

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 EIGHTH REPORT ON DEBT RELIEF IMPLEMENTATION

On February 17, 2011, the Court directed 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 process; and (3) the parties’ and the Monitor’s understanding of what, if any, additional steps are necessary to comply with Internal Revenue Service (IRS) guidance regarding USDA’s obligation to report debt relief for federal income tax purposes. The Monitor submits this report to comply with the Court’s February 17, 2011 Order.

I. TIMELINE FOR COMPLETION OF DEBT RELIEF REVIEW

USDA, Class Counsel, and the Monitor have completed the *Pigford* debt relief implementation, review, and verification process for 2,685 of the approximately 2,893 claims identified for review.¹ For each claim, the parties and the Monitor review the Adjudicator's or Arbitrator's final decision and the claimant's loan records to assess whether the claimant has received all of the *Pigford* debt relief the claimant is entitled to receive.

The process includes preparation of a summary by the Monitor that describes the debt relief, if any, implemented by USDA for each claim. The parties have agreed to certain deadlines by which Class Counsel may object to the summary or to the debt relief implemented by USDA. Table 1 sets forth the status of claims included in the debt relief review process as of June 10, 2011.

<i>Table 1: Pigford Debt Relief Review</i>	
Statistical Report as of:	June 10, 2011
A. Approximate Number of Claims Identified for Debt Relief Review	2,893 ²
B. Approximate Number of Claims in Which Debt Relief Summaries Have Been Issued by the Monitor	2,775
C. Approximate Number of Claims in Which Class Counsel's Time to Object Has Expired and the Review Process is Complete	2,685

As of June 10, 2011, there were approximately 208 claims in which the process was not yet fully complete because debt relief implementation, review, and verification

¹ Prior Monitor reports have described the purpose and background of the debt relief implementation, review, and verification process. The Monitor's Seventh Report on Debt Relief Implementation was filed on February 15, 2011. All of the Monitor's prior reports are available at <http://www.pigfordmonitor.org/reports/>.

² In prior reports, the Monitor indicated that approximately 2,880 claims had been identified for review. It is possible that additional claims may be identified as the review process continues.

was not yet finished or the time for any objections by Class Counsel was not yet expired. The parties have discussed a goal of completing the debt relief review, implementation, and verification process for all claims identified for debt relief review by October 31, 2011, if possible. The tasks that remain to be completed are described more fully in Section II below.

II. UNRESOLVED DEBT RELIEF ISSUES

The debt relief issues that remain to be resolved in order to reach the October 31, 2011 goal relate primarily to: (1) completing the debt relief review process for all of the claims that have been identified for review; and (2) managing the tax consequences of *Pigford* debt relief, including USDA's implementation of guidance from the IRS regarding the issuance of Forms 1099-C for debt relief.³

A. Primary Remaining Tasks to Complete Debt Relief Review Process

Review of claimants' loan records is ongoing. The primary remaining tasks that may affect the parties' goal of completing the debt relief review process by October 31, 2011, generally relate to three main categories of claims. The three categories are:

1. Issues Identified, Agreement Not Yet Reached. These are claims in which the parties are working to resolve the question of the appropriate debt relief;
2. Pending Implementation. These are claims in which USDA is implementing debt relief; and
3. Loan Records Need to be Routed. These are claims in which USDA needs to route loan records to the Monitor and Class Counsel for review.

³ Section III of this report discusses more fully USDA's implementation of the IRS guidance.

The tasks remaining for these three main categories are outlined more fully below.

1. Issues Identified, Agreement Not Yet Reached

As of June 10, 2011, approximately fourteen 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.⁴ The parties and the Monitor must resolve questions regarding the appropriate debt relief in these cases. If the parties agree that a claimant qualifies for debt relief, USDA's Finance Office will need to implement the relief and send records for verification.

2. Pending Implementation

As of June 10, 2011, there were approximately thirty-one cases pending USDA's implementation of *Pigford* debt relief. USDA must complete the implementation of debt relief in all cases in which claimants are entitled to *Pigford* debt relief. In the past several months, USDA's Finance Office has implemented debt relief in approximately ten cases per month and implemented fourteen cases in May 2011. There may be more cases that need implementation as other claims are reviewed and resolved.

