

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 AND RECOMMENDATIONS ON AMENDED DECISIONS

I. BACKGROUND AND SUMMARY OF CONCLUSIONS

On August 7, 2006, the Court issued a Memorandum Opinion and Order directing the Monitor to further investigate and report to the Court regarding certain amended decisions.¹ The focus of that order is a specific group of eighty-four amendments that occurred in seventy-eight

¹ Previous Monitor reports on amended decisions include: Monitor's Second Progress Report on Amended Adjudicator Decisions (Mar. 29, 2007); Monitor's Progress Report on Amended Adjudicator Decisions (Jan. 16, 2007); Monitor's Interim Follow-up Report on Amended Adjudicator Decisions (Dec. 14, 2006); and Monitor's Report on Amended Adjudicator Decisions (Apr. 7, 2006).

claims.² The Monitor submits this report to summarize the actions the Monitor has taken to investigate and attempt to resolve with the parties any problems relating to the amended decisions referenced in the Court’s August 7, 2006, Order. The parties have concluded that each claimant in this universe of claims either has received or is scheduled to receive appropriate cash relief. The Monitor agrees with the parties’ conclusion that these cash relief results comply with the Consent Decree. The parties reached agreement regarding appropriate debt relief for each claimant. The Monitor concurs with the parties’ assessments as to each of these claimants’ entitlement to debt relief. Although the parties appear to have agreed about debt relief in principle as to the universe of amended decisions claims addressed by this report, several tasks still remain in order to complete debt relief implementation.³ USDA has agreed to take certain steps necessary to ensure appropriate debt relief for all class members who are entitled to debt relief. The Monitor also investigated the re-screening of certain claim packages by the Facilitator. The Facilitator reports that no claimant was denied eligibility as a result of the eligibility re-screening process.

Later in this report, the Monitor explains the general tasks that remain to be completed regarding implementation of cash relief and debt relief. The Monitor recommends that the Court order the Monitor to report to the Court again after the achievement of certain steps that are necessary to complete implementation. Those steps and their context are explained below.

² The 84 claims include 23 “substantive” amendments and 61 “technical” amendments. *See* Memorandum Opinion and Order, dated August 7, 2006, available on the Monitor’s website at <http://www.pigfordmonitor.org/orders/>.

³ It is possible that disagreements between the parties will arise when they attempt to resolve the final details of implementation of debt relief. Moreover, because reporting regarding the last few claims is not yet complete, it is possible that issues arising in those claims will cause implementation difficulties. However, at this juncture the Monitor is hopeful that the parties will be able to resolve any remaining issues as the parties work out the details of the last implementation issues,

A. The Court's August 7, 2006, Order

The Court's August 7, 2006, Order requested that the Monitor obtain the information necessary to fully apprise the Court of the circumstances involved in:

1. Any amended Adjudicator decision among the twenty-three previously identified as "other substantive" amendments;
2. Any amended Adjudicator decision among the sixty-one previously identified as "technical" amendments where such amendments were not purely clerical and the amendments affected class members' cash and/or debt relief; and
3. Any instances in which the Facilitator initially notified a claimant that he or she was eligible to participate in the claims process, but later notified that same claimant that the eligibility decision had been "amended," and that the claimant was no longer eligible.

The Court ordered the Monitor, under the authority conferred in paragraph 12(b)(ii) of the Consent Decree, to attempt to resolve with the parties any problems regarding:

1. Class members who received amended Adjudicator decisions that changed their cash relief;
2. Class members who received amended Adjudicator decisions that changed their debt relief; and
3. Claimants who received initial notification from the Facilitator that they were eligible to participate in the claims process, and then later received an amended notification or notice of rejection from the Facilitator, resulting in the denial of their opportunity to participate in the claims process.

The Court directed the Monitor to report to the Court regarding the resolution of any problems in the above-described matters and the status of any unresolved matters. The Court also directed the Monitor to provide recommendations to the Court regarding any unresolved matters.

B. The Monitor's Progress Reports

The Monitor has been investigating the matters described in the Court's August 7, 2006, Order since the issuance of that Order. The Monitor filed progress reports with the Court on December 14, 2006; January 16, 2007; and March 29, 2007.

The Monitor's Interim Follow-Up Report, filed December 14, 2006, described the status of the Monitor's requests for information from the Facilitator and from the United States Department of Agriculture (USDA).

The Monitor's Progress Report on Amended Adjudicator Decisions, filed January 16, 2007, included as Exhibit 1 a letter to the Monitor from the Facilitator, which described the Facilitator's understanding of the circumstances that led to amended Adjudicator decisions in certain Track A claims. The Facilitator's letter also included a description of the screening procedures used by the Facilitator to determine whether class members met the eligibility criteria to participate in the claims process.

The Monitor's Second Progress Report on Amended Adjudicator Decisions, filed March 29, 2007, described the Monitor's process for analyzing the cash relief and debt relief provided to each of the class members who received an amended Adjudicator decision that affected or may have affected the class member's relief. This Progress Report described the Monitor's efforts to confirm that the appropriate amounts of cash relief had been paid to each of the class members who received an amended decision affecting the class member's cash relief. This Progress Report also described the information and records requested from USDA to confirm: (1) whether a class member had a history of USDA farm loan activity during the class period; and (2) if so, what debt relief, if any, USDA had provided to the class member.

C. Purpose of This Report

In this report, the Monitor summarizes the results of the Monitor's investigation and work with the parties to resolve any problems arising from the eighty-four amended Adjudicator decisions referenced in the Court's August 7, 2006, Order. The Monitor also summarizes the information obtained from the Facilitator regarding the re-screening of approximately 4,600 Claim Sheet and Election Forms in 1999. The Monitor recommends that the Court order the Monitor to report to the Court after certain outstanding tasks have been accomplished.

