

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 ON DEBT RELIEF IMPLEMENTATION

On August 1, 2008, the Court directed the Monitor to report to the Court by December 15, 2008, regarding the progress of debt relief implementation for all prevailing claimants who are entitled to debt relief. The Court directed the Monitor to include information in the report about any progress made regarding the implementation of a system for managing the tax consequences of debt relief. On December 12, 2008, the Court issued a Minute Order extending the deadline for the Monitor's report. The Court's December 12, 2008 Order required the Monitor to report to the Court on or before March 31, 2009. The Monitor submits this report to comply with the Court's August 1, 2008 and December 12, 2008 Orders.

I. BACKGROUND

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to claimants who prevail in Track A or Track B credit claims. These provisions require USDA to discharge all of a prevailing claimant's outstanding debt to USDA that was "incurred under, or affected by" the program(s) that were the subject of the claim(s) resolved in the claimant's favor. In addition to providing a discharge of debts incurred under or affected by discrimination, the Consent Decree states that debts subject to *Pigford* debt relief shall not adversely affect a claimant's eligibility for future participation in any USDA loan or loan servicing program.¹

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

¹ Paragraph 9(a)(iii) of the Consent Decree provides that in any Track A credit claim in which the Adjudicator decides in the class member's favor:

USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator. The discharge of such outstanding debt shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program.

Paragraph 10(g)(ii) provides that in any Track B claim in which the Arbitrator decides in the class member's favor:

USDA shall discharge all of the class member's outstanding debt to the Farm Service Agency that was incurred under, or affected by, the program(s) that were the subject of the claim(s) resolved in the class member's favor by the arbitrator. The discharge of such outstanding debt shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program.

which a finding of discrimination was made through the end of the class period (December 31, 1996).²

In 2008, the Monitor issued a revised Monitor Update regarding debt relief, Monitor Update No. 10.³ Monitor Update No. 10 summarizes the rules that the parties agreed apply to the implementation of debt relief in individual cases.⁴

II. PROGRESS ON DEBT RELIEF IMPLEMENTATION

Prior Monitor reports have described USDA's debt relief implementation process and the need for additional systems to ensure debt relief is properly implemented for all prevailing claimants.⁵ This report provides an update on all aspects of debt relief implementation, including

² Paragraph 2 of the Stipulation and Order requires USDA to discharge:
all debts which were identified by the Adjudicator or Arbitrator as having been affected by discrimination. Additionally, such relief includes all debts incurred at the time of, or after, the first event upon which a finding of discrimination is based, except that such relief shall not include: (1) debts that were incurred under FSA programs other than those as to which a specific finding of discrimination is made by the Adjudicator or Arbitrator with respect to the class member. . . ; (b) debts that were incurred by the class member prior to the date of the first event upon which the Adjudicator's or Arbitrator's finding of discrimination is based, or (c) debts that were the subject of litigation separate from this action in which there was a final judgment as to which all appeals have been foregone or concluded.

Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001). An Opinion and Order issued by the Court on February 21, 2008 applies the Consent Decree provisions and the terms of the February 7, 2001 Stipulation and Order to certain individual claimants' requests for debt relief. See *Pigford v. Schafer*, Opinion, at 4-5 (D.D.C. February 21, 2008).

³ Monitor Update No. 10 was provided to the Court as Exhibit 2 to the Monitor's Fifth Progress Report on Amended Decisions and Debt Relief Implementation, filed on July 11, 2008, and is also available on the Monitor's website at <http://www.pigfordmonitor.org/updates/update10.htm>.

⁴ Monitor Update No. 10, at 1.

⁵ The Monitor became aware of problems in USDA's debt relief implementation as a result of an investigation ordered by the Court into the circumstances of certain amended Adjudicator decisions. In 2007, the Monitor began reporting to the Court regarding debt relief implementation issues affecting all prevailing claimants. See Monitor's Report and Recommendations on Amended Decisions, at pages 23-25 (July 9, 2007). See also Monitor's Fifth Progress Report on Amended Decisions and Debt Relief Implementation, at pages 6-15 (July 11, 2008). These reports are available on the Monitor's website at <http://www.pigfordmonitor.org/reports/>. The parties and the Monitor are now engaged in a review of the debt relief implemented by USDA for all prevailing claimants who are entitled to debt relief.

the progress that has been made in implementing a system to manage the tax consequences of debt relief.

A. Aspects of Implementation Other Than the Tax Consequences of Debt Relief

In July 2008, the Monitor sent a letter to prevailing claimants informing them that the parties had agreed to engage in a process for the final review of the debt relief implemented by USDA.⁶ The parties have agreed this review is necessary to ensure that each prevailing claimant who qualifies for debt relief has received the appropriate relief. As part of the debt relief implementation process, USDA agreed to take steps to: (1) determine the proper loans subject to debt relief; (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* forgiveness will have “no adverse affect” on a prevailing claimant’s eligibility for future USDA farm program loans.

The parties have made progress regarding each of these five implementation steps. They have agreed to a process designed to ensure that prevailing claimants’ debt relief awards are correct. All of the steps in the process are well underway,⁷ except for the step concerning

⁶ A copy of the letter is available on the Monitor’s website, at http://www.pigfordmonitor.org/class/200807_dr.htm.

