

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 EDWARD T. SCHAFER, Secretary,)
 United States Department of)
 Agriculture,)
)
 Defendant.)

Civil Action No.
97-1978 (PLF)

CECIL BREWINGTON, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 EDWARD T. SCHAFER, Secretary,)
 United States Department)
 of Agriculture,)
)
 Defendant.)

Civil Action No.
98-1693 (PLF)

MONITOR'S REPORT REGARDING IMPLEMENTATION OF
THE CONSENT DECREE FOR THE PERIOD OF
JANUARY 1, 2007, THROUGH DECEMBER 31, 2007

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This is the seventh in a series of Monitor reports concerning the good faith implementation of the Consent Decree.¹ This report covers the period of January 1, 2007, through December 31, 2007. The report fulfills, in part, the Monitor's obligation to make periodic written reports on the implementation of the Consent Decree to the Court, the Secretary of Agriculture, Class Counsel, and counsel for the United States Department of Agriculture (USDA).²

I. EXECUTIVE SUMMARY

During calendar year 2007, the parties and the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) continued to work in good faith to implement the Consent Decree.

As part of the implementation process, from the date of the Court's approval of the Consent Decree in 1999 through the end of calendar year 2007, the following cumulative milestones have been achieved:

a. The Government provided a cumulative total of approximately \$989,882,655 in cash relief, estimated tax payments, and debt relief to successful claimants who prevailed under Track A or Track B of the Consent Decree claims process.

b. The Adjudicator issued a cumulative total of 22,271 Track A decisions. The Adjudicator approved a cumulative total of 15,237 (approximately 68 percent) of the Track A claims.

c. The Arbitrator issued a cumulative total of ninety-one Track B decisions. The Arbitrator awarded damages in twenty-three of those claims. An additional seventy-one Track B claimants received payments in settlement of their

¹ The Monitor's prior reports are available on the Monitor's website at <http://www.pigfordmonitor.org/reports/>.

² Paragraph 12(b)(i) of the Consent Decree requires the Monitor to make periodic written reports on the good faith implementation of the Consent Decree. On March 23, 2003, the parties stipulated and the Court ordered the Monitor to report regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary. The Consent Decree and the Court's orders referenced in this report are available on the Monitor's website at <http://www.pigfordmonitor.org/orders/>.

claims, and an additional sixty-five claimants converted their claims to Track A with the consent of the Government.

d. The Monitor issued a cumulative total of 5,688 decisions in response to petitions for Monitor review. The Monitor directed reexamination of a cumulative total of 2,904 (approximately 51 percent) of those claims.

e. The Adjudicator issued reexamination decisions in a cumulative total of 2,606 Track A claims. On reexamination, the Adjudicator granted relief to petitioning claimants in 2,229 cases and granted relief to the Government in 102 cases.

f. The Arbitrator issued reexamination decisions in a cumulative total of seven Track B claims. On reexamination, the Arbitrator granted relief to petitioning claimants in five cases by resuming the hearing process in claims that had been dismissed prior to a hearing. The Arbitrator granted relief to the Government in two cases by reducing the damages awarded in one case and by modifying the debt relief awarded in another case.

g. The parties and the Monitor worked together to ensure proper payment of cash relief and to ensure implementation of the appropriate debt relief, tax relief, and injunctive relief for prevailing claimants.

h. The parties and the neutrals began to identify the tasks necessary to wind-down the Consent Decree implementation process and to ensure the full and complete implementation of the Consent Decree prior to the final wind-down.

The remainder of this report provides additional information regarding the parties' and the neutrals' implementation of the Consent Decree during calendar year 2007. Section II of this report provides claims processing statistics and more detailed information regarding the relief provided to prevailing claimants under the Consent Decree claims process. Section III describes the issues presented to the Court, including the significant Court Orders issued in 2007. Section IV reports on the Monitor's activity and observations in 2007, including the problems reported to the Monitor by class members, the information provided to class members by the Monitor, the decisions issued by the Monitor in response to petitions for Monitor review, and the calls received on the Monitor's toll-free phone line. Section V reports on significant Consent Decree implementation issues addressed by the parties and neutrals in 2007, including claims processing issues and issues regarding relief for successful claimants. Section VI reports the steps the parties

have begun to identify as necessary for the successful wind-down of the case. Section VII reports on the parties' continued good faith implementation of the Consent Decree during this period.

Many of the implementation activities and issues described in this report have continued in 2008. Because the focus of this report is calendar year 2007, events and implementation activities in 2008 are mentioned in only a few instances. The Monitor will file a separate report after December 31, 2008, detailing the accomplishments and implementation issues addressed by the parties and the neutrals in 2008.

II. CLAIMS PROCESSING STATISTICS

As of the end of 2007, a total of 22,691 class members had been found eligible to participate in the Consent Decree claims process. A summary of the results of the claims process for these claimants is presented below. The Monitor did not independently compile the information provided in this section of the report. The Facilitator,³ the Arbitrator,⁴ and the United States Department of Agriculture (USDA) provided the information about the results of the claims process to the Monitor.

A. Track A

As of the end of 2007, approximately 99 percent (22,519) of the 22,691 eligible claimants had elected to pursue their claims under Track A of the claims process.⁵ Paragraph 9 of the

³ The Facilitator is Epiq Systems, formerly known as Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(i).

⁴ The Arbitrator is Michael K. Lewis of JAMS, formerly of ADR Associates. *See* Consent Decree, paragraph 1(b).

⁵ To participate in the claims process, a claimant must complete a claim package, including a Claim Sheet and Election Form, and must submit that package to the Facilitator. At the time a claimant submits a completed claim package, the claimant must elect whether to proceed under Track A or Track B. Consent Decree, paragraph 5(d).

Consent Decree permits claimants to present two types of claims under Track A: credit claims and non-credit claims. To prevail in a Track A credit claim, paragraph 9(a) of the Consent Decree requires a claimant to prove, by substantial evidence,⁶ that:

- (1) the claimant owned or leased, or attempted to own or lease, farmland;
- (2) the claimant applied⁷ for a specific credit transaction⁸ at a USDA county office during the period from January 1, 1981 through December 31, 1996;
- (3) the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions (such as a supervised bank account), or USDA failed to provide appropriate loan service,⁹ and such treatment

⁶ The Consent Decree defines “substantial evidence” as such relevant evidence as appears in the record that a reasonable person might accept as adequate to support a conclusion, after taking into account other evidence in the record that fairly detracts from that conclusion. Consent Decree, paragraph 1(I).

⁷ By agreement of the parties, the term “applied” includes “attempt-to-apply” claims. The requirements for attempt-to-apply claims are set forth in “Constructive Application” Principles, attached as Appendix 5 of the Monitor’s Report and Recommendations Regarding Implementation of the Consent Decree for the Period of March 1, 2000, through August 31, 2000, and available on the Monitor’s website at <http://www.pigfordmonitor.org/reports/rpt20001226.pdf>. The Principles define a “constructive application” as having the following elements: (A) the claimant contacted an appropriate USDA office or employee of that office and stated that he/she wanted to apply for a particular loan; and (B) a USDA employee or USDA employees refused to provide loan application forms or otherwise actively discouraged the claimant from applying. Examples of “actively discouraging” actions by USDA officials are set forth in the Constructive Application Principles and include actions by USDA officials who:

- (1) Stated that there were no funds available, and therefore no application would be provided.
- (2) Stated that there were no application forms available.
- (3) Stated that the office was not then accepting or processing applications.

The Principles also contain examples of the specific proof that a claimant might offer to support a conclusion that the claimant made a *bona fide* effort to obtain funds for farming purposes.

⁸ Credit claims generally involve USDA farm loan programs, such as the Operating Loan, Farm Ownership Loan, Soil and Water Loan, and Emergency Loan programs. USDA regulations described the loan eligibility requirements for each loan program. *See* 7 C.F.R. Part 1941 (Operating Loans); Part 1943, Subpart A (Farm Ownership Loans); Part 1943, Subpart B (Soil and Water Loans); and Part 1945 (Emergency Loans) (1981-1996).

⁹ Loan servicing is a term of art used in USDA regulations for tools to help borrowers recover from financial difficulties and maintain their farming operations. USDA loan servicing programs included consolidation, rescheduling, reamortization, reduction in interest rates (including limited resource interest rates), and deferral of payments scheduled on loan accounts. Beginning in 1988, loan servicing tools also included loan write-downs and write-offs, as well as options to help borrowers retain their farmland security property, such as net recovery buyouts and the leaseback/buyback program. *See* 7 C.F.R. Part 1951 (1981-1996). In addition, USDA regulations included options for compromise, adjustment, charge-off, or cancellation of debts. *See generally* 7 C.F.R. Part 1956 (1988-1996).

was less favorable than that accorded specifically identified, similarly situated white farmers; and

(4) USDA's treatment of the loan application led to economic damages to the class member.

Claimants who prevail in Track A credit claims are entitled to receive a cash payment of \$50,000, as well as certain debt relief, injunctive relief, and tax relief.¹⁰

Non-credit claims are processed pursuant to paragraph 9(b) of the Consent Decree. To prevail in a Track A non-credit claim, paragraph 9(b) of the Consent Decree requires a claimant to prove, by substantial evidence, that:

(1) the claimant applied for a specific non-credit benefit program¹¹ at a USDA county office between January 1, 1981 and December 31, 1996; and

(2) his or her application was denied or approved for a lesser amount than requested, and such treatment was different than the treatment received by specifically identified, similarly situated white farmers who applied for the same non-credit benefit.

Claimants who prevail in non-credit claims are entitled to receive cash relief of \$3,000.¹²

Table 1 contains cumulative statistics regarding the Track A claims process from 1999, when the Consent Decree was approved, through December 31, 2007. As of the end of 2007,

¹⁰ Consent Decree, paragraph 9(a)(iii).

¹¹ USDA administered a number of farm benefit programs during the period from January 1, 1981, through December 31, 1996. To pick just one year as an example, in 1993 USDA non-credit benefit programs included disaster programs, such as direct disaster relief (7 C.F.R. Part 1477 (1993)), commodity programs, such as deficiency payments (7 C.F.R. Part 1413 (1993)), and conservation programs, such as the Conservation Reserve Program (7 C.F.R. Parts 1410 and 704 (1993)).

