

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 FIFTH REPORT ON DEBT RELIEF IMPLEMENTATION

On January 25, 2010, the Court directed the Monitor to report, on or before July 1, 2010, regarding: (1) the substantive review of the debt relief implemented by the United States Department of Agriculture (USDA) for prevailing claimants who are entitled to *Pigford* debt relief; and (2) the implementation of guidance received from the Internal Revenue Service (IRS) for issuing IRS Forms 1099-C to claimants who receive *Pigford* debt relief. The Monitor submits this report to comply with the Court’s January 25, 2010 Order.

I. PROGRESS ON SUBSTANTIVE DEBT RELIEF REVIEW

USDA, Class Counsel, and the Monitor have made substantial progress in completing the substantive review of the debt relief provided to all prevailing claimants who may be eligible for *Pigford* debt relief.¹ As prior Monitor reports indicated, the parties have identified approximately 2,800 claimants whose claims will be reviewed for appropriate debt relief implementation.

A. Substantive Review Process Is Working Well

Overall, the substantive debt relief review process is working well. Over the past year, USDA routed debt relief files to the Monitor at the rate of approximately 100 files per month.² As of June 1, 2010, USDA had forwarded a total of approximately 1,950 files to the Monitor for review.³ The Monitor has verified that USDA appropriately implemented *Pigford* debt relief in the vast majority of the 1,950 files that have been routed.

As part of the review and verification process, the Monitor prepares a summary for each claimant. This summary describes the claim(s) on which the claimant prevailed, the loan(s) that qualify for *Pigford* debt relief, if any, and the debt relief that USDA has

¹ Prior Monitor reports have described the background and purpose of this review. See, for example, the Monitor's Report on Debt Relief Implementation, filed on March 31, 2009, available at http://www.pigfordmonitor.org/reports/rpt20090331_dr_impl.pdf. The Monitor's most recent prior report was filed on January 15, 2010, and is available at http://www.pigfordmonitor.org/reports/rpt20100115_dr_impl.pdf. All of the Monitor's reports are available on the Monitor's web site at <http://www.pigfordmonitor.org/reports/>.

² Since June of 2009, USDA has routed files at the rate of 100 files per month, with one exception. In March 2010, USDA routed 50 files to the Monitor for review.

³ For some claimants, USDA routes files to the Monitor on more than occasion. For example, USDA provides records more than once when USDA implements additional debt relief or when USDA provides additional records in response to a request by the Monitor for more information on an individual claimant's loan history or debt relief implementation.

implemented, if any. As of June 1, 2010, the Monitor had reviewed the records and completed a debt relief summary for approximately 1,810 claimants.

Despite this significant progress, debt relief review for some claims remains incomplete. Claims remain pending verification for a number of reasons. The three most common reasons are: (1) pending information requests; (2) pending debt relief implementation; and (3) pending research and negotiation concerning potential additional debt relief.

1. Pending Information Requests

In some cases, the Monitor requested additional information from USDA in order to verify that a claimant received the appropriate debt relief. USDA has provided information in response to many of the Monitor's requests. As of June 1, 2010, however, approximately twenty-four information requests remained outstanding. To ensure that the review process is completed, USDA must provide the information necessary to review and verify the debt relief provided in these approximately twenty-four cases. USDA has recently committed to providing responses to the requests for additional information in these cases by July 15, 2010.

2. Pending Debt Relief Implementation

As of June 1, 2010, there were approximately seventy-seven cases in which USDA had identified additional debt relief that should be implemented or in which USDA had agreed to implement additional debt relief identified by Class Counsel or the Monitor, but that implementation was not yet complete. The Monitor has discussed with the parties the need for USDA to implement the agreed-upon debt relief in these approximately seventy-seven claims. USDA has committed to implementing the agreed-upon debt relief for at least ten cases per month beginning with July 2010.

3. Pending Research and/or Negotiations

As of June 1, 2010, there were approximately forty-two cases in which potential additional debt relief has been identified, but the parties have not completed the research and/or the negotiations necessary to reach an agreement regarding additional debt relief. The Monitor has discussed with both parties the need for a timely resolution of the forty-two claims in which additional debt relief may be appropriate. The Monitor has requested that the parties agree to a schedule for resolution of the forty-two unresolved claims in which additional debt relief may be appropriate.

Additional claims will likely be added to the lists of information requests, debt relief implementation, and potential additional debt relief as the substantive debt relief review proceeds.

B. Time Is Pressing

Under the terms of a Stipulation and Order dated January 13, 2010, the Monitor's appointment is set to expire when her duties under the Consent Decree are completed or on June 15, 2011, whichever occurs first.⁴ One of the Monitor's duties is to verify that proper debt relief was granted to those prevailing claimants identified on the "comprehensive list."⁵ For the debt relief review process to be completed, the parties and the Monitor must: (1) resolve all outstanding issues regarding debt relief implementation in the approximately 1,950 files that have been routed to the Monitor for review; and (2)

⁴ See *Pigford v. Vilsack*, Stipulation and Order (D.D.C. Jan 13, 2010), available at http://www.pigfordmonitor.org/orders/20100113_order_ext.pdf.

