

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,
Plaintiffs,
v.
MIKE JOHANNNS, Secretary,
The United States Department
of Agriculture,
Defendant.

Civil Action No. 97-1978 (PLF)

CECIL BREWINGTON, et al.,
Plaintiffs,
v.
MIKE JOHANNNS, Secretary,
The United States Department
of Agriculture,
Defendant.

Civil Action No. 98-1693 (PLF)

MONITOR'S REPORT ON AMENDED ADJUDICATOR DECISIONS

I. PURPOSE OF REPORT

On February 23, 2006, this Court issued a Memorandum Opinion and Order requiring the Monitor to investigate and report about the following details of amended Adjudicator decisions:

1. The number of Adjudicator decisions that have been amended such that the "Amended" decision resulted in substantive changes to the relief awarded in the initial Adjudicator decision.
2. The relief, if any, that was awarded in each of the substantively "Amended" Adjudicator decisions, and how it differed from the relief awarded in any earlier Adjudicator decisions on the same claims.

3. Whether any of those class members receiving an “Amended” Adjudicator decision have petitioned for Monitor review pursuant to Paragraph 12(b)(iii) of the Consent Decree on the basis of either the original or the “Amended” decision.

4. What the outcome has been, if any, of those Monitor reviews.

5. What relief, if any, class members whose Adjudicator decisions were substantively amended have actually received from the government.

Additionally, the Court required the Monitor to provide actual and unaltered copies of the original and amended decisions sent to any and all class members who received an amended decision.

This report is being filed to comply with the Court’s Order.

All documents containing class members’ claim numbers and all copies of Adjudicator decisions are being filed under seal. Copies of documents filed under seal will be provided to Class Counsel and to the government at the time of filing. All potentially identifying documents are being filed under seal to protect the privacy of individual class members.

II. BACKGROUND

The Facilitator has provided information about amended Adjudicator decisions issued for a group of forty-six claims involving class members who checked the “Conservation Loan” box on the Claim Sheet and Election Form. This group includes the claim brought by Elmore and Ludean Hicks.¹ The Facilitator has also provided information about other amended Adjudicator decisions. All of the amended Adjudicator decisions issued to date in this case are described more fully in this report and its exhibits. This background section of the report provides some context for the statistics that appear in later sections.

¹ A motion filed by the Hickses to enforce the Consent Decree triggered the proceedings in this matter. *See* Memorandum Opinion and Order, February 23, 2006, at 1-3.

A. Source of Data

Because the Facilitator is the repository of most data on individual class members, the Monitor has relied on the Facilitator to provide the information used in this report. The Monitor has not been able to independently verify the data provided by the Facilitator.

B. Credit Claims and Non-Credit Claims

In large part, this report concerns Adjudicator decisions that were amended such that class members' awards of "credit" relief were rescinded and replaced with "non-credit" relief. To understand the data presented with this report, it is important to understand some basic background about the two types of relief.

Paragraph 9(a) of the Consent Decree sets forth the relief for credit claims.² This relief includes a payment of \$50,000 cash relief, as well as tax relief, debt relief, and injunctive relief.

Paragraph 9(b) sets forth the relief for non-credit farm benefit program claims. Paragraph 9(b) states that USDA shall pay to the class member "the amount of the benefit wrongly denied, but only to the extent that funds that may lawfully be used for that purpose are then available." Paragraph 9(b) also provides for some types of injunctive relief. On February 7, 2001, the parties stipulated and the Court ordered that the cash portion of relief for a non-credit claim would be set at \$3,000, regardless of the type of farm benefit program at issue and regardless of the amount of benefit wrongly denied.

The distinction between a credit claim and a non-credit claim is not necessarily an obvious one on first impression. This is true for at least two reasons. First, over the course of the

² The Consent Decree defines "credit" at paragraph 1(f) as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefore."

sixteen years of the class period, the United States Department of Agriculture (USDA) has offered a wide array of credit and non-credit programs, some of which lasted only briefly. In describing its many programs to farmers, USDA does not use the terms “credit” and “non-credit.” As a result, class members who are familiar with USDA programs would have no familiarity with the distinction made in the Consent Decree between credit and non-credit programs.

Second, there is considerable overlap between the purposes of USDA credit and non-credit programs. For example, USDA’s Emergency Loan program is a credit program designed to assist farmers in the midst of recovering from a natural disaster, such as a flood or drought. Numerous non-credit USDA disaster programs also provided direct financial assistance or payments to farmers in the wake of natural disasters. This same type of overlap exists in USDA conservation programs. A USDA credit program, the Soil and Water Loan program, provided loans to farmers to accomplish certain conservation goals during the class period. Similarly, many USDA noncredit programs used other mechanisms, such as cost shares in the Agricultural Conservation Program or long-term contracts in the Conservation Reserve Program, to accomplish resource conservation goals.

