

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 SEVENTH REPORT ON DEBT RELIEF IMPLEMENTATION

On September 30, 2010, the Court directed 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 guidance from the Internal Revenue Service (IRS) 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. On January 26, 2011, the Court issued a Minute Order extending the deadline for the Monitor's report. The Court's January 26, 2011 Order required the Monitor to report to the Court on or before February 15, 2011. The Monitor submits this report to comply with the Court's September 30, 2010 and January 26, 2011 Orders.

I. SUBSTANTIVE DEBT RELIEF REVIEW

USDA, Class Counsel, and the Monitor have made substantial progress in the substantive review of the implementation of *Pigford* debt relief.¹ In general, the process includes a review of claimants' loan records by USDA, Class Counsel, and the Monitor, and a summary prepared by the Monitor of the debt relief, if any, implemented by USDA in each case.

A. Number of Claims Reviewed

In September 2010, the parties reached agreement on a process and certain timeframes for Class Counsel to raise objections to the debt relief implemented by USDA after a Monitor summary has been issued in an individual case. On December 31, 2010, the timeframe for objection expired for approximately 2,125 of the approximately 2,880 claims currently identified for review.²

¹ Prior Monitor reports have described the background and purpose of this review. The Monitor's prior reports are available at <http://www.pigfordmonitor.org/reports/>.

² The timeframes for Class Counsel's review and objection to the debt relief implemented by USDA are discussed more fully below.

Table 1 sets forth the status of the claims under review as of the end of 2010.

<i>Table 1: Pigford Debt Relief Review</i>	
Statistical Report as of:	December 31, 2010
A. Approximate Number of Claims Identified for Debt Relief Review	2,880 ³
B. Approximate Number of Claims Identified for Debt Relief Review in Which Debt Relief Summaries Have Been Issued by the Monitor	2,535
C. Approximate Number of Claims in Which Class Counsel's Time to Object to Monitor Debt Relief Summaries Has Expired	2,125

Completion of the debt relief review process does not preclude a claimant from taking other action the claimant may deem appropriate to enforce his or her rights under the Consent Decree.⁴

B. Debt Relief Resulting From Substantive Review Process

A number of claimants have received initial or additional *Pigford* debt relief as a result of the substantive debt relief review process. This debt relief may include refunds of payments made on loans subject to *Pigford* debt relief, refunds of offsets taken by the government and applied to loans subject to *Pigford* debt relief, and forgiveness of principal and/or interest on loans subject to *Pigford* debt relief. In some cases, payments or offsets on *Pigford* loans are reversed and reapplied to repay other USDA loans that do not qualify for *Pigford* debt relief.

³ In prior reports, the Monitor indicated that USDA had identified approximately 2,800 claims for review. It is possible that additional claims may be identified as the review process continues.

⁴ See, e.g., Consent Decree, ¶ 13 (describing process for bringing alleged violations of the Consent Decree to the attention of the Court).

Table 2 sets forth the debt relief USDA has implemented as a result of the substantive review process as of December 31, 2010.

<i>Table 2: Pigford Debt Relief – Results of Review Process</i>	
Statistical Report as of:	December 31, 2010
A. Number of Claimants Who Have Received Debt Relief	88
B. Amount of Payments Refunded to Claimants	\$1,196,522.69
C. Amount of Payments Reversed and Reapplied to Non-Pigford Loans	\$30,303.77
D. Amount of Offsets Refunded to Claimants	\$418,236.21
E. Amount of Offsets Reversed and Reapplied to Non-Pigford Loans	\$17,641.91
F. Amount of Loan Forgiveness (Principal and Interest)	\$3,446,907.14

C. Tasks Remaining

To complete the substantive debt relief review for all prevailing claimants who may be entitled to *Pigford* debt relief, the parties and the Monitor must finish the tasks needed to: (1) review and resolve claimants’ entitlement to debt relief; and (2) review and verify USDA’s implementation of the appropriate debt relief.

1. Review and Resolve Claimants’ Entitlement to Debt Relief

Review of claimants’ loan records is ongoing.⁵ The remaining tasks regarding claimants’ entitlement to *Pigford* debt relief generally relate to three groups of claimants. The three groups are: (a) those for whom USDA implementation of debt relief is pending; (b) those for whom the parties need to resolve the question of the appropriate debt relief;

⁵ As of December 31, 2010, USDA had routed loan records for approximately twenty-one cases regarding which the Monitor had not completed her review.

and (c) those for whom loan records have not been routed for review. The tasks remaining for these three groups are outlined more fully below.

a. Pending Implementation

USDA must complete the implementation of debt relief in all pending cases in which claimants are entitled to *Pigford* debt relief. As of January 31, 2011, there were approximately fifty-five cases pending USDA's implementation of *Pigford* debt relief. In the past several months, USDA's Finance Office has implemented debt relief in approximately ten cases per month. There will likely be more cases that need implementation as the claims in other pending groups are reviewed and resolved. Beginning in March 2011, USDA will increase the rate of implementation to fifteen cases per month to shorten the timeframe required for completion of the implementation process.

b. Issues Identified, Agreement Not Yet Reached

As of January 31, 2011, approximately thirty-three cases had been identified in which it is possible the claimant is entitled to debt relief, but no agreement had been reached between the parties.⁶ The parties must complete the review of these cases and attempt to resolve the question of what debt relief is appropriate. Assuming the parties and the Monitor are able to resolve five cases per month, the efforts to resolve contested cases will continue through at least June 2011. If the parties agree that a claimant qualifies for debt relief, more time will be needed for USDA's Finance Office to implement the relief.