D. Information Provided and Source of Data

The Monitor has obtained data from the Facilitator and/or from USDA for each claim in which an amendment affected or may have affected a class member's cash relief or debt relief. The Monitor has relied upon the data provided by the Facilitator and by USDA in analyzing the amendments and in making recommendations regarding the relief that is appropriate for each class member under *Pigford*. The Monitor has not independently verified the information provided by the Facilitator and USDA.

This Monitor's Report includes three exhibits. The first is Exhibit 1: Sample Debt Relief Records. The purpose of the Exhibit is to illustrate the steps the Monitor and the parties took to discern from USDA loan records information relevant to debt relief implementation for each prevailing credit claim in this universe of claims. The second and third exhibits are memoranda provided by USDA to the Monitor. Exhibit 2 is Information Memo for the Monitor, Memo #4, "Criteria for Discharging Loans Under the Consent Decree." Exhibit 3 is Information Memo for the Monitor, Memo #6, "Interpreting USDA Computer and Archived Records."

The Monitor has provided the parties with the following charts, which are in draft form:

Chart A: Tentative Cash Relief Data for Claims with “Substantive” Amendments.

Chart B: Tentative Cash Relief Data for Claims with “Technical” Amendments.

Chart C: Tentative Debt Relief Data for Prevailing Credit Claims.

The draft charts indicate tasks that remain to be completed for certain claimants. These tasks include payment of recently-awarded cash relief, the provision of recently-requested documents and the implementation of debt relief in recently-issued decisions. Once these tasks are completed and the charts are finalized, the Monitor will file the charts with the Court.

E. Process of Analysis and Problem-Solving

The Monitor has worked with the government and with Class Counsel to assess whether the twenty-three amendments deemed “substantive” by the Facilitator and the sixty-one amendments deemed “technical” by the Facilitator affected class members’ cash relief or debt relief. The Monitor has collected and provided to the parties information regarding the cash and debt relief each class member has received. The Monitor and the parties reviewed records relevant to these claims to assess whether each of the affected class member’s cash relief and debt relief is appropriate. The Monitor invited the government and Class Counsel to raise any concerns they had regarding the relief due to this group of class members. The Monitor considered the parties’ reported concerns and provided the parties with recommendations regarding the appropriate relief for each affected class member.

F. Conclusions

As explained more fully in section III below, the parties have reported no substantive disagreement with the final cash relief award for any class members who received an amended

Adjudicator decision. Nearly all of the seventy-eight class members who received amended Adjudicator decisions and are entitled to cash payments have received those cash payments. Only three class members who are entitled to cash relief are still awaiting payment of some or all of that relief.

As explained more fully in section IV below, the parties have worked with the Monitor to resolve problems relating to the implementation of debt relief for all of the class members who are entitled to debt relief.

II. AMENDED ADJUDICATOR DECISIONS

The Court's August 7, 2006, Order, described different categories of amended Adjudicator decisions in which the amendment affected class members' relief. The Court's concerns related to one of the categories, the "Conservation Loan" group, were resolved by a June 12, 2006, Stipulation and Order.⁴ This report does not address the "Conservation Loan" group of amendments, except to the extent that class members in the "Conservation Loan" group also received a second amended Adjudicator decision.⁵

⁴ The "Conservation Loan" group of amendments involved a group of claims in which class members had alleged discrimination under the "Conservation Loan" program listed on page 3 of the Claim Sheet and Election Form. An issue arose early in the implementation of the Consent Decree regarding whether certain of these claims involved allegations of discrimination in a farm credit program or in a non-credit benefit program. Pursuant to the Stipulation and Order dated June 12, 2006, the Adjudicator's amended decision was vacated for a list of claims identified as part of the "Conservation Loan" group. The Stipulation reinstated the Adjudicator's original decision for the listed claims, and afforded USDA the right to file a petition for Monitor review on the sole question of whether the claim alleged discrimination in a farm credit program or in a non-credit program. *Pigford v. Johanns*, Stipulation and Order, ¶ 1 (D.D.C. June 12, 2006).

⁵ Three of the class members in the "Conservation Loan" amendments group received more than one amended decision. The Monitor has reviewed the "technical" amendments these class members received, and these class members' claims are included in this report.

This report concerns two other categories of amended Adjudicator decisions that affected or may have affected class members' relief: (1) twenty-three "substantive" amendments and (2) sixty-one "technical" amendments.

A. Background About the Twenty-Three "Substantive" Amendments

In the Facilitator's database, "substantive" amendments are amendments that changed a class member's relief after review by the Adjudicator.⁶ In addition to the substantive amendments in the Conservation Loan group discussed above, twenty-three class members received amended Adjudicator decisions that the Facilitator classified as "substantive."⁷ The Monitor's April 7, 2006, Report provided information about the relief awarded, any petition for review that had been filed and routed to the Monitor, and the relief received as of April 7, 2006, for the twenty-three class members. Simultaneously with the filing of the Monitor's April 7, 2006, Report on Amended Adjudicator Decisions, the Monitor filed under seal a copy of the original and amended decisions the Monitor had received from the Facilitator for these twenty-three substantive amendments.

B. Background About the Sixty-One "Technical" Amendments

In the Facilitator's database, "technical" amendments are amendments that did not result from a review by the Adjudicator or from an agreement of the parties. These amendments were made by the Facilitator to correct errors the Facilitator deemed technical or administrative.⁸ The

⁶ See Monitor's Report on Amended Adjudicator Decisions, at 5, and Exhibit A, Letter from the Facilitator, at 1 (Apr. 7, 2006).

⁷ In the Monitor's April 7, 2006, Report, Exhibits B, C, and E reported information about the 23 "other substantive" amendments using unique claimant identification numbers 44 through 66. The Monitor has used those same identifiers in this report. See Monitor's Report on Amended Adjudicator Decisions, April 7, 2006, Exhibits B, C, and E.

