

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, 2009, THROUGH DECEMBER 31, 2009

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This is the ninth in a series of Monitor reports concerning the good faith implementation of the Consent Decree.¹ This report covers the period of January 1, 2009, through December 31, 2009. 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

During calendar year 2009, the parties and the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) continued to work in good faith to implement the Consent Decree. Implementation of the claims process for eligible claimants is nearly complete. Although some claims remain pending, as of the end of 2009, the Government had provided a cumulative total of approximately \$1.03 billion (\$1,028,564,560) in cash relief, estimated tax payments, and debt relief to prevailing claimants. As of the end of 2009, a total of approximately 15,635 claimants had prevailed in the Track A claims process and approximately ninety-seven claimants had prevailed in or settled their claims under Track B. The parties and neutrals worked together carefully during 2009 to ensure that all prevailing claimants received the appropriate cash relief, debt relief, tax relief, and injunctive relief. The parties and neutrals also worked together to identify additional steps needed to successfully wind down the Consent Decree implementation process.

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/>.

This report provides cumulative statistics and other information on the implementation of the Consent Decree during calendar year 2009. The Monitor did not independently compile the information provided in this report. The Facilitator,³ the Arbitrator,⁴ and USDA provided information to the Monitor for this report.

Section I of this report provides statistics on claims processing. It includes statistics on the total number of eligible claimants and the number of prevailing claimants under Track A and Track B of the Consent Decree. Section II provides detailed information regarding the relief provided to prevailing claimants, including the amount of cash relief, debt relief, tax relief, and injunctive relief provided under the Consent Decree claims process. Section III describes issues presented to the Court during 2009. Section IV 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 V reports on specific claims processing and relief issues addressed by the parties and neutrals during 2009 and outlines the steps the parties and neutrals have identified as necessary to successfully wind down the Consent Decree claims process. Section VI reports on the parties' continued good faith implementation of the Consent Decree in calendar year 2009.

³ The Facilitator is Epiq Systems, formerly known as Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(i).

⁴ The Arbitrator is Michael K. Lewis of JAMS, formerly of ADR Associates. *See* Consent Decree, paragraph 1(b).

I. CLAIMS PROCESSING STATISTICS

As of the end of 2009, a total of 22,721 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.

A. Eligibility

Paragraph 5(c) of the Consent Decree provides that, to be eligible for the claims process, a claimant must submit a completed claim package to the Facilitator. In order to file a completed claim package, claimants must submit a Claim Sheet and Election Form (“Claim Sheet”).⁶ After the Claim Sheet is submitted to the Facilitator, the Facilitator determines whether the claim package is complete.

1. Timely Filed Completed Claim Packages

The Consent Decree deadline for filing a completed claim package is 180 days from the date of the Court’s Order approving the Consent Decree. The Court approved the Consent Decree on April 14, 1999. Therefore, the deadline for filing a claim package was 180 days from April 14, 1999, or October 12, 1999.

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, a single claim package has 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 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.

2. Requests for Permission to File A Late Claim

Under paragraph 5(g) of the Consent Decree, claimants who failed to meet the October 12, 1999 filing deadline can participate in the claims process only if they show that they failed to meet the filing deadline due to extraordinary circumstances beyond their control.⁷

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.”⁸ On July 14, 2000, the Court approved a stipulation by the parties setting a September 15, 2000 deadline for the filing of late claims requests.⁹

On May 7, 2009, the parties stipulated and the Court ordered that the process for review of paragraph 5(g) requests to file a late claim is complete and no additional requests to file a late claim will be granted.¹⁰ Table 1 sets forth information about the number of late claim requests filed by the September 15, 2000 deadline and the number of late claim requests granted by the Arbitrator as of the end of 2009.

⁷ 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, can petition the Court for permission to participate in the claims process. Paragraph 5(g) states that such a petition can be granted “only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.”

⁸ A copy of the Court’s order is available on the Monitor’s web site at: <http://www.pigfordmonitor.org/orders/19991220order.pdf>.

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 A copy of the Stipulation and Order is available on the Monitor’s web site at: http://www.pigfordmonitor.org/orders/20090507stip&order_5g.pdf.

Table 1: Statistical Report Regarding Late Claim Requests¹¹	
Statistical Report as of:	End of 2009
A. Number of Timely Filed Late Claim Requests	65,995
B. Number of Requests Granted	2,716
C. Number of Requests Denied	63,279

Those claimants who received permission to file a late claim were allowed to participate in the claims process by filing a completed claim package within a certain time frame. The Arbitrator has completed his review of all currently known timely filed requests for permission to file a late claim.¹²

1. Eligibility Determination on Completed Claim Packages

Under paragraph 5 of the Consent Decree, the Facilitator must determine whether a claimant who submits a completed claim package is a member of the class and therefore is eligible for relief. Paragraph 2(a) of the Consent Decree defines members of the class as follows:

¹¹ Table 1 statistics are provided by the Facilitator and are as of December 31, 2009. 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 provided all of the late claim data set forth in Table 1 of this report.

¹² The Monitor is aware that individuals who submitted a request to file a late claim under paragraph 5(g) of the Consent Decree and who did not obtain a determination on the merits of their claim may be eligible for relief under legislation enacted by Congress in 2008. *See* Food, Conservation and Energy Act of 2008, Public Law No. 110-246, § 14012 (2008). Cases that have been brought pursuant to the 2008 legislation have been consolidated as *In re: Black Farmers Discrimination Litigation*, Misc. No. 08-0511 (PLF), in the United States District Court for the District of Columbia. The *Pigford* case is separate from the cases that have been consolidated as *In re: Black Farmers Discrimination Litigation* or any other litigation that may derive from this legislation. Individuals who wish to obtain information about a late claim request they filed in the *Pigford* case may contact the Facilitator, at 1-800-547-4407.

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.¹³

In addition to responding to questions on the Claim Sheet, to be eligible to participate in the claims process, the Consent Decree requires claimants to submit documentation or proof showing that, between January 1, 1981, and July 1, 1997, they had complained about USDA discrimination.¹⁴ Claimants could also participate if they could 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 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.¹⁵

¹³ Consent Decree, paragraph 2(a).

¹⁴ 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.

¹⁵ 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.

Table 2 provides statistics on the total number of claimants who filed completed claim packages and who the Facilitator found eligible to participate in the claims process as of the end of 2009.

Table 2: Statistical Report Regarding Eligible Claimants¹⁶	
Statistical Report as of:	End of 2009
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 Filed Completed Claim Packages After October 12, 1999 Based on Permission to File a Late Claim (Late Claims)	1,904
C. Total Number of Eligible Claimants	22,721

As of the end of 2009, a total of 22,721 claimants met the eligibility screening criteria to participate in the *Pigford* Consent Decree claims process.

B. Track A

The vast majority of claimants who were found eligible to participate in the claims process elected to proceed under Track A of the Consent Decree. In general, the Track A claims process involves review by the Adjudicator of documentary information presented by claimants and the Government to determine whether claimants have met the substantial evidence standard.¹⁷ As of the end of 2009, a total of 22,549 claimants elected Track A, and of those

¹⁶ Table 2 statistics are provided by the Facilitator and include both initial eligibility decisions and 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, 2009.

¹⁷ The “substantial evidence” standard and the elements required to prevail in a Track A claim are set forth in the Consent Decree and are described in prior Monitor reports. See, for example, Monitor’s Report Regarding Implementation of the Consent Decree for the Period January 1, 2008, through December 31, 2008, at pages 6-7, available on the Monitor’s web site at http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf.

claimants, 15,635, or approximately 69 percent, prevailed in their claims. Table 3 contains cumulative statistics for the Track A claims process from 1999, when the Consent Decree was approved, through December 31, 2009.

Table 3: Statistical Report Regarding Track A Claims¹⁸		
Statistical Report as of:	End of 2009	
	Number	Percent
A. Eligible Class Members (Track A and B)	22,721	100
B. Cases in Track A (Adjudications) ¹⁹	22,549	99
Adjudication Completion Figures		
C. Adjudications Complete	22,547	~100
D. Adjudications Not Yet Complete	2	~0
Adjudication Approval/Denial Rates²⁰		
E. Claims Approved by Adjudicator	15,635	69
F. Claims Denied by Adjudicator	6,912	31
Adjudication Approvals Paid/Not Paid		
G. Approved Adjudications Paid	15,537	99
H. Approved Adjudications Not Yet Paid	98	1

As of the end of 2009, fewer than 100 Track A claims remained pending in the claims process. Most of these claims involve pending petitions for Monitor review or pending Adjudicator reexamination decisions.²¹

¹⁸ Table 3 statistics are provided by the Facilitator and are as of December 31, 2009. 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 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 2009.

²¹ Section IV of this report provides more information on the claims involving petitions for Monitor review and Adjudicator reexamination decisions.

C. Track B

The Track B claims process provides the opportunity for the submission of documentary evidence and an eight-hour arbitration hearing conducted pursuant to the Federal Rules of Evidence.²² Approximately one percent of the 22,721 eligible claimants, or a total of 241 claimants, elected to pursue their claims under Track B. Of those claimants, as of the end of 2009, seventy-two settled their claims, sixty-five converted to Track A with the consent of the Government, and twenty-five prevailed in the Track B claims process. Of the sixty-five claimants who converted their claims, a total of forty claimants prevailed in their Track A claim.²³ Of the 241 claimants who initially elected Track B, a total of 137 (approximately 57 percent) received relief in the Consent Decree claims process as of the end of 2009.

