

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

MONITOR’S FOURTH REPORT ON DEBT RELIEF IMPLEMENTATION

On November 3, 2009, the Court directed the Monitor to report, on or before January 15, 2010, regarding: (1) the status of the debt relief implementation review process for prevailing claimants who are entitled to *Pigford* debt relief; and (2) the implementation of guidance received by the United States Department of Agriculture (USDA) from the Internal Revenue Service (IRS), including USDA’s implementation of guidance concerning corrected IRS Forms 1099-C. The Monitor submits this report to comply with the Court’s November 3, 2009 Order.

## I. BACKGROUND

In 2008, the parties and the Monitor began a review of the implementation of *Pigford* debt relief for prevailing claimants who received farm program loans from USDA during the period from January 1, 1981, through December 31, 1996. 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.<sup>1</sup> Prior Monitor reports also described the federal income tax issues associated with USDA's implementation of debt relief and the guidance provided by the Office of the Chief Counsel of the IRS regarding USDA's federal tax reporting obligations.<sup>2</sup>

This report provides an update on the progress that has been made in reviewing USDA's debt relief implementation for prevailing claimants who are eligible for *Pigford* debt relief. The report also describes steps USDA has taken to comply with the IRS guidance in preparing to issue IRS Forms 1099-C to claimants who received debt relief in 2009 from USDA. Finally, the report describes actions USDA has taken in response to the IRS guidance regarding the need for corrected IRS Forms 1099-C for claimants who

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<sup>1</sup> The Monitor's most recent report, the Third Report on Debt Relief Implementation, is available at [http://www.pigfordmonitor.org/reports/rpt20090827\\_dr\\_impl.pdf](http://www.pigfordmonitor.org/reports/rpt20090827_dr_impl.pdf). Other Monitor reports are available on the Monitor's website at <http://www.pigfordmonitor.org/reports/>. The Monitor has prepared an Update for class members on the substantive rules USDA has agreed to use in implementing *Pigford* debt relief. See Monitor Update No. 10, Debt Relief for Prevailing Class Members (rev. July 11, 2008), available at <http://www.pigfordmonitor.org/updates/update10.pdf>.

<sup>2</sup> The Monitor's Third Report on Debt Relief Implementation described USDA's obligation to report the amount and the date of debt relief and the guidance the IRS has provided regarding USDA's reporting obligations. Tax implications of debt relief are also discussed in Monitor Update No. 16, Federal Income Tax and Debt Relief (August 27, 2009), available at <http://www.pigfordmonitor.org/updates/update16.pdf>.

received IRS Forms 1099-C for debt relief implemented in calendar years 2006, 2007, and 2008.

## II. PROGRESS ON SUBSTANTIVE DEBT RELIEF REVIEW

This section describes the progress that has been made in the substantive review of the debt relief USDA has implemented for claimants who are eligible for *Pigford* debt relief. USDA, Class Counsel, and the Monitor have worked together to attempt to identify all claimants who may be eligible for *Pigford* debt relief. The loan records of all such claimants will be reviewed to determine if the appropriate debt relief has been implemented. As of December 31, 2009, the parties had identified approximately 2,800 claimants who prevailed in the Consent Decree claims process and whose loan records will be reviewed to verify that debt relief has been fully implemented in accordance with the substantive rules for *Pigford* debt relief.

USDA began to forward claimant loan records to the Monitor in March 2008. During 2008, USDA reviewed and forwarded approximately fifty files per month. During 2009, USDA reviewed and forwarded approximately 100 files per month. As of the end of 2009, USDA had forwarded records for a total of approximately 1,500 claims to the Monitor. Once a claimant's loan records are received by the Monitor, the Monitor's office reviews the decision by the Adjudicator or Arbitrator that gives rise to the right to debt relief. The Monitor's office also reviews the loan records provided by USDA reflecting the claimant's loan history, including any loan forgiveness, refunds of payments or offsets, or non-cash credits to equity recapture accounts that may be required to implement *Pigford* debt relief. Questions and issues regarding individual claims are discussed in emails or in regularly scheduled phone conferences with Class Counsel and

USDA. Upon completion of the review and verification process, the Monitor prepares a summary for each claim. As of December 31, 2009, the Monitor had verified and completed a summary of the debt relief implemented by USDA for a total of approximately 1,315 claimants.