⁸ See Monitor's Report on Amended Adjudicator Decisions, at 6-7, and Exhibit A, Letter from the Facilitator, at 3 (Apr. 7, 2006).

Facilitator reported to the Monitor that most of the technical amendments involved corrections to class members' identifying information, such as name, address, social security number, or gender salutation. The Monitor's April 7, 2006, Report provided information about initial awards of relief, any petitions for review that had been filed and routed to the Monitor, and the final relief received as of April 7, 2006, by the class members who received amended Adjudicator decisions with technical amendments.⁹

Simultaneously with the filing of this report, the Monitor has filed under seal a copy of the original and amended decisions the Monitor has received from the Facilitator for the sixty-one technical amendments. Because some class members in this group received more than one amended decision, the sixty-one technical amendments involve a total of fifty-eight claims.

C. Structure of a Track A Decision

As explained in a previous Monitor's report, Track A Adjudicator decisions are generally three pages long.¹⁰

1. Page 1 is a "boilerplate" cover page that recites the criteria for recovery and indicates that the claimant either did or did not prevail.
2. Page 2 is the narrative text of the Adjudicator's decision.¹¹
3. Page 3 is a "relief" page that is based on page 2.

The Facilitator uses an automated system to produce pages 1 and 3 of the decision.¹²

⁹ Exhibit D reported information about technical amendments using unique claimant identification numbers. The Monitor has used those same identifiers in this report. *See* Monitor's Report on Amended Adjudicator Decisions, Exhibit D (Apr. 7, 2006).

¹⁰ *See* Monitor's Report on Amended Adjudicator Decisions, Exhibit A, Letter from the Facilitator, at 1 (Apr. 7, 2006).

¹¹ Occasionally, the narrative text of the Adjudicator's decision fills more than one page. The references to "page 1, page 2, and page 3" in this report are meant to describe the three parts of a Track A decision. They may not literally correspond to the page numbers in every decision.

¹² *See* Monitor's Report on Amended Adjudicator Decisions, Exhibit A, Letter from the Facilitator, at 1 (Apr. 7, 2006).

D. Reasons for Amendments

The Facilitator's April 6, 2006, letter, attached as Exhibit 1 to the Monitor's April 7, 2006, Report on Amended Decisions, describes the types of administrative errors that led to certain "technical" amendments that affected a class member's relief.¹³ For example, technical amendments were made when it came to the Facilitator's attention that a class member received a decision in which the decision "jacket" (pages 1 and 3 of the decision) were inconsistent with the Adjudicator's decision text (page two of the decision). The amended decision revised pages 1 and 3 to correspond with the relief provided in the text of the Adjudicator's narrative decision.

Additional technical amendments affecting relief resulted from a class member receiving what the Facilitator has called the "wrong decision text" for his or her claim. In these claims, page 2 of a class member's original Track A decision did not comport with the class member's allegations of discrimination in the Claim Sheet and Election Form. According to the Facilitator, these class members mistakenly received decisions that were actually written for other class members. The amended decision provided the correct decision for their claim.

In other technical amendments affecting relief, corrections or clarifications were made to the decision text on page 2 and to the relief described on page 3. Eighteen of these amendments clarified the USDA program or year at issue; other amendments clarified or corrected the text of the Adjudicator's decision in some other way.

In response to the Court's August 7, 2006, Memorandum Opinion and Order, the Monitor asked the Facilitator to provide additional explanation of the circumstances that led to

¹³ See Monitor's Report on Amended Adjudicator Decisions, Exhibit A, Letter from the Facilitator (Apr. 7, 2006).

the amendment of Adjudicator decisions that affected class members' relief. The Facilitator provided a letter dated January 15, 2007, in response to the Monitor's request.¹⁴ In general, the Facilitator explained in the letter that amendments were prompted either: (1) by a request from a party (a claimant, Class Counsel, or the government); or (2) by the Facilitator's internal quality control review process. In some cases, according to the Facilitator's January 15, 2007, letter, the government contacted the Facilitator regarding a claim in which a credit award was granted for a "Conservation Loan" and the government believed the Adjudicator should have awarded non-credit relief because the class member's Claim Sheet and Election Form alleged discrimination in a farm benefit program.¹⁵ In a few cases, according to the January 15, 2007, Facilitator letter, amended decisions were issued when the Chief Adjudicator reviewed a claim because more than one Adjudicator had written a decision for the claim and, as a result, the two adjudication decisions needed to be reconciled. The Facilitator's January 15, 2007, letter also explains that in some claims a letter or other document was filed with the Facilitator regarding the Adjudicator decision. The Facilitator classified some of this correspondence as a petition for Monitor review. In some of these cases, according to the Facilitator's letter, the Facilitator issued an amended decision and withdrew or "closed" the petition.¹⁶

III. AMENDMENTS THAT AFFECTED CLASS MEMBER CASH RELIEF

The Facilitator provided to the Monitor updated information regarding the cash relief provided in the original and amended Adjudicator decisions, the outcome of any petition for

¹⁴ The letter is attached as Exhibit 1 to the Monitor's Progress Report on Amended Adjudicator Decisions (Jan. 16, 2007).

¹⁵ These claims were not part of the "Conservation Loan" group, but the issues raised in these claims are similar to the issues presented by the "Conservation Loan" group.

¹⁶ See Monitor's Progress Report on Amended Adjudicator Decisions, Exhibit 1, Letter from the Facilitator, at 5 (Jan. 16, 2007).

Monitor review, and the amount of cash relief each class member has been paid. As noted above, the Monitor has provided to the parties draft charts that summarize this information. As explained above, when the last claims in this group are processed for cash relief and for debt relief, and when all USDA reporting to the Monitor is complete, the Monitor will finalize the charts and file them with the Court.