¹² Consent Decree, paragraph 9(b)(iii). The Consent Decree states that a non-credit claimant who prevails will receive 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. In a Stipulation and Order filed on February 7, 2001, the parties agreed that successful claimants in non-credit claims would receive a cash payment of \$3,000. *See Stipulation and Order*, ¶ 1 (D.D.C. February 7, 2001), available on the Monitor's website at <http://www.pigfordmonitor.org/orders/20010207order.pdf>. Prevailing non-credit claimants also receive certain injunctive relief. There is no debt relief or tax relief for non-credit claims. *See Consent Decree*, paragraph 9(b)(iii).

approximately 68 percent of Track A claims had been approved by the Adjudicator.¹³ This represents a total of 15,237 prevailing Track A claims.

Table 1: Statistical Report Regarding Track A Claims¹⁴		
Statistical Report as of:	End of 2007	
	Number	Percent
A. Eligible Class Members (Track A and B)	22,691	100
B. Cases in Track A (Adjudications) ¹⁵	22,519	99
Adjudication Completion Figures		
D. Adjudications Complete	22,271	99
E. Adjudications Not Yet Complete	248	1
Adjudication Approval/Denial Rates¹⁶		
F. Claims Approved by Adjudicator	15,237	68
G. Claims Denied by Adjudicator	7,034	32
Adjudication Approvals Paid/Not Paid		
H. Approved Adjudications Paid	15,079	99
I. Approved Adjudications Not Yet Paid	158	1

B. Track B

Approximately 1 percent (241) of the 22,691 eligible claimants elected to pursue their claims under Track B of the claims process. Paragraph 10 of the Consent Decree sets forth the

¹³ Under paragraph 1(a) of the Consent Decree, JAMS-Endispute, Inc., is responsible for the final decision in all Track A claims. JAMS-Endispute, Inc., is now known as JAMS.

¹⁴ These statistics are provided by the Facilitator and are as of December 31, 2007. Statistics for prior reporting periods are summarized in Appendix 1. Current statistics are available upon request from the Monitor's office (1-877-924-7483) and are updated regularly for Track A claims on the Monitor's website at <http://www.pigfordmonitor.org/stats/>.

¹⁵ These cases include 65 class members who initially elected Track B but who converted their claims to Track A with the consent of the Government.

¹⁶ These numbers include both initial Adjudicator decisions and Adjudicator reexamination decisions as of the end of 2007.

process for Track B claims. To prevail in a Track B claim, a class member must prove by a preponderance of the evidence¹⁷ that the class member was a victim of discrimination and suffered damages as a result of that discrimination.¹⁸

Table 2 contains cumulative statistics regarding the Track B claims process. As of the end of 2007, approximately 66 percent (159) of the 241 claimants who initially elected Track B had either settled their claims (71 claimants), converted their claims to Track A with the consent of the Government (65 claimants),¹⁹ or prevailed after a hearing before the Arbitrator (23 claimants).²⁰

¹⁷ The Consent Decree defines “preponderance of the evidence” as such relevant evidence as is necessary to prove that something is more likely true than not true. Consent Decree, paragraph 1(j).

¹⁸ The Track B process includes an exchange of exhibits and written direct testimony, a limited period for discovery, and the opportunity for cross-examination of witnesses at an eight-hour arbitration hearing. The submission of evidence is governed by the Federal Rules of Evidence. See Consent Decree, paragraph 10(a)-(f). Claimants who prevail before the Arbitrator may be awarded actual damages, as provided by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691e(a). Actual damages under ECOA may include both economic damages, such as for lost farm income, and non-economic damages, such as for mental distress, humiliation, or damage to credit reputation. In addition to actual damages, prevailing Track B claimants may receive debt relief and injunctive relief. There is no tax relief in Track B. See Consent Decree, paragraph 10(g).

¹⁹ Of the 65 claimants who switched to Track A with the consent of the Government, a total of 56 claimants filed completed claim packages and were found eligible by the Facilitator to participate in the Track A claims process. Nine of the 65 claimants either did not file a claim package (one claimant) or filed a claim package that was deemed deficient by the Facilitator and, after notice of the deficiency, did not timely cure the deficiency (eight claimants). As of the end of 2007, of the 56 claimants who filed completed claim packages and were found eligible to participate in the Track A claims process, a total of 36 claimants had prevailed in the claims process, 14 claimants were denied relief, and six claims remained pending in the claims process.

²⁰ The amount of each individual Track B arbitration award is set forth in Appendix 3. Claimant names and geographic locations are not disclosed.

Table 2: Statistical Report Regarding Track B Claims²¹	
Statistical Report as of:	End of 2007
A. Eligible Track B Claimants	241
B. Track B Cases Settled	71
C. Track B Cases Converted to Track A	65
D. Track B Cases Withdrawn	9
Arbitrations Complete/Not Complete	
E. Contested Track B Cases in Claims Process (Not Settled, Not Converted, Not Withdrawn)	96
F. Arbitration Decisions Issued	91
G. Arbitration Decisions Not Yet Issued	5
Arbitration Results	
H. Claimant Prevailed Before Arbitrator	23
I. Average Award to Prevailing Claimants	\$476,679
J. Government Prevailed Before Arbitrator	68
Posture of Decisions in Which Government Prevailed:	
1. Cases Dismissed Before Hearing	44
2. Full Hearing, Finding of No Liability	24
Arbitration Settlements and Damage Awards Paid/Not Paid	
K. Arbitration Settlements Paid	71
L. Arbitration Settlements Not Yet Paid	0
M. Arbitration Damage Awards Paid	18
N. Arbitration Damage Awards Not Yet Paid ²²	5

²¹ These statistics are provided by the Facilitator and are as of December 31, 2007. They include both initial and reexamination results. Statistics for prior reporting periods are summarized in Appendix 2.

²² As of the end of 2007, arbitration damage awards remained unpaid for three claims in which the final decision on the claim was issued by the Arbitrator or by the Monitor in late 2007. In addition, as of the end of 2007, two claims remained pending before the Monitor as a result of petitions for Monitor review filed by USDA and/or by the claimant.

C. Debt Relief

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to claimants who prevail on credit claims. These provisions require USDA to discharge all of a prevailing claimant's outstanding debt to USDA that was "incurred under, or affected by" the program(s) that were the subject of the claim(s) resolved in the class member's favor in the claims process. In addition to providing a discharge of debts incurred under or affected by discrimination, the Consent Decree states that debts subject to *Pigford* debt relief shall not adversely affect a claimant's eligibility for future participation in any USDA loan or loan servicing program.

A Stipulation and Order, filed on February 7, 2001, further defines the scope of debt relief. Paragraph 2 of the February 7, 2001 Stipulation and Order clarifies that debts "incurred under, or affected by" the programs that were the subject of the discrimination claims resolved in the class member's favor include: (1) those debts identified by the Adjudicator or the Arbitrator as having been affected by discrimination, and (2) all subsequent loans in the same loan program as the loans identified by the Adjudicator or the Arbitrator, from the date of the first event upon which a finding of discrimination was made through the end of the class period (December 31, 1996).²³

²³ Stipulation and Order, ¶ 2 (D.D.C. February 7, 2001). Monitor Update No. 10, revised on July 11, 2008, provides additional information about the scope of debt relief and the principles the parties have agreed to apply in determining debt relief. On February 20, 2008, the Court issued a Memorandum and Order regarding debt relief implementation for certain individual prevailing claimants. See Memorandum and Order (D.D.C. February 20, 2008). The Court's Orders and Monitor Update No. 10 are available on the Monitor's website at <http://www.pigfordmonitor.org/orders/> and <http://www.pigfordmonitor.org/updates/update10.htm>.

Table 3 provides statistics regarding the debt relief implemented by USDA for prevailing Track A and Track B class members as of the end of 2007. USDA reports that the Government provided debt relief to a total of 337 prevailing class members as of the end of 2007 (319 Track A claimants and eighteen Track B claimants), forgiving a cumulative total of \$33,313,408 in outstanding principal and interest.

Table 3: Statistical Report Regarding Debt Relief²⁴	
Statistical Report as of:	End of 2007
A. Total Amount of Debt Forgiven (Principal and Interest)	\$33,313,408
B. Debt Forgiven for Track A Claimants	\$29,635,934
C. Debt Forgiven for Track B Claimants	\$3,677,474
D. Number of Track A Claimants Who Received Debt Forgiveness	319
E. Number of Track B Claimants Who Received Debt Forgiveness	18
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$92,903
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$204,304

D. Total Monetary Relief for Track A and Track B Claims

Table 4 reports the total monetary relief provided, as of the end of 2007, to prevailing Track A claimants. This relief includes: (1) cash relief payments of \$50,000 per claimant for a prevailing credit claim and \$3,000 per claimant for a prevailing non-credit claim; (2) debt relief provided to claimants who had outstanding debt that qualified for debt relief; and (3) tax relief, consisting of payments to the Internal Revenue Service (IRS) on behalf of claimants who

²⁴ These statistics are based on information provided by USDA for debt relief implemented by USDA through December 31, 2007. Appendix 4 provides information from prior reporting periods regarding debt relief as well as information on debt relief by state.

prevailed in Track A credit claims.²⁵ As of the end of 2007, the Government had provided a cumulative total of \$967,935,690 in monetary relief to Track A claimants.

Table 4: Statistical Report Regarding Total Track A Monetary Relief to Prevailing Class Members²⁶	
Statistical Report as of:	End of 2007
A. Cash Relief Paid to Prevailing Class Members for Track A Credit Claims (\$50,000 per claimant)	\$745,300,000
B. Cash Relief Paid to Prevailing Class Members for Track A Non-Credit Claims (\$3,000 per claimant)	1,299,000
C. Payments Due to IRS as Tax Relief ²⁷	191,700,756
D. Debt Relief (Principal and Interest)	29,635,934
E. Total Track A Monetary Relief	\$967,935,690

Table 5 reports the total monetary relief provided, as of the end of 2007, to prevailing Track B claimants. This relief includes: (1) amounts paid to the seventy-one claimants who settled their Track B claims; (2) amounts paid to claimants who prevailed in the claims process and were awarded damages by the Arbitrator; and (3) debt relief provided to claimants who had

²⁵ The amount of tax relief for each successful Track A credit claim is 25 percent of the \$50,000 cash relief payment (\$12,500) plus 25 percent of the amount of any principal debt that was forgiven by USDA. See Consent Decree, paragraph 9(a)(iii)(C).