As of December 31, 2009, there were approximately 1,485 claims pending completion of the debt relief review and verification process. In some cases, USDA has identified additional debt relief that should be implemented or has agreed to implement additional debt relief identified by Class Counsel or the Monitor, but that implementation is not yet complete. As of December 31, 2009, there were approximately seventy claims that were due to receive additional debt relief that had not yet been fully implemented.<sup>3</sup> In other cases, Class Counsel or the Monitor has identified potential additional debt relief that USDA has agreed to consider. As of December 31, 2009, there were approximately fifty-six claims in which the Monitor or Class Counsel had identified potential additional debt relief but regarding which the parties had not completed their research and discussion, so no final conclusion had been reached. In addition, as of December 31, 2009, there were approximately twenty-six cases in which the Monitor had requested additional information from USDA.

USDA has indicated that it plans to forward to the Monitor the loan records for the remaining claims in the debt relief review and verification process at the rate of approximately 100 files per month. Based on this data, the Monitor expects the substantive debt relief review process to remain ongoing in 2010 and to be completed

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<sup>3</sup> For some of these claims, USDA has not yet provided any records to the Monitor. For other claims, some records have been provided but USDA has agreed to implement additional debt relief and will provide additional records to the Monitor after the implementation process is complete.

sometime in 2011. The parties have been cooperating in providing the information needed to resolve questions and issues that have arisen in individual debt relief review cases. The parties have also been cooperating in the review process to ensure that USDA has fully implemented the debt relief that is required for claimants who are entitled to *Pigford* debt relief. The substantive debt relief review process is working well, and the Monitor will report on the continued progress of this review as the Court directs.

### III. PROGRESS ON TAX ISSUES REGARDING DEBT RELIEF

This section describes steps USDA has taken to comply with guidance received from the IRS in 2009 regarding the tax implications of *Pigford* debt relief. USDA has an obligation under federal income tax law to report to the IRS the amount of principal and interest that is forgiven. USDA fulfills this obligation by preparing IRS Forms 1099-C that report the amount and the date of principal and interest forgiven for claimants who have received *Pigford* debt relief.

USDA has indicated that the agency will follow guidance received from the IRS Office of Chief Counsel regarding the appropriate date of debt relief for federal income tax purposes for each of the ten claimants who will receive an IRS Form 1099-C in early 2010 for debt relief USDA implemented in 2009.<sup>4</sup> For three of these ten claimants, the debt relief USDA implemented in 2009 was in addition to *Pigford* debt relief the

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<sup>4</sup> For some claimants, the date reported on the IRS Form 1099-C will be the date of a reexamination decision or the date an initial decision by the Adjudicator or Arbitrator became final. For other claimants, the date reported on the IRS Form 1099-C will be the date USDA and Class Counsel reached an agreement about the appropriate debt relief to implement in an individual case. For still other claimants, the date reported on the IRS Form 1099-C will be July 11, 2008, the date Monitor Update No. 10 was revised to reflect the parties' agreements regarding certain refunds of payments made on loans subject to *Pigford* debt relief. For more information on the IRS Office of Chief Counsel guidance in this regard, see the Monitor's Third Report on Debt Relief Implementation, at pages 4-7, available at [http://www.pigfordmonitor.org/reports/rpt20090827\\_dr\\_impl.pdf](http://www.pigfordmonitor.org/reports/rpt20090827_dr_impl.pdf).

claimants had received previously. The Monitor, Class Counsel, and USDA have discussed the appropriate amount of principal and interest that should be reported on IRS Forms 1099-C when claimants receive additional debt relief. These claimants have already received at least one IRS Form 1099-C, corresponding to the amount of the principal and interest that was previously forgiven. In accordance with the IRS guidance, USDA's tax reporting for the additional debt relief implemented in 2009 will be based on the individual circumstances of each case.<sup>5</sup>

