good faith implementation of the Consent Decree in calendar year 2008.

During 2009, the parties and the neutrals continued many of the implementation activities described in this report. The Monitor will file additional reports regarding the implementation of

the Consent Decree during calendar year 2009 as requested by the parties, as ordered by the Court, or as the Monitor deems necessary.

II. CLAIMS PROCESSING STATISTICS

As of the end of 2008, a total of 22,719 claimants⁵ had been found eligible to participate in the Consent Decree claims process. A summary of the results of the claims process for these claimants is presented below. The Monitor did not independently compile the information provided in this section of the report. The Facilitator,⁶ the Arbitrator,⁷ and the United States Department of Agriculture (USDA) provided the information about the results of the claims process to the Monitor.

A. Eligibility

Paragraph 5(c) of the Consent Decree provides that, to be eligible for the claims process, a claimant must have submitted a completed claim package to the Facilitator within 180 days of the date of the Court's Order approving the Consent Decree. The Court approved the Consent

⁵ The Consent Decree defines a "claimant" as any person who submits a claim package for relief under the terms of the Consent Decree. Consent Decree, paragraph 1(c). This definition might be taken to suggest that each "claimant" is a natural person. However, in many cases, claim packages have been filed on behalf of more than one natural person. For example, the Claim Sheet and Election Form includes a line for the "spouse" of the farmer, and many husbands and wives filed a single claim package together. In other cases claims have been filed on behalf of a farming entity, such as a family farming partnership. The term "claimant" in this report refers to any person or persons who together filed a single claim package for relief.

⁶ The Facilitator is Epiq Systems, formerly known as Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(i).

⁷ The Arbitrator is Michael K. Lewis of JAMS, formerly of ADR Associates. *See* Consent Decree, paragraph 1(b).

Decree on April 14, 1999. Therefore, under the Consent Decree, the deadline for filing a claim package was 180 days from April 14, 1999, or October 12, 1999.

Claimants who failed to meet the October 12, 1999 filing deadline could participate in the claims process only if they could show, pursuant to paragraph 5(g) of the Consent Decree, that they had failed to meet the filing deadline due to extraordinary circumstances beyond their control.⁸ On July 14, 2000, the Court approved a stipulation by the parties setting a deadline of September 15, 2000, for the filing of a paragraph 5(g) request to file a late claim.⁹ If a claimant's petition to file a late-claim petition was granted, the claimant was provided an opportunity to participate in the claims process by filing a completed claim package.

Each claimant who filed a completed claim package was required to provide information about the claim on a Claim Sheet and Election Form ("Claim Sheet").¹⁰ The Claim Sheet also required information needed to determine if a claimant qualified as a class member. Paragraph 2(a) of the Consent Decree defines members of the class as follows:

⁸ Paragraph 5(g) states that a claimant who satisfied the definition of the class, but who failed to submit a completed claim package within 180 days of the Court's approval of the Consent Decree, could petition the Court for permission to participate in the claims process. Paragraph 5(g) states that such a petition could be granted "only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control." On December 20, 1999, the Court delegated to the Arbitrator the authority to decide, on a case-by-case basis, whether a class member met the standards of paragraph 5(g) and therefore could file a "late claim." A copy of the Court's order is available on the Monitor's web site at: <http://www.pigfordmonitor.org/orders/19991220order.pdf>. More information and statistics on the late-claim process are provided later in this report.

⁹ The Order states that "[a]ll putative class members who seek relief under ¶ 5(g) of the Consent Decree shall submit written requests for such relief . . . postmarked not later than September 15, 2000." Stipulation and Order, ¶ 2 (D.D.C. July 14, 2000). A copy of the July 14, 2000 Stipulation and Order is available on the Monitor's web site at: <http://www.pigfordmonitor.org/orders/20000714order.pdf>.

¹⁰ Consent Decree, paragraph 5(b). A sample Claim Sheet and Election Form is available on the Monitor's web site. See Appendix 9 to the Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2006, through December 31, 2006, at http://www.pigfordmonitor.org/reports/rpt20071231_2006.pdf.

All African American farmers who:

- (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996;
- (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
- (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.¹¹

In addition to responding to questions on the Claim Sheet, to be eligible to participate in the claims process, claimants must submit documentation or proof showing that, between January 1, 1981, and July 1, 1997, they had complained about USDA discrimination.¹²

If a claimant met the other criteria for class membership, but had not filed a discrimination complaint against USDA between January 1, 1981, and July 1, 1997, the claimant could participate in the claims process only if the claimant could meet requirements for "equitable tolling" set forth in paragraph 6 of the Consent Decree. Paragraph 6 requires a claimant to show that: (1) extraordinary circumstances beyond the claimant's control prevented the claimant from filing a discrimination complaint, (2) the claimant was induced or tricked by

¹¹ Consent Decree, paragraph 2(a).

¹² Page 2 of the Claim Sheet includes check-boxes next to descriptions of the type of documentation that could be submitted. Claimants could submit a copy of the written discrimination complaint they had filed with USDA or a copy of the correspondence they had sent to a member of Congress, the White House, or another government official. Claimants who did not have written documentation of their prior complaint could submit a Declaration, signed by a person who was not a member of the claimant's family, stating that the person had first-hand knowledge of the complaint and describing the circumstances of the complaint. A copy of the Declaration form that could be used was provided as part of Appendix 9 to the Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2006, through December 31, 2006, and is available on the Monitor's web site at http://www.pigfordmonitor.org/reports/rpt20071231_2006.pdf.

USDA’s misconduct into not filing a complaint, or (3) the claimant had attempted to actively pursue his or her judicial remedies by filing a pleading that had been found defective.¹³

Paragraph 5 of the Consent Decree assigns the Facilitator the responsibility of screening each completed claim package for eligibility. Table 1 provides statistics on the cumulative number of claimants the Facilitator found eligible to participate in the claims process as of the end of 2008. As of the end of 2008, a total of 22,719 claimants (20,817 timely-filed claims and 1,902 late claims) met the eligibility screening criteria to participate in the claims process.

Table 1: Statistical Report Regarding Eligible Claimants¹⁴	
Statistical Report as of:	End of 2008
A. Number of Eligible Claimants Who Filed Completed Claim Packages On or Before October 12, 1999 (Timely Claims)	20,817
B. Number of Eligible Claimants Who Received Permission to File a Late Claim (Late Claims)	1,902
C. Total Number of Eligible Claimants	22,719

B. Track A

The Consent Decree and the Claim Sheet and Election Form require claimants to elect whether they wish to proceed under Track A or Track B of the claims process. As of the end of 2008, approximately 99 percent (22,547) of the 22,719 eligible claimants had elected to pursue

¹³ Paragraph 6 of the Consent Decree describes the process under which the Adjudicator would decide if a claimant met these standards. Paragraph 6 cites the United States Supreme Court case of *Irwin v. United States*, 498 U.S. 89 (1990) (also known as *Irwin v. Department of Veterans Affairs*), which describes the standards for “equitable tolling” of claims against the Government.

¹⁴ These statistics are provided by the Facilitator. They reflect eligibility decisions made by the Facilitator on reexamination after a petition for Monitor review of an eligibility denial. The statistics are cumulative, as of December 31, 2008. The petition for Monitor review process for Facilitator eligibility decisions is described more fully later in this report.

their claims under Track A. Prior Monitor reports described the Track A claims process and the standard a claimant must meet to prevail in a Track A credit claim¹⁵ and a non-credit claim.¹⁶

The Adjudicator makes the final decision on whether a claimant has met the substantial evidence standard to prevail in a Track A claim.¹⁷

Table 2 contains cumulative statistics for the Track A claims process from 1999, when the Consent Decree was approved, through December 31, 2008. As of the end of 2008, approximately 69 percent of Track A claims had been approved by the Adjudicator. This represents a total of 15,596 prevailing Track A claimants.

¹⁵ To prevail in a Track A credit claim, paragraph 9(a) of the Consent Decree requires a claimant to prove, by substantial evidence, that: (1) the claimant owned or leased, or attempted to own or lease, farmland; (2) the claimant applied for a specific credit transaction at a USDA county office during the period from January 1, 1981, through December 31, 1996; (3) the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions (such as a supervised bank account), 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. Credit claims involve USDA farm loan programs, such as the Operating Loan, Farm Ownership Loan, Soil and Water Loan, and Emergency Loan programs, and may also involve loan servicing. For a more detailed summary of the Track A process, see Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2007, through December 31, 2007, at pages 3-5, available on the Monitor's web site at http://www.pigfordmonitor.org/reports/Rpt20081230_2007.pdf.

¹⁶ To prevail in a non-credit claim, paragraph 9(b) of the Consent Decree requires a claimant to prove, by substantial evidence, that: (1) the claimant applied for a specific non-credit benefit program at a USDA county office during the period from January 1, 1981, through December 31, 1996, and (2) his or her 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. Non-credit claims generally involve USDA farm benefit programs, such as disaster relief, commodity programs, such as deficiency payments, and conservation programs, such as the Conservation Reserve Program. For a more detailed summary of non-credit claims, see Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2007, through December 31, 2007, at page 5, available on the Monitor's web site at http://www.pigfordmonitor.org/reports/Rpt20081230_2007.pdf.

¹⁷ The Consent Decree defines "substantial evidence" as such relevant evidence as appears in the record before the Adjudicator that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence in the record that fairly detracts from that conclusion. Consent Decree, paragraph 1(l). Under paragraph 1(a) of the Consent Decree, JAMS-Endispute, Inc., is responsible for the final decision in all Track A claims. JAMS-Endispute, Inc., is now known as JAMS.

Table 2: Statistical Report Regarding Track A Claims¹⁸		
Statistical Report as of:	End of 2008	
	Number	Percent
A. Eligible Class Members (Track A and B)	22,719	100
B. Cases in Track A (Adjudications) ¹⁹	22,547	99
Adjudication Completion Figures		
D. Adjudications Complete	22,505	99
E. Adjudications Not Yet Complete	42	1
Adjudication Approval/Denial Rates²⁰		
F. Claims Approved by Adjudicator	15,596	69
G. Claims Denied by Adjudicator	6,909	31
Adjudication Approvals Paid/Not Paid		
H. Approved Adjudications Paid	15,408	99
I. Approved Adjudications Not Yet Paid	188	1

C. Track B

Approximately 1 percent (241) of the 22,719 eligible claimants elected to pursue their claims under Track B of the claims process. Paragraph 10 of the Consent Decree sets forth the

¹⁸ These statistics are provided by the Facilitator and are as of December 31, 2008. Statistics for prior reporting periods are summarized in Appendix 1. Current statistics are available upon request from the Monitor's office (1-877-924-7483) and are updated regularly for Track A claims on the Monitor's web site at <http://www.pigfordmonitor.org/stats/>.

¹⁹ These cases include class members who initially elected Track B but converted their claims to Track A with the consent of the Government.

²⁰ These numbers include both initial Adjudicator decisions and Adjudicator reexamination decisions as of the end of 2008.

process for Track B claims.²¹ The Arbitrator makes the final decision on whether a claimant has met the preponderance of the evidence standard to prevail in a Track B claim.²²

Table 3 contains cumulative statistics regarding the Track B claims process. As of the end of 2008, approximately 66 percent (159) of the 241 claimants who initially elected Track B had either settled their claims (71 claimants), converted their claims to Track A with the consent of the Government (65 claimants),²³ or prevailed after a hearing before the Arbitrator (23 claimants).²⁴

²¹ To prevail in a Track B claim, paragraph 10 of the Consent Decree requires a claimant to prove, by a preponderance of the evidence, that he or she was a victim of racial discrimination and suffered damages as a result of that discrimination.

²² The Consent Decree defines “preponderance of the evidence” as such relevant evidence as is necessary to prove that something is more likely true than not true. Consent Decree, paragraph 1(j). This is a higher standard of proof than the “substantial evidence” standard used in Track A.

²³ Of the 65 claimants who switched to Track A with the consent of the Government, a total of 56 claimants filed completed claim packages and were found eligible by the Facilitator to participate in the Track A claims process. As of the end of 2008, of the 56 claimants who filed completed claim packages and were found eligible to participate in the Track A claims process, a total of 40 claimants had prevailed in the claims process, 15 claimants had been denied relief, and one claim remained pending in the petition for Monitor review process.

²⁴ The amount of each individual Track B arbitration award is set forth in Appendix 3. Claimant names and geographic locations are not disclosed.

Table 3: Statistical Report Regarding Track B Claims²⁵	
Statistical Report as of:	End of 2008
A. Eligible Track B Claimants	241
B. Track B Cases Settled	71
C. Track B Cases Converted to Track A	65
D. Track B Cases Withdrawn	9
Arbitrations Complete/Not Complete	
E. Contested Track B Cases in Claims Process	96
F. Arbitration Decisions Issued	91
G. Arbitration Decisions Not Yet Issued	5
Arbitration Results	
H. Claimant Prevailed Before Arbitrator	23
I. Average Award to Prevailing Claimants	\$476,679
J. Government Prevailed Before Arbitrator	68
Posture of Decisions in Which Government Prevailed:	
1. Cases Dismissed Before Hearing	44
2. Full Hearing, Finding of No Liability	24
Arbitration Settlements and Damage Awards Paid/Not Paid	
K. Arbitration Settlements Paid	71
L. Arbitration Settlements Not Yet Paid	0
M. Arbitration Damage Awards Paid	21
N. Arbitration Damage Awards Not Yet Paid ²⁶	2

²⁵ These statistics are provided by the Facilitator and are as of December 31, 2008. They reflect both initial and reexamination results. Statistics for prior reporting periods are summarized in Appendix 2.