A. Summary of Investigation

According to the information reported by the Facilitator, a total of thirty-six class members in this universe of claims received amended decisions that changed the Adjudicator's original award of cash relief. Thirteen of the thirty-six amended decisions are part of the "substantive" group of amendments. Twenty-three of the thirty-six amended decisions are part of the "technical" amendment group.

B. Substantive Amendments Affecting Cash Relief

The Monitor has analyzed the thirteen substantive amendments in which a class member's cash relief was affected by the amended Adjudicator decision. In three of the thirteen claims, the amended decision increased a class member's cash relief. In ten of the claims, the amended decision decreased a class member's cash relief.

In eight of the ten claims in which cash relief decreased, the class member's relief changed from credit relief to non-credit relief. In eight of the ten claims in which amended decisions decreased a class member's cash relief, the claimant or USDA petitioned for Monitor review. In some of the claims, the Monitor directed reexamination of the claim; in other claims, the Monitor denied reexamination.

C. Technical Amendments Affecting Cash Relief

The Facilitator reports that a total of twenty-three “technical” amendments involve claims in which amended decisions affected cash relief. Five of the twenty-three claims listed in the technical amendment group are claims for which more than one amendment was made. In these five claims, it was not the technical amendment that affected cash relief—instead, the cash relief was affected by either a prior or subsequent substantive amendment.

The remaining technical amendments affecting cash relief resulted from the type of administrative problems described in the Facilitator’s April 6, 2006, letter. In fifteen of the twenty-three technical amendments, the Facilitator reported that the original Adjudicator decision was issued with the “wrong decision jacket” or “wrong decision text.” Three other technical amendments that affected cash relief involved similar types of amendments.

D. Determining Appropriate Amount of Cash Relief

To determine the appropriate cash relief for each of the class members who received an amended decision affecting cash relief, the Monitor reviewed the following types of documents: the class member’s Claim Sheet and Election Form, USDA’s Claim Response, the original Adjudicator decision, the amended Adjudicator decision(s), any petition for Monitor review, any petition response, and any decision by the Adjudicator on reexamination. The Monitor shared with the parties the information provided by the Facilitator on the decisions each class member received in the claims process and the cash relief awarded for each claimant in the final decision for the claim. Neither USDA nor Class Counsel has raised a substantive concern with the appropriateness of the final cash relief award for any individual class members who received amended Adjudicator decisions that affected their cash relief.

E. Determining Amount of Cash Relief Payments

Under paragraph 9(a)(iii)(B) of the Consent Decree, class members who prevail in a Track A credit claim receive a cash payment of \$50,000 from the Judgment Fund.¹⁷ Cash relief for credit claims is paid to class members by the Facilitator. According to the Facilitator's report, only two cash relief payments for Track A credit claims remain outstanding for claims the Monitor has been investigating pursuant to the Court's August 7, 2006, Order.¹⁸

A February 7, 2001, Stipulation and Order set cash relief for non-credit claims at \$3,000. Cash relief for non-credit claims is paid directly by USDA. USDA notifies the Facilitator of the \$3,000 non-credit relief payment. To confirm that a \$3,000 non-credit payment was made, the Monitor reviewed information from USDA and from the Facilitator's records of reports the Facilitator has received from USDA. For some class members, USDA is able to provide the date on which a check was issued; for others, USDA cannot yet confirm that the check has been issued. Based on the information provided by the Facilitator and USDA, it appears that only one class member's non-credit cash relief award remains outstanding for claims the Monitor has been investigating pursuant to the Court's August 7, 2007, Order.¹⁹

IV. AMENDMENTS THAT AFFECTED CLASS MEMBER DEBT RELIEF

Pursuant to paragraph 9(a)(iii)(A) of the Consent Decree, class members who prevail on Track A credit claims are entitled to debt relief. Class members who are denied relief or who prevail only on non-credit claims are not eligible for debt relief. The Monitor analyzed the

¹⁷ The Judgment Fund is described in 38 U.S.C. § 1304.

¹⁸ One of these situations involves an Adjudicator reexamination decision that was issued on June 1, 2007. The other involves a claim in which USDA petitioned for Monitor review, and the Monitor denied USDA's petition on May 25, 2007. The Monitor expects that payment will be made soon for these two claims, in the normal course of payment processing.

¹⁹ This situation involves an Adjudicator decision that was issued on June 13, 2007. The Monitor expects that payment will be made soon, in the normal course of payment processing.

Track A claims in the group of “substantive” amendments and in the group of “technical” amendments to determine whether the amendments affected the class members’ debt relief.

A. Summary of Investigation

The Court’s August 7, 2006, Order directed the Monitor to obtain the information necessary to fully apprise the Court of the circumstances involved in any amended decisions that were not purely clerical and that affected class members’ debt relief. The Court further ordered the Monitor to attempt to resolve any problems regarding class members who received amended Adjudicator decisions that changed their debt relief. The Monitor’s efforts to determine the proper scope of class member debt relief are described below. Part of that process included obtaining information from USDA regarding each of the potentially affected class members. USDA has fully cooperated with all of the Monitor’s requests for information. The Monitor has also worked with the parties to resolve several potentially problematic cases. The parties appear to have reached agreement on the appropriate scope of debt relief mandated by the Consent Decree and the February 7, 2001, Debt Relief Stipulation and Order (“Debt Relief Stipulation and Order”) for all class members in the amended decisions universe that is addressed by this report.²⁰ The Monitor believes that the parties’ conclusions are in compliance with the Consent Decree and the Debt Relief Stipulation and Order. Described below are the results of the Monitor’s investigation and the remaining steps the Monitor believes are

²⁰ The parties discussed problems relating to implementation of the relief required by the Consent Decree and by the Debt Relief Stipulation and Order, and the parties discussed problems relating to implementation of USDA’s Information Memo for the Monitor, Memo #4 (“Memo #4”) (attached as Exhibit 2). This report focuses only on implementation of relief required by the Consent Decree and the Debt Relief Stipulation and Order. To the extent that the parties may have disagreements about implementation of Memo #4, those disagreements are not discussed in this report.

necessary to ensure appropriate implementation of *Pigford* debt relief for this universe of claims.