The guidance USDA received from the IRS Office of Chief Counsel in 2009 clarified a number of questions regarding how USDA should report *Pigford* debt relief. The IRS Office of Chief Counsel advised USDA that if IRS Forms 1099-C had been issued in a manner that was not consistent with the 2009 IRS guidance, USDA should file corrected IRS Forms 1099-C for claimants who received IRS Forms 1099-C within the last three calendar years.<sup>6</sup>

USDA has informed the Monitor that USDA would like to obtain an exemption or variance from the IRS so that USDA would not be required to prepare corrected IRS Forms 1099-C for claimants who received IRS Forms 1099-C for debt relief implemented prior to 2009.<sup>7</sup> Class Counsel has not objected to USDA's inquiries to the IRS regarding a

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<sup>5</sup> For example, one claimant will receive an IRS Form 1099-C, with an effective date of July 11, 2008, reporting only the amount of additional principal and interest debt cancellation that the claimant received.

<sup>6</sup> As part of the process for implementing debt relief, USDA sends an IRS Form 1099-C to the claimant. The same form is filed with the IRS. The IRS calculates the three-year period based on when USDA filed the IRS Form 1099-C. The IRS guidance states, "The general rule is that corrections should be submitted for Forms 1099-C filed within the last three calendar years." The IRS guidance is attached as Appendix 1 to the Monitor's Third Report on Debt Relief Implementation, available at [http://www.pigfordmonitor.org/reports/rpt20090827\\_dr\\_impl.pdf](http://www.pigfordmonitor.org/reports/rpt20090827_dr_impl.pdf).

<sup>7</sup> USDA has previously reported to the Monitor the total number of claimants (Track A and Track B) who have received debt relief each year. According to USDA's prior reports,

possible exemption. Class Counsel has expressed concern that corrected IRS Forms 1099-C may be confusing to claimants who may not have ready access to tax advice regarding the tax implications of a corrected IRS Form 1099-C.

Although USDA is pursuing an exemption from the guidance regarding the need for corrected IRS Forms 1099-C, USDA has agreed that if no exemption is received in calendar year 2010, USDA will review the IRS Forms 1099-C that have been issued within the three-year time frame specified by the IRS guidance and will implement the IRS guidance regarding any corrected IRS Forms 1099-C.

## V. CONCLUSION AND RECOMMENDATIONS

The substantive debt relief review process is well underway and has proven to be an effective tool in ensuring that USDA fully implements *Pigford* debt relief for all prevailing claimants who are entitled to debt relief. USDA reports that it plans to prepare IRS Forms 1099-C in compliance with guidance received from the IRS Office of Chief Counsel for the ten claimants who received *Pigford* debt relief in 2009. More details regarding USDA's implementation of IRS guidance for debt relief implemented in 2009 should be available after the IRS Forms 1099-C are prepared and issued. USDA has inquired about obtaining an exemption to the IRS guidance regarding the need for corrected IRS Forms 1099-C, and the Monitor expects that additional information on this issue will be available in the coming months.

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approximately 40 claimants received *Pigford* debt forgiveness in 2006, approximately 12 claimants received *Pigford* debt forgiveness in 2007, and approximately 26 claimants received *Pigford* debt forgiveness in 2008. See Appendix 4, 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](http://www.pigfordmonitor.org/reports/Rpt20090617_2008.pdf).

The Monitor recommends the Court order the Monitor to report to the Court on or before July 1, 2010, regarding the progress of: (1) the substantive review of USDA's implementation of *Pigford* debt relief; and (2) USDA's implementation of the IRS guidance for issuing IRS Forms 1099-C to claimants who have received debt relief, including the status of USDA's request for an exemption for any corrected IRS Forms 1099-C that may be necessary.

Dated: January 15, 2010.

Respectfully submitted,

s/Randi Ilyse Roth

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Monitor

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