²² See Consent Decree, paragraph 10. To prevail in a Track B claim, a claimant must prove, by a preponderance of the evidence, that he or she was a victim of discrimination and suffered damages as a result. 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. For a more complete description of the Track B process, see Monitor’s Report Regarding Implementation of the Consent Decree for the Period January 1, 2008, through December 31, 2008, at pages 8-9, available on the Monitor’s web site at http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf.

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, were found eligible by the Facilitator to participate in the claims process, and received a final decision on the merits of their Track A claim. As of the end of 2009, of the 56 claimants who filed a completed claim package and were found eligible to participate in the claims process, a total of 40 claimants prevailed in the claims process and 16 claimants were denied relief.

Table 4 contains cumulative statistics for claimants who elected Track B claims process.

Table 4: Statistical Report Regarding Track B Claims²⁴	
Statistical Report as of:	End of 2009
A. Eligible Track B Claimants	241
B. Track B Cases Settled	72
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	95
F. Arbitration Decisions Issued ²⁵	91
G. Arbitration Decisions Not Yet Issued	4
Arbitration Results	
H. Claimant Prevailed Before Arbitrator	25
I. Government Prevailed Before Arbitrator	66
Posture of Decisions in Which Government Prevailed:	
1. Cases Dismissed Before Hearing	44
2. Full Hearing, Finding of No Liability	22
Arbitration Settlements and Damage Awards Paid/Not Paid	
J. Arbitration Settlements Paid	71
K. Arbitration Settlements Not Yet Paid ²⁶	1
L. Arbitration Damage Awards Paid	23
M. Arbitration Damage Awards Not Yet Paid ²⁷	2

²⁴ Table 4 statistics are provided by the Facilitator and are as of December 31, 2009.

²⁵ These statistics include all claims in which the Arbitrator issued an initial final decision. The Arbitrator may also issue a decision on reexamination if a petition for reexamination is filed and granted. More information about Track B petitions and Arbitrator reexamination decisions is provided in Section IV of this report.

²⁶ The one settlement that remained unpaid as of the end of 2009 involved a settlement that was reached in November 2009.

²⁷ The two claims that remained unpaid as of the end of 2009 involved arbitration awards issued after reexamination of the claim by the Arbitrator in 2009.

As of the end of 2009, four Track B claims remained pending an initial decision by the Arbitrator and seven claims remained pending with the Arbitrator after the Monitor granted a petition for reexamination of the claim.²⁸

II. 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;²⁹ (2) a cash relief payment of \$3,000 per claimant for a prevailing non-credit claim;³⁰ (3) debt relief provided to claimants who prevail in Track A credit claims and who had outstanding debt that qualified for debt relief;³¹ (4) tax relief, consisting of payments to the Internal Revenue Service (IRS) on behalf of claimants who prevailed in Track A credit claims;³² and (5) injunctive relief.³³

Relief for claimants who prevail in the Track B claims process includes: (1) actual damages as awarded by the Arbitrator;³⁴ (2) debt relief for claimants who have outstanding debt

²⁸ More information about claims pending reexamination by the Arbitrator is provided in Section IV of this report.

²⁹ See Consent Decree, paragraph 9(a)(iii)(B).

³⁰ 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>.

³¹ See Consent Decree, paragraph 9(a)(iii)(A); Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001).

³² 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 principal amount of any debt that was forgiven by USDA. See Consent Decree, paragraph 9(a)(iii)(C).

³³ Claimants who prevail on credit claims are entitled to different injunctive relief than claimants who prevail on non-credit claims. See Consent Decree, paragraphs 9(a)(iii)(D), 9(b)(iii)(B), 11.

³⁴ 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. No tax relief payment is required in Track B. See Consent Decree, paragraph 10(g).

that qualifies for debt relief; and (3) injunctive relief.³⁵ 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 obtained relief through Track A by switching their claims to Track A with the consent of the Government.³⁶

The sections that follow provide information about the cash relief, debt relief, estimated tax relief, and injunctive relief that the Government has provided to prevailing claimants as of the end of 2009.

A. Cash Relief

To receive an award of cash relief in a Track A credit claim, a claimant must present substantial evidence that he or she suffered economic damages. Claimants who prevail in a Track A credit claim, such as the denial or delay in processing a farm program loan or loan servicing, are entitled to a payment of \$50,000 in cash relief. Claimants who prevail in a Track A non-credit claim, such as the denial or underfunding of disaster relief, are entitled to a payment of \$3,000 in cash relief. Claimants who prevail on both a credit claim and a non-credit claim are entitled to a payment of \$50,000 for their credit claim and \$3,000 for their non-credit claim. Table 5 provides information regarding the cash relief claimants have been awarded for prevailing Track A claims as of the end of 2009.

³⁵ See Consent Decree, paragraphs 10(g)(3), 11. In general, injunctive relief consists of technical assistance and other benefits in the loan application process for claimants who seek USDA farm program loans.

³⁶ These claims are described more fully in footnote 23 of this report.

Table 5: Statistical Report Regarding Track A Cash Relief Awards³⁷		
Statistical Report as of: End of 2009	Number of Prevailing Claimants	Amount of Cash Relief Per Claimant
A. Track A Credit Claims	15,414	\$50,000
B. Track A Non-Credit Claims	499	\$3,000

To receive an award of cash relief in a Track B claim, claimants must prove they suffered damages by a preponderance of the evidence. Claimants who prevail in Track B claims generally provide expert testimony regarding their economic damages. In some cases, the claimants also provide evidence of non-economic damages. The amount of cash relief in settlements and damage awards has varied.³⁸ Table 6 provides information about the amounts that have been awarded by the Arbitrator and that have been agreed to by the parties in settlement of Track B claims as of the end of 2009.³⁹

Table 6: Statistical Report Regarding Track B Settlements and Damage Awards⁴⁰							
Statistical Report as of:						End of 2009	
	Under \$100,000	\$100,00 - \$250,000	\$250,000 - \$500,000	\$500,000 - \$1,000,000	Over \$1,000,000	Average	Median
A. Track B Settlements	28	38	6	-	-	\$127,435	\$140,000
B. Track B Damage Awards	2	4	5	12	2	\$973,040	\$544,400
C. Total Track B Settlements and Damage Awards	30	42	11	12	2	\$345,374	\$140,000

³⁷ Table 5 statistics are provided by the Facilitator and are as of December 31, 2009.

³⁸ The amount of damages awarded by the Arbitrator in each case in which a claimant prevailed as of the end of 2009 is set forth in Appendix 3. Claimant names and geographic locations are not disclosed. Cumulative statistics on the average damage award are reported in Appendix 2.

³⁹ Some claimants received no relief because their claims were denied by the Arbitrator.

⁴⁰ Table 6 statistics are based on information provided by the Facilitator and are as of December 31, 2009.

B. Debt Relief

Claimants who prevail under Track A and Track B are entitled to *Pigford* debt relief. This debt relief is explained in paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree, a Stipulation and Order filed on February 7, 2001,⁴¹ a Court Opinion and Order filed on February 21, 2008,⁴² and Monitor Update No. 10, revised on July 11, 2008.⁴³

Table 7 provides statistics regarding the debt relief implemented by USDA for prevailing Track A and Track B claimants as of the end of 2009. USDA reports that the Government provided debt relief to a total of 371 prevailing claimants as of the end of 2009 (351 Track A claimants and twenty Track B claimants), forgiving a cumulative total of \$42,936,326 in outstanding principal and interest.⁴⁴

Table 7: Statistical Report Regarding Debt Relief⁴⁵	
Statistical Report as of:	End of 2009
A. Total Amount of Debt Forgiven (Principal and Interest)	\$42,936,326
B. Debt Forgiven for Track A Claimants	\$38,594,172
C. Debt Forgiven for Track B Claimants	\$4,342,154
D. Number of Track A Claimants Who Received Debt Forgiveness	351
E. Number of Track B Claimants Who Received Debt Forgiveness	20
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$109,955
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$217,108

⁴¹ Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001), available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/20010207order.pdf>.

⁴² The Court's Opinion is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/20080221_op.pdf.

⁴³ Monitor Update No. 10 is available on the Monitor's web site at <http://www.pigfordmonitor.org/updates/update10.pdf>.

⁴⁴ More information on USDA's debt relief implementation is provided in Section V of this report.

⁴⁵ Table 7 statistics are based on information provided by USDA for debt relief implemented by USDA through December 31, 2009. Appendix 4 provides information from prior reporting periods regarding debt relief as well as information on debt relief by state.

C. Tax Relief

Claimants who prevail on a Track A credit claim are 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. Claimants who receive \$50,000 in cash relief for a credit claim are entitled to a tax payment of \$12,500 to their IRS tax account. Claimants who receive debt relief are entitled to a tax payment of 25 percent of the principal amount of loan forgiveness provided by USDA.

Table 8 sets forth the estimated payments the Government was required to provide to the IRS on behalf of prevailing Track A credit claimants, as of the end of 2009.

Table 8: Statistical Report Regarding Estimated Tax Relief for Track A Credit Claims⁴⁶	
Statistical Report as of:	End of 2009
A. Payments to the IRS of 25% of \$50,000 Cash Relief Award ⁴⁷	\$191,462,500
B. Payments to the IRS of 25% of Principal Amount of Debt Relief ⁴⁸	\$6,593,146
C. Total Estimated Payments to the IRS as Tax Relief	\$198,055,646

⁴⁶ Table 8 statistics are estimated tax payments based on information and calculations provided by the Facilitator.

⁴⁷ 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 15,317 prevailing Track A credit claimants had received payment of their \$50,000 cash award as of the end of 2009. The Facilitator calculated the payments due to the IRS as tax relief for these claimants as follows: 25 percent of the \$50,000 cash award (\$12,500), to be paid on behalf of the 15,317 successful Track A credit claimants who were paid cash relief as of the end of 2009 equals \$191,462,500.