²⁶ As of the end of 2008, the arbitration damage awards remained unpaid in two claims. In both claims, USDA petitioned for Monitor review and the Monitor issued decisions in 2008 directing reexamination of the relief awarded. In one claim, the Monitor directed reexamination of the Arbitrator's award of certain costs and expert witness fees. In the other claim, the Monitor directed reexamination of the calculation of damages. As of the end of 2008, Arbitrator reexamination of both claims was pending.

III. RELIEF STATISTICS

Relief for claimants who prevail in the Track A claims process includes: (1) a cash relief payment of \$50,000 per claimant for a prevailing Track A credit claim;²⁷ (2) a cash relief payment of \$3,000 per claimant for a prevailing non-credit claim;²⁸ (3) debt relief provided to claimants who prevail in Track A credit claims and who had outstanding debt that qualified for debt relief;²⁹ and (4) tax relief, consisting of payments to the Internal Revenue Service (IRS) on behalf of claimants who prevailed in Track A credit claims.³⁰

Under paragraph 10 of the Consent Decree, monetary relief provided to claimants who prevail in Track B of the claims process includes: (1) actual damages as awarded by the Arbitrator, and (2) debt relief provided to claimants who had outstanding debt that qualified for debt relief.³¹ Some claimants who elected Track B obtained relief by settling their claims with the Government prior to completion of the claims process. Other claimants who originally elected Track B have obtained relief through Track A by switching their claims to Track A with the consent of the Government.

²⁷ See Consent Decree, paragraph 9(a)(iii)(B).

²⁸ See Consent Decree, paragraph 9(b)(iii)(A); Stipulation and Order, ¶ 1 (D.D.C. February 7, 2001), available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/20010207order.pdf>.

²⁹ See Consent Decree, paragraph 9(a)(iii)(A); Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001).

³⁰ The amount of tax relief for each successful Track A credit claim is 25 percent of the \$50,000 cash relief payment (\$12,500) plus 25 percent of the amount of any principal debt that was forgiven by USDA. See Consent Decree, paragraph 9(a)(iii)(C).

³¹ Claimants who prevail in Track B claims may be awarded actual damages, as provided by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691e(a). Actual damages under ECOA may include both economic damages, such as for lost farm income, and non-economic damages, such as for mental distress, humiliation, or damage to credit reputation. There is no required tax relief payment in Track B. See Consent Decree, paragraph 10(g).

Claimants who prevail under either Track A or Track B are entitled to certain injunctive relief.³² In general, injunctive relief consists of technical assistance and other benefits in the loan application process for claimants who seek USDA farm program loans. The sections that follow provide information about the cash relief, debt relief, tax relief, and injunctive relief that the Government has provided to prevailing claimants as of the end of 2008.

A. Debt Relief

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to claimants who prevail in Track A or Track B credit claims. These provisions require USDA to discharge all of a prevailing claimant's outstanding debt to USDA that was "incurred under, or affected by" the program(s) that were the subject of the claim(s) resolved in the claimant's favor. In addition to providing a discharge of debts incurred under or affected by discrimination, the Consent Decree states that debts subject to *Pigford* debt relief shall not adversely affect a claimant's eligibility for future participation in any USDA loan or loan servicing program.

A Stipulation and Order filed on February 7, 2001, further defines the scope of debt relief. Paragraph 2 of the February 7, 2001 Stipulation and Order clarifies that debts "incurred under, or affected by" the programs that were the subject of the discrimination claims resolved in the class member's favor include: (1) those debts identified by the Adjudicator or the Arbitrator as having been affected by discrimination, and (2) all subsequent loans in the same loan program

³² See Consent Decree, paragraph 11.

as the loans identified by the Adjudicator or the Arbitrator, from the date of the first event upon which a finding of discrimination was made.³³

Monitor Update No. 10, revised on July 11, 2008, provides additional information about the scope of debt relief and the principles the parties have agreed to apply in determining debt relief.³⁴

Table 4 provides statistics regarding the debt relief implemented by USDA for prevailing Track A and Track B claimants as of the end of 2008. USDA reports that the Government provided debt relief to a total of 363 prevailing claimants as of the end of 2008 (344 Track A claimants and nineteen Track B claimants), forgiving a cumulative total of \$41,529,287 in outstanding principal and interest.

Table 4: Statistical Report Regarding Debt Relief³⁵	
Statistical Report as of:	End of 2008
A. Total Amount of Debt Forgiven (Principal and Interest)	\$41,529,287
B. Debt Forgiven for Track A Claimants	\$37,447,673
C. Debt Forgiven for Track B Claimants	\$4,081,614
D. Number of Track A Claimants Who Received Debt Forgiveness	344
E. Number of Track B Claimants Who Received Debt Forgiveness	19
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$108,860
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$214,822

³³ Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001).

³⁴ Monitor Update No. 10 is available on the Monitor's web site at <http://www.pigfordmonitor.org/updates/update10.pdf> and is attached to this report as Appendix 10.

³⁵ These statistics are based on information provided by USDA for debt relief implemented by USDA through December 31, 2008. Appendix 4 provides information from prior reporting periods regarding debt relief as well as information on debt relief by state.

B. Tax Relief

Under paragraph 9(a)(iii)(C) of the Consent Decree, a claimant who prevails on a Track A credit claim is entitled to have the Government transfer funds directly into an account established with the Internal Revenue Service (IRS) as partial payment on federal income taxes that the claimant may owe as a result of obtaining relief. This tax relief is equal to 25 percent of the \$50,000 in cash relief for a credit claim, or \$12,500, plus 25 percent of the principal amount of any outstanding farm loan debt forgiven by USDA as a result of the *Pigford* claims process.

The establishment of tax accounts and the deposit of funds into those accounts as tax relief is required only for claimants who prevail on Track A credit claims. There are no required tax relief payments for claimants who prevail on Track A non-credit claims or for claimants who prevail in Track B claims.

Table 5 sets forth the estimated payments the Government made to the IRS on behalf of prevailing Track A credit claimants, as of the end of 2008.

Table 5: Statistical Report Regarding Tax Relief for Track A Credit Claims³⁶	
Statistical Report as of:	End of 2008
A. Payments to the IRS of 25% of \$50,000 Cash Relief Award ³⁷	\$189,950,000
B. Payments to the IRS of 25% of Principal Amount of Debt Relief ³⁸	6,513,986
C. Total Estimated Payments Due to the IRS as Tax Relief	\$196,463,986

C. Total Monetary Relief for Track A and Track B Claims

Table 6 sets forth the cumulative total of monetary relief the Government provided to prevailing Track A claimants, as of the end of 2008.

Table 6: Statistical Report Regarding Total Track A Monetary Relief³⁹	
Statistical Report as of:	End of 2008
A. Cash Relief Paid to Prevailing Class Members for Track A Credit Claims (\$50,000 per claimant)	\$759,800,000
B. Cash Relief Paid to Prevailing Class Members for Track A Non-Credit Claims (\$3,000 per claimant)	1,467,000
C. Payments Due to IRS as Tax Relief	196,463,986
D. Debt Relief (Principal and Interest)	37,447,673
E. Total Track A Monetary Relief	\$995,178,659

³⁶ These statistics are based on information and calculations provided by the Facilitator.

³⁷ Paragraph 9(a)(iii)(C) of the Consent Decree requires the government to make a payment to the IRS equal to 25 percent of the \$50,000 cash relief paid for prevailing Track A credit claims. The Facilitator reports that 15,156 prevailing Track A credit claimants had received payment of their \$50,000 cash award as of the end of 2008. The Facilitator calculated the payments made by the Government to the IRS as follows: 25 percent of the \$50,000 cash award (\$12,500), paid on behalf of the 15,196 successful Track A credit claimants who were paid cash relief as of the end of 2008 equals \$189,950,000.

³⁸ Paragraph 9(a)(iii)(C) of the Consent Decree requires the Government to make a payment to the IRS equal to 25 percent of principal amount of debt forgiven for prevailing Track A credit claimants (the amount of interest forgiven is not included in this calculation). Rounding to the nearest dollar, 25 percent of the total principal debt forgiven for successful Track A credit claimants (\$26,055,942.69) equals \$6,513,986 ($\$26,055,942.69 \times 25\% = \$6,513,985.67$).

³⁹ These statistics are based on information provided by the Facilitator regarding cash awards and tax relief through December 31, 2008. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2008.

Table 7 reports the total monetary relief the Government provided, as of the end of 2008, to prevailing Track B claimants.

Table 7: Statistical Report Regarding Total Track B Monetary Relief⁴⁰	
Statistical Report as of:	End of 2008
A. Total Amount Paid to Class Members in Settlement of Track B Claims	\$9,090,293
B. Total Amount Paid to Class Members for Damages Awarded by the Arbitrator	10,660,507
C. Debt Relief (Principal and Interest)	4,081,614
D. Total Track B Monetary Relief	\$23,832,414

Table 8 reports the total monetary relief the Government provided, as of the end of 2008, to both Track A and Track B claimants. As of the end of 2008, the Government had provided a cumulative total of \$1,019,011,073 in monetary relief under the terms of the Consent Decree, including cash relief payments to prevailing Track A claimants, payments in settlement and for damage awards to Track B claimants, estimated tax payments to the IRS on behalf of claimants who prevailed in Track A credit claims, and debt relief for Track A and Track B claimants.

⁴⁰ The payment statistics (rows A and B) are based on information provided by the Facilitator for payments made by the Government in settlement or for damage awards through December 31, 2008. The debt relief statistics (row C) are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2008. These statistics do not include the relief provided to claimants who initially elected Track B but who switched their claims from Track B to Track A with the consent of the Government. The Facilitator reports that the 40 claimants who prevailed in the Track A claims process after switching their claims from Track B to Track A received a total of \$1,909,000 in Track A cash relief and \$408,950 in debt relief as of the end of 2008. This relief is included as part of the Track A cash relief and debt relief statistics reported in Table 6.

Table 8: Statistical Report Regarding Total Track A and Track B Monetary Relief⁴¹	
Statistical Report as of:	End of 2008
A. Total Amount of Cash Relief Paid for Track A and Track B Claims (cash awards, payments in settlement, and damage awards)	\$781,017,800
B. Total Payments Due to IRS as Tax Relief for Track A Credit Claims	196,463,986
C. Total Debt Relief for Track A and Track B Claims (Principal and Interest)	41,529,287
D. Total Track A and Track B Monetary Relief	\$1,019,011,073

D. Cash Relief by State

As of the end of 2008, the Government made payments to claimants who currently reside in thirty-nine different states. Table 9 reports the number of claimants and amount of cash relief paid by state for those states with the largest number of prevailing claimants. Appendix 5 contains information on the number of prevailing claimants by state.

⁴¹ Statistics for cash awards and tax relief are through December 31, 2008, and are based on information provided by the Facilitator. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2008.

Claimants' Residence	Total Number of Prevailing Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2008 (Track A and Track B)
Alabama	3,398	\$167,152,500
Mississippi	3,141	158,509,029
Georgia	1,994	98,264,741
Arkansas	1,483	74,751,260
North Carolina	1,231	65,546,486
South Carolina	889	45,099,500
Oklahoma	591	29,266,000
Louisiana	585	29,171,000
Tennessee	484	25,076,755
Texas	343	18,607,400
Florida	281	13,681,000
Virginia	188	10,329,780
Illinois	177	8,856,000
California	150	8,034,600

E. Injunctive Relief

Paragraph 11 of the Consent Decree describes the injunctive relief USDA is required to provide to prevailing class members who seek to obtain loans or credit assistance from USDA after they prevail on their claim under the Consent Decree. Generally speaking, prevailing class members are to receive: (1) technical assistance in completing loan applications from a qualified USDA official acceptable to the class member; (2) consideration of certain applications in the light most favorable to the class member; and (3) priority consideration for one Farm Ownership

⁴² These statistics are provided by the Facilitator and are as of December 31, 2008. For purposes of this table, prevailing paid claimants in Track B include claimants who received payments in settlement of their Track B claims and claimants who received payments of Arbitrator damage awards. Appendix 5 contains statistics for all prevailing claimants by residence.

Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property.⁴³

Certain aspects of injunctive relief were available from April 14, 1999 (the date the Consent Decree was approved by the Court), to April 14, 2004.⁴⁴ In 2003, USDA voluntarily agreed to extend the right to these aspects of injunctive relief for one additional year, through April 14, 2005.⁴⁵ On April 21, 2005, the parties agreed to another extension of the deadline for some aspects of injunctive relief.⁴⁶ Pursuant to the April 21, 2005 Stipulation and Order, prevailing class members can request technical assistance, “light most favorable,” and priority consideration injunctive relief for up to two years after the date on which the prevailing class member completes the claims process.⁴⁷ Thus, injunctive relief remained in effect during 2008 for class members who prevailed in the claims process in 2006 or later.

⁴³ Inventory property is real estate or chattel property that formerly secured a USDA farm program loan to which the Government has acquired title. 7 C.F.R. § 761.2 (2008).

⁴⁴ Paragraphs 11(a) and 11(c) of the Consent Decree state that a class member must exercise his or her right to priority consideration in writing and “within 5 years of the date of this order” and further state that applications submitted “within five years of the date of this Consent Decree” will be viewed in the light most favorable to the class member.