⁶ This number includes cases in which USDA has not yet stated a position, cases in which USDA has stated a position but no agreement has been reached with Class Counsel, and cases in which additional information may be necessary to reach an agreement between the parties.

c. Loan Records Not Yet Routed

As of January 31, 2011, USDA had yet to route records for approximately 125 claims. USDA's review and routing of loan records must be completed for all claimants whose cases have been identified for review. USDA has informed the Monitor and Class Counsel that debt relief will be implemented in at least some of the cases that have not yet been routed. USDA plans to route the loan records of these claimants after the debt relief has been implemented. Given USDA's current implementation projections, it is possible that USDA's routing of initial records will not be completed until on or after June 2011.

Table 3 summarizes the three groups of claimants whose claims remain pending debt relief review and implementation.

Group	Approximate Number of Claimants in this Group as of January 31, 2011
A. Pending Implementation. USDA has identified debt relief that needs to be implemented or the parties have agreed on specific debt relief to be implemented. The USDA Finance Office needs to implement the relief.	55
B. Issues Identified, Agreement Not Yet Reached. Issues have been identified that need to be resolved regarding the appropriate debt relief. These claims need to be scheduled for resolution.	33
C. Loan Records Not Routed Yet. USDA has not yet routed records to the Monitor and Class Counsel for review. USDA needs to complete its review of the loan records before routing them to the Monitor and Class Counsel.	125

2. Verification and Closure

To complete the debt relief review and verification process, Class Counsel and the Monitor must each have the opportunity to review and verify USDA's debt relief

implementation and propose any corrections to the debt relief that may be appropriate. In September 2010, the parties agreed to deadlines that will lead to closure of Class Counsel and Monitor review. The details of the parties' agreement are described below.

a. Monitor Summaries Issued Prior to September 4, 2010

After the Monitor's Office has reviewed a claimant's loan records, the Monitor prepares a summary of the debt relief, if any, which was implemented by USDA. For those claims in which a Monitor summary was issued prior to September 4, 2010, the parties agreed that Class Counsel would have until December 31, 2010, to raise an objection to the debt relief implemented by USDA or to request that debt relief be implemented. As of December 31, 2010, the parties had discussed issues regarding the debt relief implemented by USDA in a small number of the 2,175 cases in which the Monitor had issued summaries prior to September 4, 2010. The parties' review of the appropriate debt relief for all other claims in which a Monitor summary had been issued prior to September 4, 2010, is now complete.⁷

b. Monitor Summaries Issued After September 4, 2010

For Monitor summaries issued after September 4, 2010, the parties agreed that the Monitor will issue a summary that is marked "DRAFT." After the agreed-upon timeframe, if no objection has been raised that remains unresolved, the Monitor will issue a final summary. The debt relief review process will be concluded when the final summary is issued. Table 4 sets forth the timeframes the parties have agreed will apply to Class

⁷ As indicated above, completion of the debt relief review process does not preclude a claimant from taking other action the claimant may deem appropriate to enforce his or her rights under the Consent Decree.

Counsel's review of claims for which draft Monitor summaries are issued after September 4, 2010.

<i>Table 4: Timeframes for Class Counsel Review</i>	
Date of Draft Monitor Debt Relief Summary	Deadline for Class Counsel Objection Prior to Final Monitor Summary
A. September 4, 2010 - October 31, 2010	January 31, 2011
B. November 1, 2010 - December 31, 2010	February 28, 2011
C. January 1, 2011 - February 28, 2011	March 31, 2011
D. March 1, 2011 - March 31, 2011	April 30, 2011

The parties have not yet reached agreement on a schedule for Class Counsel review of the claims in which draft Monitor summaries will be issued after March 31, 2011.

II. DEBT RELIEF TAX ISSUES

USDA's computer system, the Program Loan Accounting System (PLAS), generates an IRS Form 1099-C for each loan that receives *Pigford* debt relief. In March 2009, USDA received guidance from the IRS Office of Chief Counsel on how to report the amount of debt cancellation income and the income realization date of *Pigford* debt relief for federal income tax purposes.⁸ The Court's September 30, 2010 Order directed the Monitor to report on the tasks remaining to implement the 2009 IRS guidance, including any corrected IRS Forms 1099-C that may be required.

⁸ For a general explanation of the federal income tax rules that may apply to *Pigford* debt relief, see Monitor Update No. 16, Federal Income Tax and Debt Relief, available at <http://www.pigfordmonitor.org/updates/update16.pdf>. For a more detailed description of the information that must be reported on a Form 1099-C, including the "income realization" date of *Pigford* debt relief, see pages 6-9 of the Monitor's Sixth Report on Debt Relief Implementation, available at http://www.pigfordmonitor.org/reports/rpt20100914_dr_impl.pdf.