⁴⁸ 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 USDA reports as forgiven for successful Track A credit claimants through the end of 2009 (\$26,372,583.83) equals \$6,593,146.

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

Table 9 reports the cumulative total monetary relief for prevailing Track A claimants, as of the end of 2009.

Table 9: Statistical Report Regarding Total Track A Monetary Relief⁴⁹	
Statistical Report as of:	End of 2009
A. Cash Relief Paid to Prevailing Class Members for Track A Credit Claims (\$50,000 per claimant)	\$765,850,000
B. Cash Relief Paid to Prevailing Class Members for Track A Non-Credit Claims (\$3,000 per claimant)	\$1,512,000
C. Payments Due to IRS as Tax Relief	\$198,055,646
D. Debt Relief (Principal and Interest)	\$38,594,172
E. Total Track A Monetary Relief	\$1,004,011,818

Table 10 reports the cumulative total monetary relief for Track B claimants who prevailed in the claims process or who settled their claims, as of the end of 2009.

Table 10: Statistical Report Regarding Total Track B Monetary Relief⁵⁰	
Statistical Report as of:	End of 2009
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	\$11,120,295
C. Debt Relief (Principal and Interest)	\$4,342,154
D. Total Track B Monetary Relief	\$24,552,742

⁴⁹ Table 9 statistics regarding cash awards and tax relief through December 31, 2009 are based on information provided by the Facilitator. Debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2009.

⁵⁰ Table 10 statistics are based on information provided by the Facilitator for payments made by the Government in settlement or for damage awards through December 31, 2009. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2009. 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. This relief is included as part of the Track A cash relief and debt relief statistics reported in Table 9.

Table 11 reports the total monetary relief, as of the end of 2009, for Track A and Track B claimants. As of the end of 2009, prevailing claimants received an approximate cumulative total of \$1,041,770,256 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 due to the IRS on behalf of claimants who prevailed in Track A credit claims, and debt relief for Track A and Track B claimants.

Table 11: Statistical Report Regarding Total Track A and Track B Monetary Relief⁵¹	
Statistical Report as of:	End of 2009
A. Total Amount of Cash Relief Paid for Track A and Track B Claims (cash awards, payments in settlement, and damage awards)	\$787,572,588
B. Total Payments Due to IRS as Tax Relief for Track A Credit Claims	\$198,055,646
C. Total Debt Relief for Track A and Track B Claims (Principal and Interest)	\$42,936,326
D. Total Track A and Track B Monetary Relief	\$1,028,564,560

E. Cash Relief by State

As of the end of 2009, the Government had made payments to claimants who resided, at the time of the payment, in thirty-nine different states. Table 12 reports the number of claimants and the amount of cash relief by state for those states with the largest number of prevailing claimants. Appendix 5 contains information on the number of prevailing claimants by state.

⁵¹ Table 11 statistics for cash awards and estimated tax relief are through December 31, 2009, and are based on information provided by the Facilitator. Debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2009.

Table 12: Statistical Report Regarding States With 100 or More Prevailing Claimants⁵²		
Claimants' Residence	Total Number of Prevailing Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2009 (Track A and Track B)
Alabama	3,402	\$167,352,500
Mississippi	3,151	\$159,554,352
Georgia	2,000	\$98,564,742
Arkansas	1,484	\$74,915,905
North Carolina	1,322	\$70,096,486
South Carolina	891	\$45,199,500
Oklahoma	592	\$29,316,000
Louisiana	587	\$29,271,000
Tennessee	487	\$25,226,755
Texas	344	\$18,657,400
Florida	282	\$13,731,000
Virginia	191	\$10,479,780
Illinois	177	\$8,856,000
California	151	\$8,084,600

F. Injunctive Relief

Claimants who prevail in Track A and Track B claims are entitled to injunctive relief as described in paragraph 11 of the Consent Decree. Generally speaking, *Pigford* injunctive relief is available to prevailing claimants who seek to obtain farm program loans or who wish to obtain farm land from USDA inventory property.⁵³

⁵² Table 12 statistics are provided by the Facilitator and are as of December 31, 2009. 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. Numbers are rounded to the nearest dollar. Appendix 5 contains statistics for all prevailing claimants by residence.

⁵³ Injunctive relief is described in Monitor Update No. 4, available at <http://www.pigfordmonitor.org/updates/update04.pdf>. USDA's Farm Loan Program (FLP) Notices regarding injunctive relief and priority consideration are also available on the Monitor's web site at: <http://www.pigfordmonitor.org/flp/>. More detailed information about injunctive relief is provided on pages 18 through 21 of the Monitor's Report Regarding Implementation of the Consent Decree for the Period January 1, 2008, through December 31, 2008, available at http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf.

One form of injunctive relief is called “priority consideration.” Under a Stipulation and Order filed on April 21, 2005, prevailing claimants may receive “priority consideration” and other forms of injunctive relief for up to two years after the date on which the prevailing class member completes the claims process.⁵⁴ Prevailing claimants may also obtain new farm program loans and may obtain inventory property without using their right to “priority consideration.” Table 13 provides statistics reported by USDA concerning prevailing claimants who requested “priority consideration” for a Farm Ownership Loan, an Operating Loan, or the purchase of inventory property, as of the end of 2009.

Table 13: Statistical Report Regarding Priority Consideration Injunctive Relief⁵⁵	
Statistical Report as of:	End of 2009
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration With Complete Application	126
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

⁵⁴ The April 21, 2005 Stipulation and Order is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/20050421stip&order.pdf>.

⁵⁵ Table 13 statistics are provided by USDA and are as of December 31, 2009. Appendix 6 contains statistics from prior reporting periods regarding injunctive relief.

III. COURT ORDERS

In January 2009, the Court issued an Order regarding the appointment of Rose Sanders, also known as Faya Rose Toure, as Class Counsel and Co-Lead Counsel. Ms. Sanders succeeded J.L.Chestnut, who passed away on September 30, 2008. During 2009, the Court also issued Orders directing the parties and the Monitor to continue the review of USDA's implementation of debt relief, including the tax implications of that debt relief. In May 2009 the Court approved a Stipulation and Order regarding petitions for permission to file a late claim. The Stipulation and Order directed the Facilitator to provide Claim Sheets to thirteen claimants whose late claim requests had been approved by the Arbitrator. The Stipulation and Order affirmed that the process for reviewing requests to file a late claim under paragraph 5(g) of the Consent Decree is complete. In addition, the Court considered and denied challenges brought by individual claimants regarding the results of the Monitor's decisions in response to petitions for review of Track A and Track B claims.

The Court's Orders are summarized in Table 14 below.

<i>Table 14: Court Orders</i>			
Court Docket Number	Date Filed	Title	Major Issues Addressed
1521	1/8/2009	Minute Order	Grants the unopposed motion for the appointment of Rose Sanders as Class Counsel and Co-Lead Counsel, succeeding J.L. Chestnut in those positions.
1549	4/21/2009	Order	Orders the Monitor to continue to work with the parties to review and verify USDA's debt relief implementation, including the preparation of a list of class members whose cases must be reviewed in order to ensure that debt relief has been fully implemented.

Table 14: Court Orders

Court Docket Number	Date Filed	Title	Major Issues Addressed
1554	5/7/2009	Stipulation and Order	Approves a Stipulation regarding the claims of certain individuals whose petitions to file a late claim under paragraph 5(g) of the Consent Decree have been approved by the Arbitrator. The Court's Order directs the Claims Facilitator to promptly send a Claim Sheet and Election Form to the thirteen claimants identified in Exhibit A to the Stipulation. The Court approves the parties' Stipulation that indicates the process for review of petitions to file a late claim under paragraph 5(g) is complete.
1556	5/12/2009	Memorandum Opinion and Order	Denies the motion of an individual Track B claimant who prevailed in the claims process but who did not receive any economic damages award. In the motion filed with the Court, the claimant asserted that the Arbitrator and Monitor erred in considering certain evidence presented by USDA regarding economic damages. The Court denied the claimant's motion, ruling that the Consent Decree did not permit the Court to be involved in decisions about the scheduling and management of individual claims.
1557	5/12/2009	Memorandum Opinion and Order	Denies the motion of an individual Track A claimant who requested the Court clarify the Monitor's authority to consider information presented by USDA regarding the claimant's eligibility for class membership. The Court denied the motion, finding that the Monitor had not "reversed" the Facilitator's decision that the claimant was eligible for class membership, but instead had concluded that a fundamental miscarriage of justice would not occur if the Adjudicator's decision denying the claimant relief was not reexamined.
1579	7/16/2009	Order	Orders the Monitor to continue to perform her role in the debt relief review process and to report to the Court regarding debt relief matters including, in particular, USDA's progress in implementing a system for managing the tax consequences of debt relief.

IV. 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 on May 4, 2009, with Secretary of Agriculture Tom Vilsack.⁵⁶ 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 meetings during 2009 with Steven C. Silverman, Acting General Counsel and Deputy General Counsel, and James Michael Kelly, former Deputy General Counsel. The Monitor also met with Inga Bumbary-Langston, Assistant General Counsel, Civil Rights Litigation Division, and several other lawyers from USDA's Office of the 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 of Agriculture, 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, 2009, through December 31, 2009, pursuant to paragraph 12(b)(i) of the Consent Decree and the March 24, 2003 Stipulation and Order.

⁵⁶ The current Secretary of Agriculture, Tom Vilsack, was sworn in as the Secretary of Agriculture on January 21, 2009.

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;⁵⁷ 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.