B. How the Monitor Analyzed the Amendments' Effect on Debt Relief

Prevailing Track A credit claimants' entitlement to debt relief arises from the Consent Decree and from the Debt Relief Stipulation and Order. Read together, the Consent Decree and Debt Relief Stipulation and Order provide that Track A debt relief is a function of the Adjudicator's findings of discrimination.

1. The Consent Decree and Debt Relief Stipulation and Order

The Consent Decree provides debt relief for class members who prevail on Track A credit claims. The Consent Decree debt relief provision provides in relevant part:

USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator. The discharge of such outstanding debt shall not adversely affect the claimant's eligibility for future participation in any USDA loan or loan servicing program.

Consent Decree, ¶ 9(a)(iii)(A).

On February 7, 2001, the parties stipulated and the Court ordered that class members who are entitled to debt relief under the Consent Decree are entitled to the following:

The relief to be provided in [the debt relief paragraphs] of the Consent Decree to a class member who prevails on a claim of credit discrimination includes all debts which were identified by the Adjudicator . . . as having been affected by the discrimination. Additionally, such relief includes all debts incurred at the time of, or after, the first event upon which a finding of discrimination is based, except that such relief shall not include: (a) debts that were incurred under FSA programs other than those as to which a specific finding of discrimination was made by the Adjudicator or Arbitrator with respect to the class member (e.g., the Operating Loan program [OL program], the Farm Ownership loan program [FO program], the Emergency Loan program [EM program], etc.); (b) debts that were incurred by the class member prior to the date of the first event upon which the Adjudicator's or Arbitrator's finding of discrimination is based, or

(c) debts that were the subject of litigation separate from this action in which there was a final judgment as to which all appeals have been forgone or completed.

Debt Relief Stipulation and Order, ¶ 2 (footnote omitted).

2. *Two-Step Debt Relief Process*

To determine whether class members who received amended decisions received the appropriate *Pigford* debt relief, the Monitor applied a two-step process. In step one, the Monitor determined the “debt affected by” discrimination for each class member’s claim. In step two, the Monitor determined the appropriate “forward sweep.” Each of these steps is explained below.

a. *Debt “Affected By” Discrimination*

The first sentence of the Debt Relief Stipulation and Order quoted above provides that each prevailing class member is entitled to debt relief for all debts identified by the Adjudicator as having been affected by discrimination.

b. *“Forward Sweep”*

The second sentence of the Debt Relief Stipulation and Order quoted above provides that each prevailing class member is entitled to debt relief for all subsequent loans incurred in the same program(s) as the loan(s) that were identified by the Adjudicator as having been affected by discrimination. This “forward sweep” debt relief has been implemented to apply to all debt in the loan program(s) at issue from the date of the first event upon which a finding of discrimination is based through the end of the class period (December 31, 1996).

c. The Formula

As a result of the provisions cited above, the identification of the appropriate debt relief for each class member has two parts:

(1) Each loan or loan attempt identified by the Adjudicator as having been affected by discrimination

Plus

(2) All subsequent loans in the identified loan program(s) until the end of the class period.

For example, in the claim that corresponds to unique identification number 49, the Adjudicator's decision found discrimination in the context of a 1991 Operating Loan.²¹ Therefore, the claimant is entitled to debt relief regarding all Operating Loans that he or she incurred from the time of the 1991 event that formed the basis for the finding of discrimination through December 31, 1996.

C. Locating the Adjudicator's Finding of Discrimination in Amended Decisions

The format of Track A decisions is described on page 9 above. The Monitor and the parties treat the Adjudicator's narrative text, generally found on page 2 of the Track A decision, as the controlling document for purposes of calculating debt relief. This is despite the fact that some Track A decisions specify on page 3 what debt is to be forgiven.

There are at least two sets of problems with treating the computer-generated text on page 3 as authoritative as to debt relief. First, occasionally there are clerical errors in the process

²¹ The Monitor filed Exhibits B through E with the Monitor's April 7, 2006 Amended Decisions report listing information regarding the claims of class members who had received "technical" or "substantive" amendments to their original Adjudicator decisions. Those exhibits use unique identification numbers rather than claim numbers for each claim. The Monitor uses those same unique identification numbers in this report. The claim with unique identifier number 49 can be found on Exhibit B, C, and E of the Monitor's April 7, 2006 Report.

of generating page 3 of the decision. Since page 2 is the source document for the information found on page 3, page 2 is more reliable. The second problem, which is more significant, relates to timing.²² Approximately 20,118 claimants had received Track A decisions as of February 7, 2001—the date of issuance of the Debt Relief Stipulation and Order. In 11,947 of those 20,118 decisions, the claimant had prevailed on a Track A credit claim. According to the Facilitator, the formula used by the Facilitator to code the page 3 debt relief language in those 11,947 decisions was different from the formula the Facilitator later adopted in an effort to conform to the Stipulation and Order. In most, if not all, cases, the debt relief language in decisions that were issued before the Debt Relief Stipulation and Order was not consistent with the provisions of the Order.

The parties did not require the Facilitator to re-write and re-issue the text of previously issued Track A relief pages to bring them into compliance with the Debt Relief Stipulation and Order. Aware of the fact that the relief pages of Track A decisions were not updated to comply with the Order, USDA agreed to implement the terms of the Order based on the text of the Adjudicator’s narrative on page 2 of Track A decisions.²³

D. Determining Whether Class Members Received Appropriate Debt Relief

The Monitor reviewed each of the claims in which class members received an amended decision to determine the appropriate debt relief. Because of the problems explained above

²² The background regarding this situation is explained in more detail in the letter from the Facilitator. Monitor’s Progress Report on Amended Adjudicator Decisions, Exhibit 1, Letter from the Facilitator, at 3 (Jan. 16, 2007).