²⁶ These statistics are based on information provided by the Facilitator regarding cash awards and tax relief through December 31, 2007. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2007.

²⁷ The tax relief in Table 4 is calculated based on information provided by the Facilitator about the amount of principal debt relief USDA has provided to class members with prevailing Track A credit claims. Rounding to the nearest dollar, payments due to the Internal Revenue Service as tax relief include: 25 percent of the \$50,000 cash award for successful Track A credit claimants ($\$50,000 \times 25\% = \$12,500 \times 14,906 = \$186,325,000$) plus 25 percent of the total principal debt forgiven for this group of successful claimants (reported by the Facilitator as $\$21,503,024 \times 25\% = \$5,375,756$). Rounding to the nearest dollar, according to the data provided by the Facilitator, the following total tax relief payments were due to the IRS as of the end of 2007 for Track A claims: $\$186,325,000 + \$5,375,756 = \$191,700,756$.

outstanding debt that qualified for debt relief. As of the end of 2007, the Government had provided a cumulative total of \$21,946,965 in monetary relief to Track B claimants.

Table 5: Statistical Report Regarding Total Track B Monetary Relief to Prevailing Class Members²⁸	
Statistical Report as of:	End of 2007
A. Total Amount Paid to Class Members in Settlement of Track B Claims	\$8,840,293
B. Total Amount Paid to Class Members for Damages Awarded by the Arbitrator	9,429,198
C. Debt Relief (Principal and Interest)	3,677,474
D. Total Track B Monetary Relief	\$21,946,965

Table 6 reports the total monetary relief received by claimants as of the end of 2007. As of the end of 2007, the Government had provided a cumulative total of \$989,882,655 in monetary relief under the terms of the Consent Decree, including cash relief payments to prevailing Track A claimants, payments in settlement and for damage awards to Track B claimants, estimated tax payments to the IRS on behalf of claimants who prevailed in Track A credit claims, and debt relief for Track A and Track B claimants.

²⁸ The payment statistics (rows A and B) are based on information provided by the Facilitator for payments made by the Government in settlement or for damage awards through December 31, 2007. The debt relief statistics (row C) are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2007. These statistics do not include the relief provided to claimants who initially elected Track B but who switched their claims from Track B to Track A with the consent of the Government. The Facilitator reports that the 36 claimants who prevailed in the Track A claims process after switching their claims from Track B to Track A received a total of \$1,756,000 in Track A cash relief and \$408,950 in debt relief as of the end of 2007. This relief is included as part of the Track A cash relief and debt relief statistics reported in Table 4.

Table 6: Statistical Report Regarding Total Track A and Track B Monetary Relief to Prevailing Class Members²⁹	
Statistical Report as of:	End of 2007
A. Total Amount of Cash Relief Paid for Track A and Track B Claims (cash awards, payments in settlement, and damage awards)	\$764,868,491
B. Total Payments Due to IRS as Tax Relief for Track A Claims	191,700,756
C. Total Debt Relief for Track A and Track B Claims (Principal and Interest)	33,313,408
D. Total Track A and Track B Monetary Relief	\$989,882,655

E. Relief by State

The Government has made payments to claimants who reside in thirty-nine different states. Table 7 reports the number of claimants and amount of cash relief paid by state, based on claimants' residence at the time the payment was made, for those states with the largest number of prevailing claimants. Appendix 5 contains information on the number of prevailing claimants in each state.

²⁹ Statistics for cash awards and tax relief are through December 31, 2007, and are based on information provided by the Facilitator. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA (principal and interest) through December 31, 2007.

Table 7: Statistical Report Regarding States With 100 or More Prevailing Paid Claimants³⁰		
Claimants' Residence	Total Number of Prevailing Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2007 (Track A and Track B)
Alabama	3,343	\$164,789,500
Mississippi	3,090	\$156,060,914
Georgia	1,956	\$96,881,742
Arkansas	1,475	\$74,330,969
North Carolina	1,147	\$60,791,583
South Carolina	881	\$44,693,500
Oklahoma	589	\$29,216,000
Louisiana	572	\$28,571,000
Tennessee	473	\$24,679,755
Texas	324	\$17,448,400
Florida	274	\$13,331,000
Illinois	178	\$8,906,000
Virginia	175	\$9,720,780
California	146	\$7,834,600

F. Injunctive Relief

Paragraph 11 of the Consent Decree describes the injunctive relief USDA is required to provide to prevailing class members who seek to obtain loans or credit assistance from USDA after they prevail on their claim under the Consent Decree. Generally speaking, prevailing class members are to receive: (1) technical assistance in completing loan applications from a qualified USDA official acceptable to the class member; (2) consideration of certain applications in the

³⁰ These statistics are provided by the Facilitator and are as of December 31, 2007. For purposes of this table, prevailing paid claimants in Track B include claimants who received payments in settlement of their Track B claims and claimants who received payments of Arbitrator damage awards. Appendix 5 contains statistics for all prevailing claimants by residence.

light most favorable to the class member; and (3) priority consideration for one Farm Ownership Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property. Certain aspects of injunctive relief were available from April 14, 1999 (the date the Consent Decree was approved by the Court) to April 14, 2004.³¹ In 2003, USDA voluntarily agreed to extend the right to injunctive relief for one additional year, through April 14, 2005.³² On April 21, 2005, the parties agreed to another extension of the deadline for some aspects of injunctive relief.³³ Pursuant to the April 21, 2005 Stipulation and Order, prevailing class members can request technical assistance, “most favorable light,” and priority consideration injunctive relief for up to two years after the date on which the prevailing class member completes the claims process.³⁴ Thus, injunctive relief remained in effect during 2007 for class members who prevailed in the claims process in 2005 or later.

Table 8 provides statistics reported by USDA concerning the cumulative number of requests for priority consideration for Farm Ownership Loans, Farm Operating Loans, and the

³¹ See paragraph 11(a) of the Consent Decree (stating that a class member must exercise his or her right to injunctive relief in writing and “within 5 years of the date of this order”).

³² USDA’s voluntary agreement is set forth in Notice FLP-313, “Priority Consideration for Prevailing Claimants,” (July 21, 2003) (made obsolete by Notice FLP-381-on March 3, 2005). Many of USDA’s FLP Notices that are particularly relevant to the *Pigford* class are available on the Monitor’s website at <http://www.pigfordmonitor.org/flp/>.

³³ The April 21, 2005 Stipulation and Order is available on the Monitor’s website at <http://www.pigfordmonitor.org/orders/20050421stip&order.pdf>.

³⁴ A class member completes the claims process, for injunctive relief purposes, at one of three possible points. If the class member prevails before the Adjudicator or Arbitrator and no petition for Monitor review is filed, the class member completes the claims process 120 days after the date of the Adjudicator or Arbitrator decision. If a petition for Monitor review is filed and the Monitor denies reexamination, the class member completes the claims process on the date of the Monitor’s decision denying reexamination. If a petition for Monitor review is filed and the Monitor grants reexamination, the class member completes the claims process on the date of the reexamination decision. See Monitor Update No. 4, Injunctive Relief in *Pigford v. Schafer* (rev. May 18, 2005), available on the Monitor’s website at <http://www.pigfordmonitor.org/updates/update04.htm>.

acquisition of inventory property from the beginning of the claims process through December 31, 2007.

Table 8: Statistical Report Regarding Injunctive Relief³⁵	
Statistical Report as of:	End of 2007
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration With Complete Application	125
2. Number of Applications Approved	29
B. Farm Operating Loans	
1. Number of Requests for Priority Consideration With Complete Application	217
2. Number of Applications Approved	75
C. Inventory Property	
1. Number of Requests for Priority Consideration	10
2. Number of Applications Approved	1

III. COURT ORDERS

In September 2007, the Court denied a “motion” filed by Ms. Thedford Rowser-Bey and hundreds of identical or substantially similar “motions” that had been mailed to the Court. The Court expressed concern that the mailings and Ms. Rowser-Bey’s “motion” included inaccurate information about the *Pigford* case and the deadlines for filing a claim in this case. The Court reiterated that no new claims could be filed in this case, that the deadline for filing a claim was October 12, 1999, and that the deadline for filing a request for permission to file a late claim was September 15, 2000. The Court expressed concern that individuals who had not met the deadlines for filing a claim in this case were being given false hope that they might somehow

³⁵ These statistics are provided by USDA and are as of December 31, 2007. Appendix 6 contains statistics from prior reporting periods regarding injunctive relief.

obtain relief through this case, and the Court ordered that no further papers prepared or submitted by Ms. Rowser-Bey would be accepted for filing without leave of the Court.

In October 2007, the Court approved a Stipulation to extend the Monitor's appointment. The Stipulation permits the Monitor to continue in existence until the Monitor issues a decision on the final petition for Monitor review or until three months after the date on which the final petition is routed to the Monitor for decision, whichever occurs first.

In December 2007, the Court directed the Monitor to work with the parties to attempt to settle an individual claim regarding access to the proceeds of a supervised bank account.³⁶

Table 9 sets forth a brief summary and provides the docket numbers for the substantive Orders issued by the Court during 2007.³⁷

³⁶ The parties reported to the Court on March 17, 2008, that they were able to resolve this claim with the assistance of the Monitor.

³⁷ Procedural orders, orders relating to approval of the Monitor's budgets and invoices, and orders and settlement agreements relating to attorneys' fees are not included in this list.