The most common concerns brought to the Monitor’s attention by class members in 2009 included:

- a. Concerns about debt relief and whether class members have received the appropriate relief.
- b. Concerns about offsets and payments for debts that might be subject to *Pigford* debt relief.
- c. Concerns about tax relief and the status of tax deposits.
- d. Questions about whether a claim can still be filed in the *Pigford* case and whether the case has been reopened by congressional action.

The Monitor addressed class members’ concerns by informing the parties, the neutrals, and the Court of the problems brought to the Monitor’s attention. The Monitor also worked directly with Class Counsel and USDA to attempt to solve individual class members’ problems. The Monitor addressed class members’ concerns about debt relief by working directly with USDA and Class Counsel to review individual class members’ loan records to determine whether individual prevailing claimants received the appropriate debt relief, including refunds of

⁵⁷ The meetings the Monitor’s office attended during 2009 are listed in Appendix 7.

certain offsets or payments made on loans subject to *Pigford* debt relief. The Monitor addressed concerns about tax relief through meetings with the Internal Revenue Service (IRS) Office of Chief Counsel and the dissemination of information to class members in a Monitor Update on Federal Income Tax and Debt Relief.⁵⁸

The Monitor provided information to the entire class through postings on the Monitor's web site.⁵⁹ The Monitor's web site is regularly updated to include relevant Court Orders in the case, reports by the Monitor and the Arbitrator, 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 2009, there were 96,337 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 2009, the Monitor had issued 5,794 decisions in response to the 5,848 petitions for Monitor review that had been filed. Table 15 provides statistics regarding Monitor

⁵⁸ Monitor Update No. 16, Federal Income Tax and Debt Relief (Aug. 27, 2009), is attached to this report as Appendix 10 and is available on the Monitor's web site at: <http://www.pigfordmonitor.org/updates/update16.pdf>. Monitor Update No. 16 was mailed to all prevailing claimants who may be eligible for *Pigford* debt relief.

⁵⁹ The Monitor's web site address is: <http://www.pigfordmonitor.org>.

petition decisions as of the end of 2009. Appendix 8 contains statistics from previous reporting periods.

Table 15: Statistical Report Regarding Petitions for Monitor Review⁶⁰	
Statistical Report as of:	End of 2009
Petitions for Monitor Review	
A. Total Number of Petitions for Monitor Review	5,848
1. Claimant Petitions	4,981
2. Government Petitions	867
Monitor Decisions	
B. Total Number of Petition Decisions Issued by Monitor	5,794
1. Total Number of Petitions Granted	2,936
a. Claimant Petitions Granted	2805
b. Government Petitions Granted	131
2. Total Number of Petitions Denied	2,858
a. Claimant Petitions Denied	2,169
b. Government Petitions Denied	689

As of the end of 2009, approximately fifty-four petitions for Monitor review remained pending in the petition process.

1. Petitions for Review of Facilitator Screening Decisions

Previous Monitor reports described the ninety-four petitions for reexamination of a Facilitator Notification of Rejection decision that had been filed by claimants and decided by the Monitor.⁶¹ No petitions for reexamination of a Facilitator’s eligibility determination were filed

⁶⁰ Table 15 statistics are provided by the Facilitator and are as of December 31, 2009.

⁶¹ See pages 27-28 of the Monitor’s Report Regarding Implementation of the Consent Decree for the Period January 1, 2008, through December 31, 2008, available at http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf.

by claimants in 2009 and no petitions for review of the Facilitator’s screening decision remained pending with the Monitor as of the end of 2009.

2. Petitions for Review of Adjudicator Decisions

The Adjudicator had issued decisions in a cumulative total of 22,547 Track A claims as of the end of 2009. In 5,787 of those claims (approximately 26 percent), either the claimant or USDA petitioned the Monitor for review. Table 16 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 2009.

Table 16: Statistical Report Regarding Track A Petitions and Adjudicator Reexamination Decisions⁶²	
Statistical Report as of:	End of 2009
A. Number of Petitions for Monitor Review of Track A Adjudicator Decisions ⁶³	5,787
1. Track A Claimant Petitions	4,939
2. Track A Government Petitions	848
B. Track A Petition Decisions Issued by Monitor	5,733
1. Total Number of Track A Petitions Granted	2,920
a. Claimant Track A Petitions Granted	2,793
b. Government Track A Petitions Granted	127
2. Total Number of Track A Petitions Denied	2,813
a. Claimant Track A Petitions Denied	2,139
b. Government Track A Petitions Denied	674

(continued)

⁶² Table 16 statistics are provided by the Facilitator and are as of December 31, 2009. 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 web site at: <http://www.pigfordmonitor.org/orders/20020718order.pdf>.

Statistical Report as of:	End of 2009
C. Reexamination Decisions Issued by Adjudicator	2,893
1. Reexamination Decisions After Claimant Petition Granted by Monitor	2,766
a. Claimant Prevailed on Reexamination	2,456
b. Claimant Did Not Prevail on Reexamination	310
2. Reexamination Decisions After Government Petition Granted by Monitor	127
a. Government Prevailed on Reexamination	113
b. Government Did Not Prevail on Reexamination	14

As of the end of 2009, there were approximately fifty-four pending petitions for Monitor review of an Adjudicator decision and approximately thirty-one claims pending a reexamination decision by the Adjudicator.

3. Petitions for Review of Arbitrator Decisions

The Arbitrator had issued decisions in a cumulative total of ninety-one Track B claims as of the end of 2009. In sixty-one of those claims (approximately 67 percent), either the claimant or USDA or both the claimant and USDA petitioned the Monitor for review. As of the end of 2009, the Monitor had issued decisions in all sixty-one of those claims. No new Track B petitions for Monitor review were filed in 2009 and no petitions for review of an Arbitrator's decision remained pending with the Monitor as of the end of 2009. Table 17 sets forth information about the petitions for Monitor review and the results of reexamination decisions by the Arbitrator as of the end of 2009.

Table 17: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions⁶⁴	
Statistical Report as of:	End of 2009
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	61
1. Total Number of Track B Petitions Granted	16
a. Claimant Track B Petitions Granted	12
b. Government Track B Petitions Granted	4
2. Total Number of Track B Petitions Denied	45
a. Claimant Track B Petitions Denied	30
b. Government Track B Petitions Denied	15
C. Reexamination Decisions Issued By Arbitrator After Claimant Petition Granted by Monitor	7
Result on Reexamination:	
1. Arbitrator Notified Parties That Hearing Process Would Be Completed	5
2. Arbitrator Issued Final Decision Awarding Relief	2
D. Reexamination Decisions Issued by Arbitrator After Government Petition Granted by Monitor	4
Result on Reexamination:	
1. Damages Award Revised	3
2. Debt Relief Order Revised	1

Some of the Track B petitions for Monitor review involve claimant requests for reexamination of a decision by the Arbitrator to dismiss a claim prior to completion of the Track

⁶⁴ Table 17 statistics are provided by the Facilitator and the Arbitrator and are valid as of December 31, 2009.

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 web site at: <http://www.pigfordmonitor.org/orders/20020718order.pdf>.

B hearing process. The Monitor directed reexamination of a total of seven claims that had been dismissed prior to completion of the hearing process. In five of those claims, the Arbitrator reexamined the decision to dismiss the claim and notified the parties that the hearing process would be completed; in two cases, the Arbitrator's reexamination decision remained pending.⁶⁶ The Monitor also directed reexamination of claims in cases involving an Arbitrator decision issued after the completion of the hearing process.⁶⁷ As of the end of 2009, a total of seven claims remained pending before the Arbitrator after a decision by the Monitor directing reexamination.⁶⁸

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 4,965 calls in 2009.

Some callers in 2009 were prevailing claimants who had questions or concerns about the status of their claim or about their relief. Toll-free operators have access to information about the status of a claim, and operators provided current information on claim status to callers whose

⁶⁶ As of the end of 2009, the Arbitrator had not issued a formal decision on reexamination in two of the seven claims because the Arbitrator reported that the parties were discussing settlement. Two other claims remained pending in the claims process because, although the Arbitrator decided on reexamination to complete the hearing process, no hearing had yet taken place as of the end of 2009.

⁶⁷ The Monitor directed reexamination of a total of nine claims: five claims in response to petitions by claimants and four claims in response to petitions by the government. As of the end of 2009, the Arbitrator had issued reexamination decisions in six of those nine claims. Three claims remained pending a reexamination decision as of the end of 2009.

⁶⁸ All seven claims involved decisions by the Monitor granting reexamination in response to a petition by a claimant. Four of the claims involved reexamination of claims that were dismissed prior to completion of the hearing process. Three of the claims involved reexamination of the final decision issued after the hearing process had been completed.

claims had pending a petition for Monitor review or a decision by the Adjudicator or the Arbitrator on reexamination. Callers with specific problems, such as questions about whether particular loans qualify for debt relief, were referred to attorneys in the Monitor's office for assistance.

The Monitor received calls in 2009 from individuals who requested information about a "new lawsuit" and who asked whether they could file a *Pigford* claim in 2009. The Monitor is aware that certain individuals who submitted a request to file a late claim under paragraph 5(g) of the Consent Decree in this case, and who did not receive a determination on the merits of their claim, may have a new cause of action under legislation enacted by Congress in 2008.⁶⁹ The Monitor is also aware that certain cases brought pursuant to the 2008 legislation have been consolidated as *In re: Black Farmers Discrimination Litigation*, Misc. No. 08-0511 (PLF), in the United States District Court for the District of Columbia, and that a potential settlement of the case has been publicly announced. As of the end of 2009, however, the Court had not certified a class in the *In re: Black Farmers Discrimination Litigation* and the various plaintiffs' attorneys had not established a unified web site or telephone bank to which the Monitor could refer potentially eligible individuals.⁷⁰ The Monitor, therefore, did not provide callers with a web site link or any other information regarding *In re: Black Farmers Discrimination Litigation* in 2009.