⁵ The "comprehensive list" is a list of claimants who prevailed on a credit claim and who received farm program loans that may be eligible for *Pigford* debt relief.

complete the review process for the approximately 850 files that have been identified for review but which have not yet been routed to the Monitor.

Completion of these tasks will require focused attention by all parties. To assist the parties in completing the necessary tasks, the Monitor recommends that the Court order the Monitor to report on or before September 15, 2010, on the progress of substantive debt relief review, including: (1) the status of USDA's response to information requests; (2) USDA's implementation of agreed-upon additional debt relief; and (3) the resolution of claims where potential additional debt relief has been identified.

II. PROGRESS ON TAX ISSUES REGARDING DEBT RELIEF

Under federal income tax law, USDA must report *Pigford* debt relief to the IRS. In March 2009, USDA received guidance from the IRS Office of Chief Counsel regarding how to report *Pigford* debt relief on the IRS Forms 1099-C that USDA issues for prevailing claimants who have received *Pigford* debt relief.⁶ According to the IRS guidance, USDA is required to issue an IRS Form 1099-C (also referred to by the IRS as an "information return"), if a claimant has realized discharge of indebtedness income of \$600 or more.⁷

A. "Effective Date" of Debt Relief on IRS Forms 1099-C

The IRS guidance clarified how USDA is to determine the income realization date of *Pigford* debt relief, which USDA uses as the "effective date" when implementing debt

⁶ 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.

⁷ USDA has indicated that since March 2003 the agency's policy has been to report all discharges of debt on IRS Forms 1099-C, regardless of amount.

relief.⁸ USDA has reported to the Monitor and to Class Counsel the debt relief that USDA implemented in 2009 and the effective date for tax purposes that USDA used in reporting that debt relief on Forms 1099-C.⁹ The “effective date” for one claimant was in 2009, the date an agreement was reached regarding the claimant’s debt relief. For other claimants, the “effective date” was July 11, 2008, the date of a Monitor Update publishing the parties’ agreements on certain aspects of debt relief. For still other claimants, the “effective date” was the date the decision in their claim became final in 2007 or 2008.¹⁰

B. Amount of Debt Relief on IRS Forms 1099-C

In addition to the “effective date,” USDA also reports on the IRS Form 1099-C the amount of principal and interest that was written off as a result of *Pigford* debt relief. For many claimants, USDA implements *Pigford* debt relief only once. These claimants receive one IRS Form 1099-C for each loan reporting the total amount of principal and interest USDA wrote off when USDA implemented *Pigford* debt relief.

⁸ According to the IRS guidance, the income realization date of debt relief for tax purposes is the date on which the last event necessary to effectuate a discharge of indebtedness occurred. This date may be: (1) the date an Adjudicator or Arbitrator decision becomes a final decision in the claim; (2) February 7, 2001, the date of a Stipulation and Order regarding debt relief for certain “forward sweep” loans; (3) July 11, 2008, the date when certain agreements between the parties regarding debt relief were published in a revised Monitor Update No. 10, “Debt Relief for Prevailing Class Members”; or (4) the date the parties reach agreement on the appropriate debt relief in an individual case.

⁹ USDA reported that it implemented *Pigford* debt relief for a total of 10 claimants in 2009.

¹⁰ In two cases, USDA did not issue Forms 1099-C based on the IRS guidance that corrected Forms 1099-C are required only for Forms 1099-C that were filed within the last three calendar years. In these two cases, USDA implemented debt relief by writing off loans in 2005. In both cases, USDA would have issued an IRS Form 1099-C in 2006 for the amount of debt relief provided. In 2009, USDA refunded certain offsets, which increased the amount of the write-off for the loans at issue. The debt relief provided in 2009 had the same “effective date” as the debt relief provided in 2005. USDA did not issue corrected Forms 1099-C reporting the additional debt relief provided in 2009 because the original Forms 1099-C, with the same “effective date,” were filed more than three years ago.

