

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.)	
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CECIL BREWINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
TOM VILSACK, Secretary,)	
United States Department)	
of Agriculture,)	
)	
Defendant.)	
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MONITOR'S SIXTH REPORT ON DEBT RELIEF IMPLEMENTATION

On July 28, 2010, the Court directed the Monitor to report, on or before September 15, 2010, regarding: (1) the substantive review of the United States Department of Agriculture's (USDA's) implementation of *Pigford* debt relief; and (2) USDA's 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 July 28, 2010 Order.

I. SUBSTANTIVE DEBT RELIEF REVIEW

Prior Monitor reports have described the substantive review that USDA, Class Counsel, and the Monitor have been conducting to ensure the appropriate implementation of *Pigford* debt relief for prevailing claimants who may be eligible for *Pigford* debt relief.¹ The Court's July 28, 2010 Order directed the Monitor to report on: (1) the status of USDA's response to pending information requests necessary to complete the debt relief review process; (2) the resolution of claims where potential additional debt relief has been identified; and (3) USDA's implementation of agreed-upon additional debt relief. The parties and the Monitor have made progress in addressing each of these matters.

A. Information Requests

In order to review and verify that USDA has implemented debt relief appropriately, the Monitor must have access to borrower records for each claim. Generally, USDA provides the necessary records when USDA forwards a claimant's loan records for review. In some cases, the Monitor has requested additional information concerning a claimant's loan history or the interpretation of particular entries in USDA's loan records. In the Monitor's July 1, 2010 report, the Monitor indicated that approximately twenty-four of the Monitor's requests for information remained pending with USDA.

Since July 1, 2010, USDA has provided information in response to each of the twenty-four pending requests. For several claims, the additional information provided by

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 on debt relief implementation was filed on July 1, 2010, and is available at http://www.pigfordmonitor.org/reports/rpt20100701_dr_impl.pdf.

USDA resolved the Monitor's questions. For other claims, questions remain regarding the claimant's debt relief.²

Since July 1, 2010, the Monitor has made additional requests for information from USDA. As of August 31, 2010, approximately fifteen information requests were pending.³ It is likely that still other requests will be made as USDA routes additional loan records to the Monitor for review.⁴ USDA's timely response to requests for information is necessary if the debt relief review process is to be completed before the end of the Monitor's appointment.⁵

B. Resolution of Claims Pending Potential Additional Debt Relief

A second category of pending claims involves claimants who may qualify for additional debt relief. As of August 31, 2010, there were approximately thirty-nine claims in which potential additional debt relief had been identified, but the parties had not completed the research and/or the negotiations necessary to reach an agreement regarding the claimant's debt relief. The parties have agreed to complete the research and

² In some cases, questions remain regarding a claimant's loan history. In one case, for example, USDA has requested an audit of a claimant's archived loan records and the audit is not yet complete. USDA has indicated that the results of the audit will be forwarded when the information becomes available. In other cases, questions remain because the additional information provided by USDA suggests that the claimant may be entitled to additional debt relief.

³ Most of these information requests are relatively new. With one exception, all outstanding requests were made within the last six months.

⁴ Approximately 2,800 claimants have been identified for the *Pigford* debt relief review process. As of August 31, 2010, USDA had routed loan records for approximately 2,250 claimants to the Monitor for debt relief review. For some claimants, USDA routes loan records to the Monitor on more than one occasion, such as when USDA implements additional debt relief or provides additional information in response to a request by the Monitor. The parties and the Monitor have projected that USDA will continue to route records for approximately 100 claimants per month through March 31, 2011.

⁵ 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. The January 13, 2010 Stipulation and Order is available on the Monitor's web site at http://www.pigfordmonitor.org/orders/20100113_order_ext.pdf.

negotiation process for five unresolved cases per month. The parties and the Monitor plan to regularly assess the schedule for resolving potential additional debt relief cases to determine if the schedule should be adjusted.