⁶⁹ See Food, Conservation and Energy Act of 2008, Public Law No. 110-246, § 14012 (2008).

⁷⁰ In Case Management Order No. 1, *In re: Black Farmers Discrimination Litigation*, Misc. No. 08-mc-0511 (PLF) (D.D.C. Dec. 15, 2008) the Court authorized plaintiffs' counsel to 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*. The Case Management Order stated that 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. For the reasons described above, the Monitor did not post any telephone number or web site link in 2009.

V. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

During calendar year 2009, the parties and the neutrals continued their efforts to complete implementation of the Consent Decree. Significant implementation issues addressed in 2009 are described below.

A. Claims Processing

As of the end of 2009, fewer than one percent (approximately 100) of the 22,721 eligible claimants had not yet received a final decision on their claim. The neutrals in the case (the Adjudicator, the Arbitrator, and the Monitor) each made progress in completing the remaining pending decisions. The Court also decided motions brought by individual claimants who sought to change the result of the claims process in their individual claims.

In one of the motions decided by the Court, a claimant who had elected Track B of the claims process requested that the Court issue an order finding a violation of paragraph 10(b) of the Consent Decree because the Arbitrator considered economic damages evidence submitted by the Government after the initial deadline established for the submission of evidence. The Court denied the motion, noting that the hearing schedule for the claim had been revised after the parties had engaged in settlement discussions for a period of time and it was unclear whether the Government had submitted its evidence in violation of the deadlines in paragraph 10(b) of the Consent Decree. The Court observed that “[n]either the letter nor the spirit of the Consent Decree contemplate the Court’s involvement” in matters such as the scheduling and management of arbitration proceedings.

In the second case, a claimant brought a “motion for clarification” of the Monitor’s authority to direct reexamination of claims under paragraph 12 of the Consent Decree. The claimant sought an order declaring that the Monitor had no authority to consider a claimant’s

proof of class membership in reviewing the claimant's petition for reexamination of an Adjudicator's decision.⁷¹ The claimant argued that the Facilitator had sole responsibility for class membership decisions. In the alternative, the claimant sought an order permitting the claimant to produce additional proof of her class membership and requiring the Monitor to direct the Facilitator to reexamine that proof. Noting that the Monitor had the authority to consider whether an error by the Adjudicator would result in a fundamental miscarriage of justice, the Court ruled that the Monitor was not precluded from considering the claimant's eligibility for class membership in deciding whether to direct reexamination of a claim, and the Court denied the claimant's motion for clarification.

B. Relief for Successful Class Members

During 2009, the parties and the Monitor continued their review of the implementation of *Pigford* debt relief for prevailing claimants who received farm program loans from USDA during the class period. Prior Monitor reports described the reasons for the review and the substantive rules the parties agreed to use in determining the appropriate debt relief for each prevailing claimant who is entitled to *Pigford* debt relief.⁷² As part of the debt relief implementation process, USDA agreed to take steps to: (1) determine which loans are subject to debt relief;

⁷¹ The Adjudicator had denied the claim, and the claimant petitioned the Monitor requesting reexamination of the Adjudicator's decision. In the Monitor's decision, the Monitor found an error in the adjudication of the claim, because the record before the Adjudicator was incomplete. The Monitor did not direct reexamination of the claim, however, because the Monitor concluded that it was unlikely the result of the claims process would change if the Adjudicator were to reexamine the claim in light of the more complete record. Based on the information presented by USDA regarding the declaration submitted by the claimant as proof of her class membership, the Monitor found it likely the Adjudicator would deny the claim on reexamination based on the claimant's failure to submit a declaration signed by a non-family member.

⁷² See pages 40-44 of the Monitor's Report Regarding Implementation of the Consent Decree for the Period of January 1, 2008, through December 31, 2008, available at http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf.

(2) refund certain voluntary payments made on loans subject to *Pigford* debt relief; (3) refund certain offsets taken to repay loans subject to *Pigford* debt relief; (4) manage the tax consequences of debt relief; and (5) ensure that the resolution of loans subject to *Pigford* debt relief will have no “adverse affect” on a prevailing claimant’s eligibility for future loans and loan servicing.

1. Progress on Substantive Debt Relief Review

During 2009, the parties and the Monitor made significant progress on each of the five steps described above, including the identification of approximately 2,800 claimants whose loan records will be reviewed to verify that debt relief has been fully implemented. As of the end of 2009, USDA had reviewed and forwarded loan records and information regarding the debt relief implemented by the agency for a total of approximately 1,500 of those 2,800 claims. Class Counsel, USDA, and the Monitor held regularly scheduled conference calls to address questions and issues regarding the debt relief implemented in individual cases, and the Monitor prepared summaries for claims upon completion of the review and verification process. As of December 31, 2009, the Monitor had prepared summaries in a total of approximately 1,315 claims.

The Monitor has projected that the substantive debt relief review process will be completed for all of the currently identified claimants in 2011. To complete the review process in a timely manner, USDA must continue to provide records and information as needed and must complete implementation of the additional debt relief the agency has agreed to provide in individual cases. In addition, the parties must reach agreement about the appropriate debt relief in a number of cases in which some additional debt relief may be appropriate.

2. Tax Relief

In addition to providing *Pigford* debt relief to prevailing claimants with qualifying debts, USDA is obliged to send claimants Internal Revenue Service (IRS) Forms 1099-C reporting the

amount of debt relief provided. For Track A claimants, the Government also has the obligation to deposit funds in a tax account established with the IRS. The tax deposit for debt relief is 25 percent of the amount of principal debt forgiveness. Prevailing Track A claimants receive an additional Form 1099-C from the Facilitator for the amount of the tax deposit made on their behalf.

During 2009, the parties and the Monitor consulted with representatives from the IRS Office of Chief Counsel regarding USDA's obligation to issue IRS Forms 1099-C for *Pigford* debt relief. The Office of Chief Counsel provided the parties with a guidance memorandum, which is summarized in the Monitor's Third Report on Debt Relief, filed August 27, 2009, and in Monitor Update No. 16, Federal Income Tax and Debt Relief, attached to this report as Appendix 10.⁷³ USDA took steps in 2009 to implement the IRS guidance for claimants who received debt relief in 2009. USDA requested a variance or exemption from the IRS from the recommendation by IRS Chief Counsel to issue corrected Forms 1099-C for claimants who previously received IRS Forms 1099-C for *Pigford* debt relief.⁷⁴

The implementation of debt relief and the tax implications of debt relief are complicated, and the parties and the Monitor devoted significant time to these issues in 2009. More

⁷³ The Monitor's Third Report on Debt Relief is available on the Monitor's web site at: http://www.pigfordmonitor.org/reports/rpt20090827_dr_impl.pdf. Monitor Update No. 16 is also available on the web site at <http://www.pigfordmonitor.org/updates/update16.pdf>.

⁷⁴ The IRS recommendation to issue corrected IRS Forms 1099-C applies to Forms 1099-C that were issued prior to 2009 and that USDA determines require correction based on the guidance received from the IRS in 2009. USDA informed the Monitor that if no exemption is granted by the IRS in 2010, USDA will review and issue any necessary corrections for the IRS Forms 1099-C that have been issued within the three-year time frame specified by the guidance.

information about the debt relief and tax relief issues addressed by the parties is available in the reports on debt relief implementation filed by the Monitor.⁷⁵

C. Wind-Down Process

During 2009, the parties identified a number of steps that must be taken to complete and wind down the Consent Decree claims process. As of the end of 2009, the major remaining substantive work involved: (1) the completion of the claims process for all pending Track A and Track B claims, including pending arbitration hearings, initial decisions, petitions for Monitor review, and reexamination decisions; and (2) the completion of the debt relief review process for all claimants who may be eligible for *Pigford* debt relief.

In addition to focusing on the completion of substantive tasks, in 2009 the parties began to take some of the steps necessary to complete a wind down of the implementation process. The parties identified items that may be desirable to include in a final stipulation that would be submitted to the Court for approval. The Monitor conferred with the parties and with representatives from the National Archives and Records Administration regarding document disposition issues. The Facilitator prepared a timeline with estimated dates for final cash relief payments, the issuance of Forms 1099-C for cash payments and IRS tax deposits, and the end date for the Facilitator's toll-free line and receipt of correspondence.

These and other efforts must be continued in order to fully implement the Consent Decree and successfully wind down the claims process.

⁷⁵ During 2009, the Monitor filed three reports on debt relief implementation. All of these reports are available on the Monitor's web site at: <http://www.pigfordmonitor.org/reports/>.

VI. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

The parties and the neutrals worked in good faith to implement the Consent Decree in calendar year 2009. The Monitor will continue to work with the parties and the neutrals to complete the implementation process and to identify and implement those tasks necessary to a successful wind down of the case. The Monitor will report to the Court on the progress of implementation and any recommendations for the wind down of the case as required.

Dated: June 17, 2010.

Respectfully submitted,

OFFICE OF THE MONITOR

s/Randi Ilyse Roth

Randi Ilyse Roth
Monitor

s/Cheryl W. Heilman

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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 ⁵		\$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 ⁶	

(See next page for years 2005 through 2009.)