²³ Although the key document for determining debt relief is the Adjudicator narrative text on page 2 of the decision, the Monitor’s review included amended decisions that changed the USDA loan program or year identified on page 3 of the Adjudicator decision. The Monitor included these claims in the review to ensure that debt relief was properly calculated and implemented in all amended decision cases.

regarding the relief page of most Track A decisions, the Monitor looked to the Adjudicator’s narrative text on page 2 of each original decision and each amended decision. The Monitor also reviewed any Monitor decisions and any Adjudicator reexamination decisions that a class member may have received. Finally, the Monitor reviewed several categories of USDA records regarding each affected claimant. The records included USDA’s Current/Past Debt Inquiry records (CPDI), Online Borrower History records (OBH), archived microfiche loan records, Equity Recapture Screens, and, in some cases, certifications of no loan history. Samples of some of these records along with a narrative explanation of how to read the records are included in Exhibit 1. The sample records are redacted to remove any information about the claimants’ identities.

The steps taken to determine whether the class members in this universe who prevailed on credit claims received the appropriate debt relief are described in Table 1.

Step	Description
1. Analyze Adjudicator Decisions	<p>The Monitor reviewed the class member’s original and amended Adjudicator decisions to determine the dates of the adjudication decisions and to determine the formula for the class member’s entitlement to debt relief.</p> <p>For example, in the claim with unique identification number 134, the Adjudicator found discrimination in the context of USDA’s Operating Loan (OL) and Farm Ownership Loan (FO) programs in 1983. This finding entitles the claimant to the relief of all Operating Loans (OLs) and Farm Ownership Loans (FOs) received between the date of the 1983 event that formed the basis of the finding of discrimination and December 31, 1996.</p>

Table 1: Steps To Determine Whether Class Member Received Proper Debt Relief

Step	Description
2. Identify Loans Outstanding at Time of Initial Prevailing Adjudication Decision	<p>The Monitor reviewed USDA loan records, including but not limited to Current/Past Debt Inquiries (CPDIs) and Online Borrower Histories (OBHs), to identify loans that were outstanding at the time of the initial prevailing adjudication decision.</p> <p>For example, in the claim with unique identification number 134, the claimant had three outstanding loans at the time of the Adjudicator’s initial prevailing adjudication decision: an Operating Loan (OL) that originated in 1989, and an Operating Loan (OL) and a Farm Ownership Loan (FO) that originated in 1990.</p>
3. Determine Which Loans Should Be Subject to Debt Relief	<p>The Monitor determined which of the loans identified in step two, above, should be subject to debt relief according to the narrative text on page 2 of the final adjudication decision.</p> <p>For example, because the claimant with unique identification number 134 had a finding of discrimination relating to a 1983 Operating Loan (OL) and a 1983 Farm Ownership Loan (FO), the Operating Loans he received in 1989 and 1990 and the Farm Ownership Loan he received in 1990 were all subject to <i>Pigford</i> debt forgiveness pursuant to “forward sweep.”</p>
4. Determine Whether Relief Was Fully Implemented	<p>The Monitor assessed the data discussed above to determine whether each class member who prevailed on a credit claim received all of the debt relief to which he or she is entitled. Additionally, the Monitor assessed whether USDA accepted voluntary payments on debts after those debts should have been forgiven, and whether the government took funds by administrative or Treasury offset to satisfy any debt subject to <i>Pigford</i> debt forgiveness after January 1, 1999.²⁴</p> <p>For example, in the claim with unique identification number 134, USDA granted <i>Pigford</i> debt forgiveness for the claimant’s 1989 and 1990 Operating Loans as well as his 1990 Farm Ownership Loan. In addition, USDA refunded the voluntary payments the claimant had made on his loans after the date of the initial prevailing Adjudicator decision.</p>

²⁴ For an explanation of offsets, see USDA Notice FLP-197, Collecting Farm Loan Program (FLP) Debt by Administrative Offset for *Pigford v. Glickman* Claimants (Apr. 6, 2001) (available at the Office of the Monitor website at <http://www.pigfordmonitor.org/flp/>).

Table 1: Steps To Determine Whether Class Member Received Proper Debt Relief

Step	Description
5. No Adverse Effect Analysis	<p>USDA has a “no adverse effect” policy which was explained in detail in the Monitor’s March 29, 2007 Second Progress Report on Adjudicator Decisions.²⁵ In essence, this policy should ensure that debt that receives <i>Pigford</i> debt forgiveness—and debt that would have received <i>Pigford</i> debt forgiveness had it still been outstanding at the time of the <i>Pigford</i> adjudication—will not be used as a reason to deny loans or loan servicing to the claimant in the future.²⁶ USDA uses a computer program to keep track of the loans that should not form the basis for future adverse action. One certain page or screen in that computer program, called the “ADPS Civil Rights Screenshot,” is currently the key document used by USDA in implementation of its “no adverse effect” policy.</p> <p>In step five of the analysis, the Monitor assessed the coding of the ADPS Civil Rights Screenshot for each affected claimant to determine whether it contains accurate information regarding the claimant’s prevailing claims.</p> <p>For example, in the claim with unique identification number 134, the ADPS Civil Rights Screen Shot accurately showed that the claimant is entitled to forgiveness of Operating Loans and Farm Ownership Loans from 1983 through 1996.</p>
6. Recommend Corrective Action	<p>Based on the information and analysis described above, the Monitor’s office prepared recommendations for the parties. The parties each had the opportunity to provide their views as to the proper result in these cases. In the end, the parties reached agreement as to the proper outcome in each affected case. The Monitor believes that these outcomes are in compliance with the Consent Decree and the Debt Relief Stipulation and Order.</p>

²⁵ Ordinarily, if USDA forgives or writes-off debt and the forgiveness causes a loss to the government, that forgiveness has an adverse effect on the farmer’s ability to obtain future loans or loan servicing from USDA. See, for example, 7 C.F.R. §§ 1941.12(a)(8), 1943.12(a)(10) (2007). USDA’s “no adverse effect” policy is intended to ensure that debt that is forgiven due to the Consent Decree (and debt that would have been forgiven by the Consent Decree had it not already been forgiven through some other program or paid off) does not cause such an adverse effect.