C. Implementation of Additional Debt Relief

A third category of pending cases involves claims in which USDA has indicated that additional debt relief will be implemented.⁶ In the Monitor's July 1, 2010 report, the Monitor reported that USDA had committed to implementing additional debt relief for ten cases per month. USDA has informed the Monitor that USDA met this commitment in July and August 2010. As of August 31, 2010, there were approximately seventy-two claims pending the implementation of additional debt relief.⁷ It is likely that more cases will be added to the list of cases for implementation as the review process continues. The parties and the Monitor plan to regularly assess USDA's implementation of debt relief to determine if the rate of implementation is sufficient to complete the debt relief review process before the end of the Monitor's appointment.

D. Reaching Closure

Since 2008, the Monitor has worked with the parties, as ordered by the Court, to review the *Pigford* debt relief implemented by USDA for prevailing claimants who are entitled to *Pigford* debt relief. The parties' review of *Pigford* debt relief has been based on frequent, detailed negotiations and an atmosphere of tremendous good faith. The parties

⁶ Prior to routing records to the Monitor and Class Counsel, USDA reviews the loan records and debt relief USDA has provided to each claimant. In some cases, USDA identifies additional debt relief that should be implemented. In other cases, Class Counsel or the Monitor identifies potential additional debt relief, and, after review, USDA agrees that the additional debt relief is appropriate.

⁷ These seventy-two claims may include claims in which USDA has recently implemented additional debt relief. The number of claims pending implementation is adjusted after USDA confirms to the Monitor and Class Counsel that USDA has implemented the additional debt relief.

have engaged in a process of research and negotiation when the debt relief in a particular case is contested. Class Counsel and USDA have worked together to resolve numerous contested cases. After the parties resolve a contested case, USDA implements any agreed-upon debt relief and forwards loan records verifying that implementation to the Monitor. The summary issued at the conclusion of this process describes the debt relief that was agreed to by the parties and deemed appropriate by the Monitor and that was implemented by USDA.

As of August 31, 2010, the Monitor issued debt relief summaries in approximately 2,125 cases. The vast majority of these cases have not been contested cases. The debt relief in these cases, therefore, has not been the subject of a negotiated agreement between the parties. Instead, in these cases, USDA generally routes loan records after USDA has reviewed a claim and believes that the appropriate debt relief has been implemented or that no debt relief is appropriate.⁸ After loan records are routed by USDA, the Monitor reviews the loan records provided and issues a summary if the result for the particular claimant appears correct to the Monitor's office.

Recently, Class Counsel raised issues regarding the appropriate debt relief in three previously uncontested cases, after the Monitor issued debt relief summaries in these cases. The parties are working to resolve these three cases. The parties have also begun to discuss how the substantive debt relief review process could reach closure in individual

⁸ There are many reasons why claimants may not receive any *Pigford* debt relief. Some claimants have received qualifying loans that were fully repaid or resolved through debt settlement prior to the prevailing Adjudicator or Arbitrator decision, and no offsets were taken by USDA that qualify for refund. Other claimants have outstanding debt on farm program loans that do not qualify for *Pigford* debt relief because, for example, the loans originated prior to the earliest prevailing claim year or were incurred in a different loan program than the loan program that was the subject of the prevailing claim.

cases. The parties and the Monitor are working to develop procedures to address the issue of closure and to address the issue of when the substantive debt relief review process would be considered complete.

II. DEBT RELIEF TAX ISSUES

Federal income tax law requires USDA to report the date and the amount of *Pigford* debt relief to the IRS as cancellation of debt income. In March 2009, USDA received guidance from the IRS Office of Chief Counsel on how to appropriately report *Pigford* debt relief on IRS Forms 1099-C.⁹ The Court's July 28, 2010 Order directed the Monitor to report on: (1) the steps USDA has taken to ensure the appropriate amount of debt relief is reported on IRS Forms 1099-C that are issued for additional *Pigford* debt relief; (2) the status of USDA's request for a variance from the guidance regarding corrected IRS Forms 1099-C; and (3) USDA's plans for implementing the IRS guidance if USDA's request for a variance is not granted before the end of the calendar year. The Monitor reports on each of these matters below.