3. Loan Records Need to Be Routed

As of June 10, 2011, USDA had yet to route records for approximately sixty-seven claims. USDA's review and routing of loan records must be completed for all claimants whose cases have been identified for review. USDA has indicated that debt relief will be

⁴ 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.

implemented in at least thirty-one of the claims that still need to be routed.⁵ USDA plans to route the loan records of these claimants after the debt relief has been implemented.

Table 2 summarizes the three main categories of claims in which debt relief review, implementation, and verification is not yet complete.⁶

<i>Table 2: Main Categories of Claims In Which Debt Relief Review Is Not Yet Complete</i>	
Current Status:	Approximate Number of Claims as of June 10, 2011
A. Issues Raised, Agreement Not Yet Reached. The parties need to resolve identified issues regarding the appropriate debt relief. ⁷	14
B. Pending Implementation. The USDA Finance Office needs to implement debt relief.	31
C. Loan Records Need to be Routed. USDA needs to route loan records to the Monitor and Class Counsel for review.	67 ⁸

⁵ As noted above, USDA is currently implementing debt relief in thirty-one claims in which loan records will need to be routed for review and verification. In addition, USDA implemented debt relief in seven claims in May 2011 for which loan records need to be routed. Finally, there are twenty-nine claims in which USDA has not yet routed records and has not indicated that debt relief is pending implementation. The total number of claims for which USDA will need to route loan records, as of June 10, 2011, is sixty-seven.

⁶ Table 2 does not include all claims in which the debt relief review is not yet complete. It only includes claims currently identified in one of the three main categories.

⁷ These claims include cases in which potential debt relief has been identified and USDA has not yet stated a position on the appropriate debt relief, cases in which USDA has stated a position and the position remains under review by Class Counsel, and cases in which additional information may be necessary for the parties to complete their review.

⁸ In addition to the claims identified in Table 2, there are approximately thirty-two claims in which USDA has routed loan records and the Monitor or Class Counsel has requested follow-up information from USDA. As USDA completes its routing of loan records and provides the requested follow-up information to the Monitor and Class Counsel, the number of claims in which the parties need to resolve issues regarding appropriate debt relief and the number of claims requiring implementation of debt relief by USDA may increase.

B. Timeframe for Final Debt Relief Summaries

To complete the debt relief review process, the parties must resolve all individual cases, USDA must implement all appropriate debt relief, and USDA must forward the loan records necessary to verify the debt relief, if any, implemented for all claims identified for debt relief review. Once the Monitor receives the necessary records for each claim, the Monitor will prepare a debt relief summary.⁹

The parties have agreed to timeframes within which Class Counsel may object to the Monitor's summary or to the debt relief implemented by USDA for the remaining pending claims. If an objection is raised, the Monitor and the parties must work together to review and attempt to resolve the objection. If no objection is received from Class Counsel that remains unresolved as of the agreed-upon deadline(s), the debt relief review process will be concluded.¹⁰

Table 3 sets forth the deadlines the parties have established for Class Counsel objections regarding draft debt relief summaries for the remaining pending claims. The debt relief process will be concluded when "final" Monitor summaries are issued for all claims identified for review.

⁹ For Monitor summaries issued after September 4, 2010, the parties agreed that the Monitor will issue a summary that is marked "DRAFT." After the expiration of an agreed-upon timeframe for Class Counsel to object to the draft summary or to the debt relief implemented by USDA, the Monitor will issue a final summary.

¹⁰ Completion of the 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. *See, e.g.*, Consent Decree, ¶ 13 (describing process for bringing alleged violations of the Consent Decree to the attention of the Court).

<i>Table 3: Timeframes for Final Monitor Summaries</i>	
Date of Draft Monitor Debt Relief Summary	Deadline for Class Counsel to Object to Draft Monitor Summary
A. April 1, 2011-April 30, 2011	June 15, 2011
B. May 1, 2011-May 31, 2011	July 15, 2011
C. June 1, 2011-June 30, 2011	Aug. 15, 2011
D. July 1, 2011-July 31, 2011	Sept. 15, 2011
E. Aug. 1, 2011-Aug. 31, 2011	Oct. 14, 2011
F. Sept. 1, 2011-Sept. 30, 2011	Nov. 15, 2011 ¹¹

III. COMPLIANCE WITH IRS GUIDANCE

Claimants who receive *Pigford* debt relief may receive one or more IRS Forms 1099-C reporting the amount and the date of the debt that was cancelled. Prior reports have described the guidance USDA received from the Office of Chief Counsel of the Internal Revenue Service (IRS) concerning USDA's federal income tax reporting obligations for *Pigford* debt relief.¹² Federal income tax reporting rules are complicated, and the parties and the Monitor have worked together to review the IRS guidance and to consider how the guidance should be implemented in individual cases. USDA has taken steps to implement many aspects of the IRS guidance.