Table 9: Court Orders

Court Docket Number	Date Filed	Title	Major Issues Addressed
1416	09/10/2007	Memorandum Opinion and Order	Denies “Emergency Hearing Motion to Enforce the Consent Decree Paragraph 6 and to Stay” various proceedings and all identical and substantially similar motions. The Court’s Order states that hundreds of documents have been received by the Court containing information similar to the “motion” prepared by Ms. Thedford Rowser-Bey; these “motion” papers contain incorrect and inaccurate information; the deadlines for filing a claim under the Consent Decree have passed and the Consent Decree claims process has been closed to new applicants for approximately seven years. The Court orders that no further papers prepared or submitted by Ms. Thedford Rowser-Bey will be accepted for filing without prior leave of the Court.
1424	10/22/2007	Stipulation and Order	Approves stipulation of the parties that the Monitor shall remain in existence until the Monitor issues a decision on the final petition for Monitor review, or until three months after the date on which the final petition for Monitor review is routed to the Monitor, whichever occurs first.
1442	12/21/2007	Memorandum Opinion and Order	Orders the parties to pursue settlement discussions, with the assistance of the Monitor, regarding a motion filed by named class members to obtain the proceeds of a supervised bank account. Orders further briefing on the motion if the parties are unable to reach an agreement.

IV. MONITOR’S ACTIVITY AND OBSERVATIONS

A. Reporting — Paragraphs 12(a) and 12(b)(i) of the Consent Decree

1. Reporting Directly to Secretary of Agriculture

Paragraph 12(a) of the Consent Decree states that the Monitor shall report directly to the Secretary of Agriculture. The Monitor met with then-Secretary of Agriculture Mike Johanns on

April 19, 2007.³⁸ The Monitor also fulfills the Consent Decree reporting requirement through work with USDA's Office of the General Counsel. The Monitor had many meetings and frequent phone conversations during 2007 with James Michael Kelly, USDA's Deputy General Counsel.

2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant's Counsel

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports to the Court, the Secretary, Class Counsel, and Defendant's counsel. The Monitor is required to report on the good faith implementation of the Consent Decree during each twelve-month period, on such matters as the Court or the parties may request, and as the Monitor deems necessary. The Monitor submits this report on the good faith implementation of the Consent Decree for the period from January 1, 2007, through December 31, 2007, pursuant to paragraph 12(b)(i) of the Consent Decree and the March 24, 2003 Stipulation and Order.

B. "Resolving Any Problems" — Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree states that the Monitor shall:

Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree

To fulfill this responsibility, the Monitor's office works with Class Counsel and with class members: (1) by phone; (2) through correspondence; (3) in person at meetings sponsored by claimant organizations and/or by USDA;³⁹ and (4) by sending out and otherwise making

³⁸ Edward Schafer, the current Secretary of Agriculture, was sworn in as the Secretary of Agriculture on January 28, 2008, after Secretary Johanns resigned in September 2007.

³⁹ The meetings the Monitor's office attended during 2007 are listed in Appendix 7.

available “Monitor Updates” to disseminate important information to the whole class or to segments of the class affected by particular issues.

Matters brought to the Monitor’s attention by class members in 2007 included:

a. Concerns about delays in the Monitor review process and the reexamination process for class members whose Monitor decisions and Adjudicator and Arbitrator decisions remained pending.

b. Concerns about delayed payments of cash relief, particularly in cases involving payments to the estate of a deceased class member.

c. Concerns about tax relief and the status of tax deposits, particularly in early 2007 as claimants prepared to file their tax returns.

d. Concerns about debt relief and whether class members had received the appropriate relief.

e. Concerns about offsets and payments for debts that might be subject to *Pigford* debt relief.

f. Allegations of continued discrimination by local Farm Service Agency (FSA) offices and allegations of problems for class members seeking farm loans in 2007.

g. Questions about whether a claim can still be filed in the *Pigford* case and whether the case will be reopened through congressional action.

h. Concerns about the approval rate for requests for permission to file a late claim and concerns about the standards required for the granting of permission to file a late claim.

The Monitor has addressed class members’ questions and concerns by informing the parties, the neutrals, and the Court of the problems brought to the Monitor’s attention. The Monitor has also worked directly with Class Counsel and USDA in attempts to solve individual class members’ problems. The Monitor’s Office has provided information to class members about the claims process and the status of their claim.

In addition to providing information to individual class members on request, the Monitor also maintains a website to provide information for class members.⁴⁰ The Monitor's website includes information such as key Court Orders in the case, reports by the Monitor and the Arbitrator, up-to-date statistics on the claims process provided by the Facilitator, relevant Farm Loan Program (FLP) notices issued by USDA, and helpful links for class members seeking assistance with their farming operations. In 2007, there were 73,450 page "hits" to this website.

C. Reexamination of Claims — Paragraph 12(b)(iii)

Paragraph 12(b)(iii) of the Consent Decree gives the Monitor responsibility to direct reexamination of a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim that has resulted or is likely to result in a fundamental miscarriage of justice. The Monitor considers whether reexamination is warranted in response to petitions for Monitor review filed by class members and by USDA.

The Facilitator reports that a cumulative total of 5,707 timely petitions for Monitor review had been filed as of the end of 2007. The Monitor had issued decisions in response to approximately 5,688 of those petitions by the end of 2007. In about half of the decisions issued by the Monitor (2,904 of 5,688), the Monitor directed the Adjudicator or the Arbitrator to reexamine a claim. Most of the Monitor's decisions directing reexamination (approximately 95 percent) were in response to petitions by claimants for Monitor review.

Table 10 provides statistics regarding Monitor petition decisions as of the end of 2007; Appendix 8 contains statistics from previous reporting periods.

⁴⁰ The Monitor's website address is: <http://www.pigfordmonitor.org>.

Table 10: Statistical Report Regarding Petitions for Monitor Review⁴¹	
Statistical Report as of:	End of 2007
Petitions for Monitor Review	
A. Total Number of Petitions for Monitor Review	5,707
1. Claimant Petitions	4,950
2. Government Petitions	757
Monitor Decisions	
B. Total Number of Petition Decisions Issued by Monitor	5,688
1. Total Number of Petitions Granted	2,904
a. Claimant Petitions Granted	2,776
b. Government Petitions Granted	128
2. Total Number of Petitions Denied	2,784
a. Claimant Petitions Denied	2,157
b. Government Petitions Denied	627

1. Petitions for Review of Facilitator Screening Decisions

Paragraph 5 of the Consent Decree establishes a screening process for timely-filed claims. As part of that screening process, the Facilitator reviews the information submitted by claimants in a completed claim package.⁴² As part of that claim package, claimants were required to submit documentation or proof they had previously complained of discrimination by USDA between January 1, 1981, and July 1, 1997. Paragraph 5 of the Consent Decree specifies the types of proof claimants could offer.⁴³

⁴¹ These statistics are provided by the Facilitator and are valid as of December 31, 2007.

⁴² To file a claim, class members were required to submit a completed claim package, consisting of a Claim Sheet and Election Form (“Claim Sheet”) and supporting documentation. Consent Decree, paragraph 5(b). A sample Claim Sheet and Election Form was attached as Appendix 9 to the Monitor’s Report Regarding Implementation of the Consent Decree for the Period of January 1, 2006, through December 31, 2006, and is available on the Monitor’s website at http://www.pigfordmonitor.org/reports/rpt20071231_2006.pdf.

⁴³ On page 2 of the Claim Sheet, claimants were required to check a box indicating the type of documentation they were submitting as proof they had previously complained of discrimination. Claimants could submit a copy of the written discrimination complaint they had filed with USDA or a

If a claimant met the other criteria for class membership but indicated on their Claim Sheet and Election Form that they had not filed a discrimination complaint between January 1, 1981, and July 1, 1997, the Facilitator sent the claimant a Supplemental Information Form. The Supplemental Information Form asked the claimant to explain, in detail, why a complaint of discrimination was not filed against USDA prior to July 1, 1997. Upon receipt of a completed Supplemental Information Form, the Facilitator referred the claim to the Adjudicator to determine if the claimant met the requirements for an exception for “equitable tolling” of the requirement for a prior complaint of discrimination. Under paragraph 6 of the Consent Decree, a claimant who did not file a discrimination complaint until after July 1, 1997, could participate in the claims process if the Adjudicator found, consistent with the standards set forth in a specified United States Supreme Court decision,⁴⁴ that the claimant was prevented by “extraordinary circumstances beyond his control” from filing a discrimination complaint, the claimant was

copy of the correspondence they had sent to a member of Congress, the White House, or another government official. Claimants who did not have written documentation of their prior complaint could submit a Declaration, signed by a person who was not a member of the claimant’s family, stating that the person had first-hand knowledge of the complaint and describing the circumstances of the complaint. A copy of the Declaration form that could be used was provided as part of Appendix 9 to the Monitor’s Report Regarding Implementation of the Consent Decree for the Period of January 1, 2006, through December 31, 2006, and is available on the Monitor’s website at http://www.pigfordmonitor.org/reports/rpt20071231_2006.pdf.

⁴⁴ Paragraph 6 of the Consent Decree cites the case of *Irwin v. United States*, 498 U.S. 89 (1990) (also known as *Irwin v. Department of Veterans Affairs*). In *Irwin*, the petitioner sought to file a Title VII discrimination action against the Department of Veterans Affairs. The petitioner’s attorney had been out of the country at the time the petitioner and his attorney received a final decision from the Equal Employment Opportunity Commission (EEOC). The EEOC’s decision triggered a 30-day deadline to file an action in court. The petitioner did not meet the deadline but argued that the deadline should be “tolled” or extended due to his attorney’s absence from the country for part of the 30-day time frame. The Supreme Court affirmed the dismissal of the petitioner’s action as untimely filed, ruling that the petitioner’s circumstances did not meet the standards for “equitable tolling” of claims against the Government. The Supreme Court stated that the deadline for filing an action would not be extended for “what is at best a garden variety claim of excusable neglect.” *Irwin*, 498 U.S. at 96.

induced or tricked by USDA's misconduct into not filing a timely complaint, or the claimant had attempted to actively pursue his or her judicial remedies by filing a pleading that had been found defective.

If after completion of the screening process the claimant was found to be ineligible to participate in the claims process, the Facilitator sent a Notification of Rejection to the claimant. In some circumstances, claimants who received a Notification of Rejection from the Facilitator could file a petition for Monitor review of the Facilitator's class membership screening decision.⁴⁵ As of the end of 2006, the Monitor had issued decisions in a total of ninety-four petitions requesting reexamination of the Facilitator's Notifications of Rejection. The Monitor directed the Facilitator to reexamine the eligibility determination in a total of twenty-one Track A claims and one Track B claim. On reexamination, the Facilitator found each of those twenty-two claimants eligible to participate in the claims process.⁴⁶

No additional petitions for reexamination of Facilitator Notices of Rejection were filed in 2007 and no eligibility petitions remain pending with the Monitor.