A. IRS Forms 1099-C for *Pigford* Debt Relief

To meet its reporting obligations under federal income tax law, USDA files an IRS Form 1099-C for *Pigford* debt relief.¹⁰ USDA's computer system, the Program Loan Accounting System (PLAS), generates an IRS Form 1099-C for each loan that receives *Pigford* debt relief. Ordinarily, a claimant who receives *Pigford* debt relief will receive

⁹ 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. On August 27, 2009, the Monitor issued Monitor Update No. 16, Federal Income Tax and Debt Relief, which generally explains the federal income tax rules that may apply to *Pigford* debt relief. Monitor Update No. 16 is available on the Monitor's web site at <http://www.pigfordmonitor.org/updates/update16.pdf>.

¹⁰ A sample IRS Form 1099-C is attached to this report as Appendix 1.

one IRS Form 1099-C for each loan that is cancelled. The IRS Form 1099-C reports the date of debt relief and the amount of debt cancelled. The March 2009 IRS guidance clarified, for federal income tax purposes, both the date on which income from *Pigford* debt relief is realized and the amount of *Pigford* debt relief that should be reported on Forms 1099-C. When USDA implements debt relief in its computer system, USDA must input information consistent with the IRS guidance in order for the IRS Forms 1099-C generated by USDA to report *Pigford* debt relief accurately for federal income tax purposes.

1. Date of Debt Relief on IRS Forms 1099-C

The IRS Form 1099-C contains a box for the date a debt is cancelled. According to the IRS, the date that should be reported in this box is the “income realization” date. The income realization date of debt relief is the date on which the last event necessary to effectuate a discharge of indebtedness occurs. This date may be: (1) the date an Adjudicator or Arbitrator decision becomes a final decision in the claim; (2) February 7, 2001, which is the date of a Stipulation and Order regarding debt relief for certain “forward sweep” loans; (3) July 11, 2008, which is 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 reached agreement on the appropriate debt relief in an individual case.

Ordinarily, when USDA implements debt relief, USDA enters an “effective date” in its computer system for each debt that is cancelled. That “effective date” is then printed in box 1, the “Date canceled” box on the IRS Form 1099-C that USDA issues to report the

debt cancellation.¹¹ In order to comply with the IRS guidance, therefore, the “effective date” USDA enters in its computer system for the loan cancellation must correspond with the IRS guidance on the “income realization” date for federal income tax purposes.

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

The IRS Form 1099-C also contains boxes for reporting the amount of debt cancellation. For federal tax purposes, the amount of debt relief a claimant receives is called the amount of debt cancellation income. The IRS Form 1099-C reports the amount of debt cancellation (both principal and interest) in box 2. The amount of interest included in the amount of debt cancellation is reported in box 3.¹² When USDA cancels a loan, USDA’s computer system calculates the amount of interest through the “effective date” USDA enters to cancel the debt. USDA’s computer system generates a Form 1099-C that reports this amount of interest, the amount of debt written off (both principal and interest), and the “effective date” USDA entered in its computer system.

B. IRS Forms 1099-C for Additional Debt Relief

For some claimants, USDA implements *Pigford* debt relief on more than one occasion. These claimants may realize debt cancellation income for federal tax purposes in more than one tax year. When USDA provides additional debt relief on a loan that has previously received *Pigford* debt relief, USDA generally will issue an additional IRS Form 1099-C.

¹¹ For example, if USDA implemented debt relief using an effective date of March 5, 2008, USDA’s computer system would generate an IRS Form 1099-C reporting the date of March 5, 2008 in box 1, the “Date canceled” box on the Form 1099-C. See the sample IRS Form 1099-C, attached as Appendix 1.

¹² See the sample IRS Form 1099-C, attached as Appendix 1.

In some cases, the income realization date of the additional debt relief is different than the income realization date of the initial debt relief.¹³ In the past, USDA implemented additional debt relief by reversing the initial relief and cancelling the entire debt with one “effective date.” The Form 1099-C that was generated using this implementation process reported a cumulative total amount of debt relief, not just the additional amount of debt relief. For those claimants whose additional debt relief had a different “income realization” date than the initial debt relief, this process resulted in Forms 1099-C that did not report the amount of debt cancellation in accordance with the 2009 IRS guidance. USDA has agreed to file corrected Forms 1099-C for these claimants, as needed. USDA has also adjusted how it implements additional debt relief in these cases so that claimants will receive an IRS Form 1099-C that accurately reports both the income realization date and the amount of additional debt relief. The Monitor will continue to work with the parties to ensure that USDA correctly reports the amount of additional debt relief on IRS Forms 1099-C filed for claimants who receive additional debt relief.