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

⁶ 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		End of 2009	
	Number	%	Number	%	Number	%	Number	%	Number	%
A. Eligible Class Members	22,415	100	22,440	100	22,691	100	22,719	100	22,721	100
B. Cases in Track A (Adjudications)	22,243	99	22,269	99	22,519	99	22,547	99	22,549	99
C. Cases in Track B (Arbitrations) ⁷	172	1	171	1	172	1	172	1	172	1
Adjudication Completion Figures										
D. Adjudications Complete	22,240	~100	22,268	~100	22,271	99	22,505	99	22,547	~100
E. Adjudications Not Yet Complete	3	~0	1	~0	248	1	42	1	2	~0
Adjudication Approval/Denial Rates										
F. Claims Approved by Adjudicator	14,257	64	14,751	66	15,237	68	15,596	69	15,635	69
G. Claims Denied by Adjudicator ⁸	7,983	36	7,517	34	7,034	32	6,909	31	6,912	31
Adjudication Approvals Paid/Not Paid										
H. Approved Adjudications Paid	13,916	98	14,494	98	15,079	99	15,408	99	15,537	99
I. Approved Adjudications Not Yet Paid	341	2	257	2	158	1	188	1	98	1
J. Cash Relief Paid to Class Members for Track A Credit Claims ⁹	\$685,300,000		\$714,900,000		\$745,300,000		\$759,800,000		\$765,850,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims	\$1,326,000		\$1,254,000 ¹⁰		\$1,299,000		\$1,467,000		\$1,512,000	

⁷ 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.

⁸ The decrease in denials is a result of decisions being overturned on reexamination.

⁹ 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.

¹⁰ 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	End of 2009
A. Eligible Track B Claimants	177	235	236	237	238	239	240	241	241	241
B. Track B Cases Settled	11	57	61	71	69 ²	71	71	71	71	72
C. Track B Cases Converted to Track A	27	50	54	55	62	64	65	65	65	65
D. Track B Cases Withdrawn	5	6	6	6	9	9	9	9	9	9
Arbitrations Complete/Not Complete										
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105	98	95	95	96	96	95
F. Arbitration Decisions Issued ³	15	51	71	77	81	87	90	91	91	91
G. Arbitration Decisions Not Yet Issued	119	71	44	28	17	8	5	5	5	4

(Continued on next page.)

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, 2008, and 2009.

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.

³ These statistics include all claims in which the Arbitrator has issued an initial final decision. In some claims, the Arbitrator may also issue a decision on reexamination if petition for reexamination is filed and granted.

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	End of 2009
Arbitration Results										
H. Claimant Prevailed Before Arbitrator	2	8	15	17	18	19	22	23	23	25
I. Average Award to Prevailing Claimants	\$580,500	\$531,373	\$560,309	\$545,686	\$551,587	\$526,626	\$499,057	\$476,679	\$476,679	\$985,046
J. Government Prevailed Before Arbitrator	13	43	56	60	63	68	68	68	68	66
Posture of Decisions in Which Government Prevailed										
K. Cases Dismissed Before Hearing	10	28	34	38	40	44	44	44	44	44
L. Full Hearing, Finding of No Liability	3	15	22	22	23	24 ⁴	24	24	24	22

⁴ 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	End of 2009
Claimant A	\$544,400.00									
Claimant B	\$616,600.00									
Claimant C	-	\$615,090.00								
Claimant D	-	\$100,000.00								
Claimant E	-	\$780,000.00								
Claimant F	-	\$625,566.00								
Claimant G	-	\$507,954.88								
Claimant H	-	[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	-	-	\$1,447,917.00							
Claimant J	-	-	\$879,920.58							
Claimant K	-	-	\$594,444.00							
Claimant L	-	-	\$557,800.00							
Claimant M	-	-	\$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 2008 ³	End of 2009
Claimant N	-	-	\$172,000.00							
Claimant O	-	-	\$52,000.00							
Claimant P	-	-	-	\$750,048.00						
Claimant Q	-	-	-	[damages award issued in 2003 reexamined in 2009]						\$116,533.31
Claimant R	-	-	-	-	\$651,903.00					
Claimant S	-	-	-	-	-	\$77,321.00				
Claimant T	-	-	-	-	-	-	\$277,115.11			
Claimant U	-	-	-	-	-	-	\$269,524.90			
Claimant V	-	-	-	-	-	-	-	[damages award issued in 2007 reexamined in 2009]		\$164,465.00
Claimant W	-	-	-	-	-	-	-	\$302,290.87		
Claimant X	-	-	-	-	-	-	-	-	-	\$595,323.02
Claimant Y	-	-	-	-	-	-	-	-	-	\$12,789,162.00

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	End of 2009
A. Total Amount of Debt Forgiven (Principal and Interest)	\$21,930,937	\$22,657,917	\$26,093,911	\$30,291,397	\$33,313,408	\$41,529,287	\$42,936,326
B. Debt Forgiven for Track A Claimants	\$19,583,425	\$20,253,962	\$23,191,245	\$26,626,924	\$29,635,934	\$37,447,673	\$38,594,172
C. Debt Forgiven for Track B Claimants	\$2,347,512	\$2,403,955	\$2,902,666	\$3,664,473	3,677,474	\$4,081,614	\$4,342,154
D. Number of Track A Claimants Who Received Debt Forgiveness	228	239	268	307	319	344	351
E. Number of Track B Claimants Who Received Debt Forgiveness	25	25	17 ²	18	18	19	20
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$85,892	\$84,745	\$86,535	\$86,733	\$92,903	\$108,860	\$109,955
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	\$217,108

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	\$ 999,929
Arkansas	8,220,841
California	8,016
Florida	267,967
Georgia	6,213,813
Illinois	200,189
Kansas	83,531
Kentucky	139,039
Louisiana	3,719,167
Minnesota	11,911
Missouri	1,183,816
Mississippi	11,156,995
North Carolina	3,330,600
Oklahoma	1,439,592
South Carolina	994,720
Tennessee	1,327,075
Texas	1,499,499
Virginia	2,081,401
Virgin Islands	58,224.39

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, 2009 (Track A and Track B)
Alaska	2	\$100,000
Alabama	3,402	\$167,352,500
Arkansas	1,484	\$74,915,905
Arizona	5	\$250,000
California	151	\$8,084,600
Colorado	8	\$353,000
Connecticut	8	\$400,000
District of Columbia	12	\$630,000
Delaware	2	\$100,000
Florida	282	\$13,731,000
Georgia	2,000	\$98,564,742
Iowa	2	\$100,000
Illinois	177	\$8,856,000
Indiana	14	\$700,000
Kansas	31	\$1,550,000
Kentucky	63	\$3,115,500
Louisiana	587	\$29,271,000
Massachusetts	4	\$200,000
Maryland	42	\$2,059,000
Michigan	97	\$4,828,000
Minnesota	7	\$350,000
Missouri	92	\$4,621,000
Mississippi	3,151	\$159,554,352
North Carolina	1,322	\$70,096,486

¹ These statistics are provided by the Facilitator and are as of December 31, 2009. 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 2009. 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, 2009 (Track A and Track B)
Nebraska	5	\$250,000
New Jersey	34	\$1,703,000
New Mexico	3	\$150,000
Nevada	3	\$103,000
New York	37	\$2,211,249
Ohio	33	\$1,693,000
Oklahoma	592	\$29,316,000
Ontario	1	\$50,000
Pennsylvania	19	\$950,000
South Carolina	891	\$45,199,500
Tennessee	487	\$25,226,755
Texas	344	\$18,657,400
Utah	2	\$100,000
Virginia	191	\$10,479,780
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	End of 2009
A. Farm Ownership Loans							
1. Number of Requests for Priority Consideration with Complete Application	56	75	124	125	125	125	126
2. Number of Applications Approved	15	21	29	29	29	29	29
B. Farm Operating Loans							
1. Number of Requests for Priority Consideration with Complete Application	112	138	210	215	217	218	218
2. Number of Applications Approved	39	52	72	75	75	76	76
C. Inventory Property							
1. Number of Requests for Priority Consideration	3	4	10	10	10	10	10
2. Number of Applications Approved	1	1	1	1	1	1	1

¹ These statistics are provided by USDA.

Appendix 7

EVENTS AND MEETINGS ATTENDED BY MONITOR'S OFFICE
JANUARY 1, 2009 – DECEMBER 31, 2009

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
February 21, 2009	Albany, Georgia	Federation of Southern Cooperatives	250
November 21, 2009	Wewoka, Oklahoma	Oklahoma Department of Agriculture Small Farms Conference	150

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	End of 2009
Timely Petitions for Monitor Review								
A. Number of Petitions for Monitor Review	5,160	5,401	5,617	5,668	5,701	5,707	5,768	5,848
1. Claimant Petitions	4,560	4,727	4,901	4,938	4,945	4,950	4,974	4,981
2. Government Petitions	600	674	716	730	756	757	794	867
Monitor Decisions								
B. Petition Decisions Issued by Monitor	1,743	2,725	3,310	4,189	5,243	5,688	5,701	5,794
1. Total Number of Petitions Granted	676	1,218	1,510	2,049	2,627	2,904	2,914	2,936
a. Claimant Petitions Granted	631	1,162	1,439	1,971	2,508	2,776	2,784	2805
b. Government Petitions Granted	45	56	71	78	119	128	130	131
2. Total Number of Petitions Denied	1,067	1,507	1,800	2,140	2,616	2,784	2,787	2,858
a. Claimant Petitions Denied	609	1,040	1,319	1,622	2,011	2,157	2,160	2,169
b. Government Petitions Denied	458	467	481	518	605	627	627	689

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	End of 2009
Reexamination Decisions Issued by Adjudicator	39	301	664	1,355	1,957	2,606	2,868	2,893
1. Reexamination Decisions After Claimant Petition Granted by Monitor	39	291	631	1,295	1,880	2,494	2,743	2,766
a. Claimant Prevailed on Reexamination	39	279	571	1,189	1,704	2,229	2,437	2,456
b. Claimant Did Not Prevail on Reexamination	0	12	60	106	176	265	306	310
2. Reexamination Decisions After Government Petition Granted by Monitor	0	10	33	60	77	112	125	127
a. Government Prevailed on Reexamination	0	10	31	52	68	102	113	113
b. Government Did Not Prevail on Reexamination	0	0	2	8	9	10	12	14

¹ These statistics are provided by the Facilitator.