²⁶ The policy is found in USDA Notice FLP-460, Priority Consideration for Prevailing Claimants, at 8 (May 23, 2005) (available at the Office of the Monitor website at <http://www.pigfordmonitor.org/flp/>). The policy is explained in detail in Monitor Update No. 14, which is available at the Office of the Monitor website at <http://www.pigfordmonitor.org/updates/>.

E. Remaining Debt Relief Implementation Steps

In the course of examining the documents related to this universe of cases, the Monitor became aware of several issues that are problematic in USDA's debt relief implementation system. Some of the issues relate only to amended decisions. Other issues came to the Monitor's and the parties' attention as a result of the amended decisions investigation, but they relate to the *Pigford*-wide debt relief system.

The problems that were raised by the amended decisions cases—those which relate only to amended decisions, and those which relate to class-wide debt relief—now appear to have been resolved in principle. For some, steps remain to be taken to achieve full implementation. The steps that need to be taken are discussed below.

The Monitor notes that USDA has been completely cooperative in responding to the Monitor's requests for information about these issues, and in discussions with the Monitor has agreed to take additional steps to ensure full implementation of *Pigford* debt relief for all prevailing claimants. The Monitor is not making formal recommendations regarding these steps at this time because the Monitor believes that USDA is in the process of implementing solutions to these debt relief issues. If any difficulties impede implementation of USDA's remaining debt relief tasks, the Monitor will report to the Court about the difficulties, and, if appropriate, issue formal recommendations to the Court to resolve the difficulties.

The general steps that need to be taken to complete implementation of debt relief are listed below. The need for the actions described below applies to all debt relief cases, not only amended decisions cases.

1. System for Refunds of Voluntary Payments

There are some cases in which, after the date of the initial prevailing Adjudicator decision, USDA accepted from claimants voluntary payments on debts that qualify for *Pigford*

debt relief. USDA agrees to refund these payments to the claimants. A system is needed to identify these payments and refund them.

2. System for Refunds of Offsets

In some cases, USDA took payments owed to claimants by federal entities through a mechanism called “offset” and applied the payments to debts that qualify for *Pigford* debt relief.

USDA has agreed to refund to the claimants any such offsets taken after January 1, 1999.²⁷

A system is needed to identify these funds taken by offset and refund them.

3. System for Determining the Proper Loan Type for Debt Relief

In some cases, the Adjudicator’s narrative text on page 2 finds discrimination based on a certain set of facts in a particular loan program. For example, the decision may find discrimination in the late funding of an Operating Loan (OL) in 1983. Later, when USDA implements debt relief for the claimant, USDA records reveal that the 1983 loan described in the Adjudicator’s decision was actually an Emergency Loan (EM loan). The Debt Relief Stipulation and Order requires forgiveness of the debt “affected by” discrimination, along with “forward sweep” forgiveness of subsequent loans in the same loan program. In cases in which it is clear that the loan referred to in the Track A decision was in a different loan program than the program identified by the Adjudicator, USDA has agreed to “switch” the loan type for debt relief purposes to provide debt relief in the correct loan program. A system is needed to make sure that both the debt “affected by” and the “forward sweep” aspects of debt relief are implemented in these “switch” cases.

²⁷ For an explanation of USDA’s *Pigford* offset policy, see USDA Notice FLP-197, Collecting Farm Loan Program (FLP) Debt by Administrative Offset for *Pigford v. Glickman* Claimants (Apr. 6, 2001) (available at the Office of the Monitor website at <http://www.pigfordmonitor.org/flp/>).

4. System for Managing Tax Consequences of Revised Debt Relief

Implementation of the systems described above will likely trigger increased debt relief, which will in turn trigger tax consequences for affected claimants, and the need for further Consent Decree federal income tax relief.²⁸ USDA has agreed to coordinate with Class Counsel to put a system in place to notify claimants of *Pigford*-related transactions of this type that may have tax consequences for claimants.

5. System for Implementation of “No Adverse Action” Assurances

USDA’s current system for ensuring that no adverse action is taken against prevailing claimants due to *Pigford* debt forgiveness (or due to debt that would have received *Pigford* debt forgiveness had it still been outstanding) primarily relies on a computer screen referred to by USDA as the ADPS Civil Rights Screen Shot. The Monitor has encouraged USDA to put a system in place to make sure that these screen shots are accurately coded, and to make sure that USDA county offices understand how to use the screen shots. Alternatively, USDA could choose to design and implement a different type of system to communicate “no adverse action” information to county offices. This system should take into account issues regarding equity recapture screens, and issues regarding surviving spouses.²⁹

²⁸ See Consent Decree, ¶ 9(a)(iii)(C), regarding the tax relief component of relief for prevailing Track A credit claims.

²⁹ Equity recapture screens are the part of USDA’s computer records system that shows certain transactions that may indicate outstanding liabilities or losses caused to the government that could form the basis of future adverse actions against the borrower. These transactions may include “shared appreciation agreements” and “net recovery value buyout agreements” with recapture periods that may or may not have expired. For a discussion of these transactions toward the end of the class period, see 7 C.F.R. §§ 1951.909 (j)-(k), 1951.913, 1951.914 (1996). Surviving spouse issues focus on whether losses caused to the government due to loans that were the subject of *Pigford* debt forgiveness should cause an adverse effect for a deceased borrower’s spouse if the spouse, who may have been a co-borrower, seeks a future USDA loan.