C. IRS Guidance on Corrected IRS Forms 1099-C

The IRS Office of Chief Counsel advised USDA that if Forms 1099-C reporting *Pigford* debt relief were filed in a manner that was inconsistent with the 2009 IRS guidance, corrections should be filed for Forms 1099-C filed within the last three calendar

¹³ For example, a claimant may receive initial debt relief on an outstanding Operating Loan in 1999. Later, the claimant may receive additional debt relief on the same loan when USDA refunds certain payments the claimant made on the loan after a final decision was made on the claim but prior to the implementation of the claimant’s debt relief. The additional debt relief may have an income realization date in 2008, the date of a revised Monitor Update setting forth the parties’ agreements on the refund of the payments.

years.¹⁴ USDA sought an exemption or variance from this aspect of the IRS guidance but, as of August 2010, USDA had not yet received a substantive response to its request.

Accordingly, USDA, Class Counsel, and the Monitor agreed to undertake steps to identify those claims in which corrected Forms 1099-C may be required to comply with the IRS guidance.

D. Claims That May Require Corrected IRS Forms 1099-C

The Monitor has worked with the parties to identify those claims for which the IRS guidance requires corrections to IRS Forms 1099-C. According to the IRS guidance, if IRS Forms 1099-C reporting the discharges of indebtedness were filed incorrectly in 2007, 2008, or 2009 (the three preceding calendar years), corrections should be submitted. USDA ordinarily would have filed IRS Forms 1099-C in the three preceding calendar years for claimants who received debt relief implemented by USDA in calendar years 2006, 2007, and 2008.

Based on the loan records and information provided by USDA to date, the Monitor has identified approximately 125 claimants who may have had IRS Forms 1099-C filed for *Pigford* debt relief within the IRS' three-year guideline for corrections.¹⁵ USDA had

¹⁴ The IRS guidance states, "The general rule is that corrections should be submitted for Forms 1099-C filed within the last three calendar years. . . . If Forms 1099-C reporting the discharges of indebtedness were filed incorrectly by the USDA, corrections should be submitted for returns filed within the last three calendar years." IRS Office of Chief Counsel Memorandum, page 10 (citation omitted). 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.

¹⁵ The Monitor identified 47 claimants who may have received *Pigford* debt relief implemented in 2006, 17 claimants who may have received *Pigford* debt relief implemented in 2007, and 52 claimants who may have received *Pigford* debt relief implemented in 2008. The Monitor has also identified nine claimants who received *Pigford* debt relief implemented in 2009 and who received IRS Forms 1099-C filed in 2010 reporting debt cancellation income. Some claimants received *Pigford* debt relief in more than one of these years.

previously routed loan records reflecting the debt relief provided for most of these claims.¹⁶ The loan records reflect the effective date(s) and amount(s) of debt cancellation income that USDA's computer system ordinarily would have reported on IRS Forms 1099-C. The parties and the Monitor have established a process for reviewing the relevant loan records for each of the potentially affected claimants to assess whether corrected IRS Forms 1099-C may be required.

For most of the claimants who received IRS Forms 1099-C within the IRS' three-year guideline for corrections, the effective date used in USDA's computer system to implement debt relief is consistent with the date the IRS guidance identifies as the income realization date for federal income tax reporting purposes. For some claimants, however, it appears from loan records that corrections may be required to report the accurate income realization date and/or the accurate amount of *Pigford* debt relief.¹⁷

USDA has agreed to take steps to issue corrected IRS Forms 1099-C for those cases in which it is determined that a corrected IRS Form 1099-C is required. USDA has further agreed to inform Class Counsel of the timing of USDA's issuance of the corrected IRS Forms 1099-C, so Class Counsel can notify affected claimants who may be receiving corrected IRS Forms 1099-C. Because there are very complicated rules regarding how debt cancellation affects taxes that may be owed by a claimant, the Monitor has generally

¹⁶ As of August 31, 2010, the Monitor had received loan records for all but nine of the identified claimants.