Appendix 10

MONITOR UPDATE NO. 16, FEDERAL INCOME TAX AND DEBT RELIEF

Monitor Update:

Federal Income Tax and Debt Relief

Date Issued: August 27, 2009
Update 016
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This is not a USDA publication.

Federal Income Tax and Debt Relief

A. Introduction

This Monitor Update discusses briefly the intersection between *Pigford* debt relief and federal income tax rules.¹

This intersection occurs because the *Pigford* Consent Decree grants prevailing claimants forgiveness of some USDA loans, and also requires the government to make payments to the Internal Revenue Service (IRS) on behalf of those claimants. *Pigford* claimants are subject to federal income tax rules. According to those rules, *Pigford* debt relief may result in taxable income for the claimant.

This Update focuses on a handful of topics.

- First, it describes the most basic rules for *Pigford* debt forgiveness and for federal income tax that affect claimants receiving *Pigford* debt forgiveness.
- Second, it discusses how the interaction between *Pigford* debt forgiveness and federal income tax rules should work.
- Third, it explains why the timing of debt forgiveness is both complicated and important for claimant income taxes.
- Fourth, it describes the purpose of the IRS Form 1099-C that many claimants will receive in the mail.
- Finally, and perhaps most important, it directs claimants to additional resources that can be of help to them.

¹ Information in this Update is drawn primarily from the Consent Decree and other *Pigford* documents, especially *Pigford* court orders and other Monitor Updates, and an official memorandum from the Office of Chief Counsel at the IRS. All of these documents are available at the Monitor website. The *Pigford* Consent Decree is available at <http://www.pigfordmonitor.org/orders/19990414consent.pdf>; a February 7, 2001, Stipulation and Order, at <http://www.pigfordmonitor.org/orders/20010207order.pdf>; Monitor Update No. 10, "Debt Relief for Prevailing Class Members" (July 10, 2008), at <http://www.pigfordmonitor.org/updates/>; and Memorandum, Office of Chief Counsel, Internal Revenue Service, to Special Counsel to the National Taxpayer Advocate, *Pigford v. Schafer: Debt Relief Issues* (March 12, 2009), at http://www.irs.gov/pub/lanoa/pmta2009_151.pdf.

Understanding the intersection between *Pigford* debt relief and federal income taxes is essential if a claimant's federal income taxes are to be filed correctly.

B. Get Expert Income Tax Help

The topics covered in this Update are complicated. Therefore, claimants facing the issues described in the Update should consult with a federal income tax expert.

In addition, help for claimants on tax issues is available from the National Taxpayer Advocate and from Class Counsel. Contact information for both is available at the end of this Update.

C. Pigford Debt Relief in Brief

The *Pigford* Consent Decree provides for debt relief for some prevailing claimants. For the purpose of this Update, two aspects of debt relief are central: the forgiveness of some USDA loans and, for Track A claimants, payment(s) to the IRS on behalf of the claimant.

1. Forgiveness of Claimant Debt

As part of debt relief, the *Pigford* Consent Decree provides for the forgiveness of some USDA claimant debt. Not all prevailing claimants receive debt forgiveness, and in some cases prevailing claimants receive forgiveness for only a part of their USDA debt.

The *Pigford* debt relief process—the sorting out of which claimant debts are to be forgiven, and which are not to be forgiven—has now stretched out over several years. Some claimants received debt forgiveness as early as 1999, and others are receiving debt forgiveness as this Update is written, in 2009. In addition, some claimants have received debt forgiveness on more than one occasion.

2. USDA Tax Payments to the IRS

The *Pigford* Consent Decree requires USDA to make payments to the IRS on behalf of Track A claimants who receive debt forgiveness. The payment to the IRS is equal to 25 percent of the principal debt forgiven by USDA.

The IRS treats the payment as if it were made by the claimant toward his or her federal income tax.

3. For More Information on Debt Relief: See Monitor Update No. 10

The above explanation only touches on the most basic aspects of *Pigford* debt relief. For detail about how debt relief works, see Monitor Update No. 10, "Debt Relief for Prevailing Class Members."²

See, as well, the contact information at the end of this Update for further assistance regarding *Pigford* debt relief.

² Available at <http://www.pigfordmonitor.org/updates/>.

D. Federal Income Tax Law in Brief

Pigford debt forgiveness can affect the federal income tax a claimant may owe.

1. Debt Forgiveness Can Mean “Debt Cancellation” Income

The IRS sees *Pigford* debt forgiveness as a form of what federal income tax law calls “debt cancellation.”³ The IRS considers debt cancellation a form of income, much like the salary from a job, or proceeds from the sale of crops, are considered income.

The extent to which *Pigford* debt forgiveness turns out to be taxable income can vary greatly from person to person. For example, *Pigford* debt forgiveness will almost always include both principal and interest. Because *Pigford* debts were made for farming purposes, it is possible that only forgiveness of the principal part of the debt is considered income by the IRS.

There are other complicated rules regarding how debt cancellation affects taxes owed by a claimant. For example, some or all of the cancelled debt may be excluded from income if the debt was incurred for the claimant’s farming business or if the claimant is financially insolvent.

2. IRS Form 1099-C and *Pigford* Debt Forgiveness

Federal income tax law requires USDA to use what is known as IRS Form 1099-C to report the amount of *Pigford* debt forgiveness if the forgiveness is for \$600 or more. The purpose of IRS Form 1099-C is to let the *Pigford* claimant and the IRS know exactly what debts are forgiven and in what tax year the forgiveness took place. Both of these pieces of information—how much debt is forgiven, and in what year—are essential if the claimant is to file his or her federal income taxes correctly.

IRS Form 1099-C reports the total amount of debt cancelled—both principal and interest. It also gives the date of debt cancellation for tax reporting purposes. It is sent to both the claimant and the IRS.

3. Consult an Income Tax Expert

Although the IRS says that debt cancellation—including *Pigford* debt forgiveness—can be taxable income, figuring out how debt cancellation affects a person’s taxes can be very complicated.

To make sure federal income tax filings are correct, and to deal with the IRS, the agency that administers tax law, claimants should consult a tax expert.

In addition to a tax expert, claimants may want to contact the National Taxpayer Advocate or Class Counsel. Contact information for both is at the end of this Update.

³ IRS Form 1099-C refers to “Cancellation of Debt.” IRS rules also sometimes call debt forgiveness “discharge of indebtedness.” See, for example, IRS Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment) (revised March 2009).

E. *Pigford* Debt Relief and Federal Income Taxes—How It Should Work in Theory

Several basic steps that should occur every time a *Pigford* claimant is eligible for debt forgiveness are described below.

1. *Pigford* Debt Identified and Forgiven

The Consent Decree and other *Pigford* documents set out how *Pigford* debt relief works.

Some prevailing *Pigford* claimants with outstanding USDA farm loan debt will have at least part of that debt forgiven. The rules governing *Pigford* debt forgiveness are described generally in Monitor Update No. 10, "Debt Relief for Prevailing Class Members."⁴

2. USDA Makes Payments to the IRS

The Consent Decree orders USDA to make payments to the IRS on behalf of Track A claimants who receive debt relief. The payments are equal to 25 percent of the principal forgiven under *Pigford* debt relief.

For example:

Suppose debt relief for a Track A claimant is \$5,000. One thousand dollars of this total is interest that had accumulated over time, and \$4,000 is the remaining principal on a loan. USDA forgives the entire \$5,000. Since 25 percent of \$4,000 is \$1,000, USDA contributes \$1,000 to the IRS on behalf of the claimant to be applied to any taxes the claimant might owe.

Track B claimants are not entitled to a tax payment for debt relief.

3. USDA Sends IRS Form 1099-C to *Pigford* Claimants and the IRS

After the debt to be forgiven is identified, USDA sends claimants an IRS Form 1099-C. The same form is sent to the IRS. This is the way both the claimant and the IRS learn how much claimant debt was forgiven and when the forgiveness—for income tax purposes—took place. It is therefore an important tax document.

The year after USDA makes a payment to the IRS on behalf of a claimant receiving debt forgiveness, an additional IRS Form 1099-C is sent to the claimant and the IRS to report the tax payment. The IRS considers the tax payment income.

4. Claimants File Federal Income Taxes

Using IRS Form 1099-C and other documents, the claimant files his or her federal income tax forms. The extent to which *Pigford* debt forgiveness turns out to affect the federal income taxes of a claimant varies greatly from person to person and circumstance to circumstance. Even in the simplest case, farm taxes and debt cancellation tax law is complicated. As noted above, therefore, *Pigford* claimants should consult an expert on federal income taxes.

⁴ Available at <http://www.pigfordmonitor.org/updates/>.

F. Timing of Debt Relief—a Central Problem for Federal Income Tax

For *Pigford* claimants, the timing of debt forgiveness is both important and complicated.

1. Timing of Debt Forgiveness “Realization”

From the viewpoint of the IRS, an important question for *Pigford* debt forgiveness is when the cancellation of *Pigford* debt is “realized.” Realization of debt forgiveness essentially means that the claimant’s right to debt forgiveness is final and cannot be taken away.

One might think that it would be easy to identify the year in which *Pigford* debt forgiveness for a particular claimant is realized. Unfortunately, settling on a date on which *Pigford* debt forgiveness is realized is more difficult than it may seem at first.