⁴⁵ USDA’s voluntary agreement is set forth in Notice FLP-313, “Priority Consideration for Prevailing Claimants,” (July 21, 2003) (made obsolete by Notice FLP-381 on March 3, 2005). Many of USDA’s FLP Notices that are particularly relevant to the *Pigford* class are available on the Monitor’s web site at <http://www.pigfordmonitor.org/flp/>.

⁴⁶ The April 21, 2005 Stipulation and Order is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/20050421stip&order.pdf>.

⁴⁷ A class member completes the claims process, for injunctive relief purposes, at one of three possible points. If the class member prevails before the Adjudicator or Arbitrator and no petition for Monitor review is filed, the class member completes the claims process 120 days after the date of the Adjudicator or Arbitrator decision. If a petition for Monitor review is filed and the Monitor denies reexamination, the class member completes the claims process on the date of the Monitor’s decision denying reexamination. If a petition for Monitor review is filed and the Monitor grants reexamination, the class member completes the claims process on the date of the reexamination decision. *See* Monitor Update No. 4, Injunctive Relief in *Pigford v. Vilsack* (rev. May 18, 2005), available on the Monitor’s web site at <http://www.pigfordmonitor.org/updates/update04.pdf>.

Claimants who request priority consideration for a Farm Ownership Loan or an Operating Loan must still meet the regulatory requirements for loan eligibility. However, claimants who request priority consideration are entitled to priority in the processing of their loan applications.⁴⁸ In addition, if a loan on which priority consideration was requested is approved, a claimant who requests “priority consideration” receives priority in funding.⁴⁹ Priority consideration also extends to properties USDA has available for purchase from inventory property.⁵⁰ Prevailing

⁴⁸ For claimants who request priority consideration on loan applications, USDA policy notices require loan officials to “immediately take action to process the priority application,” regardless of whether there are other incomplete applications on file in the county office. USDA officials must provide assistance to the applicant to complete the application, and once an application is complete, USDA must act on the application prior to other non-priority applications that may be pending. USDA has issued a series of policy notices setting forth these requirements. See USDA FSA Notice FLP 533, Guidance on Applications Submitted by *Pigford* Claimants (April 20, 2009) (set to expire April 1, 2010); USDA FSA Notice FLP-510, Guidance on Applications Submitted by *Pigford* Claimants (July 9, 2008); USDA FSA Notice FLP-504, Guidance on Applications Submitted by *Pigford* Claimants (May 1, 2008); USDA FSA Notice FLP-460, Priority Consideration for Prevailing Claimants (April 19, 2007). These Farm Loan Program Notices are available on the Monitor’s web site, at <http://www.pigfordmonitor.org/flp/>.

⁴⁹ USDA policy notices indicate that funding for approved priority consideration loans will first come from targeted socially disadvantaged applicant funds. If those funds are insufficient to fund immediately an approved priority consideration loan, the applicant must be the first to receive funding once it becomes available, regardless of how many other applications have earlier application dates. See, for example, USDA FSA Notice FLP-510, Guidance on Applications Submitted by *Pigford* Claimants, at 6 (July 9, 2008) (expired April 1, 2009).

⁵⁰ Prior to 2008, USDA was required by law to offer priority to qualified beginning farmers to purchase inventory property. See USDA FSA Notice FLP-504, Guidance on Applications Submitted by *Pigford* Claimants, at 6 (May 1, 2008) (expired April 1, 2009). See also USDA FSA Notice FLP-500, Sale of Inventory Property (March 11, 2008) (expired August 1, 2008). As of May 22, 2008, Congress added socially disadvantaged applicants to the priority list for the purchase of inventory property. See Pub. L. No. 110-246, § 5302 (2008) (the Food, Conservation and Energy Act of 2008). Prevailing claimants are, by definition, socially disadvantaged applicants. See 7 C.F.R. §761.2 (2008) (defining socially disadvantaged groups as American Indians, Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women). A prevailing claimant who requests priority consideration may purchase USDA inventory property at the appraised value before the property is put up for public bid. See USDA FSA Notice FLP-510, Guidance on Applications Submitted by *Pigford* Claimants, at 6 (July 9, 2008) (expired April 1, 2009); USDA FSA Notice FLP 533, Guidance on Applications Submitted by *Pigford* Claimants, at 6 (April 20, 2009) (set to expire April 1, 2010).

claimants have obtained new farm program loans without filing a written request for priority consideration.

Table 10 provides statistics reported by USDA concerning the requests for priority consideration and the results of those requests for Farm Ownership Loans, Farm Operating Loans, and the acquisition of inventory property from the beginning of the claims process through December 31, 2008.

Table 10: Statistical Report Regarding Priority Consideration Injunctive Relief⁵¹	
Statistical Report as of:	End of 2008
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration With Complete Application	125
2. Number of Applications Approved	29
B. Farm Operating Loans	
1. Number of Requests for Priority Consideration With Complete Application	218
2. Number of Applications Approved	76
C. Inventory Property	
1. Number of Requests for Priority Consideration	10
2. Number of Applications Approved	1

IV. COURT ORDERS

During 2008, the Court issued Orders regarding debt relief, attorney’s fees, and matters relating to the Monitor’s work. Table 11 sets forth a brief summary and provides the docket numbers for orders issued by the Court in 2008 regarding these matters.⁵²

⁵¹ These statistics are provided by USDA and are as of December 31, 2008. Appendix 6 contains statistics from prior reporting periods regarding injunctive relief.

⁵² Some procedural orders (regarding, for example, extensions of time for filings), orders relating to approval of the Monitor’s budgets and invoices, and orders regarding settlement agreements relating to attorneys’ fees are not included in this list.

Table 11: Court Orders

Court Docket Number	Date Filed	Title	Major Issues Addressed
1451	1/24/2008	Memorandum Opinion and Order	Denies a motion for relief from judgment and motion for recusal filed by Ms. Rowser-Bey. The Court reviews the history of certain documents prepared by Ms. Rowser-Bey, which included inaccurate information about the status of the case and the Consent Decree. The Court denies a request by Ms. Rowser-Bey that the Court vacate an Order issued September 15, 2007 regarding these documents. No further documents authored by Ms. Rowser-Bey will be accepted for filing without leave of the Court.
1455 & 1456	2/21/2008	Order and Opinion	Denies motions filed by certain class members and the estates of certain class members regarding debt relief for certain restructured loans. The Court rules that USDA is not required to provide debt relief for loans that originated prior to the date of discrimination identified in the Adjudicator's decisions. The Court rejects class members' arguments that debt relief should be provided because loans that originated prior to the relevant date of discrimination were restructured after that date. The Court rules that loans at issue in these cases were "incurred" when the claimants first became liable to repay the debts, not when they are restructured or subject to a shared appreciation agreement. ⁵³ The Court orders that, prior to demanding payment under a shared appreciation agreement, USDA must provide information regarding the specific loans underlying the agreement to ensure that the agreement is enforced only as to loans that are not subject to <i>Pigford</i> debt relief.

⁵³ A shared appreciation agreement is an agreement between the USDA and a borrower that requires the borrower who has received a write-down to repay the USDA some or all of the write-down received, based on a percentage of any increase in the value of the real estate securing a shared appreciation agreement at a future date. A write-down is one of the loan servicing tools available to USDA. It reduces a borrower's debt to that amount USDA determines to be collectible based on an analysis of the security value and the borrower's ability to pay. See 7 C.F.R. § 761.2 (2008). The Court's Order does not address debt relief for cases in which the Adjudicator makes a finding of discrimination in the loan restructuring or loan servicing process. USDA's implementation of debt relief for all prevailing claimants is discussed more fully later in this report. See Section VI.B.1 on the debt relief implementation review process.

Table 11: Court Orders

Court Docket Number	Date Filed	Title	Major Issues Addressed
1503	9/03/2008	Minute Order	Denies a claimant's request for a hearing on a motion for clarification of the scope of the Monitor's authority. In the motion for clarification of the scope of the Monitor's authority, the claimant requests the Court to rule that the Monitor does not have the authority to direct reexamination regarding a claimant's eligibility to participate in the claims process. Alternatively, the claimant requests the Court to allow the claimant to supplement the record regarding her eligibility. The Court's Order states that the claimant's motion on the scope of the Monitor's authority will be decided without a hearing, based on the pleadings filed by the parties.
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.
1513	12/19/2008	Memorandum Opinion and Order	Directs the parties to file certain letters with the clerk's office and requests the parties to jointly file information regarding attorney's fees for implementation of the Consent Decree and for representation of a successful Track B claimant.

V. MONITOR'S ACTIVITY AND OBSERVATIONS

A. Reporting — Paragraphs 12(a) and 12(b)(i) of the Consent Decree

1. Reporting Directly to Secretary of Agriculture

Paragraph 12(a) of the Consent Decree states that the Monitor shall report directly to the Secretary of Agriculture. The Monitor met during 2008 with then-Secretary of Agriculture Edward Schafer.⁵⁴ The Monitor also fulfills the paragraph 12(a) Consent Decree reporting requirement through work with USDA's Office of the General Counsel. The Monitor had

⁵⁴ Edward Schafer was sworn in as the Secretary of Agriculture on January 28, 2008. The current Secretary of Agriculture, Tom Vilsack, was sworn in as the Secretary of Agriculture on January 21, 2009.

meetings and frequent phone conversations during 2008 with James Michael Kelly, USDA's Deputy General Counsel.

2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant's Counsel

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports to the Court, the Secretary, Class Counsel, and Defendant's counsel. The Monitor is required to report on the good faith implementation of the Consent Decree during each twelve-month period, on such matters as the Court or the parties may request, or as the Monitor deems necessary. The Monitor submits this report on the good faith implementation of the Consent Decree for the period from January 1, 2008, through December 31, 2008, pursuant to paragraph 12(b)(i) of the Consent Decree and the March 24, 2003 Stipulation and Order.

B. "Resolving Any Problems" — Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree states that the Monitor shall:

Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree

To fulfill this responsibility, the Monitor's office works with Class Counsel and with class members: (1) by phone; (2) through correspondence; (3) in person at meetings sponsored by claimant organizations and/or by USDA;⁵⁵ and (4) by sending out and otherwise making available "Monitor Updates" to disseminate important information to the whole class or to segments of the class affected by particular issues.

⁵⁵ The meetings the Monitor's office attended during 2008 are listed in Appendix 7.

Matters brought to the Monitor's attention by class members in 2008 included:

a. Concerns about debt relief and whether class members had received the appropriate relief.

b. Concerns about offsets and payments for debts that might be subject to *Pigford* debt relief.

c. Questions about whether a claim can still be filed in the *Pigford* case and whether the case has been reopened through congressional action.

d. Concerns about tax relief and the status of tax deposits, particularly in early 2008 as claimants prepared to file their tax returns.

e. Concerns about delays in the Monitor review process and the reexamination process for class members whose Monitor decisions and Adjudicator or Arbitrator decisions remained pending.

f. Concerns about delayed payments of cash relief, particularly in cases involving payments to the estate of a deceased class member.

g. Allegations of continued discrimination by local Farm Service Agency (FSA) offices and allegations of problems for class members seeking farm loans in 2008.

h. Concerns about the approval rate for requests for permission to file a late claim and concerns about the standards required for the granting of permission to file a late claim.

The Monitor addressed class members' questions and concerns by informing the parties, the neutrals, and the Court of the problems brought to the Monitor's attention. The Monitor has also worked directly with Class Counsel and USDA to attempt to solve individual class members' problems. The Monitor's Office has provided information to class members about the claims process and the status of their claims.

The Monitor disseminates information more broadly to class members through a web site.⁵⁶ The Monitor's web site includes selected Court Orders in the case, reports by the

⁵⁶ The Monitor's web site address is: <http://www.pigfordmonitor.org>.

Monitor and the Arbitrator, up-to-date statistics on the claims process provided by the Facilitator, relevant Farm Loan Program (FLP) notices issued by USDA, and links for class members seeking assistance with their farming operations. In 2008, there were 124,702 page “hits” to this web site.

C. Reexamination of Claims — Paragraph 12(b)(iii) of the Consent Decree

Paragraph 12(b)(iii) of the Consent Decree gives the Monitor responsibility to direct reexamination of a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim that has resulted or is likely to result in a fundamental miscarriage of justice. The Monitor considers whether reexamination is warranted in response to petitions for Monitor review filed by class members and by USDA.

As of the end of 2008, the Monitor had issued 5,701 decisions in response to the 5,768 petitions for Monitor review that had been filed. In approximately fifty-one percent of the decisions issued by the Monitor, the Monitor directed the Adjudicator or the Arbitrator to reexamine a claim. Most of the petitions for Monitor review were filed by claimants, and most of the Monitor’s decisions directing reexamination were in response to petitions by claimants requesting reexamination of their claims.

Table 12 provides statistics regarding Monitor petition decisions as of the end of 2008; Appendix 8 contains statistics from previous reporting periods.

Table 12: Statistical Report Regarding Petitions for Monitor Review⁵⁷	
Statistical Report as of:	End of 2008
Petitions for Monitor Review	
A. Total Number of Petitions for Monitor Review	5,768
1. Claimant Petitions	4,974
2. Government Petitions	794
Monitor Decisions	
B. Total Number of Petition Decisions Issued by Monitor	5,701
1. Total Number of Petitions Granted	2,914
a. Claimant Petitions Granted	2,784
b. Government Petitions Granted	130
2. Total Number of Petitions Denied	2,787
a. Claimant Petitions Denied	2,160
b. Government Petitions Denied	627

1. Petitions for Review of Facilitator Screening Decisions

Paragraph 5 of the Consent Decree establishes a screening process to determine the eligibility of claimants to participate in the claims process. Paragraph 12(b)(iii) of the Consent Decree authorizes claimants to petition the Monitor for reexamination of the Facilitator’s eligibility determination.⁵⁸ On October 29, 2002, the Court issued an Order setting a deadline for petitions from Facilitator screening decisions that denied the claimant’s eligibility.⁵⁹

⁵⁷ These statistics are provided by the Facilitator and are valid as of December 31, 2008.