2. Petitions for Review of Adjudicator Decisions

As of the end of 2007, the Adjudicator had issued decisions in a cumulative total of 22,271 Track A claims. In 5,646 of those claims (approximately 25 percent), either the claimant

⁴⁵ By Order dated October 29, 2002, the Court set a 120-day deadline for filing a petition for review of a notification of rejection received by claimants who had timely filed a complete claim package. The October 29, 2002, Order is available on the Monitor's website at <http://www.pigfordmonitor.org/orders/20021029order.pdf>. The circumstances under which claimants could petition to the Monitor regarding eligibility denials are explained in the October 29, 2002, Order and in Monitor Update No. 5 (available at <http://www.pigfordmonitor.org/updates/update05.htm>).

⁴⁶ After being found eligible to participate in the claims process, the one claimant who had elected Track B of the claims process switched to Track A with the consent of the Government. Thus, all 22 eligible claimants participated in the Track A claims process.

or USDA had petitioned the Monitor for review. As of the end of 2007, the Monitor had issued decisions in response to 5,635 of those 5,646 petitions for Monitor review.

The Court's Order of Reference permits the Monitor to consider additional materials as part of the Track A petition process if such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed.⁴⁷ In many Track A Monitor decisions, the Monitor accepted supplemental information offered by the parties in the petition process.

Supplemental information provided by claimants often included additional proof that USDA treated a specifically identified, similarly situated white farmer more favorably than the claimant.⁴⁸ Supplemental information provided by claimants also often included additional claim details, such as the type of loan sought, the year of the loan, or how the claimant intended to use the loan funds.

Supplemental information provided by USDA often related to searches of USDA computer databases of farm borrowers and archived records of borrowers' loan and repayment histories.⁴⁹ In some cases, USDA provided supplemental information regarding a claimant's

⁴⁷ Order of Reference, ¶ 8(e)(i) (D.C.C. April 4, 2000). A copy of the Court's Order of Reference is available on the Monitor's website at <http://www.pigfordmonitor.org/orders/20000404oor.pdf>.

⁴⁸ See Consent Decree, paragraph 9(a)(i). During a hearing on July 31, 2000, regarding a motion by certain claimants to reconsider the fairness of the Consent Decree, Class Counsel acknowledged that identifying specific similarly situated white farmers for each claimant had proved more difficult than anticipated. The Court's January 4, 2001, Memorandum Opinion and Order denying the motion to reconsider the fairness of the Consent Decree also noted the difficulties of identifying similarly situated white farmers. *See* Memorandum Opinion and Order (D.D.C. Jan. 4, 2001), available on the Monitor's website at <http://www.pigfordmonitor.org/orders/20010104order.pdf>.

⁴⁹ To provide USDA's initial claim response to an individual claim, USDA employees completed a form for each claimant and for each identified white farmer. In many claims, USDA also attached documents from the agency's paper loan files, computer database, or archived microfiche records of loan transactions. In claims where the Government provided supplemental information about an individual

eligibility for class membership, such as information about the adequacy of the proof the claimant had provided to establish that the claimant had previously complained of discrimination by USDA.⁵⁰

As of the end of 2007, the Monitor had directed the Adjudicator to reexamine a cumulative total of 2,893 claims. As of the end of 2007, the Adjudicator had issued reexamination decisions in 2,606 claims, granting relief to claimants in 2,229 claims and granting relief to the Government in 102 claims. Table 11 sets forth statistics about the petitions for Monitor review in Track A claims and the Adjudicator’s decisions on reexamination as of the end of 2007.

Table 11: Statistical Report Regarding Track A Petitions and Adjudicator Reexamination Decisions⁵¹	
Statistical Report as of:	End of 2007
A. Number of Petitions for Monitor Review of Track A Adjudicator Decisions	5,646
1. Track A Claimant Petitions	4,908
2. Track A Government Petitions	738

(continued)

claimant or about specifically identified white farmers with the petition or petition response, the Government often stated that time constraints had prevented the Government from fully searching the Government’s records and therefore this information was not included with the Government’s initial claim response. USDA also provided supplemental information in response to new information provided by claimants in the petition process, such as additional allegations of discrimination or newly-identified similarly situated white farmers.

⁵⁰ For example, USDA’s supplemental information has included information about whether the declarant who signed a claimant’s Declaration was a family member or whether the individual named by the declarant as the USDA official to whom the claimant had complained was employed by USDA during the time period at issue. See Consent Decree, paragraph 5.

⁵¹ These statistics are provided by the Facilitator and are valid as of December 31, 2007. Appendix 9 contains information about Adjudicator reexamination decisions from prior reporting periods.

(Table 11, continued)

Statistical Report as of:	End of 2007
B. Track A Petition Decisions Issued by Monitor	5,635
1. Total Number of Track A Petitions Granted	2,893
a. Claimant Track A Petitions Granted	2,767
b. Government Track A Petitions Granted	126
2. Total Number of Track A Petitions Denied	2,742
a. Claimant Track A Petitions Denied	2,130
b. Government Track A Petitions Denied	612
C. Reexamination Decisions Issued by Adjudicator	2,606
1. Reexamination Decisions After Claimant Petition Granted by Monitor	2,494
a. Claimant Prevailed on Reexamination	2,229
b. Claimant Did Not Prevail on Reexamination	265
2. Reexamination Decisions After Government Petition Granted by Monitor	112
a. Government Prevailed on Reexamination	102
b. Government Did Not Prevail on Reexamination	10

3. Petitions for Review of Arbitrator Decisions

As of the end of 2007, the Arbitrator had issued decisions in ninety-one of the pending Track B claims. In sixty-one of those claims (approximately 67 percent), either the claimant or USDA or both the claimant and USDA had petitioned the Monitor for review. As of the end of 2007, the Monitor had issued decisions in fifty-three of those sixty-one claims. The Monitor directed the Arbitrator to reexamine a cumulative total of eleven claims. Table 12 sets forth information about the petitions for Monitor review and the results of reexamination decisions by the Arbitrator as of the end of 2007.

Table 12: Statistical Report Regarding Track B Petitions and Arbitrator Reexamination Decisions⁵²	
Statistical Report as of:	End of 2007
A. Number of Petitions for Monitor Review of Track B Arbitrator Decisions ⁵³	61
1. Claimant Track B Petitions	42
2. Government Track B Petitions	19
B. Track B Petition Decisions Issued by Monitor	53
1. Total Number of Track B Petitions Granted	11
a. Claimant Track B Petitions Granted	9
b. Government Track B Petitions Granted	2
2. Total Number of Track B Petitions Denied	42
a. Claimant Track B Petitions Denied	27
b. Government Track B Petitions Denied	15
C. Reexamination Decisions Issued By Arbitrator After Claimant Petition Granted by Monitor	5
Result on Reexamination:	
1. Arbitrator Notified Parties That Hearing Process Would Be Completed ⁵⁴	5
D. Reexamination Decisions After Government Petition Granted by Monitor	2
Result on Reexamination:	
1. Damages Award Revised	1
2. Debt Relief Order Revised	1

⁵² These statistics are provided by the Facilitator and the Arbitrator and are valid as of December 31, 2007.

⁵³ In four Track B claims, both the claimant and USDA petitioned for Monitor review from the same Arbitrator decision. In these cases, the Facilitator's database "merges" the two petitions and counts them as one petition. The parties have stipulated and the Court has ordered that where both a claimant and USDA have filed a petition for Monitor review from the same Arbitrator's Decision, the petitions shall be consolidated and the Monitor shall set forth whether the claim should be reexamined in one Monitor petition decision letter. *Pigford v. Glickman*, Order, ¶¶ 1-2 (D.D.C. July 17, 2002).

⁵⁴ Of these five claims, one claim settled and one claim resulted in a hearing and an award of damages to the claimant. The other three claims remained pending as of the end of 2007.

D. Calls to Toll-Free Telephone Number

Paragraph 12(b)(iv) of the Consent Decree gives the Monitor the responsibility to staff a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints. The Monitor's toll-free telephone number is: 1-877-924-7483. The Monitor's toll-free operators staffed a total of 4,956 calls in 2007.

Many of the callers in 2007 requested information about the reexamination status of their claims. For example, those requesting information about the status of their claim may have filed a petition for Monitor review that remained pending or may have filed a petition for Monitor review and prevailed, but their reexamination decision had not yet been issued. Some callers described financial problems or health concerns that made it difficult for them to continue to wait for a final decision. The toll-free operators have access to a database containing information that allows the operators to provide information to claimants regarding the status of their claim. The Monitor also worked with the parties and the other neutrals to convey claimant concerns about the delays in claim processing. In response to claimant calls and correspondence, the Monitor and the parties continued to track claims processing data and worked to expedite the final resolution of all pending claims.

The Monitor also worked with the parties to address concerns from callers who were prevailing claimants. Callers who had prevailed in the claims process expressed concern regarding the relief they had received or were entitled to receive. For example, some callers who were eligible for non-credit cash relief of \$3,000 reported they had not yet received payment of their relief. Other callers reported delays in receiving cash relief for claims where payments were due to the estate of a deceased class member. Some callers had questions about the paperwork needed to obtain a payment on behalf of a deceased class member.

Other callers in 2007 raised questions about the implementation of debt relief, including questions about relief for loans USDA had recently accelerated and the possibility of obtaining a refund of offsets taken and applied to USDA loans or voluntary payments made on USDA loans. Some callers had questions about tax relief, including questions about the establishment of their tax account for Track A credit claim cash relief (the payment of \$12,500 to a tax account on their behalf) and questions about tax issues arising from debt relief and the Internal Revenue Service (IRS) Form 1099 for that relief.

Some callers described problems with current loan applications and expressed frustration with their local Farm Service Agency (FSA) office and the loan application process. For callers with individual concerns or complicated problems, the operators set up phone conferences between the caller and an attorney in the Monitor's Office. Attorneys in the Monitor's Office worked with the parties and the neutrals to resolve the many different types of problems regarding individual claims that were brought to the Monitor's attention in 2007 through the toll-free line.