¹⁷ Because USDA's computer system calculates interest through the effective date, changing the "effective date" may change the amount of interest cancelled, which may also change the amount of debt cancellation.

advised claimants to consult a tax expert concerning their individual federal income tax situation.¹⁸

III. TASKS REMAINING

The parties have continued to make substantial progress on the tasks necessary to complete the debt relief review process. USDA has responded to pending requests for information, the parties have established a schedule for reaching agreement on cases in which additional debt relief may be appropriate, USDA has indicated that additional debt relief will be implemented for at least ten claimants each month, and the parties are working with the Monitor to address the issue of closure and completion of the substantive debt relief review process. Progress has also been made in addressing the tax issues related to USDA's implementation of debt relief, including the issuance of IRS Forms 1099-C and the identification of cases in which corrected IRS Forms 1099-C may be required.

Although substantial progress has been made, a number of outstanding tasks must be accomplished in a timely way for the debt relief review process to be completed prior to June 15, 2011, the date the Monitor's appointment is set to expire. First, USDA must complete the routing of loan records and must provide all of the information necessary to permit the Monitor and Class Counsel to review the *Pigford* debt relief that is appropriate in each case. Second, USDA and Class Counsel must work together to resolve all

¹⁸ The extent to which *Pigford* debt relief is taxable income can vary greatly from claimant to claimant, and the tax rules can be complicated. For example, it is possible that only cancellation of the principal part of the debt is considered income by the IRS. It is also possible that 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 insolvent. The Monitor has advised claimants to seek expert advice regarding the federal income tax implications of *Pigford* debt relief. See generally Monitor Update No. 16, Federal Income Tax and Debt Relief, available on the Monitor's web site at <http://www.pigfordmonitor.org/updates/update16.pdf>.

outstanding cases in which additional *Pigford* debt relief may be appropriate. Third, USDA must complete the implementation of all appropriate *Pigford* debt relief and must forward records to permit the Monitor and Class Counsel to verify the implementation. Fourth, the parties must develop procedures to address the issue of closure in the debt relief review process. Finally, USDA must complete its obligations to comply with the IRS guidance for issuing IRS Forms 1099-C for *Pigford* debt relief, including the IRS guidance regarding any corrected IRS Forms 1099-C that may be required. Completion of these tasks by June 15, 2011, will require focused and sustained effort by all parties.

IV. RECOMMENDATIONS

The Monitor recommends the Court order the Monitor to report on or before January 28, 2011, regarding: (1) the tasks remaining to complete the substantive debt relief implementation, review, and verification process; (2) the tasks remaining to implement the 2009 IRS guidance regarding IRS Forms 1099-C for *Pigford* debt relief, including any corrected IRS Forms 1099-C that may be required; and (3) the projected timeline for the completion of all of the tasks necessary to ensure that *Pigford* debt relief has been appropriately implemented for prevailing claimants who are entitled to *Pigford* debt relief.

Dated: September 14, 2010.

Respectfully submitted,

s/Randi Ilyse Roth

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Monitor

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APPENDIX 1

CORRECTED (if checked)

CREDITOR'S name, street address, city, state, ZIP code, and telephone no.		1 Date canceled	OMB No. 1545-1424 2010 Form 1099-C	Cancellation of Debt
		2 Amount of debt canceled \$		
		3 Interest if included in box 2 \$		
CREDITOR'S federal identification number	DEBTOR'S identification number	4 Debt description		Copy B For Debtor This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
DEBTOR'S name				
Street address (including apt. no.)		5 Was borrower personally liable for repayment of the debt? <input type="checkbox"/> Yes <input type="checkbox"/> No		
City, state, and ZIP code				
Account number (see instructions)	6 Bankruptcy (if checked) <input type="checkbox"/>	7 Fair market value of property \$		

Form **1099-C**

(keep for your records)

Department of the Treasury - Internal Revenue Service

SAMPLE