⁵⁸ On April 4, 2000, the Court issued an Order of Reference setting forth additional details governing petitions for Monitor review. The Court’s Order of Reference is available on the Monitor’s web site at: <http://www.pigfordmonitor.org/orders/20000404oor.pdf>.

⁵⁹ The Court’s October 29, 2002 Order is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/20021029order.pdf>. The circumstances under which claimants could petition to the Monitor regarding eligibility denials are explained in Monitor Update No. 5, Eligibility and Monitor Review, available on the Monitor’s web site at <http://www.pigfordmonitor.org/updates/update05.pdf>.

As of the end of 2006, the Monitor had issued decisions in a total of ninety-four petitions requesting reexamination of the Facilitator's Notifications of Rejection. The Monitor directed reexamination of a total of twenty-two claims. On reexamination, the Facilitator found each of those twenty-two claimants eligible to participate in the claims process.⁶⁰ No additional petitions for Monitor review of Facilitator Notices of Rejection were filed in 2007 or 2008 and no eligibility petitions remained pending with the Monitor as of the end of 2007 or 2008.

2. Petitions for Review of Adjudicator Decisions

As of the end of 2008, the Adjudicator had issued decisions in a cumulative total of 22,505 Track A claims. In 5,707 of those claims (approximately 25 percent), either the claimant or USDA had petitioned the Monitor for review.⁶¹ As of the end of 2008, the Monitor had issued decisions in response to 5,642 of those 5,707 petitions for Monitor review. Table 13 sets forth statistics about the petitions for Monitor review in Track A claims and the Adjudicator's decisions on reexamination as of the end of 2008.

⁶⁰ All 22 eligible claimants participated in the Track A claims process (one claimant who had elected Track B of the claims process switched to Track A with the consent of the Government). As of the end of 2008, 11 of the 22 claimants had prevailed in the Track A claims process, 10 of the 22 claimants had been denied relief, and one of the 22 claims remained pending a reexamination by the Adjudicator.

⁶¹ The Court's Order of Reference permits the Monitor to consider additional materials as part of the Track A petition process if such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. Order of Reference, ¶ 8(e)(i) (D.D.C. April 4, 2000). In many Track A Monitor decisions, the Monitor accepted supplemental information offered by the parties in the petition process. For the type of supplemental information provided to the Monitor, see the Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2007, through December 31, 2007, at pages 25-26, available on the Monitor's web site at http://www.pigfordmonitor.org/reports/Rpt20081230_2007.pdf.

Table 13: Statistical Report Regarding Track A Petitions and Adjudicator Reexamination Decisions⁶²	
Statistical Report as of:	End of 2008
A. Number of Petitions for Monitor Review of Track A Adjudicator Decisions ⁶³	5,707
1. Track A Claimant Petitions	4,932
2. Track A Government Petitions	775
B. Track A Petition Decisions Issued by Monitor	5,642
1. Total Number of Track A Petitions Granted	2,899
a. Claimant Track A Petitions Granted	2,773
b. Government Track A Petitions Granted	126
2. Total Number of Track A Petitions Denied	2,743
a. Claimant Track A Petitions Denied	2,131
b. Government Track A Petitions Denied	612
C. Reexamination Decisions Issued by Adjudicator	2,868
1. Reexamination Decisions After Claimant Petition Granted by Monitor	2,743
a. Claimant Prevailed on Reexamination	2,437
b. Claimant Did Not Prevail on Reexamination	306
2. Reexamination Decisions After Government Petition Granted by Monitor	125
a. Government Prevailed on Reexamination	113
b. Government Did Not Prevail on Reexamination	12

3. *Petitions for Review of Arbitrator Decisions*

As of the end of 2008, the Arbitrator had issued decisions in ninety-one of the pending Track B claims. In sixty-one of those claims (approximately 67 percent), either the claimant or

⁶² These statistics are provided by the Facilitator and are valid as of December 31, 2008. Appendix 9 contains information about Adjudicator reexamination decisions from prior reporting periods.

⁶³ In some Track A claims, both the claimant and USDA petitioned for Monitor review from the same Adjudicator decision. In these cases, the Facilitator’s database “merges” the two petitions and counts them as one petition, and the Monitor issues one decision in response to the two petitions. See Order, ¶¶ 1-2 (D.D.C. July 18, 2002), available on the Monitor’s website at: <http://www.pigfordmonitor.org/orders/20020718order.pdf>.

USDA or both the claimant and USDA petitioned the Monitor for review. As of the end of 2008, the Monitor had issued decisions in fifty-nine of those sixty-one claims. Table 14 sets forth information about the petitions for Monitor review and the results of reexamination decisions by the Arbitrator as of the end of 2008.

Table 14: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions⁶⁴	
Statistical Report as of:	End of 2008
A. Number of Petitions for Monitor Review of Track B Arbitrator Decisions ⁶⁵	61
1. Claimant Track B Petitions	42
2. Government Track B Petitions	19
B. Track B Petition Decisions Issued by Monitor	59
1. Total Number of Track B Petitions Granted	15
a. Claimant Track B Petitions Granted	11
b. Government Track B Petitions Granted	4
2. Total Number of Track B Petitions Denied	44
a. Claimant Track B Petitions Denied	29
b. Government Track B Petitions Denied	15

(continued)

⁶⁴ These statistics are provided by the Facilitator and the Arbitrator and are valid as of December 31, 2008.

⁶⁵ In four Track B claims, both the claimant and USDA petitioned for Monitor review from the same Arbitrator decision. In these cases, the Facilitator’s database “merges” the two petitions and counts them as one petition, and the Monitor issues one decision in response to the two petitions. See Order, ¶¶ 1-2 (D.D.C. July 18, 2002), available on the Monitor’s website at: <http://www.pigfordmonitor.org/orders/20020718order.pdf>.

Table 14: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions	
Statistical Report as of:	End of 2008
C. Reexamination Decisions Issued By Arbitrator After Claimant Petition Granted by Monitor ⁶⁶	5
Result on Reexamination:	
1. Arbitrator Notified Parties That Hearing Process Would Be Completed ⁶⁷	5
D. Reexamination Decisions After Government Petition Granted by Monitor ⁶⁸	2
Result on Reexamination:	
1. Damages Award Revised	1
2. Debt Relief Order Revised	1

D. Calls to Toll-Free Telephone Number — Paragraph 12(b)(iv) of the Consent Decree

Paragraph 12(b)(iv) of the Consent Decree gives the Monitor the responsibility to staff a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints. The Monitor’s toll-free telephone number is: 1-877-924-7483. The Monitor’s toll-free operators staffed a total of 15,510 calls in 2008.

Many of the callers in 2008 were prevailing claimants who had questions or concerns about their relief. For example, prevailing claimants often raised questions about the debt relief or tax relief they were entitled to receive. Some callers were claimants whose claims remained pending in the claims process. Toll-free operators have access to information about the status of a claim, and operators provided current information on claim status to callers whose claims

⁶⁶ Of the 11 claimant petitions granted by the Monitor, six remained pending reexamination by the Arbitrator as of the end of 2008.

⁶⁷ Of these five claims, one claim settled and one claim resulted in a hearing and an award of damages to the claimant. The other three claims remained pending as of the end of 2008.

⁶⁸ Of the four government petitions granted by the Monitor, two remained pending reexamination by the Arbitrator as of the end of 2008.

remained pending a petition for Monitor review or a decision by the Adjudicator or the Arbitrator on reexamination.

Other callers to the Monitor's toll-free line requested information about whether they could file a *Pigford* claim in 2008 or whether the case had been reopened due to congressional action. The Monitor is aware that section 14012 of the Food, Conservation and Energy Act of 2008 was enacted in May 2008 as part of Public Law No. 110-246 (2008). Section 14012 provides a new cause of action for certain individuals who previously submitted a request to file a late-claim under paragraph 5(g) of the Consent Decree and who have not previously obtained a determination on the merits of their claim through the *Pigford* claims process.

This legislation does not reopen the *Pigford* Consent Decree or change the deadlines for filing a claim under the *Pigford* Consent Decree. Nonetheless, many individuals contacted the Monitor requesting information about the opportunity to file a new claim under section 14012.

The Monitor is aware of a number of newly-filed cases that have been brought pursuant to section 14012 in the United States District Court for the District of Columbia, consolidated by the Court under Misc. No. 08-0511 (PLF), *In re Black Farmers Discrimination Litigation*. The Court has issued a Case Management Order that authorizes the Monitor to provide a link to a web site that the plaintiffs in the *In re Black Farmers Discrimination Litigation* cases may create.⁶⁹ As of this date, however, no class is certified in these cases, and therefore there is not

⁶⁹ Case Management Order No. 1, *In re Black Farmers Discrimination Litigation*, Misc. No. 08-mc-0511 (PLF) (D.D.C. Dec. 15, 2008) (stating that plaintiffs' counsel may create and operate a publicly available web site and a phone bank with a toll-free number established for the purpose of providing information regarding the litigation consolidated as *In re Black Farmers Discrimination Litigation*, and plaintiffs' counsel may make the web site address and phone numbers available to the *Pigford* Monitor so that she may, if she wishes, post them on the Monitor's web site).

one unified web site or unified telephone bank that provides information about all of the potentially eligible individuals' options. The Monitor, therefore, does not provide a web site link for the *In re Black Farmers Discrimination Litigation*.

VI. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

During calendar year 2008, the parties and the neutrals addressed a variety of issues regarding implementation of the Consent Decree for the 22,719 claimants who have been found eligible to participate in the claims process. These issues are discussed more fully below.

A. Claims Processing

As of the end of 2008, only a few claimants had not yet received final decisions in response to the claims they filed for relief. Nonetheless, claims remained pending before the Monitor, the Adjudicator, and the Arbitrator as of the end of 2008. During 2008, the neutrals each made efforts to complete the claims process for those claimants who had not yet received a final decision on their claim. In addition, claims processing activities in 2008 included the Arbitrator's audit review of late-claims requests and the parties' review and implementation of the appropriate relief for claimants who received amended Adjudicator decisions outside of the Monitor petition process. More information on the late-claims process and the implementation of relief for claimants who received amended Adjudicator decisions follows below.

1. Late-Claim Requests

Many thousands of people sought to participate in the claims process after the October 12, 1999 deadline for filing a claim package. Under paragraph 5(g) of the Consent Decree, a claimant who did not timely file a claim package could request permission from the Court to file a claim after the deadline. Paragraph 5(g) required a claimant to show that his or her

failure to submit a timely claim was due to extraordinary circumstances beyond his or her control.

On July 14, 2000, the Court approved a stipulation by the parties regarding the procedure for late-claims requests. Paragraph 2 of the July 14, 2000 Stipulation and Order stated that persons who sought to qualify for permission to file a late claim under paragraph 5(g) of the Consent Decree could file a written request with the Facilitator postmarked no later than September 15, 2000. The Facilitator began to enter all late-claim petitions into a database and, beginning with requests received in response to the July 14, 2000 Stipulation and Order, the Facilitator assigned each request a unique identifying number.⁷⁰ The Facilitator reports that a total of 65,993 requests for permission to file a “late claim” were postmarked on or before the September 15, 2000 deadline.⁷¹

Late-claim requests that were filed on or before the September 15, 2000 deadline were categorized based on the reasons offered by claimants for seeking permission to file a late claim.⁷² Claimants whose late-claim affidavits were placed into certain categories, such as those

⁷⁰ See page 5 of the Arbitrator’s November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor’s web site at <http://www.pigfordmonitor.org/arbrpts/arb20011114.pdf>. Some people filed more than one late-claim request.

⁷¹ In the Monitor’s 2007 report on the implementation of the Consent Decree, the Monitor reported that a total of 65,952 timely late-claims requests had been filed. This statistic was based on a report by the Arbitrator, who used a different protocol than the Facilitator uses for counting individual late-claim requests. The number of timely-filed late-claims requests reported in this report (65,993) is based on data provided by the Facilitator, as of the end of 2008.

⁷² The Arbitrator published a list of categories in the Appendix to the Arbitrator’s Seventh Report on the Late-Claim Petition Process, filed on December 1, 2004. The Arbitrator’s December 1, 2004 report is available on the Monitor’s web site at <http://www.pigfordmonitor.org/arbrpts/arb20041201.pdf>.

involving personal health or the impact of Hurricane Floyd,⁷³ were sent a letter accepting or rejecting their request after an individual review of their request by the Arbitrator and/or a member of the Arbitrator's staff. Claimants whose late-claim affidavits were placed into other categories, such as those involving a lack of knowledge about the lawsuit or a lack of information about the claims process, were sent a letter rejecting their request to file a late claim. These categories have been referred to as "automatic denial" categories because affidavits placed in these categories were denied without an individual review of each affidavit by the Arbitrator or a member of his staff.⁷⁴

The Arbitrator permitted claimants to request reconsideration of the decision to deny their late-claims request. Claimants could request reconsideration by making a written request within a sixty-day timeframe set forth in a letter they received from the Arbitrator.⁷⁵ For those claimants who had not requested reconsideration, the Arbitrator performed an audit of late-claims requests

⁷³ As the Arbitrator has previously described, Hurricane Floyd resulted in a federal disaster declaration for approximately sixty counties in and around North Carolina. The hurricane hit land in mid-September 1999, shortly before the October 12, 1999 filing deadline.