V. FACILITATOR ELIGIBILITY RE-SCREENING

In the Monitor's April 7, 2006, Report on Amended Adjudicator Decisions, the Monitor advised the Court that in addition to amended Adjudicator decisions, there may have been amendments to the "eligibility" determinations made by the Facilitator. The Court's August 7, 2006, Order required the Monitor to further investigate and report to the Court regarding any claimant who received an initial notification from the Facilitator that they were eligible to participate in the claims process and then later received a notice of rejection or other notification from the Facilitator resulting in the denial of the claimant's opportunity to participate in the claims process.

A. Summary of Investigation

The Monitor requested information from the Facilitator regarding any "amended" decisions in the eligibility screening process. The Monitor obtained that information in a letter from the Facilitator dated January 15, 2007, which the Monitor has provided to the Court as Exhibit 1 to the Monitor's January 16, 2007, Progress Report on Amended Decisions. The Monitor has discussed the re-screening criteria with the Facilitator and shared with the parties information provided by the Facilitator. The Facilitator reports that although 4,600 claims were re-screened after the Court approved the Consent Decree, no class member was denied eligibility to participate in the claims process as a result of re-screening.

B. Facilitator Eligibility Screening

Under paragraph 5(f) of the Consent Decree, the Facilitator is charged with the task of screening claim packages to determine whether each claimant meets the criteria for class

membership. The Consent Decree requires the Facilitator to make this determination within twenty days of receiving a completed claim package. If a claimant is determined to be a class member, the Consent Decree requires the Facilitator to assign the class member a Consent Decree case number and forward the claim to Class Counsel and USDA and to the Adjudicator (Track A) or the Arbitrator (Track B), as appropriate. If a claimant is found not to be a class member, the Consent Decree requires the Facilitator to notify the claimant and the parties' counsel of that finding.

C. Screening of First 4,600 Claims

The Facilitator's January 15, 2007, letter, attached as Exhibit 1 to the Monitor's January 16, 2007, Progress Report, describes the actions taken to implement the Facilitator's eligibility screening process prior to the Court's final approval of the Consent Decree. According to the Facilitator, with the agreement of the parties, the Facilitator began screening Claim Sheet and Election Forms after January 5, 1999, the date on which the Court granted preliminary approval of the Consent Decree. Shortly after the Court granted final approval of the Consent Decree on April 14, 1999, the parties met with the Facilitator to finalize the screening procedures for completed Claim Sheet and Election Forms. The final screening procedures differed from the screening procedures the Facilitator had used for the first 4,600 claims.

D. Re-Screening of 4,600 Claims

The Facilitator indicated that beginning in May 1999, by agreement of the parties, the Facilitator re-screened the first 4,600 claims using the final screening procedures. This re-screening process was completed in July 1999. The Facilitator reports that each of the 4,600

claimants received notification of the re-screening. In the cases in which deficiencies in the Claim Sheet and Election Form were identified, the claimant was given notice and an opportunity to cure the deficiency by October 12, 1999, the 180-day deadline for the submission of claim packages. Appendix D to the Facilitator's January 15, 2007, letter contains samples of the letters that the Facilitator sent to claimants whose claim packages were re-screened by the Facilitator from May to July 1999.

E. Results of Re-Screening

The Facilitator has reported to the Monitor that the Facilitator's computer database is dynamic and therefore does not contain information regarding how many of the 4,600 claimants were initially deemed eligible but then received a notice of deficiency as a result of the re-screening process. The Facilitator reported to the Monitor that all claimants who received a notice of deficiency as a result of the re-screening process were able to cure that deficiency. The Facilitator reports that of the 122 claimants who were denied eligibility in the group of 4,600, none had previously been deemed eligible. In other words, none of the 122 who were ultimately ineligible became ineligible as a result of the re-screening process.

The Monitor has discussed the Facilitator's re-screening process with counsel for the government and with Class Counsel. Neither party has identified any concerns with the Facilitator's re-screening process or the results of that re-screening process.

VI. CONCLUSIONS AND RECOMMENDATIONS

The Monitor has worked with the Facilitator and USDA to obtain the information needed to assess the effect of amended decisions on both eligibility for the claims process and on relief provided to prevailing claimants for the groups of claimants identified in the Court's

August 7, 2006, Order. The Monitor has worked with Class Counsel and with counsel for the government to analyze the appropriate cash relief and debt relief for each of the class members who received amended Adjudicator decisions. The Monitor has reviewed with the parties the information provided by the Facilitator regarding the re-screening of the first 4,600 claims for eligibility. The Monitor has received the full cooperation of the Facilitator and the parties in addressing the matters the Court has directed the Monitor to investigate. The Monitor found no outstanding problems that require the Court's attention at this time. The Monitor will continue to work with the parties to ensure that debt relief systems are implemented, and to ensure that each class member receives the debt relief and cash relief that they have been awarded and that the parties have agreed is appropriate.

The Monitor anticipates that over the next month the parties and the Monitor will establish a timetable for completion of the tasks that must be accomplished in order to:

1. Complete reporting regarding the universe of amended decisions claims addressed in this report;
2. Complete implementation of cash and debt relief for the universe of amended decisions claims addressed in this report; and
3. Complete implementation of class-wide debt relief as to all prevailing credit claims that have already completed the adjudication process.

The Monitor anticipates that the bulk of those tasks can be completed over the next three months. The Monitor recommends that the Court order the Monitor to continue to work with the parties on the implementation tasks described in this report and to report back to the Court on or

before October 11, 2007, regarding the tasks that have been completed and the tasks, if any, that remain to be completed.

Dated: July 9, 2007.

Respectfully submitted,

s/Randi Ilyse Roth
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