C. Meaning of “Substantive” and “Technical” Amendments

1. “Substantive” and “Technical” In the Court’s Order

The Court’s Order of February 23, 2006, requests information on amended Adjudicator decisions that resulted in substantive changes to the relief awarded to the claimant. The Court distinguished substantive amendments that affect relief from technical amendments that do not affect the relief, stating:

The Court recognizes the need for a certain degree of flexibility in administering the Consent Decree and allowing for circumstances not

specifically addressed in it. For example, the Court can contemplate the necessity of the Arbitrator or Adjudicator reissuing a decision for the purpose of correcting a clerical error, such as a misspelled name, a misplaced decimal point, or an incorrect mailing address.

Pigford v. Johanns, Civ. No. 97-1978, at 3 n.1 (D.D.C. Feb. 23, 2006). The Court distinguished technical amendments like those described in the above quote from substantive amendments which change the class members' relief.

2. "Substantive" and "Technical" In the Facilitator's Database

The data available to the Monitor for this report comes from the Facilitator's database. The Facilitator categorizes amendments as "substantive" or "technical" based on somewhat different criteria than those articulated in the Court's Order.

a. *Meaning of "Substantive Amendments" in the Facilitator's Database*

As the Facilitator explains in the letter attached to this report as Exhibit A, in the Facilitator's database, "substantive" amendments are "amendments [that] changed the claimants' relief after review by the Adjudicator." Exhibit A, at 1. In the Facilitator's nomenclature, "substantive amendments" resulted when the Adjudicator reviewed a claim and changed the Adjudicator's decision by adding, subtracting, or changing relief. Amendments that meet this definition of "substantive" were made both in the review of the Conservation Loan group (explained below) and also in certain other claims when potential errors in the decisions were called to the Facilitator's and Adjudicator's attention by internal quality control audits, by contact from a claimant, or by contact from the government.

b. Meaning of “Technical Amendments” in the Facilitator’s Database

In the Facilitator’s nomenclature, “technical amendments” are amendments which:

[E]ither did not affect the claimants’ relief or affected the claimants’ relief solely because of the correction of administrative or clerical errors. None of these amendments resulted from a substantive re-review by the Adjudicator, or from any agreement of the parties.

Exhibit A, at 3.

The Facilitator reports that the vast majority of amendments that the Facilitator classified as technical were made to correct identifying information (such as social security number, spelling of name, gender salutation, or address), and therefore did not affect the class members’ relief. However, in approximately sixty-one of the amendments classified as technical by the Facilitator, despite the fact that the reason for the amendment was the correction of an administrative or clerical error, the relief awarded in the amended paperwork may have differed from the relief awarded in the original paperwork. The Facilitator’s letter, attached as Exhibit A, explains the process used to publish Adjudicator decisions and provides examples of technical corrections that would have caused the amended paperwork to provide different relief than the original paperwork. Two examples of this type of technical amendment are: (1) corrections to decisions in which the text appeared in the wrong “jacket” (the Adjudicator’s decision text found discrimination and awarded the claimant relief, but the “jacket”—pages one and three of the decision—contained the language for a losing decision, or vice versa); and (2) corrections to decisions containing mismatched relief (for example, the automated issuance of the relief text on page three of the decision specified the wrong years for debt relief or the wrong type of farm loan program for debt relief). The Monitor’s understanding is that the Facilitator characterizes these amendments as technical because the need for the amendment arose from an administrative

or clerical error in generating pages one and/or three of the decision—not from a re-review by the Adjudicator, or from any agreement of the parties.

Because the data compiled by the Facilitator defined substantive and technical amendments to Adjudicator decisions in ways that do not match the definitions set out in the Court’s Order of February 23, 2006, the distinction between substantive and technical changes to an Adjudicator’s decision can be confusing. In this report, the use of the terms “substantive” and “technical” generally comport with the meanings of those terms in the Facilitator’s database.

D. Background Regarding Review of Certain “Conservation Loan” Claims

The Claim Sheet and Election Form (Claim Sheet) that was adopted by the parties and approved by the Court required class members to indicate in which of five specific federal farm programs the class member sought to participate during the class period. The five choices were: (1) Operating Loan, (2) Farm Ownership Loan, (3) Emergency Loan, (4) Conservation Loan, and (5) Non-credit Benefit Program. Despite the use of the term “Conservation Loan” on the Claim Sheet, USDA did not have a specific loan program called the “Conservation Loan” program. As described above, the agency offered both loans (“credit” programs) and payments under farm benefit programs (“non-credit” programs) which could be used for conservation purposes.