⁷⁴ The "automatic denial" categories included a variety of reasons deemed insufficient to establish "extraordinary circumstances" beyond a claimant's control, such as: (1) claimants believed the case was not legitimate; (2) claimants believed they were not eligible to participate in the claims process; (3) claimants were unaware of the lawsuit or the deadline to file a claim; (4) claimants were unaware that they needed to request and file a claim form; or (5) claimants were unsure how to fill out a claim form. The "automatic denial" categories also included requests that provided no reason or explanation for the claimant's failure to file a claim prior to the October 12, 1999 deadline, as well as requests that mentioned slave reparations and claimants who cited tax forms ("back tax lawsuit") as the reason they had not timely filed a claim. See generally pages 5 through 8 of the Arbitrator's November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor's web site at <http://www.pigfordmonitor.org/arbrpts/arb20011114.pdf>.

⁷⁵ In response to requests for reconsideration, the Arbitrator granted a total of 159 additional requests to file a late claim as of the end of 2008. The Arbitrator has provided samples of the letters sent to claimants who petitioned to file a late claim; these samples are attached to the Arbitrator's November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor's web site at <http://www.pigfordmonitor.org/arbrpts/arb20011114.pdf>.

that initially had been denied by the Arbitrator. In 2007, the Arbitrator granted permission for additional claimants to file a late claim as a result of audits of requests categorized in the “Hurricane Floyd” categories.⁷⁶

During 2008, the Arbitrator completed audits of other affidavits that had been previously denied and had not been the subject of a reconsideration request. The Arbitrator’s audit review included affidavits that referred to the weather resulting from “the Hurricane” without using the words “Hurricane Floyd” as the reason why class members had been unable to timely file their claim packages.⁷⁷ The Arbitrator’s review also included affidavits that had been placed into categories where the requests were automatically denied, without any prior individualized case-by-case review of the affidavits. As a result of the Arbitrator’s 2008 audit, the Arbitrator granted additional requests to file a late claim. As of the end of 2008, Claim Sheets had been sent to twenty-six claimants whose petitions to file a late claim were granted by the Arbitrator during 2008.⁷⁸

Table 15 contains cumulative information about the late-claims process. As of the end of 2008, including the requests granted by the Arbitrator on reconsideration and in the audit review

⁷⁶ The Arbitrator granted an additional 471 “Hurricane Floyd” requests to file a late claim. The two categories used for “Hurricane Floyd” requests were: “Hurricane Floyd in North Carolina” and “Hurricane Floyd outside North Carolina.” See Appendix 1 of the Arbitrator’s Seventh Report on the Late-Claim Petition Process, filed on December 1, 2004, and available on the Monitor’s web site at <http://www.pigfordmonitor.org/arbrpts/arb20041201.pdf>.

⁷⁷ For example, this audit examined affidavits that used the phrase “big storm” as the reason for not filing on time.

⁷⁸ As of the end of 2008, the Arbitrator granted permission for 13 additional claimants to file a late claim. Pursuant to a Stipulation and Order issued by the Court on May 7, 2009, these 13 additional claimants will be provided with the opportunity to file Claim Sheet and Election Forms in 2009. See Stipulation and Order, filed May 7, 2009, and available on the Monitor’s web site at http://www.pigfordmonitor.org/orders/20090507stip&order_5g.pdf.

process, a total of 2,702 claimants had received notice that their late-claims requests had been granted by the Arbitrator.⁷⁹ This amounts to approximately 4 percent of the 65,993 timely filed late-claims requests.

Table 15: Statistical Report Regarding Late-Claim Requests⁸⁰	
Statistical Report as of:	End of 2008
A. Number of Timely-Filed Late-Claim Requests	65,993
B. Number of Requests Granted	2,702
C. Number of Requests Denied	63,291

2. Amended Adjudicator Decisions

During 2008, the parties and neutrals worked to implement relief for a certain group of claimants who had received amended decisions from the Adjudicator outside of the Monitor petition process. Previous reports to the Court have addressed these amended decisions claims.⁸¹

One group of claimants who received amended Adjudicator decisions has been referred to by the parties as the “Conservation Loan Group.” The claimants in this group each checked

⁷⁹ On May 7, 2009, the Court approved a stipulation by the parties indicating that the late claim process is complete and, after Claim Sheet and Election Forms are sent to the 13 claimants identified in the Stipulation, no additional Claim Sheet and Election Forms will be sent to any other late-claim petitioners.

⁸⁰ These statistics are provided by the Facilitator and are as of December 31, 2008. Some people filed more than one late-claim request; the statistics provided in this report reflect the number of late-claims requests, not the number of people who filed such requests. Data provided in previous Monitor reports relied, in part, on statistics provided by the Arbitrator in the Arbitrator’s reports on the late-claim process. The Arbitrator used a different protocol than the Facilitator in counting the number of individual late-claims requests. The Facilitator has provided all of the late-claim data set forth in Table 15 of this report.

⁸¹ The Monitor began reporting to the Court on amended decisions in 2006. In response to orders by the Court, the Monitor filed additional reports in 2007 and in 2008 on the “amended decisions” claims. All of the Monitor’s reports are available on the Monitor’s web site: <http://www.pigfordmonitor.org/reports/>.

the “Conservation Loan” box on their Claim Sheet and Election Forms.⁸² These claimants received amended decisions from the Adjudicator, outside of the petition for Monitor review process, that affected whether they would receive Track A credit claim relief or whether they would receive non-credit claim relief. Under the terms of a Stipulation and Order filed on June 30, 2006, certain of the claimants identified as part of the “Conservation Loan” group received the relief provided in the original Adjudicator decision for their claim, subject to USDA’s right to petition the Monitor for review of the issue of whether the claim in question concerned discrimination in a farm credit program or in a non-credit program. As of the end of 2008, all but one of the forty-three claimants who were part of the “Conservation Loan Group” had received a final decision regarding their relief.⁸³ One of the forty-three “Conservation Loan” claims remained pending a reexamination of the type of relief the claimant should receive.⁸⁴

⁸² As prior reports have explained, despite the use of the term “Conservation Loan” on the Claim Sheet and Election Form, USDA did not have a Conservation Loan program. USDA offered both a credit program (the Soil and Water Loan program) and various non-credit programs (such as cost shares in the Agricultural Conservation Program or long-term contracts in the Conservation Reserve Program) to achieve conservation purposes. See generally pages 3 through 4 of the Monitor’s Report on Amended Adjudicator Decisions, filed April 7, 2006, and available on the Monitor’s web site at <http://www.pigfordmonitor.org/reports/rpt20060407dec.pdf>.

⁸³ USDA filed petitions for Monitor review in 21 of the “Conservation Loan” group claims. As of the end of 2007, the Monitor had directed reexamination of the type of relief awarded to prevailing claimants in seven of the 21 claims. The Monitor denied reexamination in 14 of the 21 claims. For those 14 claims in which USDA’s petition was denied, the claimants are entitled to receive relief for a prevailing Track A credit claim, including a cash relief payment of \$50,000, tax relief, and debt relief.

⁸⁴ The Monitor directed reexamination of a total of seven Conservation Loan Group claims. As of the end of 2008, the Adjudicator had issued reexamination decisions in six of the seven claims. In three of the claims, claimants received relief for a non-credit claim (\$3,000 cash relief) on reexamination. In two of the claims, claimants received relief for a credit claim and a non-credit claim (\$53,000 cash relief) on reexamination. In one claim, the claimant received relief for a credit claim (\$50,000 cash relief) on reexamination. As of the end of 2008, one claim remained pending before the Adjudicator on reexamination.

In addition to the Conservation Loan Group, the parties considered the appropriate relief for seventy-eight other claimants who had received amended Adjudicator decisions outside of the petition for Monitor review process. The Monitor's Fifth Progress Report on Amended Decisions and Debt Relief Implementation, filed on July 11, 2008, summarized the parties' review of the appropriate cash relief and debt relief for each of the seventy-eight claimants who had received amended Adjudicator decisions that affected or that may have affected the amount of cash relief or debt relief the claimants received. The Monitor reported that no objections had been received from the parties regarding the final cash relief payments that had been made to any of the affected claimants.⁸⁵ The Monitor further reported that USDA had completed the tasks identified and agreed upon by the parties for the proper implementation of debt relief for each of the affected claimants who qualified for debt relief. As of the end of 2008, with one exception, the steps needed to fully implement debt relief had been completed for each claimant whose debt relief may have been affected by the amended decisions they received.⁸⁶

B. Relief for Successful Class Members

During 2008, the parties addressed a number of issues involving the implementation of relief for all prevailing claimants. In addition to monitoring payments of cash relief and addressing issues of injunctive relief and applications for new USDA loans, the parties and the

⁸⁵ See pages 2 through 3 and Exhibits A and B to the Monitor's Third Progress Report on Amended Decisions, filed October 11, 2007, and available on the Monitor's web site at http://www.pigfordmonitor.org/reports/rpt20071011_amenddec.pdf.

⁸⁶ In one amended decisions case USDA agreed to switch a claimant's debt relief from the Operating Loan program to the Emergency Loan program, to reflect accurately the type of loan at issue in the claim. Implementation of the switch initially was delayed because the claimant was incapacitated. The claimant has since passed away. Class counsel remains in contact with the claimant's representative regarding the steps needed to fully implement a switch in the debt relief for this claim.

Monitor spent a significant amount of time addressing the implementation of debt relief and tax relief for prevailing claimants. The issues regarding debt relief and tax relief addressed in 2008 are described more fully below.

1. Debt Relief Implementation Review Process

All claimants who prevail on one or more credit claims under Track A or under Track B are eligible for *Pigford* debt relief. In 2008, both the parties and the Court considered the rules that should be applied when USDA implements debt relief.

In February 2008, the Court issued an Order in response to challenges brought by individual prevailing claimants who sought to obtain additional debt relief from USDA.⁸⁷ The Court reviewed the terms of the Consent Decree and the February 7, 2001 Stipulation and Order on debt relief in considering the implementation of debt relief. The Court held that claimants were entitled to debt relief for: (1) all outstanding debts identified by the Adjudicator as “affected by” discrimination; and (2) all subsequent loans incurred in the same loan program(s) as the loans identified by the Adjudicator as having been affected by discrimination, from the date of the first event upon which a finding of discrimination is based through the end of the class period, December 31, 1996.⁸⁸ The Court held that a loan is “incurred” for purposes of *Pigford* debt relief when a claimant first becomes liable to repay the debt. Loans that are incurred

⁸⁷ The Court issued an Opinion and an Order on February 24, 2008. The Court’s Opinion and Order are available on the Monitor’s web site at: http://www.pigfordmonitor.org/orders/20080221_op.pdf.

⁸⁸ The Monitor’s Report and Recommendations on Amended Decisions, filed July 9, 2007, describes in more detail the two-step process for determining debts that are subject to debt relief. This report is available on the Monitor’s web site at http://www.pigfordmonitor.org/reports/rpt20070709_amenddec.pdf.

prior to the earliest prevailing claim year generally do not qualify for *Pigford* debt relief, even if the loans are later restructured by USDA.⁸⁹

During 2008, the parties, with assistance from the Monitor, initiated a process for a final review of the debt relief awarded to all claimants who are eligible for debt relief.⁹⁰ In July 2008, the Monitor issued a revised Monitor Update on Debt Relief for Prevailing Class Members, Monitor Update No. 10. Monitor Update No. 10 summarized the rules the parties agreed apply in implementing *Pigford* debt relief.⁹¹ Some of these rules are summarized below.

a. *Determining the Debts to be Discharged*

The scope of debt relief is dependent upon the type of loan(s) at issue in each prevailing claim. In general, a claimant who prevails on an Operating Loan claim, for example, will qualify for debt relief for Operating Loans. As the parties began to review USDA loan records, it became

⁸⁹ For example, in one of the cases considered by the Court, a claimant had prevailed on a claim involving the denial of a Farm Ownership Loan and an Operating Loan in 1988. Under the terms of the Consent Decree and the February 7, 2001 Stipulation and Order, the claimant was entitled to debt relief for all outstanding Farm Ownership Loan debt and all outstanding Operating Loan debt incurred from 1988 to the end of the class period, December 31, 1996. The claimant sought debt relief for loans that were originally issued in 1982 and were later restructured by USDA after 1988. The Court rejected the claimant's argument that USDA was required to forgive these loans. The Court found the loans were "incurred" when they were initially granted in 1982, which was prior the earliest prevailing claim year (1988). The claimant's 1982 loans therefore did not qualify for *Pigford* debt relief. The Court's Order does not address debt relief for cases in which the Adjudicator makes a finding of discrimination in the loan restructuring or loan servicing process.

⁹⁰ As part of the debt relief correction and verification process, USDA agreed to implement systems to: (1) determine the proper loan(s) for each prevailing claimant that are subject to discharge under the Consent Decree; (2) verify that those loans have been discharged and there is no remaining personal liability for the debt; (3) provide refunds of any voluntary payments made after the loans became subject to discharge; (4) provide refunds of offsets taken by the Government after January 1, 1999, on loans subject to discharge; (5) manage the tax consequences of any additional debt relief provided; and (6) provide county offices access to accurate information regarding *Pigford* debt forgiveness, to ensure that no adverse action is taken to deny new loans based upon debt that was subject to forgiveness under the Consent Decree.