For other claimants, USDA provides *Pigford* debt relief on more than one occasion and in more than one calendar year. These claimants may receive more than one IRS Form 1099-C. For example, a claimant who received *Pigford* debt relief in 2007 on an outstanding Operating Loan could receive an IRS Form 1099-C with an effective date in 2007 reporting the amount of principal and interest that USDA wrote off as *Pigford* debt relief in 2007. Later, in 2009, USDA could review the claimant's loan records and determine that the claimant is entitled to additional debt relief on the loan that was forgiven because the claimant made payments after the prevailing Adjudicator decision that should be refunded. The claimant in this case could receive a second IRS Form 1099-C reporting the additional debt relief provided in 2009.¹¹

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 on loans that previously received *Pigford* debt relief. USDA had used a system in which the cumulative total amount of *Pigford* debt relief for those loans could be reported on the new IRS Form 1099.¹² Reporting the cumulative total on the new Form 1099-C could inaccurately report the claimant's debt relief for tax reporting

¹¹ The second IRS Form 1099-C could be a correction to a previous Form 1099-C or it could be a Form 1099-C reporting a separate taxable event. The 2009 IRS guidance advised USDA to report the amount of additional debt relief using the "effective date" of the additional debt relief. If the additional debt relief has the same "effective date" for tax purposes as the initial debt relief (in 2007, for example), USDA will issue a corrected Form 1099-C using the 2007 effective date. If the additional debt relief has a different "effective date" than the initial debt relief (an agreement of the parties in 2009, for example), USDA will issue a Form 1099-C for the additional debt relief using the effective date that applies to that additional relief.

¹² This issue arose because USDA implemented debt relief in its computer system, the Program Loan Accounting System (PLAS), by reversing the previously granted relief and cancelling the debt with a new effective date. USDA informed the Monitor that PLAS automatically generates a Form 1099-C report reflecting the amount and effective date of the debt cancellation entry. This process could generate an IRS Form 1099-C that reported more than the amount of additional debt relief provided in the year in question.

purposes, because a portion of the relief was already reported in an earlier Form 1099-C.¹³ After research and discussion about this potential problem, USDA has agreed that any IRS Forms 1099-C issued for additional *Pigford* debt relief on loans that previously received debt relief will report only the additional amount of debt cancellation.¹⁴

Given the number of claimants who have received or who may receive additional debt relief as a result of the substantive debt relief review process, the Monitor recommends that the Court order the Monitor to report on or before September 15, 2010, concerning the steps USDA has taken to ensure that the appropriate amount of debt relief is reported on any IRS Forms 1099-C that are issued for additional *Pigford* debt relief.

C. Corrected IRS Forms 1099-C

The Monitor, Class Counsel, and USDA have discussed and resolved most of the issues identified above concerning USDA's implementation of the March 2009 IRS guidance. One remaining outstanding issue is whether USDA must review and correct any IRS Forms 1099-C that the agency issued prior to receiving the March 2009 IRS guidance. 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 March 2009 IRS guidance, USDA should file corrected IRS Forms 1099-C for claimants whose IRS Forms 1099-C

¹³ This creates tax reporting problems when the effective date of the additional debt relief is different than the original debt relief. It is not an issue when the additional debt relief has the same effective date as the original debt relief.

¹⁴ In one case, for example, USDA implemented debt relief on a loan in 2001 and issued a Form 1099-C for the amount of principal and interest that was written off in 2001. In 2009, after further review, USDA wrote off an additional amount due to a refund of payments the claimant had made after the prevailing Adjudicator decision. The effective date of the additional debt relief was July 11, 2008. USDA agreed to issue a second Form 1099-C reporting only the additional amount of debt cancellation with an effective date of July 11, 2008, not the cumulative total written off for the loan.

were filed within the last three calendar years.¹⁵ USDA has sought from the IRS an exemption or variance from this aspect of the IRS guidance. Class Counsel is not opposed to the request for the exemption or variance.

USDA reports that its request for a variance remains under consideration by the IRS. USDA has agreed that if no exemption is received, in 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 that may be necessary.

Given the time that may be required to research and correct any previously issued IRS Forms 1099-C,¹⁶ the Monitor recommends that the Court order the Monitor to report, on or before September 15, 2010, concerning the status of USDA's request for a variance and USDA's plans for implementing the IRS guidance if USDA's request for a variance is not granted in 2010.

III. CONCLUSION AND RECOMMENDATIONS

The Monitor recommends the Court order the Monitor to report to the Court on or before September 15, 2010, regarding the progress of:

1. The substantive review of USDA's implementation of *Pigford* debt relief, including: (a) the status of pending information requests; (b) USDA's implementation of

¹⁵ 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.

¹⁶ The Monitor and the parties have not yet determined the number of corrected IRS Forms 1099-C that may be required.

the agreed-upon additional debt relief; and (c) the resolution of claims where potential additional debt relief has been identified; and

2. USDA's implementation of the March 2009 IRS guidance for issuing IRS Forms 1099-C to claimants who have received *Pigford* debt relief, including: (a) the steps USDA has taken to ensure that the appropriate amount of debt relief is reported on any IRS Forms 1099-C that are issued for additional *Pigford* debt relief; (b) the status of USDA's request for a variance from the guidance regarding corrected IRS Forms 1099-C; and (c) USDA's plans for implementing the IRS guidance if USDA's request for a variance is not granted before the end of this calendar year.

Dated: July 1, 2010.

Respectfully submitted,

s/Randi Ilyse Roth

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