Finally, many callers to the Monitor's toll-free line requested information about whether they could file a *Pigford* claim in 2007 or whether the case would be reopened due to congressional action. The Monitor's Office provided information to callers indicating that the established deadlines for filing a claim in this case (October 12, 1999) and for requesting permission to file a late claim (September 15, 2000) have not been changed.⁵⁵

⁵⁵ See Monitor Update No. 13, *The Pigford Case is Closed, No One Can Get Into the Case If They Did Not Apply by Deadlines* (June 28, 2004), available on the Monitor's website at <http://www.pigfordmonitor.org/updates/update13.htm>. The Monitor is aware that Congress passed legislation in 2008, section 14012 of Public Law No. 110-246 (2008), that provides an opportunity for a new cause of action by persons who previously submitted a late-claim request under paragraph 5(g) of the

V. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

The most significant Consent Decree implementation issues addressed by the parties, the neutrals, and the Court during calendar year 2007 are described more fully below.

A. Claims Processing

Although the claims process has been completed for most of the 22,691 claimants who have been found eligible to participate in the claims process, the parties and neutrals continued to address claims processing issues during 2007. The Monitor worked with the parties and neutrals to address a variety of concerns in individual pending claims. The Monitor reports below on the more significant claims processing issues addressed by the neutrals and the parties during calendar year 2007: (1) late-claims requests, (2) “amended” Adjudicator decisions, and (3) Facilitator re-screening decisions.

1. Late Claims

Under the Consent Decree, the deadline for filing a claim package was October 12, 1999. Claimants who failed to meet the October 12, 1999 filing deadline could not participate in the claims process unless they could show, pursuant to paragraph 5(g) of the Consent Decree, that they had failed to meet the October 12, 1999 filing deadline due to extraordinary circumstances beyond their control.

On December 20, 1999, the Court issued an Order delegating to the Arbitrator the authority to decide, on a case-by-case basis, whether a class member met the standards of

Consent Decree and who did not obtain a determination on the merits of their claim through the *Pigford* claims process. This legislation does not affect the *Pigford* deadlines or reopen the Consent Decree claims process in this case.

paragraph 5(g) and therefore could file a “late claim.” The Court’s Order set a deadline of January 30, 2000, for the submission of requests to the Arbitrator to file a “late claim.”⁵⁶

As part of the late-claims process, the parties and the Arbitrator developed a form for class members to complete, captioned Affidavit in Support of Petition to File a Late Claim. The Arbitrator has reported that the form included three categories: (1) “Hurricane Floyd,” which permitted claimants to indicate that they resided in one of the North Carolina counties declared by the federal government to be a disaster area as a result of the damage caused by Hurricane Floyd on September 15, 1999; (2) “Homebound,” which permitted claimants to indicate that they became homebound due to illness and/or physical disability and remained homebound during the period from August 12, 1999, through October 12, 1999; and (3) “Other Extraordinary Circumstances Beyond Your Control,” which permitted claimants to describe any other circumstances that prevented them from filing a timely claim.⁵⁷

On July 14, 2000, the parties and the Court modified the procedure for “late-claims” filings through a Stipulation and Order. The July 14, 2000 Stipulation and Order revised the deadlines and the process for submitting a request for permission to file a late claim. The Stipulation and Order noted that since the October 12, 1999 deadline, thousands of individuals had either filed Claim Sheet and Election Forms or had requested them in an effort to participate in the claims process. Paragraph 2 of the July 14, 2000 Stipulation and Order stated that persons who sought to qualify for permission to file a “late claim” under paragraph 5(g) of the Consent

⁵⁶ A copy of the Court’s December 20, 1999 Order is available on the Monitor’s website at <http://www.pigfordmonitor.org/orders/19991220order.pdf>.

⁵⁷ See pages 3-4 of the Arbitrator’s November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20011114.pdf>. A sample Affidavit in Support of Petition to File a Late Claim is attached in Appendix 10.

Decree could file a written request with the Facilitator – without a Claim Sheet and Election Form – postmarked no later than September 15, 2000. The Stipulation and Order stated that no extensions of the September 15, 2000 deadline would be granted for any reason.

The July 14, 2000 Stipulation and Order was mailed to class members who had requested a Claim Sheet and Election Form from the Facilitator and who had not filed a timely Claim Sheet and Election Form.⁵⁸ In addition, the Arbitrator and the parties developed a Late Claim Affidavit form providing prospective claimants with information about the late-claim petition process. This Late Claim Affidavit form advised class members to provide detailed information and documentation to help the Arbitrator decide whether circumstances beyond their control prevented them from filing a timely claim.⁵⁹

The Facilitator began to enter all late-claim petitions into a database and, beginning with requests received in response to the July 14, 2000 Stipulation and Order, the Facilitator assigned each request a unique identifying number.⁶⁰ The Arbitrator reported that the Facilitator received

⁵⁸ The Facilitator sent this mailing to 47,648 individuals. In addition, the Monitor issued Monitor Update No. 1, “Late Claim Deadline,” on August 14, 2000. See Appendix 4 to the Monitor’s Report and Recommendations Regarding Implementation of the Consent Decree for the Period of March 1, 2000 through August 31, 2000, and page 10 of the Monitor’s Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001. These reports are available on the Monitor’s website at <http://www.pigfordmonitor.org/reports/>, along with a revised version of Monitor Update No. 1, Late Claim Deadline (rev. Oct. 1, 2003), <http://www.pigfordmonitor.org/updates/update01.htm>.

⁵⁹ See pages 4-5 of the Arbitrator’s November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor’s website at <http://www.pigfordmonitor.org/arbbrpts/arb20011114.pdf>. A sample Late Claim Affidavit form is attached in Appendix 10.

⁶⁰ See page 5 of the Arbitrator’s November 14, 2001 Report on the Late-Claim Petition Process, available on the Monitor’s website at <http://www.pigfordmonitor.org/arbbrpts/arb20011114.pdf>. Some people filed more than one late-claims request.

a total of 65,952 requests for permission to file a “late claim” that were postmarked on or before the September 15, 2000 deadline.⁶¹

Class members’ late-claim requests offered a variety of reasons for why class members were unable to meet the October 12, 1999 claim deadline. These reasons included:

1. Class members were unaware of the *Pigford* lawsuit or the deadline for filing a claim;
2. Class members had suffered personal health problems;
3. Class members’ family members had suffered health problems or had died around the time of the October 12, 1999 deadline;
4. Class members were misinformed about the qualifications needed to participate in the claims process;
5. Class members were unable to attend a meeting about the claims process;
6. The filing of claims had been delayed due to issues involving the estate or death of a class member;
7. Class members had difficulty obtaining all of the information needed to complete the claim form, such as an attorney’s signature;
8. Class members never received a claim form or were unaware of the need to request a claim form; and
9. Class members lived in the area affected by Hurricane Floyd and were unable to file a timely claim due to the effects of the hurricane.

As part of the late-claim review process, the Arbitrator and the Facilitator created a process for coding the reasons offered by claimants for seeking permission to file a late claim.

⁶¹ In addition to the 65,952 timely-filed requests, the Arbitrator’s Ninth Report on the Late-Claim Petition Process, filed on November 30, 2005, reports a total of approximately 7,800 additional requests received after the September 15, 2000 deadline. See Arbitrator’s Ninth Report on the Late-Claim Process, at page 6 (reporting a total of approximately 73,800 late-claims requests), available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20051130.pdf>. The Arbitrator denied the approximately 7,800 late-claim requests received after the September 15, 2000 deadline on the ground that the requests were not timely filed. Throughout the time from the September 15, 2000 deadline to the

This process included a list of “reason codes” or categories to correspond to the various reasons provided by those seeking to file a late claim.⁶² The Facilitator assisted the Arbitrator by categorizing each late-claim request according to these reason codes. Certain decisions were made about late-claims requests based on these categorizations. The Arbitrator determined that late-claim requests that identified certain categories of reasons, such as those involving lack of knowledge about the lawsuit or lack of information about the claims process, could not constitute “extraordinary circumstances” beyond a claimant’s control. Claimants whose late-claim affidavits were placed into categories of reasons that the Arbitrator determined were not sufficient to constitute extraordinary circumstances beyond a claimant’s control were sent a letter rejecting their request to file a late claim without an individualized review by the Arbitrator.

The Arbitrator determined that late-claim requests that identified other categories of reasons, such as those involving personal health or the impact of Hurricane Floyd, required an individualized, case-by-case review and determination. Claimants whose late-claim affidavits were placed in one of the “case-by-case” reason categories were individually reviewed by the Arbitrator and/or a member of the Arbitrator’s staff. For some claims, the Arbitrator’s staff contacted claimants to obtain additional information or clarification about the circumstances that the claimants faced before the Arbitrator made a decision on their late-claim request.⁶³

present, the Facilitator has continued to receive inquiries from individuals who have sought to file a claim.

⁶² The Arbitrator published the list of categories in Appendix 1 of Attachment A of the Arbitrator’s December 1, 2004 Seventh Report on the Late-Claim Petition Process, available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20041201.pdf>.

⁶³ See page 4 and footnote 6 of the Arbitrator’s Report on the Late Claim Petition Process, filed on November 14, 2001, and available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20011114.pdf>.

During 2007, as part of the Facilitator's preparation to wind down the late-claims process, the Facilitator reported to the parties that thirty-three timely-filed late-claim requests had been discovered that should have been forwarded to the Arbitrator for review on a case-by-case basis, but mistakenly had not been sent to the Arbitrator for review. These thirty-three timely-filed late-claim requests were routed to the Arbitrator, and, after review of the requests, the Arbitrator granted permission for an additional four claimants to file a late claim. The other twenty-nine requests in this group were denied.

In addition, during 2007, the Arbitrator completed an audit review of 971 denied requests to file a late claim that included Hurricane Floyd as a reason the claimant had been unable to file a Claim Sheet and Election Form on or before October 12, 1999. After reviewing these 971 initially-denied requests, the Arbitrator granted permission for an additional 412 claimants to file a late claim.