⁹¹ Monitor Update No. 10 is attached to this report as Appendix 10 and is available on the Monitor's web site, <http://www.pigfordmonitor.org/updates/update10.pdf>.

apparent that in some cases the Adjudicator's decision did not properly identify the type of loan the claimant actually received. For example, the Adjudicator's decision may award relief for a 1990 Operating Loan claim, but USDA loan records may show that the only loan the claimant received in 1990 was an Emergency Loan for operating purposes. In such cases, as Monitor Update No. 10 describes, USDA has agreed to implement debt relief based on the actual loan program at issue. In the example above, USDA would provide debt relief for any outstanding Emergency Loans incurred from 1990 through the end of the class period, December 31, 1996. The parties have referred to these types of cases as "switch" cases because, in implementing debt relief, USDA will switch the type of loan to correctly identify the loan and loan program.⁹²

b. Providing Refunds of Certain Payments

In reviewing USDA's implementation of debt relief in individual cases, it also became apparent that in some cases claimants had continued to make payments to USDA on loans after the loans qualified for *Pigford* debt relief. This is particularly true for claimants who prevailed early in the claims process, prior to the February 7, 2001 Stipulation and Order. The February 7, 2001 Stipulation and Order clarified that debt relief included what the parties have referred to as "forward sweep" debt relief for loans issued in the same loan program as the loans found by the Adjudicator or Arbitrator to have been affected by discrimination. In general, USDA implemented "forward sweep" debt relief beginning in 2001. Many claimants who

⁹² USDA also agreed that there are rare cases in which the Adjudicator found discrimination in the making of a loan in one loan program and USDA's records indicate that the claimant received two loans at the same time that were affected by the same act of discrimination. For example, an Adjudicator may have found discrimination in the late funding of an Operating Loan in 1991. If the facts establish that the claimant's 1991 loan application resulted in both an Operating Loan and an Emergency Loan being made to the claimant on the same time schedule, the remedy will generally be switched to include both the Operating Loan and the Emergency Loan and both loans will be forgiven.

prevailed in the claims process in 1999 and 2000 made payments on loans that were forgiven in 2001 under the terms of the February 7, 2001 Stipulation and Order. As described in Monitor Update No. 10, USDA has agreed to refund to claimants certain payments made after a prevailing Adjudicator decision on loans that are subject to *Pigford* debt relief.⁹³

c. Providing Refunds of Certain Offsets

USDA has also agreed to refund certain offsets of payments that were taken by the Government and applied to loans subject to *Pigford* debt relief. Offsets can be taken from USDA farm program payments and from other federal payments, such as Social Security benefits or income tax refunds. As Monitor Update No. 10 describes, USDA has agreed to refund certain offsets taken after January 1, 1999, on loans subject to *Pigford* debt relief.⁹⁴

d. Review, Correction, and Verification Process for Debt Relief

In July 2008, the Monitor sent a letter to prevailing claimants informing them that the parties had agreed to a review of the implementation of *Pigford* debt relief.⁹⁵ In 2008, the parties and the Monitor began the debt relief review process for prevailing claimants whose Adjudicator or Arbitrator decisions entitled them to *Pigford* debt relief. This review process includes a review of each claimant's prevailing Adjudicator or Arbitrator decision and the claimant's USDA loan records. In some cases, as part of the debt relief review process, USDA agreed to forgive additional outstanding loans. In other cases, USDA agreed to provide refunds of payments made,

⁹³ As Monitor Update No. 10 describes, instead of refunding the payments to a claimant, USDA may apply the payments to a claimant's other outstanding loans, if the claimant had other delinquent debt that was not subject to *Pigford* debt relief. In addition, payments made prior to the prevailing Adjudicator or Arbitrator decision do not qualify for refund.

⁹⁴ As with voluntary payments, however, USDA may apply the funds to other delinquent farm program debt before providing a refund to the claimant.

⁹⁵ A copy of the letter is available on the Monitor's web site, at http://www.pigfordmonitor.org/class/200807_dr.pdf.

or of offsets taken, to repay loans that were subject to *Pigford* debt relief. In still other cases, although claimants had outstanding USDA farm loan program debts, the parties determined that the claimants' debts did not qualify for *Pigford* debt relief.⁹⁶ For claims in which additional debt relief was appropriate, USDA provided verification to Class Counsel and the Monitor regarding the implementation of that relief. At the conclusion of the process for each claimant, the Monitor prepares a summary of the debt relief the parties agreed was appropriate for each prevailing claimant.

In December 2008, USDA produced a list of prevailing claimants who the parties have agreed should receive an individualized review of their debt relief. The identification of the universe of prevailing claimants who are entitled to debt relief remains ongoing, and the parties and the Monitor expect that the debt relief review process for individual claimants will require substantial additional effort.

2. Tax Relief and IRS Forms 1099

Under paragraph 9(a)(iii)(C) of the Consent Decree, a class member who prevails on a Track A credit claim is entitled to have the Government transfer funds directly into an account established with the Internal Revenue Service (IRS) as partial payment on federal income taxes that he or she may owe as a result of obtaining relief. This tax relief is equal to 25 percent of the \$50,000 in cash relief for a credit claim, or \$12,500, plus 25 percent of the principal amount of any outstanding farm loan debt forgiven by USDA as a result of *Pigford*. During 2008, the

⁹⁶ Generally speaking, loans that are not subject to *Pigford* debt relief include: loans that are incurred prior to the earliest prevailing claim year, loans that are incurred in loan programs other than the loan program(s) at issue in the prevailing claim, and loans that are incurred after the end of the class period, December 31, 1996.

Monitor and the parties reviewed the establishment of tax accounts for claimants who prevailed in 2007 or earlier. The Facilitator reported to the parties that tax accounts were established prior to the end of 2008 for all claimants who prevailed in Track A credit claims and who received their cash relief payments in 2007. In addition to establishing the tax accounts with the IRS, the Facilitator reported that tax deposits were made to the accounts on behalf of claimants who received relief as of the end of 2007.⁹⁷

As part of the tax relief implementation process, claimants receive letters from the Facilitator and Class Counsel informing them of the tax implications of their relief and of the tax accounts established on their behalf with the IRS. The letters explain that claimants should receive IRS Forms 1099 reflecting the relief and that the relief may be taxable income. The responsibility for sending claimants IRS Forms 1099 is shared by the Facilitator and USDA. Table 16 indicates which entity is responsible for preparing and issuing the Forms 1099 to prevailing claimants.

Table 16: Responsibility for IRS Forms 1099	
Subject of the Form 1099	Who Prepares and Mails the Form 1099
A. Track A Credit Relief Payments (\$50,000)	Facilitator
B. Track A Non-Credit Relief Payments (\$3,000)	USDA
C. Track B Cash Payments (Settlements and Damage Awards)	Facilitator
D. Track A Debt Relief	USDA
E. Track B Debt Relief	USDA
F. Deposits to Claimants' IRS Accounts	Facilitator

⁹⁷ The Facilitator reported that 600 tax accounts were funded as of the end of 2008 for 2007 payees. There were a total of 601 tax accounts established in 2008 for 2007 payees; one account was funded in February 2009.

The Facilitator reported that IRS Forms 1099 were timely sent in 2008 for Track A claimants who received cash relief in 2007. There was some delay in the IRS Forms 1099 for several Track B damage awards paid to claimants in 2007, due to the Government's failure to inform the Facilitator of the payments of the awards. The Government reports that the Facilitator has been informed of all Track B payments made by the Government in 2008.

USDA is responsible for the IRS Forms 1099 reporting non-credit cash relief (\$3,000) and reporting the amount of debt relief the Government provided to successful Track A and Track B claimants. During 2008, the parties and the Monitor sought guidance from the National Taxpayer Advocate (NTA) and the Internal Revenue Service (IRS) Office of Chief Counsel regarding the federal income tax implications for claimants when USDA provides a claimant with debt relief in a number of different years. The parties described to the NTA and the IRS common circumstances that could result in a claimant receiving multiple IRS Forms 1099 for *Pigford* debt relief. For example, a claimant who received cancellation of outstanding debt in 1999 as a result of a prevailing Adjudicator decision in 1999 could receive additional debt relief in 2001 as USDA implemented the "forward sweep" debt relief described in the February 7, 2001 Stipulation and Order. In addition, the same claimant could receive further debt relief in 2008 as a result of refunds of payments made or offsets taken to repay loans subject to *Pigford* debt relief.⁹⁸ Claimants could also receive debt relief in more than one year if the

⁹⁸ For example, in one claim, the claimant prevailed on a 1987 Operating Loan claim. In 1999, the year of the Adjudicator's decision, USDA forgave an outstanding Operating Loan, which originated in 1987. Later, in 2001, USDA provided "forward sweep" debt relief by forgiving another outstanding Operating Loan, which originated in 1988. Most recently, in 2008, USDA refunded payments the claimant had made in January and December 2000, after the prevailing Adjudicator decision, on the Operating Loans that were subject to *Pigford* debt relief. Refunding these payments in 2008 increased the amount of debt cancellation.

claimant prevailed on additional claims in an Adjudicator reexamination decision.⁹⁹ The parties and the Monitor had several conferences with representatives from the IRS Office of Chief Counsel and the National Taxpayer Advocate discussing the tax implications of USDA's debt relief implementation. These conferences were very helpful to the parties and the Monitor. In December 2008, the Monitor requested and the Court granted the Monitor additional time to report to the Court on the tax implications of USDA's debt relief implementation.¹⁰⁰

C. Wind-Down Process

During 2008, the parties identified and began to implement the steps that will be necessary to successfully complete the Consent Decree implementation process. The Facilitator prepared projections for the completion of claims-processing activity based on the number of pending claims in each phase of the claims process. All of the neutrals (the Facilitator, the Adjudicator, the Arbitrator, and the Monitor) each performed tasks necessary to move towards completion of their claims-processing responsibilities. The Monitor's next report on the implementation of the Consent Decree will outline in greater detail the steps that remain to be completed to successfully wind down the implementation process for all claimants.

VII. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

The parties and the neutrals worked in good faith to implement the Consent Decree

⁹⁹ For example, a claimant who prevailed in 1999 on a 1983 Farm Ownership Loan claim would receive debt relief for Farm Ownership Loan program debt incurred from 1983 to 1996. If the claimant later prevailed on reexamination on a 1981 Operating Loan claim, the claimant would be entitled to receive additional debt relief for Operating Loan program debts incurred from 1981 through 1996.

¹⁰⁰ The Court granted this request, and the Monitor filed a report on March 31, 2009. See the Monitor's Report on Debt Relief Implementation, filed March 31, 2009, and available on the Monitor's web site at: http://www.pigfordmonitor.org/reports/rpt20090331_dr_impl.pdf. The Court ordered the Monitor to file another report on or before June 30, 2009, regarding the parties' progress with respect to debt relief implementation.

throughout calendar year 2008. Although much was accomplished, continued effort and attention will be required to complete the implementation process and wind-down of the case. The Monitor will continue to work with the parties and neutrals to complete the implementation process and will report on the progress of implementation as required by the Consent Decree and as the Court and/or the parties request.

Dated: June 17, 2009.

Respectfully submitted,

OFFICE OF THE MONITOR

s/Randi Ilyse Roth

Randi Ilyse Roth
Monitor

s/Cheryl W. Heilman

Cheryl W. Heilman
Assistant Senior Counsel

Post Office Box 64511
St. Paul, Minnesota 55164-0511
877-924-7483

Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS¹

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

(See next page for 2005 through 2008.)

¹ These statistics were provided by the Facilitator.

² 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.

³ The decrease in denials is a result of decisions being overturned on reexamination.

⁴ 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.

⁵ 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 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS

(continued)

Statistical Report as of:	End of 2005		End of 2006		End of 2007		End of 2008	
	Number	%	Number	%	Number	%	Number	%
A. Eligible Class Members	22,415	100	22,440	100	22,691	100	22,719	100
B. Cases in Track A (Adjudications)	22,243	99	22,269	99	22,519	99	22,547	99
C. Cases in Track B (Arbitrations) ⁶	172	1	171	1	172	1	172	1
Adjudication Completion Figures								
D. Adjudications Complete	22,240	~100	22,268	~100	22,271	99	22,505	99
E. Adjudications Not Yet Complete	3	~0	1	~0	248	1	42	1
Adjudication Approval/Denial Rates								
F. Claims Approved by Adjudicator	14,257	64	14,751	66	15,237	68	15,596	69
G. Claims Denied by Adjudicator ⁷	7,983	36	7,517	34	7,034	32	6,909	31
Adjudication Approvals Paid/Not Paid								
H. Approved Adjudications Paid	13,916	98	14,494	98	15,079	99	15,408	99
I. Approved Adjudications Not Yet Paid	341	2	257	2	158	1	188	1
J. Cash Relief Paid to Class Members for Track A Credit Claims ⁸	\$685,300,000		\$714,900,000		\$745,300,000		\$759,800,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims	\$1,326,000		\$1,254,000 ⁹		\$1,299,000		\$1,467,000	

⁶ 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.

⁷ The decrease in denials is a result of decisions being overturned on reexamination.

⁸ 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.