A. Claims Requiring Corrected IRS Forms 1099-C

The IRS Office of Chief Counsel advised USDA to file a corrected Form 1099-C for certain claimants. According to the IRS, the general rule is that a corrected Form 1099-C should be submitted if a Form 1099-C filed within the last three calendar years reported an amount or realization date for *Pigford* debt relief that was inconsistent with the IRS March 2009 guidance.⁹

The Monitor and the parties worked together to review the loan records and debt relief provided to claimants for whom USDA implemented debt relief in the three calendar years preceding the 2009 IRS guidance. For nineteen of these claimants, the parties determined that USDA used a date to cancel a *Pigford* loan in its computer system that was inconsistent with the IRS guidance on the “income realization date” for federal income tax purposes. To generate a corrected Form 1099-C for each of these nineteen claimants, USDA reprocessed the claimants’ debt relief in its computer system using a date that the parties agreed was consistent with the IRS guidance. USDA has indicated that each of the nineteen claimants will receive one or more corrected IRS Forms 1099-C. USDA has provided the Monitor with loan records for all nineteen claimants, indicating the date and amount of debt relief that USDA’s computer system would report on a corrected Form 1099-C. The Monitor has reviewed USDA’s records and has issued a summary reflecting the claimant’s corrected *Pigford* debt relief in all nineteen claims.

⁹ 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.” 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.

B. Remaining Tasks

The parties and the Monitor will continue to consult on an ongoing basis regarding the application of the 2009 IRS guidance in individual cases. The Monitor is aware of no claims other than the nineteen described above that require USDA to reprocess debt relief or to file corrected Forms 1099-C to comply with the IRS guidance. Class Counsel is working with individual claimants and with the IRS National Taxpayer Advocate Service to assist claimants who receive corrected Forms 1099-C for *Pigford* debt relief.¹⁰ The parties and the Monitor are in discussions about what, if any, additional steps are necessary to comply with the IRS guidance.¹¹

III. TIMELINE FOR COMPLETION OF *PIGFORD* DEBT RELIEF REVIEW

The parties and the Monitor have agreed on the tasks remaining to conclude the debt relief implementation, review, and verification process. The parties and the Monitor have had numerous discussions about the pace of USDA's implementation of debt relief, the pace of the parties' review of cases in which claimants may be entitled to debt relief, and the timeline within which all tasks can reasonably be accomplished in order to ensure

¹⁰ The extent to which *Pigford* debt relief is taxable income can vary greatly from claimant to claimant, and the tax rules can be complicated. 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 at <http://www.pigfordmonitor.org/updates/update16.pdf>.

¹¹ In addition to working with the parties on compliance with the March 2009 IRS guidance, the Facilitator and the Monitor are working with the parties and the IRS on the timing of tax deposits for Track A claimants who receive *Pigford* debt relief. Track A claimants are entitled to a tax relief payment equal to 25 percent of the principal amount of *Pigford* loan forgiveness. The tax relief payment is made from the Judgment Fund to an individual tax account established for each claimant with the IRS. The parties, the Facilitator, and the Monitor have discussed the problems claimants experience if tax relief payments are delayed, and the Facilitator has contacted the IRS to discuss the ways in which payments might be made earlier.

that all prevailing claimants who are entitled to receive *Pigford* debt relief receive the appropriate relief.

Given the number of claims pending the implementation of debt relief and the number of claims that may be eligible for debt relief, it appears that the substantive debt relief review process will extend beyond June 15, 2011, which is the date the Monitor's appointment is currently set to expire.¹² On February 10, 2011, the parties filed a proposed Stipulation and Order extending the Monitor's appointment until her duties are completed or until January 31, 2012, whichever occurs first.¹³

IV. CONCLUSION AND RECOMMENDATIONS

The parties and the Monitor have made significant progress in the review, implementation, and verification of the appropriate *Pigford* debt relief for prevailing claimants. The parties and the Monitor are continuing their efforts to complete the process for all pending claims scheduled for review. The parties and the Monitor have engaged in productive discussions regarding the timeframe that will be needed to complete all outstanding tasks.

The Monitor recommends the Court order the Monitor to report on or before June 15, 2011, regarding: (1) the projected timeline for completion of the *Pigford* debt relief review process; (2) any issues that remain to be resolved in the debt relief review

¹² 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 June 15, 2011, whichever comes first. The January 13, 2010 Stipulation and Order is available at: http://www.pigfordmonitor.org/orders/20100113_order_ext.pdf.

¹³ The proposed Stipulation provides that the focus of the Monitor's work will be completing the last remaining implementation tasks within the purview of paragraph 12 of the Consent Decree, including the debt relief implementation work described in this and prior Monitor Court reports.

process; and (3) the parties' and the Monitor's understanding of what, if any, additional steps are necessary to comply with the IRS guidance.

Dated: February 15, 2011.

Respectfully submitted,

s/Randi Ilyse Roth

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