The Facilitator sent Claim Sheet and Election Forms to the claimants granted permission by the Arbitrator to file a late claim in 2007, and the parties agreed to a schedule for USDA to respond to the completed claim packages filed by claimants who were granted permission to file a late claim. As part of the Arbitrator's preparation for winding down the late-claims process, the Arbitrator reported to the parties that the Arbitrator would conduct a further audit of late-claims requests.

Table 13 contains information about the late-claims process. As of the end of 2007, the Arbitrator had granted permission to file late to a total of 2,676 late-claims requests, or approximately 4 percent of the 65,952 timely-filed late-claims requests.

Table 13: Statistical Report Regarding Late-Claim Requests⁶⁴	
Statistical Report as of:	End of 2007
A. Number of Timely-Filed Late-Claim Requests	65,952
B. Number of Requests Granted	2,676
C. Number of Requests Denied	63,276

In 2007, class members continued to express their concern to the Monitor about the approval rate of late-claim requests. The Arbitrator has explained that the predominant reason provided by those whose requests were denied was some form of lack of knowledge about the litigation, about the settlement, about the claims process, or about the deadlines.⁶⁵ Given that the Court has ruled that class members received adequate notice of the Consent Decree claims process, the Arbitrator has determined that a lack of notice cannot meet the Consent Decree requirement for “extraordinary circumstances” beyond a class member’s control.⁶⁶

⁶⁴ These statistics are provided by the Facilitator and are as of December 31, 2007. Some people filed more than one late-claims request; the statistics provided in this report reflect the number of late-claims requests, not the number of people who filed such requests.

⁶⁵ In addition to the reports filed with the Court, the Arbitrator provided an overview of the late-claims process upon the request of the Chairman of the Committee on the Judiciary of the U.S. House of Representatives. The Arbitrator’s written statement and testimony are attached as Appendix A to the Arbitrator’s Seventh Report on the Late-Claim Petition Process, filed on December 1, 2004, and available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20041201.pdf>.

⁶⁶ See, for example, pages 3-4 of the Arbitrator’s Ninth Report on the Late-Claim Petition Process, filed on November 30, 2005, and available on the Monitor’s website at <http://www.pigfordmonitor.org/arbrpts/arb20051130.pdf>.

2. Amended Adjudicator Decisions

During 2007, the Monitor continued to work with the parties and neutrals to address issues regarding the proper relief for a certain group of class members who had received amended decisions from the Adjudicator that affected or may have affected the class members' relief.⁶⁷ Previous reports to the Court have addressed these amended decisions claims.⁶⁸

On June 30, 2006, the Court entered a Stipulation and Order regarding a group of forty-three claims in which amended decisions had been issued to claimants who indicated on their Claim Sheet and Election Forms that they had received a "Conservation Loan."⁶⁹ The Adjudicator had amended the original decisions issued in these claims to change whether a claimant's relief was deemed credit relief (resulting in a cash relief payment of \$50,000, as well as tax relief and debt relief) or non-credit relief (resulting in a cash relief payment of \$3,000, with no tax relief or debt relief). Under the terms of the June 30, 2006, Stipulation and Order, certain of the claimants identified as part of the "Conservation Loan" group received the relief

⁶⁷ The amended decisions were issued outside of the petition for Monitor review process.

⁶⁸ The Monitor began reporting to the Court on amended decisions in 2006. See Monitor's Report on Amended Adjudicator Decisions (April 7, 2006) and Monitor's Interim Follow-Up Report on Amended Adjudicator Decisions (Dec. 14, 2006). During 2007, the Monitor filed the following reports regarding amended decisions: Monitor's Progress Report on Amended Adjudicator Decisions (Jan. 16, 2007); Monitor's Second Progress Report on Amended Adjudicator Decisions (March 29, 2007); Monitor's Report and Recommendations on Amended Decisions (July 9, 2007); and Monitor's Third Progress Report on Amended Decisions (Oct. 11, 2007). All of these reports are available on the Monitor's website.

⁶⁹ The Claim Sheet and Election Form required a claimant to indicate which of five specific federal farm programs the claimant sought to participate in during the period from January 1, 1981, through December 31, 1996. The five choices were: (1) Operating Loan, (2) Farm Ownership Loan, (3) Emergency Loan, (4) Conservation Loan, or (5) Non-credit Benefit Program. Despite the use of the term "Conservation Loan," USDA did not have a Conservation Loan program. USDA offered both a credit program (the Soil and Water Loan program) and various non-credit programs (such as cost shares in the Agricultural Conservation Program or long-term contracts in the Conservation Reserve Program) to achieve conservation purposes. See Monitor's Report on Amended Adjudicator Decisions, filed April 7,

provided in the original Adjudicator decision for their claim, subject to USDA's right to petition the Monitor for review of the issue of whether the claim in question concerned discrimination in a farm credit program or in a non-credit program. USDA filed petitions for Monitor review in twenty-one of the forty-three claims. As of the end of 2007, the Monitor had issued decisions in all twenty-one claims. The Monitor granted reexamination in seven claims and denied reexamination in fourteen claims. Six of the seven claims remained pending before the Adjudicator on reexamination as of the end of 2007.

During 2007, the Monitor worked with the parties and neutrals to address issues relating to an additional group of eighty-four amended decisions. These eighty-four amendments occurred in a total of seventy-eight claims.⁷⁰ The amendments included changes made by the Adjudicator after a second review of the claim (classified by the Facilitator as "substantive" amendments) and changes made by the Facilitator for clerical or administrative reasons (classified by the Facilitator as "technical" amendments).⁷¹

2006, and available on the Monitor's website at <http://www.pigfordmonitor.org/reports/rpt20060407dec.pdf>.

⁷⁰ The amended decisions were issued outside of the petition for Monitor review process. There were more amended decisions than claims because some claimants received more than one amended decision. Three of the claimants who received multiple amended decisions were also part of the "Conservation Loan" group. The Monitor reviewed the additional amended decisions these claimants received as part of the group of 84 amendments.

⁷¹ The Facilitator explained the reasons for amendments in a letter, attached as Exhibit 1 to the Monitor's Progress Report on Amended Adjudicator Decisions, filed January 16, 2007, and available on the Monitor's website at <http://www.pigfordmonitor.org/reports/rpt20070116.pdf>. Substantive amendments generally resulted from changes made after a review by the Adjudicator based on a request by a party (a claimant, Class Counsel, or the government), or, in a few cases, based on a review by the Chief Adjudicator when more than one Adjudicator decision had inadvertently been issued for the claim. Technical amendments affecting relief generally resulted from administrative errors in assembling a claimant's three-page decision. In some cases the "jacket" of the decision (pages 1 and 3) did not match the text of the Adjudicator's decision on page 2; in other cases, the text of the Adjudicator's decision on page 2 was not the correct text for the claim at issue.

The Monitor and the parties reviewed each of the claims in which amendments may have affected a claimant's relief to identify the appropriate cash relief and debt relief for each claimant. Regarding cash relief, the parties and the Monitor reviewed information about the underlying claim, the reasons for amendments,⁷² and the amount of cash relief the Government had paid to each affected claimant. After this review, there were no adjustments to the cash relief paid by the Government and the parties raised no substantive concern regarding the final amount of cash relief received by any of the affected claimants.⁷³

Regarding debt relief, the Monitor worked with the parties to identify those claimants who would be eligible for debt relief because they prevailed on a credit claim.⁷⁴ For those claims, the Monitor took the following steps to assess whether claimants had received the proper debt relief.

a. Analyze Adjudicator Decisions

The Monitor reviewed the text of each Adjudicator decision the claimant received to determine: (1) the loans identified by the Adjudicator as affected by discrimination; and (2) the date on which the claimant initially prevailed on each prevailing claim.

⁷² The reasons for amendments that affected cash relief are described in more detail on pages 10 through 13 of the Monitor's July 9, 2007 Report and Recommendations on Amended Decisions. This report is available on the Monitor's website at http://www.pigfordmonitor.org/reports/rpt20070709_amenddec.pdf.

⁷³ See pages 2-3 of the Monitor's Third Progress Report on Amended Decisions, filed on October 11, 2007. The Monitor's Third Progress Report on Amended Decisions sets forth data regarding the cash relief outcomes for each claimant who received an amended Adjudicator decision. See Exhibits A and B, Monitor's Third Progress Report on Amended Decisions, available on the Monitor's website at http://www.pigfordmonitor.org/reports/rpt20071011_amenddec.pdf.

⁷⁴ Under 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 on non-credit claims are not eligible for debt relief.

b. Identify Outstanding Loans

The Monitor reviewed USDA loan records, including but not limited to computer database records called Current/Past Debt Inquiries (CPDIs) and Online Borrower Histories (OBHs), to identify any loans that would be subject to *Pigford* debt relief, including loans that were outstanding on the date the claimant initially prevailed in the claims process.⁷⁵ If the USDA loan records for the claimant revealed that the claimant had actually prevailed regarding a different type of loan than the loan type identified by the Adjudicator's decision, USDA agreed to "switch" the loan type to provide debt relief for the loan type the claimant actually received from USDA.⁷⁶

c. Determine Loans Subject to Debt Relief

The Monitor worked with the parties to determine which, if any, of the claimant's loans were subject to *Pigford* debt relief. Identifying loans that qualify for *Pigford* debt relief involves a two step process. Loans that qualify for debt relief include: (1) all outstanding loans that the Adjudicator found were affected by discrimination according to the narrative text found on page two of the final Adjudicator decision; and, (2) all subsequent loans incurred in the same loan program as the loan(s) identified by the Adjudicator as having been affected by discrimination. This second step is referred to as "forward sweep" debt relief and applies to all debt in the loan

⁷⁵ Exhibit 1 to the Monitor's July 9, 2007 Report and Recommendations on Amended Decisions describes USDA's loan records and provides two detailed examples of the review process the Monitor completed for each affected claimant. The Monitor's July 9, 2007 report is available on the Monitor's website at http://www.pigfordmonitor.org/reports/rpt20070709_amenddec.pdf.