⁹ 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 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS¹

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
A. Eligible Track B Claimants	177	235	236	237	238	239	240	241	241
B. Track B Cases Settled	11	57	61	71	69 ²	71	71	71	71
C. Track B Cases Converted to Track A	27	50	54	55	62	64	65	65	65
D. Track B Cases Withdrawn	5	6	6	6	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
F. Arbitration Decisions Issued	15	51	71	77	81	87	90	91	91
G. Arbitration Decisions Not Yet Issued	119	71	44	28	17	8	5	5	5

¹ 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, and 2008.

² This number is lower than the prior year's number because the Arbitrator learned that reports that some cases had settled were in error.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS

(continued)

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
Arbitration Results									
H. Claimant Prevailed Before Arbitrator	2	8	15	17	18	19	22	23	23
I. Average Award to Prevailing Claimants	\$580,500	\$531,373	\$560,309	\$545,686	\$551,587	\$526,626	\$499,057	\$476,679	\$476,679
J. Government Prevailed Before Arbitrator	13	43	56	60	63	68	68	68	68
Posture of Decisions in Which Government Prevailed									
K. Cases Dismissed Before Hearing	10	28	34	38	40	44	44	44	44
L. Full Hearing, Finding of No Liability	3	15	22	22	23	24 ³	24	24	24

³ This number includes a claim where the decision was signed by the Arbitrator on November 30, 2005, but the decision was not postmarked until January 4, 2006.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS¹

Claimant	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 2008²
Claimant A	\$544,400.00								
Claimant B	616,600.00								
Claimant C	<N/A>	\$615,090.00							
Claimant D	<N/A>	100,000.00							
Claimant E	<N/A>	780,000.00							
Claimant F	<N/A>	625,566.00							
Claimant G	<N/A>	507,954.88							
Claimant H	<N/A>	[liability found but damages not awarded as of the end of 2001]	[damages award issued in 2002 reexamined in 2006]				\$411,248.91		
Claimant I	<N/A>	<N/A>	\$1,447,917.00						
Claimant J	<N/A>	<N/A>	879,920.58						
Claimant K	<N/A>	<N/A>	594,444.00						
Claimant L	<N/A>	<N/A>	557,800.00						
Claimant M	<N/A>	<N/A>	427,363.00						

¹ These awards were reported by the Arbitrator for the columns through the end of 2005. The Facilitator provided the statistics for the individual Track B awards reported as of the end of 2006 and 2007.

² There were no decisions issued by the Arbitrator awarding relief in a Track B claim in 2008.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS

(continued)

Claimant	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 2008³
Claimant N	<N/A>	<N/A>	172,000.00						
Claimant O	<N/A>	<N/A>	52,000.00						
Claimant P	<N/A>	<N/A>	<N/A>	\$750,048.00					
Claimant Q	<N/A>	<N/A>	<N/A>	121,978.00					
Claimant R	<N/A>	<N/A>	<N/A>	<N/A>	\$651,903.00				
Claimant S	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$77,321.00			
Claimant T	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$277,115.11		
Claimant U	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$269,524.90		
Claimant V	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$181,138.00	
Claimant W	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	302,290.87	

³ There were no decisions issued by the Arbitrator awarding relief in a Track B claim in 2008.

Appendix 4

STATISTICAL REPORT REGARDING DEBT RELIEF¹

Statistical Report as of:	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007	End of 2008
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
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
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
D. Number of Track A Claimants Who Received Debt Forgiveness	228	239	268	307	319	344
E. Number of Track B Claimants Who Received Debt Forgiveness	25	25	17 ²	18	18	19
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
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$93,900	\$96,158 ³	\$170,745	\$203,582	\$204,304 ⁴	\$214,822

¹ These statistics are provided by USDA.

² 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.

³ 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.

⁴ 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 4

STATISTICAL REPORT REGARDING DEBT RELIEF

(continued)

Total Amount of Debt Forgiven (Principal and Interest) for Track A and Track B Claimants, by Residence of Claimants	
Alabama	\$ 949,350
Arkansas	7,954,595
California	8,016
Florida	267,967
Georgia	5,867,406
Illinois	200,189
Kansas	80,275
Kentucky	139,039
Louisiana	3,756,094
Minnesota	11,911
Mississippi	10,911,006
Missouri	1,183,816
North Carolina	3,330,600
Oklahoma	1,439,593
South Carolina	994,720
Tennessee	1,327,075
Texas	1,494,830
Virginia	1,554,581
Virgin Islands	58,224

Appendix 5

**STATISTICAL REPORT REGARDING
PREVAILING PAID CLAIMANTS BY STATE OF RESIDENCE¹**

State, Province, or Territory of Claimants' Residence	Total Number of Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2008 (Track A and Track B)
Alaska	2	\$ 100,000
Alabama	3,398	167,152,500
Arkansas	1,483	74,751,260
Arizona	5	250,000
California	150	8,034,600
Colorado	8	353,000
Connecticut	8	400,000
District of Columbia	11	580,000
Delaware	2	100,000
Florida	281	13,681,000
Georgia	1,994	98,264,741
Iowa	2	100,000
Illinois	177	8,856,000
Indiana	14	700,000
Kansas	31	1,550,000
Kentucky	63	3,115,500
Louisiana	585	29,171,000
Massachusetts	4	200,000
Maryland	41	2,009,000
Michigan	97	4,828,000
Minnesota	7	350,000
Missouri	91	4,571,000
Mississippi	3,141	158,509,029
North Carolina	1,231	65,546,486

¹ These statistics are provided by the Facilitator and are as of December 31, 2008. Cash relief for Track A claimants includes payment of credit relief (\$50,000) and non-credit relief (\$3,000) to class members who prevailed in the claims process as of the end of 2008. Cash relief for Track B claimants includes payment of damage awards for prevailing class members and payments to class members who settled their claims.

Appendix 5

**STATISTICAL REPORT REGARDING
PREVAILING PAID CLAIMANTS BY STATE OF RESIDENCE**

(continued)

State, Province, or Territory of Claimants' Residence	Total Number of Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2008 (Track A and Track B)
Nebraska	5	250,000
New Jersey	33	1,653,000
New Mexico	3	150,000
Nevada	3	103,000
New York	37	2,211,249
Ohio	33	1,693,000
Oklahoma	591	29,266,000
Ontario	1	50,000
Pennsylvania	19	950,000
South Carolina	889	45,099,500
Tennessee	484	25,076,755
Texas	343	18,607,400
Utah	2	100,000
Virginia	188	10,329,780
Virgin Islands	25	1,250,000
Washington	3	150,000
Wisconsin	16	855,000
West Virginia	1	50,000

Appendix 6

STATISTICAL REPORT REGARDING
PRIORITY CONSIDERATION INJUNCTIVE RELIEF¹

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

¹ These statistics are provided by USDA.

Appendix 7

LIST OF MONITOR OFFICE TRAINING EVENTS AND MEETINGS ATTENDED
 JANUARY 1, 2008 – DECEMBER 31, 2008

The Monitor’s office appeared at the speaking engagements listed below to explain the rules that govern the Monitor’s discharge of her responsibilities (including the rules of the petition process, the injunctive relief process, and the debt relief process) and to meet individually with class members to address their particular concerns. These speaking engagements included:

Date	Location	Sponsor	Approximate Number of Participants
Jan. 24, 2008	Brinkley, Arkansas	Arkansas Land Farm Development Corporation	200+
Feb. 16, 2008	Raleigh, North Carolina	Black Farmers Agriculturalists Association (Tenth National Black Land Summit)	60
June 16, 2008	Tuskegee University, Tuskegee, Alabama	Congressman Artur Davis	1,200
July 12, 2008	Forkland, Alabama	Tenn Tom Community Development, Inc.	30
Oct. 22, 2008	Little Rock, Arkansas	Arkansas Land Farm Development Corporation	300+

Appendix 8

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
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
1. Claimant Petitions	4,560	4,727	4,901	4,938	4,945	4,950	4,974
2. Government Petitions	600	674	716	730	756	757	794
Monitor Decisions							
B. Petition Decisions Issued by Monitor	1,743	2,725	3,310	4,189	5,243	5,688	5,701
1. Total Number of Petitions Granted	676	1,218	1,510	2,049	2,627	2,904	2,914
a. Claimant Petitions Granted	631	1,162	1,439	1,971	2,508	2,776	2,784
b. Government Petitions Granted	45	56	71	78	119	128	130
2. Total Number of Petitions Denied	1,067	1,507	1,800	2,140	2,616	2,784	2,787
a. Claimant Petitions Denied	609	1,040	1,319	1,622	2,011	2,157	2,160
b. Government Petitions Denied	458	467	481	518	605	627	627

¹ These statistics are provided by the Facilitator.

Appendix 9

STATISTICAL REPORT REGARDING
ADJUDICATOR REEXAMINATION DECISIONS¹

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
Reexamination Decisions Issued by Adjudicator	39	301	664	1,355	1,957	2,606	2,868
1. Reexamination Decisions After Claimant Petition Granted by Monitor	39	291	631	1,295	1,880	2,494	2,743
a. Claimant Prevailed on Reexamination	39	279	571	1,189	1,704	2,229	2,437
b. Claimant Did Not Prevail on Reexamination	0	12	60	106	176	265	306
2. Reexamination Decisions After Government Petition Granted by Monitor	0	10	33	60	77	112	125
a. Government Prevailed on Reexamination	0	10	31	52	68	102	113
b. Government Did Not Prevail on Reexamination	0	0	2	8	9	10	12

¹ These statistics are provided by the Facilitator.

Appendix 10

MONITOR UPDATE NO. 10

Monitor Update: Debt Relief for Prevailing Class Members

Originally Issued: March 19, 2001

Date Revised: July 11, 2008

Update 010

© Copyright 2003-08, Office of the Monitor.

Office of the Monitor
Pigford v. Vilsack (D.D.C.)
Brewington v. Vilsack (D.D.C.)
Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483
www.pigfordmonitor.org

This is not a USDA publication.

Debt Relief for Prevailing Class Members

1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief claimants will receive.

2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the claimant's effort to get a farm loan from USDA. For example, if a claimant claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the claimant made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the claimant's effort to obtain some other benefit from USDA. For example, if a claimant claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the claimant made a noncredit claim.

3. Legal Authority for Debt Relief

Debt relief for claimants who prevail on a credit claim is based on several legally binding documents.

a. Consent Decree

The Consent Decree provides that a claimant who prevails on a credit claim receives a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of a prevailing credit claim.

b. February 7, 2001 Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that discusses the details regarding the debt discharge that claimants will receive in credit cases. The Stipulation and Order is based on an agreement that was reached by the government and Class Counsel. According to the Stipulation and Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Stipulation and Order.

c. February 22, 2008 Opinion and Order

On February 22, 2008, Judge Paul L. Friedman signed an Opinion and Order that interprets certain Consent Decree provisions regarding debt relief.

d. USDA Agreement

USDA has agreed that the principles outlined in this Monitor Update are consistent with how USDA implements debt relief to prevailing claimants.

4. Debts to Be Discharged

Certain USDA debts will be discharged as a result of the *Pigford* settlement. The question of which loans will be forgiven can be complicated. The following sections explain debt forgiveness in some detail.

a. Debts Affected by Discrimination

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged. For example, if the Adjudicator found discrimination in the late funding of the claimant's 1984 Operating Loan, the 1984 Operating Loan that was affected by discrimination qualifies for *Pigford* debt relief.

Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. In general, a loan is of the same type if it was incurred under the same loan program. The Operating (OL) Loan Program is one USDA program, the Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

b. Some Debts Incurred After the Discrimination Occurs

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. If, after the date of discrimination, the claimant incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged.

For example, if the Adjudicator found that USDA discriminated against the claimant in denying a Farm Operating Loan in 1994, and USDA then made a Farm Operating Loan to the claimant in 1995, the 1995 Operating Loan will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

c. Loans Made After December 31, 1996—No Debt Discharge

In general, loans made after the end of the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree.

For example, if a claimant received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

If, however, a loan application was filed before the end of the class period, and the loan resulting from that application closed after the end of the class period, the loan may be discharged.

For example, a claimant might have submitted a loan application in November 1996 for a Farm Ownership Loan, and, based on that application, received a Farm Ownership Loan in May 1997. If the Adjudicator found discrimination in the making of the May 1997 Farm Ownership Loan, that loan would be forgiven even though the loan was made after the end of the class period.

d. Rescheduling, Reamortization, and Defining When a Debt Is Incurred

As is noted above, the date on which a loan was incurred is important for figuring the right to debt relief in *Pigford*. For *Pigford* debt relief purposes, a loan is considered "incurred" at the time the loan was originally made, not at the time a loan was rescheduled or reamortized.

For example, if the only discrimination found by the Adjudicator was in the making of an Emergency Loan in 1992, the 1992 Emergency Loan would normally be discharged, as would Emergency Loans made from 1992 through the end of the class period. If USDA rescheduled the 1992 Emergency Loan in 1998, for the purposes of *Pigford* debt relief, the loan was still incurred in 1992, and would be forgiven. If the Emergency Loan had been originally incurred by the claimant in 1998, it would not normally be forgiven.

It is also possible for a loan to have been incurred before the class period, and later rescheduled during the class period.

For example, if the only discrimination found by the Adjudicator was in the making of an Operating Loan in 1984, the 1984 Operating Loan would normally be discharged, as would Operating Loans made from 1984 through the end of the class period. If the claimant had also received an Operating Loan in 1979 that was rescheduled in 1986, for the purposes of *Pigford* debt relief, the loan was incurred in 1979 and would not be forgiven because it was incurred before the discrimination occurred.

e. Some Debts Incurred at the Same Time as the Discrimination

If the claimant incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged.