⁷ The rules the parties have agreed to apply to determine debt relief are summarized in Monitor Update No. 10, revised on July 11, 2008. In addition to providing forgiveness of the outstanding principal and interest for loans subject to *Pigford* debt relief, USDA has agreed to refund certain payments made or offsets taken on loans that are subject to debt relief. The agreed-upon refund procedures are set forth more fully in Monitor Update No. 10. USDA has also put in place a system to ensure “no adverse action” is taken as a result of the loan forgiveness claimants receive for debts subject to *Pigford* debt relief. This system is described in a USDA Notice, FLP-510, Guidance on Applications Submitted by *Pigford* Claimants (July 9, 2008) (set to expire April 1, 2009). USDA Notice, FLP-510 was provided to the Court as Exhibit 1 to the Monitor’s Fifth Progress Report on Amended Decisions and Debt Relief Implementation, filed on July 11, 2008, and is also available on the Monitor’s website at http://www.pigfordmonitor.org/flp/flp_510.pdf

managing the tax consequences of debt relief. The tax consequences issue will be addressed below.

B. The Tax Consequences of Debt Relief

The *Pigford* claims process and petitions process create many events which give rise to questions regarding federal income taxes.⁸ Some aspects of the tax consequences of *Pigford* debt relief, particularly for class members who received corrections to their debt relief as part of the debt relief implementation review process, are confusing.

Some of the confusion relates to whether USDA should issue IRS Forms 1099 when additional debt relief is provided. Other questions relate to what USDA should report on the Forms 1099. For example, when previously-granted debt relief is corrected, should USDA issue corrected IRS Forms 1099 for the year the original debt relief was reported? Or, should additional debt relief be reported on an IRS Form 1099 for a subsequent tax year? To resolve these and other uncertainties, the parties consulted with representatives from the Internal Revenue Service (IRS) Office of Chief Counsel and the IRS Taxpayer Advocate Service regarding the tax implications of USDA's debt relief implementation process.

In response to the parties' tax-related questions, the IRS Office of Chief Counsel recently provided the parties and the Monitor with guidance on the federal income tax implications of *Pigford* debt relief.

⁸ The benefits prevailing claimants receive under the Consent Decree, including cash relief payments, forgiveness of outstanding loans (debt relief), and deposits made to tax accounts established with the Internal Revenue Service (IRS), are considered by the IRS to constitute taxable income. Claimants who have received each of these benefits (cash payments, forgiveness of loans, and a deposit to a tax account established with the IRS) generally have also received an IRS Form 1099 reporting on the benefits.

III. STEPS REMAINING TO COMPLETE DEBT RELIEF IMPLEMENTATION

The parties have not yet had a chance to fully consider how to implement the guidance provided by the IRS Office of Chief Counsel. The parties have just begun to confer about whether additional follow-up questions might be appropriately addressed to the IRS to clarify the tax implications of *Pigford* debt relief. The Monitor anticipates that the parties will address these issues in depth over the next few months.

In addition to working through the tax issues described above, the parties are continuing their review of USDA's implementation of debt relief in individual cases. This review includes the preparation of a summary by the Monitor at the conclusion of the debt relief review process for each claimant. The summary sets forth the debt relief the parties agreed was appropriate for each prevailing claimant. The summary includes: (1) the claims on which the claimant prevailed; (2) the amount(s) of outstanding farm loan principal and interest USDA has forgiven for each loan subject to *Pigford* debt relief; (3) the amount of any refunds of voluntary payments or offsets USDA has provided; and (4) for claimants who have other outstanding farm program debt, an explanation of why that debt does not qualify for *Pigford* debt relief.

In December 2008, USDA provided the parties and the Monitor with a list of prevailing claimants who had outstanding farm loan program debt during the class period and who the parties have agreed should receive an individualized review of their debt relief. The parties and the Monitor have discussed the extent to which this list may not be complete. Additional steps may be needed to ensure a complete list of claimants is identified. As discussed above, additional efforts will also be needed to complete the debt relief review process for each of these prevailing claimants and to clarify the tax implications of that relief.

IV. CONCLUSION

The review of USDA's debt relief implementation remains ongoing. As part of USDA's obligation to develop a system to manage the tax consequences of debt relief, the parties and the Monitor have requested and have now received guidance from representatives of the Internal Revenue Service on the tax implications of *Pigford* debt relief. The Monitor expects that USDA's debt relief implementation will incorporate this guidance to provide an appropriate system for managing the tax consequences of debt relief.

The Monitor recommends that the Court order the Monitor to:

1. Continue to work with the parties to review, correct, and verify USDA's debt relief implementation for all prevailing claimants who may be entitled to debt relief; and
2. Report to the Court on or before June 30, 2009, regarding the progress on debt relief implementation, including: (a) the steps taken to implement a system to manage the tax consequences of debt relief and (b) the preparation of a complete list of class members whose cases must be reviewed in order to ensure that *Pigford* debt relief has been fully implemented.

Dated: March 31, 2009

Respectfully submitted,

s/Randi Ilyse Roth

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