The parties began processing completed Claim Sheets and implementing the Consent Decree relief for successful class members prior to the Monitor’s appointment. The Monitor has learned that in the early stages of the implementation process, questions arose regarding the appropriate relief for claims in which class members had checked the “Conservation Loan” box on the Claim Sheet. In response to those questions, the Facilitator identified a group of “Conservation Loan” claims that were reviewed by the Adjudicator early in the claims

implementation process. This group of claims will be referred to in this report as the “Conservation Loan” group. The Hickses’ claim was a part of this group.

The Facilitator provided background about the amended decisions in the Conservation Loan group by supplying the Monitor with the letter attached to this report as Exhibit A. In essence, the letter explains that in early 2000, the parties and the Facilitator conferred about the proper classification of claims in which class members had checked the “Conservation Loan” box on the Claim Sheet. The Facilitator identified a group of several hundred claims that would be reviewed to determine whether the claim was properly a credit claim arising out of a loan from USDA or a non-credit claim arising out of one of the many benefit programs USDA offered for conservation purposes. As a result of this review, the Adjudicator issued amended decisions in forty-three claims.³ In forty-two of those claims, the relief changed from a credit payment of \$50,000 to non-credit relief; in one of those claims, the relief changed from credit and non-credit relief to solely credit relief.

III. STATISTICS

This section of the report provides the statistics requested by the Court in its February 23, 2006, Order. The statistics are provided in tables that are attached to this report as Exhibits B, C, D, and E. In those exhibits, claim numbers have been deleted and “unique claimant identification numbers” have been used instead. Simultaneous with the filing of this report, the Monitor is filing under seal a duplicate set of exhibits that list both the unique claimant identification numbers and the claim numbers.

³ The Facilitator reports there were a total of 46 amended decisions in the Conservation Loan group. The Facilitator classified 43 of the 46 amended decisions as substantive amendments and classified three of the 46 amended decisions as technical amendments.

The data in these exhibits has been provided by the Facilitator. The Monitor has not independently verified this data.

A. Number of Substantively Amended Decisions

The Court's Order asked the Monitor to report about the number of Adjudicator decisions that have been amended such that the amended decision resulted in substantive changes to the relief awarded in the initial Adjudicator decision. The Facilitator reports there are a total of sixty-six claims where changes that the Facilitator classified as substantive were made based on a review of the claim by the Adjudicator. The Facilitator reports that forty-three of these sixty-six amended decisions are in the Conservation Loan group. These claims are listed with unique identifiers of numbers 1 through 43 in Exhibit B. The Facilitator further reports that twenty-three of the sixty-six amendments that the Facilitator classified as substantive are not in the Conservation Loan group. These claims are listed with unique identifiers of numbers 44 through 66 in Exhibit B.

Additionally, at the Monitor's request, the Facilitator has reported that there were approximately sixty-one amended decisions in which changes classified as technical by the Facilitator were made to the decision text or to the relief page of the decision. The Monitor has not had the opportunity to review any of the decisions which the Facilitator has identified as technical amendments. If requested by the Court, the Monitor will provide additional information regarding technical amendments that resulted in changes in relief in a future report. Details of the amendments that resulted or may have resulted in changes to relief are explained below.

Table 1. Amendments That Resulted or May Have Resulted in Changes to Relief	
Conservation Loan Group (resulted in change to relief)	43
Other Amendments Classified as Substantive by Facilitator (resulted in change to relief)	23
Amendments Classified as Technical by Facilitator (may have resulted in change to relief)	61
TOTAL	127

B. Relief Ordered Before and After Amendment

The Court’s Order asked the Monitor to report on what relief, if any, was awarded in each of the substantively amended Adjudicator decisions, and how that relief differed from the relief awarded in any earlier Adjudicator decisions on the same claims. Exhibit B provides that information.

1. Conservation Loan Group

Based on statistics provided by the Facilitator, it appears that in forty-two of the forty-three Conservation Loan group claims described above, the amended Adjudicator decision resulted in an award of non-credit relief. In one of these forty-three claims, the amended Adjudicator decision resulted in an award of credit relief. These changes in relief are described in Exhibit B for each of the claims, which are listed with unique identifiers 1 through 43.