A. Claimants Who May Not Have Received IRS Forms 1099-C

One remaining issue concerns claimants who have received *Pigford* debt relief but who may not have received an IRS Form 1099-C from USDA reporting that debt relief.

¹¹ Depending on the number of claims involved, Class Counsel has indicated that they may be able to complete review of these cases prior to November 15, 2011.

¹² 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. 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>.

Prior to receiving the IRS guidance in March of 2009, USDA generally had not issued an IRS Form 1099-C reporting debt cancellation in cases in which the effective date USDA used in implementing the debt relief was more than three years before implementation.¹³ In those cases, USDA reported the amount of debt cancellation principal and interest to the Facilitator and the Facilitator reported this information to the IRS, but no IRS Form 1099-C was issued to the claimant.

The parties and the Monitor have identified the claimants who may not have received an IRS Form 1099-C reporting *Pigford* debt cancellation income because the income realization date was more than three years prior to the year the debt relief was implemented.¹⁴ The parties have agreed that USDA will research these cases to determine whether an IRS Form 1099-C was issued for the identified debt relief. If no IRS Form 1099-C was issued, USDA has agreed that a Form 1099-C should be issued in order to comply with the IRS guidance.

B. Assistance For Claimants Who May Receive Forms 1099-C

The Monitor has met with National Taxpayer Advocate (NTA) regarding the issuance of IRS Forms 1099-C in the *Pigford* debt relief process. The NTA is investigating whether claimants who receive IRS Forms 1099-C reporting debt cancellation with an income realization date of a prior year can elect to report the income

¹³ The “effective date” USDA enters in its computer system for the loan cancellation is ordinarily the “income realization” date reported on the IRS Form 1099-C issued by USDA. The IRS guidance describes how to determine the appropriate income realization date for federal income tax purposes.

¹⁴ For each of the identified claimants, the income realization date of the debt cancellation was in a tax year between 2000 and 2006 for debt relief implemented between 2004 and 2010. For example, in one case, the income realization date was in 2000 for debt relief USDA implemented in 2004.

in the year the claimant learned of the debt cancellation.¹⁵ In addition, the Facilitator is investigating whether tax deposits were made on behalf of the identified claimants.¹⁶

The Monitor anticipates that Class Counsel and the NTA will continue to provide assistance to claimants who have questions about the tax implications of *Pigford* debt relief, including questions from claimants who may receive IRS Forms 1099-C reporting debt cancellation income with an effective date of a prior tax year. The Facilitator, the parties, and the Monitor will also continue to consult, as needed, to address any remaining issues regarding the issuance of IRS Forms 1099-C for *Pigford* debt relief.

IV. CONCLUSION AND RECOMMENDATIONS

The parties and the Monitor are continuing their efforts to complete the debt relief implementation, review, and verification process for all pending claims scheduled for review. USDA is continuing its effort, in cooperation with Class Counsel and the Monitor, to implement the IRS guidance regarding USDA's tax reporting obligations for *Pigford* debt relief.

The parties have discussed a goal of completing the *Pigford* debt relief review process by October 31, 2011, if possible. The Monitor recommends the Court order the Monitor to report to the Court on or before December 1, 2011, on the completion of the debt relief review process. The Monitor further recommends that the Court order the

¹⁵ 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>.

¹⁶ Under paragraph 9(a)(iii)(C) of the Consent Decree, claimants who prevail in a Track A credit claim are entitled to a tax deposit of 25 percent of the principal amount of any debt relief they receive. The Facilitator has requested information from the IRS to determine whether or not a tax deposit was made on behalf of the claimants who received *Pigford* debt relief but who may not have received an IRS Form 1099-C from USDA for that relief.

Monitor to report prior to December 1, 2011, should any problems that arise that would affect the parties' and the Monitor's ability to complete their debt relief work by the end of this calendar year.

Dated: June 14, 2011.

Respectfully submitted,

s/Randi Ilyse Roth

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