2. When *Pigford* Debt Forgiveness Is Realized for Income Tax Purposes

The question to be answered for each *Pigford* claimant who receives debt forgiveness is: when is *Pigford* debt cancellation realized for federal income tax purposes? The IRS has provided legal guidance on how to answer this question.

In general, the date when *Pigford* debt forgiveness is realized can be based on one of four possible events:

- a. the date of a final decision on the claimant’s individual case;
- b. the date of a specific order issued by the Court;
- c. the date of an agreement on a general rule regarding how *Pigford* debt relief works; or
- d. the date of an agreement in an individual claimant’s case.

A claimant’s right to debt forgiveness is made final by one of these dates, which means that debt forgiveness is realized on that date.

It is also the case that a claimant can have a number of different realization dates because part of the forgiveness was realized on a certain date, and another part of the forgiveness was realized on a different date.

Each of the four realization possibilities is discussed briefly below.

a. Adjudicator or Arbitrator Decision Is Final

For many *Pigford* claimants, the realization of debt cancellation occurs when a decision by the Adjudicator or Arbitrator that resulted in debt forgiveness becomes final.

The question of when a *Pigford* decision becomes final is itself sometimes challenging to answer. In general, if the claimant prevails with the Adjudicator or Arbitrator, and no petition to the Monitor is filed, the IRS concludes that the decision is final, and the debt cancellation is realized 120 days after the decision is issued.

For example:

Suppose the Track A decision by the Adjudicator approving the claim is issued on October 1, 2007. The 120-day period for USDA to file a petition to the Monitor

expires on January 29, 2008. USDA does not file a petition. The decision is final on January 29, 2008, and the debt cancellation income is realized in 2008.

In many cases, however, a petition is filed by either the claimant or the government with the Monitor in an effort to have the decision changed. The finality of an Adjudicator or Arbitrator decision therefore depends on whether a petition to the Monitor is filed.

For example, when the claimant prevails on an Adjudicator or Arbitrator decision, a petition to the Monitor is filed, and the Monitor denies the petition, the decision is final and debt cancellation is realized when the Monitor issues a decision.

If the claimant receives a decision from the Adjudicator or Arbitrator, a petition to the Monitor is filed, and the Monitor grants the petition, the Adjudicator or Arbitrator will issue a decision on reexamination. In such a case, the decision is final, and the debt cancellation is realized when the Adjudicator or Arbitrator issues a reexamination decision.

b. Pigford Court Order Regarding Debt Forgiveness

A number of court orders issued by the Judge in the *Pigford* case address debt forgiveness. As a result, for some claimants, the IRS considers the date of a *Pigford* court order as the date a claimant realizes cancellation of indebtedness income.

In general, *Pigford* rules say that debt relief is provided for loans that were directly affected by discrimination. A Stipulation and Order issued by the Court on February 7, 2001, clarifies debt relief further. The February 7, 2001, Stipulation and Order stated that if the claimant received loans through the same loan program after the loan that was directly affected by discrimination, those loans are also eligible for debt forgiveness. Forgiveness of these loans is sometimes called "forward sweep" debt forgiveness.⁵ The IRS has concluded that, for federal income tax purposes, forward sweep debt relief resulted from the February 7, 2001, Stipulation and Order. As a result, for many claimants, forward sweep debt relief is realized in 2001.

So, for example:

Suppose a claimant prevailed on a claim concerning the denial of a 1981 Operating Loan and that the Adjudicator issued a decision on January 10, 2000. Suppose also that the claimant has an outstanding Operating Loan that originated in 1985. As a result of "forward sweep," the claimant is entitled to debt forgiveness of the 1985 Operating Loan. The date on which the claimant realized cancellation of indebtedness income is February 7, 2001.

c. Agreement on a General Rule Regarding Debt Forgiveness

After the *Pigford* Consent Decree was signed, lawyers for the class and the government ironed out some agreements as to how *Pigford* debt forgiveness should work. These agreements could be said to have filled in some of the gaps of the Consent Decree as far

⁵ For details, see Update No. 10 at <http://www.pigfordmonitor.org/updates/>.

as debt forgiveness is concerned. They apply to the whole class in general, and not just to a certain claimant. The IRS considers the date of this type of agreement as the date some claimants realize cancellation of indebtedness income.

For example, a revised version of Monitor Update No. 10, "Debt Relief for Prevailing Class Members," was released on July 11, 2008.⁶ It set forth a number of general agreements reached by the lawyers for the class and the government as to how debt forgiveness should work, and discusses which claimant loans should be forgiven in certain situations.

According to the IRS, claimants who receive debt forgiveness based on some of the rules agreed to and described in Monitor Update No. 10 realize a cancellation of indebtedness in 2008, the year the agreement was reached and the revised Update was issued.

d. Agreement on a Case-by-Case Basis

In still other cases, lawyers for the class and the government do not at first agree on the debt forgiveness that a particular claimant should receive. If there is a disagreement on how *Pigford* debt relief rules should be applied to an individual claimant, but lawyers for the class and the government later reach agreement on the debt relief that should be provided to that claimant, the IRS considers the date of the agreement as the date the claimant realizes a cancellation of indebtedness income.

3. IRS Form 1099-C Should Tell Claimants When Forgiveness Realized

The above sections discuss in some detail when *Pigford* debt forgiveness is realized for income tax purposes. As noted above, the date on which *Pigford* debt forgiveness is realized is important when a *Pigford* claimant files his or her taxes. An IRS Form 1099-C sent to the claimant by USDA should take into account all of the factors described above, and should give the claimant the correct date for when his or her debt forgiveness is realized.

Claimants who believe their IRS Form 1099-C is in error should talk with an income tax expert and should consider contacting Class Counsel. Contact information for Class Counsel is at the end of this Update.

4. Administrative Delay—No Effect on Realization Date

In some cases, the claimant's decision is final, and under the rules that apply for *Pigford* the claimant should receive debt forgiveness. Instead of getting debt forgiveness right away, however, there is a delay in the implementation of the debt forgiveness. If the reason debt

⁶ Available at <http://www.pigfordmonitor.org/updates/>.

forgiveness is not implemented right away is what the IRS calls “administrative delay,” the delay in implementation does not change the date of realization.

For example, debt cancellation realization often takes place when an Adjudicator decision that triggered debt forgiveness is final. If after an Adjudicator’s decision some form of administrative delay slows the actual cancellation of the claimant’s debt, this delay does not affect the year in which a claimant realizes cancellation of indebtedness income. The date of realization is still the date when the Adjudicator decision was final.

G. IRS Form 1099-C Information Returns

If debt is forgiven under *Pigford*, federal tax law requires USDA to send to the claimant an IRS Form 1099-C if the debt forgiven is \$600 or more.

1. IRS Form 1099-C and the Year Debt Cancellation Is Realized

The purpose of an IRS Form 1099-C, as noted above, is to let the *Pigford* claimant and the IRS know exactly what debt is forgiven, and in what year the debt cancellation is realized. With this information a claimant can properly file his or her federal income tax return.

2. IRS Form 1099-C and a New Round of Debt Cancellation

Beginning in 2008, USDA, Class Counsel, and the Monitor started reviewing the loan records and debt forgiveness provided to prevailing *Pigford* claimants. As a result of this review, some claimants may receive additional debt cancellation or may receive debt cancellation for the first time. If, as a result of the review, USDA cancels claimant debt, USDA must send the claimant and the IRS an IRS Form 1099-C.

3. Correcting an Already-Issued IRS Form 1099-C

In some cases, a claimant may receive additional debt relief on a loan for which the claimant already received an IRS Form 1099-C. If the additional debt relief makes an earlier IRS Form 1099-C incorrect, USDA may correct the previously issued IRS Form 1099-C rather than issue a new IRS Form 1099-C. USDA will only issue corrected IRS Forms 1099-C if the previously issued form was filed within the last three calendar years.

Legal guidance issued by the IRS suggests that USDA incorrectly identified the tax year in some previously issued IRS Forms 1099-C.⁷ According to the IRS legal guidance, a corrected IRS Form 1099-C with the correct tax year should be issued if the previously issued form was filed within the last three calendar years.

⁷ See Memorandum, Office of Chief Counsel, Internal Revenue Service, to Special Counsel to the National Taxpayer Advocate, *Pigford v. Schafer*: Debt Relief Issues (March 12, 2009), available at http://www.irs.gov/pub/lanoa/pmta2009_151.pdf.

H. For More Information

Claimants interested in more information on the interaction between *Pigford* debt relief and federal income tax should ask for additional help. The following resources are available.

1. Income Tax Experts

As noted above, *Pigford* claimants with debt relief should consult a tax expert. Tax experts may include, for example, certified public accountants (CPAs) who assist people with their taxes.

2. Class Counsel

Claimants in *Pigford* are represented by Class Counsel. Class Counsel can be contacted at 1-866-492-6200.

3. National Taxpayer Advocate

The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. Each state, the District of Columbia, and Puerto Rico has at least one Local Taxpayer Advocate, who is independent of the local IRS office and reports directly to the National Taxpayer Advocate. If a claimant has difficulties resolving a tax issue with the IRS, the claimant should contact the Taxpayer Advocate Service at 1-877-777-4778 or TTY/TTD 1-800-829-4059. Their website is <http://www.irs.gov/advocate/>. Either the claimant or the claimant's tax adviser should feel free to contact the Taxpayer Advocate Service.

4. Monitor

The Monitor's office is unable to provide tax advice to claimants. For questions about *Pigford* debt relief or other matters related to *Pigford*, feel free to contact the Monitor's office at 1-877-924-7483.