2. Other Substantive Amendments

Based on statistics provided by the Facilitator, it appears that eight of the twenty-three other amendments classified as substantive by the Facilitator involved changes affecting an award of debt relief on the “relief” page of the decision. In three of these twenty-three amendments, the amended Adjudicator decision adds credit or non-credit relief for a claimant

who has already prevailed on a non-credit or credit claim. In twelve of the twenty-three claims, the amended Adjudicator decision reduces the amount of relief by denying relief or by changing credit relief to non-credit relief. These changes in relief are described in Exhibit B for each of the claims, which are listed with unique identifiers 44 through 66.

3. Technical Amendments

The information provided by the Facilitator indicates that sixty-one of the amended Adjudicator decisions classified by the Facilitator as “technical amendments” may have involved changes to the “relief” page of the Adjudicator’s decision or to the text of the decision. The Facilitator has informed the Monitor that there were approximately nine amended Adjudicator decisions that corrected the decision “jacket” (the first and third pages of the decision); approximately eighteen amended Adjudicator decisions that corrected the USDA program or year of the claim listed on the “relief” page (which may affect debt relief); approximately twenty-nine amended Adjudicator decisions that clarified or corrected the text of the Adjudicator’s decision; and approximately five amended Adjudicator decisions that made other changes described by the Facilitator as technical. The Monitor has not had the opportunity to review the decisions identified by the Facilitator as technical amendments. If requested by the Court, the Monitor will provide further information regarding technical amendments that may have affected class members’ relief in a subsequent report to the Court.

C. Petitions for Monitor Review

The Court’s Order asked the Monitor to report about whether the class members who received amended Adjudicator decisions have petitioned for Monitor review on the basis of either the original or the amended decision. The Order further asked the Monitor to report about

the outcome, if any, of Monitor review of any petitions filed by the class members who received amended Adjudicator decisions.

1. Substantive Amendments

Twenty-four of the sixty-six class members who received amended Adjudicator decisions classified as substantive by the Facilitator petitioned for Monitor review. Exhibit C provides details about petition activity in these cases. The Monitor notes that some of the petitions remain pending before the Monitor. In addition, where the Monitor has directed reexamination, some of the reexamination decisions remain pending before the Adjudicator.

2. Technical Amendments

In addition to the sixty-six amended Adjudicator decisions that were classified as substantive by the Adjudicator, the Facilitator reports that 379 class members received amended Adjudicator decisions that were classified as technical by the Facilitator. Ninety-three of those 379 class members petitioned for Monitor review. Exhibit D provides details about petition activity in those cases. As explained above, some of the petitions remain pending before the Monitor, and some reexamination decisions remain pending before the Adjudicator.

D. Relief Received by Class Member

The Court's Order asked the Monitor to report about the relief, if any, that the government has provided to class members whose Adjudicator decisions were substantively amended. Exhibit E provides information about the relief that was provided to the sixty-six class members who received decisions that were classified by the Facilitator as substantive amendments.

IV. COPIES OF DECISIONS

The Monitor asked the Facilitator to provide the Monitor with actual and unaltered copies of the original and amended decisions sent to any and all class members who received an amended decision that resulted in substantive changes to the relief awarded in any earlier Adjudicator decision(s) on the same claims. The Monitor received copies of those documents for the sixty-six claims the Facilitator identified as having had at least one substantive amendment, and, simultaneous with the filing of this report, the Monitor is filing those documents under seal.

V. MONITOR RECOMMENDATIONS REGARDING AMENDED ADJUDICATOR DECISIONS

The Monitor is actively working with the parties to help them to reach agreement about the proper relief for the Hickses' claim as well as for all of the claims in the Conservation Loan group. The parties have made substantial progress toward reaching an agreement that would resolve these claims, and the Monitor is hopeful that a stipulated agreement can be presented to the Court in the near future. The Monitor therefore recommends that the Court direct the Monitor to file an additional report by June 1, 2006, regarding the outcome of the parties' efforts to resolve the Conservation Loan group of claims identified in this report.

The Monitor has not had the opportunity to fully review the information provided by the Facilitator for other claims in which amended decisions were issued or to discuss this information with the parties. As a result, the Monitor does not have any specific recommendations regarding these other claims at this time. Moreover, it has come to the Monitor's attention that there may have been amendments to some Facilitator determinations of class member eligibility. The Monitor will request information from the Facilitator regarding these possible amendments as well. Prior to June 1, 2006, the Monitor will confer with Class Counsel and with the Department of Justice regarding the data provided by the Facilitator for all

of the amended decisions. If the Court would like more detailed information about any of the categories of amended decisions, the Monitor recommends that the Court direct the Monitor to file an additional report containing that information.

Dated: April 7, 2006.

Respectfully submitted,

s/Randi Ilyse Roth
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