For example, if the Adjudicator found that discrimination occurred in the late funding of a claimant's one-year 1990 Operating Loan for annual production purposes, that loan would normally be forgiven under *Pigford*. If, on the same day that the claimant received the one-year Operating Loan, he or she also received a seven-year Operating Loan for the purchase of equipment or livestock, the seven-year Operating Loan incurred at the same time as the one-year Operating Loan would be forgiven even if the Adjudicator did not specifically discuss that loan.

f. Exception to Loan Program Rules—Switch Cases

As is noted above, debt forgiveness in *Pigford* largely follows the loan programs that are available from USDA.

For example, in general, if an Adjudicator found discrimination in the making of an Operating Loan in 1990, the claimant will receive debt relief for Operating Loans received from 1990 through 1996. If the claimant also received a Farm Ownership Loan in 1990, but the Adjudicator did not

find discrimination in the making of a Farm Ownership Loan, the Farm Ownership Loan would generally not be eligible for debt relief.

An exception to this general rule occurs in what might be called "switch cases." In some cases, the Adjudicator or Arbitrator made an explicit finding of discrimination with respect to a specific loan, and USDA determines that the actual loan at issue was clearly from a different loan program and was simply misidentified by the Adjudicator or Arbitrator. In these cases, USDA will "switch" the finding to the correct loan program and implement debt relief based on the actual loan program in which the Adjudicator or Arbitrator found discrimination. In other words, if the Adjudicator or Arbitrator found discrimination in the making of a loan, but made a mistake in identifying the type of loan program in question, the loan will be forgiven even if the loan program was incorrectly identified. In these cases, the claimant will generally not receive debt forgiveness for the loan type that was mistakenly identified by the Adjudicator or Arbitrator.

For example, an Adjudicator may have found discrimination in the making of an Operating Loan in 1991, but it turns out that the only loan made to the claimant in 1991 was an Emergency Loan. If the facts establish that the loan referred to by the Adjudicator was actually an Emergency Loan, the remedy will be "switched" to the Emergency Loan and the Emergency Loan will be forgiven.

Similarly, an Adjudicator may have found discrimination in the making of a 1981 Farm Ownership Loan but in fact the loan at issue was a 1981 Emergency Loan for real estate purposes. If the 1981 Emergency Loan is the loan referred to by the Adjudicator, the debt relief would be "switched" to the Emergency Loan program.

As another example, if the Adjudicator found discrimination in the making of Emergency Loans from 1981 through 1984, but the claimant received Emergency Loans from 1981 through 1983 and received an Operating Loan in 1984, the remedy for 1984 will be "switched" to the Operating Loan program. In this case, the claimant's 1981, 1982, and 1983 Emergency Loans and 1984 Operating Loan were the subject of the finding that they were "affected by" discrimination and qualify for debt relief.

There are rare cases in which the Adjudicator found discrimination in the making of a loan in one loan program and USDA's records indicate that the claimant received two loans at the same time that were affected by the same act of discrimination.

For example, an Adjudicator may have found discrimination in the late funding of an Operating Loan in 1991. If the facts establish that the claimant's 1991 loan application resulted in both an Operating Loan and an Emergency Loan being made to the claimant, the remedy will be "switched" to include both the Operating Loan and the Emergency Loan and both loans will be forgiven.

In addition, once the remedy of loan forgiveness has been switched to a different loan program, the switch applies to debt forgiveness for loans in the same program that were made for the rest of the class period. Some USDA farm loan programs authorize the use of funds for a variety of purposes. Once the loan program is identified, however, the use of loan funds for particular purposes does not affect the eligibility of subsequent loans in the same loan program for *Pigford* debt relief.

For example, if debt relief is “switched” from the 1981 Operating Loan program to the 1981 Emergency Loan program, the claimant’s Emergency Loans received between 1981 and 1996 qualify for debt relief regardless of whether the Emergency Loans were used for operating or real estate purposes.

g. USDA Forgives All Liability for Claimant

In some cases the claimant will already have had the debt forgiven through USDA’s loan servicing or debt settlement regulations. When this happens, the claimant is sometimes still possibly liable to repay part of the debt. This can occur, for example, with a shared appreciation agreement that is signed after a debt write-down. If the original debt is forgiven under *Pigford*, the debt forgiveness applies to all claimant liability for that debt, including shared appreciation and other similar obligations.

5. Debt Forgiveness and Loan Servicing

In cases concerning a prevailing claim based upon loan servicing, USDA will discharge loans that were in effect at the time of the loan servicing application or were the subject of the loan servicing request, when the Adjudicator or Arbitrator specifically provided for such discharge. “Loan servicing” as used here means various types of loan restructuring available to eligible farm loan borrowers. These include, but are not limited to: primary loan servicing options previously found in Code of Federal Regulations, Title 7, Part 1951, subpart S, such as rescheduling, reamortization, consolidation, limited resource interest rates, deferrals, write-downs, and net recovery buyouts; preservation loan servicing opportunities, such as homestead protection, credit sales, and leaseback/buyback; debt settlement options previously found in Code of Federal Regulations, Title 7, Part 1956, such as adjustment, compromise, cancellation, and charge off; and other options, including, disaster set aside, subordinations, and the release of valueless liens.

The parties are not in agreement with respect to the appropriate debt relief in cases concerning a prevailing claim based upon loan servicing when the Adjudicator or Arbitrator did not specifically identify the loans to be discharged. In this latter situation, a claimant should contact class counsel or the Monitor’s office for assistance.

6. Debts Not to Be Forgiven—Older Lawsuits

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed.

For example, if a claimant was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the claimant, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

7. Refunds of Voluntary Payments

Claimants sometimes make voluntary payments on loans that are subject to discharge under the Consent Decree. In most cases, voluntary payments that a *Pigford* claimant paid on a debt that was later forgiven under *Pigford* will not be refunded. However, USDA will refund voluntary

payments made after the date of the initial prevailing decision that gave the claimant the right to debt relief on the loan on which voluntary payments were made.

a. Most Common Cases—No Refund

In most cases, the claimant will not receive a refund of payments he or she made.

For example, if a claimant received an Operating Loan in 1993 and made payments on that loan in 1994 and 1995, those payments will not be refunded even if under *Pigford* the 1993 Operating Loan became eligible for forgiveness.

b. Refunds for Payments After Adjudicator or Arbitrator Decision

Payments made by the claimant after the claimant won the right to debt relief in an Adjudicator or Arbitrator decision will generally be refunded. However, such refunds might be applied to other delinquent debt that is outstanding at the time of the refund but that is not subject to discharge under the Consent Decree.

c. Defining When an Adjudicator or Arbitrator Decision Takes Effect

As noted above, the date the claimant won the right to debt relief in an Adjudicator or Arbitrator decision is important for deciding whether the claimant will get a refund of a payment made on a debt. Because many Adjudicator and Arbitrator decisions were the subject of a petition to the Monitor, and in some cases were amended by the Adjudicator without a petition, defining when a claimant prevailed on certain debt relief can be complicated.

(1) Claimant Prevails, No Petitions

If a claimant prevailed on a claim in his or her Adjudicator decision and neither side petitioned the decision to the Monitor, the claimant qualified for debt relief on the date of that Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination with respect to USDA's 1995 Operating Loan program and neither party petitioned the Monitor on the decision, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

(2) Claimant Prevails, USDA Petition Denied by Monitor

If a claimant prevailed on a claim in his or her Adjudicator decision and a USDA petition was denied by the Monitor, for debt relief purposes, the claimant prevailed on the date of the original Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination with respect to USDA's 1995 Operating Loan program, USDA petitioned the Monitor, but the petition was denied, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

(3) Claimant Prevails, USDA Petitions, Monitor Directs Reexamination, but Adjudicator Reaffirms Claimant Win

If a claimant prevailed on a claim in his or her Adjudicator decision, and a USDA petition to the Monitor resulted in the Monitor sending the decision to the Adjudicator for reexamination, but the Adjudicator reaffirmed the original decision, the claimant qualified for debt relief on the date of the original Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in USDA's 1995 Operating Loan program, USDA petitioned the Monitor, the Monitor sent the decision back to the Adjudicator, and the Adjudicator issued a reexamination decision in 2005 that reaffirmed the Adjudicator's original decision, including a finding of discrimination with respect to the claimant's 1995 Operating Loan, USDA will refund payments the claimant made on the 1995 Operating Loan on or after October 1, 1999, the date of the original Adjudicator decision.

(4) Claimant Loses, Claimant Petitions, Monitor Directs Reexamination, and the Adjudicator Finds Discrimination in the Reexamination Decision

If a claimant originally lost a claim in his or her Adjudicator decision, but petitioned to the Monitor, and the Monitor sent the decision back to the Adjudicator for reexamination, the claimant may not have prevailed in an Adjudicator reexamination decision until a long time after the original adjudication. In this case, the claimant's loans did not qualify for debt relief until the later Adjudicator reexamination decision in which the claimant won.

For example, if an October 1, 1999 Adjudicator decision denied the claimant any relief, the claimant petitioned the Monitor, the Monitor sent the decision back to the Adjudicator, and the Adjudicator issued a reexamination decision in 2005 that resulted in forgiveness of a 1995 Operating Loan, USDA will refund payments by the claimant on the 1995 Operating Loan on or after the date of the Adjudicator reexamination decision in 2005. Payments made before the 2005 reexamination decision will not be refunded.

(5) Reexamination Decisions That Do Not Affect Relief of a Particular Debt

If a claimant originally prevailed in an Adjudicator decision that was later the subject of a petition, it will sometimes be the case that the petition and the later decisions based on the petition did not address the original finding that resulted in relief for a particular debt. In such a case, the loans identified in the original decision qualified for debt relief on the date of that initial prevailing Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in the making of a 1995 Operating Loan, the claimant might have petitioned the Monitor to seek a reexamination of the Adjudicator's refusal to find discrimination in the making of a 1982 Farm Ownership Loan. If the Claimant won the 1982 Farm Ownership Loan claim on reexamination and the 1995 Operating Loan claim was not disturbed by the petition process, the relevant Operating Loans qualified for debt relief on October 1, 1999, the date of the original prevailing Adjudicator decision. In this case, the relevant Farm Ownership Loans qualified for debt relief on the date of the Adjudicator's reexamination decision. USDA will refund payments made on the respective loans on or after the dates that the loans qualified for debt relief.

(6) Claimant Prevails and Petitions on Debt Relief, Monitor Directs Reexamination to Correct Debt Relief

If a claimant originally prevailed in an Adjudicator decision that, under the general debt relief rules of *Pigford*, would have provided debt relief, it will sometimes be the case that the claimant petitioned regarding the debt relief in question. If the Monitor sent the decision back to the Adjudicator for reexamination of debt relief, the Adjudicator's reexamination decision clarifying debt relief did not change the date that the claimant's loans qualified for debt relief. The claimant's loans qualified for debt relief on the date of the original prevailing Adjudicator decision.

For example, if an October 1, 1999 Adjudicator decision found discrimination in the making of a 1990 Operating Loan but did not award debt relief, the claimant might have petitioned the Monitor for debt relief on his outstanding 1990 Operating Loan. Although the Adjudicator specifically awarded Operating Loan debt relief for the first time in the reexamination decision, the claimant's 1990 Operating Loan qualified for debt relief on October 1, 1999, when the Adjudicator found discrimination in USDA's 1990 Operating Loan program. In this case, USDA will refund payments made by the claimant on or after October 1, 1999.

8. Refund of Offsets

Many claimants have had "offsets" of payments that would usually have been paid to them by the federal government. Offsets can be taken for USDA farm program payments, as well as other federal payments, such as Social Security benefits and income tax refunds. Offset funds are applied to a borrower's debt to the government instead of being paid to the borrower.

Offsets are important for *Pigford* because some of the money offset by the federal government was applied to loans that were forgiven as a part of the lawsuit. USDA will refund offsets taken after January 1, 1999, as payment on any loans subject to discharge under the Consent Decree. Offsets taken before January 1, 1999, will not be refunded. However, such refunds might be applied to other delinquent debt that is outstanding at the time of the refund but is not subject to discharge under the Consent Decree.

9. Correcting Mistakes in Debt Relief

USDA has agreed that if they mistakenly provided debt relief that was not due to a claimant, and also failed to provide the debt relief that was due to that claimant, USDA will notify class counsel about the mistake. USDA will also provide the claimant's loan records to class counsel and give class counsel the choice of whether USDA should implement the correct debt relief or allow debt relief to stand as implemented. In other words, once USDA has forgiven a debt through *Pigford*, USDA will not reverse the debt forgiveness and reinstate the debt unless the claimant's lawyer informs USDA that the claimant agrees to the change.

10. Debt Forgiveness and Future Participation in USDA Programs

USDA agrees that debt forgiveness under *Pigford* will not affect the claimant's ability to participate in USDA farm loan programs—either in receiving or servicing a loan. This means, for example, that *Pigford* debt forgiveness will not affect the claimant's creditworthiness if the claimant seeks another loan with USDA.

11. More Information

For more information about the February 7, 2001 Order, the February 22, 2008 Order, or for a copy of the Consent Decree or the Orders, please call the Monitor's office at the phone number listed below.

Anyone who has any question regarding debt relief should call the Monitor's office toll free at 1-877-924-7483.