⁷⁶ For example, in one case, the Adjudicator's decision found discrimination in regard to a 1982 Operating Loan, but USDA records revealed that the loan the claimant received in 1982 was actually an Emergency Loan for operating purposes. USDA agreed to provide debt relief for the actual loan type the claimant received, in this case, for the claimant's 1982 Emergency 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).⁷⁷

d. Determine Whether Debt Relief Was Fully Implemented

Finally, the Monitor worked with the parties to determine whether USDA had forgiven the appropriate loans for each prevailing claimant who received an amended Adjudicator decision. For each prevailing claimant who had received or was entitled to debt relief on outstanding loans, the Monitor and the parties reviewed whether USDA had accepted payments from claimants on loans after those loans qualified for debt relief. USDA agreed to refund payments claimants had made on loans subject to *Pigford* debt forgiveness if those payments were received by the agency after the date of the initial prevailing decision that gave the claimant the right to debt relief on the loan.⁷⁸ In addition, the Monitor and the parties reviewed whether the Government took any funds by administrative or Treasury offset to satisfy loans that were subject to *Pigford* debt forgiveness.⁷⁹ USDA voluntarily agreed to refund offsets taken between

⁷⁷ More information about the rules the parties have agreed to apply in providing debt relief can be found in Monitor Update No. 10, Debt Relief for Prevailing Class Members (revised July 10, 2008), and available on the Monitor's website at <http://www.pigfordmonitor.org/updates/update10.htm>.

⁷⁸ For example, in one claim, the Adjudicator's initial prevailing decision was issued on November 5, 1999, and entitled the claimant to debt relief on a 1991 Farm Ownership Loan. Between the time of the initial decision and USDA's implementation of debt relief, the claimant had made payments on the loan on April 4, 2000, and on March 6, 2001. In 2007, USDA agreed to refund these payments to the claimant. USDA also agreed to refund payments the claimant made on a 1996 Farm Ownership Loan, which was also subject to *Pigford* debt relief.

⁷⁹ Federal statutes authorize USDA to pursue an administrative offset against borrowers who become delinquent on their farm program loans. See 31 U.S.C. § 3716(a) (2008) (stating that "After trying to collect a claim from a person . . . the head of an executive, judicial, or legislative agency may collect the claim by administrative offset"); 31 U.S.C. § 3716(c)(6) (2008) (stating that "Any Federal agency that is owed by a person a past due, legally enforceable nontax debt that is over 180 days delinquent . . . shall notify the Secretary of the Treasury of all such nontax debts for purposes of administrative offset under this subsection"). An "offset" diverts federal payments that otherwise would be paid to the borrower and applies the payments to the borrower's delinquent USDA farm loan account. See 31 U.S.C. § 3716(c)(1)(a) (2008) (authorizing offsets at least annually of payments "by an amount equal to the

January 1, 1999, and the date of the Adjudicator’s initial prevailing decision if the offsets were taken and the payments applied to a loan that qualified for *Pigford* debt relief.⁸⁰ As of the end of 2007, the parties had reached agreement in principle on the proper debt relief outcome for many of the amended decisions claims.

In the course of reviewing the debt relief implementation process for the claimants who had received amended Adjudicator decisions, the Monitor and the parties became aware of several issues that required additional attention in order to ensure appropriate implementation of debt relief for all prevailing *Pigford* claimants. These additional issues are described more fully below in the section on Debt Relief.

3. Facilitator Eligibility Re-Screening

On August 7, 2006, the Court ordered the Monitor to investigate and report to the Court regarding any claimant who may have received an “amended” decision from the Facilitator that resulted in the denial of the claimant’s opportunity to participate in the claims process. Under paragraph 5(f) of the Consent Decree, the Facilitator is charged with the task of screening completed claim packages to determine whether a claimant is eligible to participate in the claims

amount of a claim which a creditor agency has certified to the Secretary of the Treasury”); 26 U.S.C. § 6402(d) (2008) (authorizing offsets of overpayments made to the Government under the Internal Revenue Code (tax refunds)). USDA uses an “administrative” offset for payments due to a borrower from USDA, such as conservation program payments, commodity program payments, or disaster payments. USDA reports amounts owed by borrowers to the Secretary of the Treasury, who uses a “Treasury” offset for payments due to borrowers from other federal agencies, such as tax refunds or Social Security benefits.

⁸⁰ For example, in one claim, USDA took the claimant’s non-credit farm program benefits by administrative offset and applied the payments to the claimant’s outstanding 1996 Operating Loan. The claimant prevailed in the claims process on Operating Loan claims that entitled the claimant to debt relief on the 1996 Operating Loan as part of “forward sweep” debt relief. In 2007, USDA agreed to refund all offsets taken on or after January 1, 1999, that had been applied to the claimant’s 1996 Operating Loan. For an explanation of USDA’s *Pigford* offset policy, see USDA Notice FLP-197, Collecting Farm Loan Programs (FLP) Debt by Administrative Offset for *Pigford v. Glickman* Claimants (April 6, 2001)

process. On January 15, 2007, the Facilitator provided a letter to the Monitor describing the screening process used by the Facilitator beginning in January 1999, when the first Claim Sheet and Election Forms were filed.⁸¹ The Facilitator's letter also provided information about a re-screening process completed by the Facilitator after April 1999, when the parties met with the Facilitator to finalize the screening procedures for completed Claim Sheet and Election Forms.

The Facilitator's letter describes the differences between the procedures used from January to April of 1999, and the procedures used after April 1999.⁸² After April 1999, the Facilitator re-screened the claim packages that had previously been screened, and the Facilitator

(expired August 1, 2001), available on the Monitor's website at http://www.pigfordmonitor.org/flp/flp_197.pdf.

⁸¹ The Facilitator's letter is provided as Exhibit 1 to the Monitor's Progress Report on Amended Adjudicator Decisions, filed January 16, 2007, which is available on the Monitor's website at <http://www.pigfordmonitor.org/reports/rpt20070116.pdf>.

⁸² The Facilitator's letter indicates that until April 1999, the Facilitator regarded certain information requested on the Claim Sheet and Election Form as "non-critical," such as the claimant's date of birth, or a second attorney signature (attorney signatures are required on page 2 and page 6) or a date of signature. If the claimant met the eligibility criteria for class membership contained in the Consent Decree, the Facilitator found the claimant eligible to participate in the claims process, even if some of the "non-critical" Claim Sheet information was missing. Until April 1999, the Facilitator also deemed a claimant eligible if the claimant's "proof" or documentation of a discrimination complaint was valid, but was different than the type of proof indicated by the box the claimant checked on page three of the Claim Sheet. Page 1 of the Claim Sheet required claimants to place an 'X' next to each category of proof provided. Page 1 states that "You must attach to this Claim Sheet documentation ('proof') for each item you check. If you do not attach proof, your claim may be rejected." Page 2 of the Claim Sheet includes boxes for claimants to check next to four different types of proof:

3A. A copy of the discrimination complaint the claimant filed with USDA or a copy of a USDA document referencing the complaint.

3B. A declaration from a person who is not a member of the claimant's family and who has first-hand knowledge that the claimant filed a discrimination complaint with USDA.

3C. A copy of correspondence from the claimant to a member of Congress, the White House, or a state, local, or federal official averring that the claimant had been discriminated against.

3D. A declaration from a person who is not a member of the claimant's family and who has first-hand knowledge that, while attending a USDA listening session or other meeting with a USDA official, the claimant was explicitly told by a USDA official that the official would investigate that specific claimant's oral complaint of discrimination.

sent Notices of Deficiency to claimants whose claim packages were deemed deficient under the new procedures.

The Facilitator reported that claimants were given an opportunity to cure the deficiencies identified in the re-screening process, and all claimants who received a Notice of Deficiency were able to cure that deficiency and were found eligible to participate in the claims process. The Monitor reported the information provided by the Facilitator to USDA and to Class Counsel, and neither USDA nor Class Counsel expressed concern to the Monitor regarding the Facilitator's re-screening process.⁸³

B. Relief for Successful Class Members

During 2007, the parties worked to resolve a number of issues involving implementation of relief for successful class members. These issues included: (1) the payment of cash relief; (2) the implementation of tax relief; (3) the implementation of debt relief; and (4) the process for obtaining new loans and questions about the injunctive relief right to priority consideration for new loans.

1. Payments of Cash Relief

Responsibility for the payment of cash relief to prevailing class members is shared by the Facilitator and the Government. Under a Stipulation and Order entered by the Court on September 29, 1999, the Government completes an electronic transfer from the fund described in 31 U.S.C. § 1304 (the "Judgment Fund"), and, once that transfer is made, the Facilitator is

⁸³ See Monitor's Report and Recommendations on Amended Decisions, filed July 9, 2007, at pages 26-28, available on the Monitor's website at http://www.pigfordmonitor.org/reports/rpt20070709_amenddec.pdf.

responsible for payments of cash relief for Track A credit claims.⁸⁴ Payments for Track B settlements and damage awards come directly from the Government through the Judgment Fund. USDA makes the payments for non-credit claims. During 2007, the Facilitator reported payment statistics for Track A credit claims on an ongoing basis, and the process for payment of Track A credit claims worked very well. Some payments from the Judgment Fund took additional time to process when necessary information regarding the claimant was missing, such as a Social Security number, or when issues arose involving estate claims. The process for payment of Track A non-credit claims was more difficult to track due to delays in receiving reports from USDA on non-credit payments. The Government also did not consistently inform the Facilitator in a timely way of the payments made to Track B claimants. The Monitor worked with the parties to address these matters.

During 2007, the Monitor also worked with the parties to address issues regarding “uncashed checks,” payments to heirs when a claim involves a deceased class member, and certain non-credit claim payments that had been placed on “hold.” In addition, the Monitor responded to individual claimants who contacted the Monitor with problems relating to their cash relief, including inquiries from both successful Track A and Track B claimants whose payments had been pending for some time.

2. Tax Relief

Under paragraph 9(a)(iii)(C) of the Consent Decree, a class member who prevails on a Track A credit claim is entitled to have the Government transfer funds directly into an account

⁸⁴ See Stipulation and Order Allowing Payments to Prevailing Class Members to be Made Through Poorman-Douglas Corporation (D.D.C. Sept. 29, 1999), available on the Monitor’s website at <http://www.pigfordmonitor.org/orders/19990929stip&order.pdf>.

established with the Internal Revenue Service (IRS) as partial payment on federal income taxes that he or she may owe as a result of obtaining relief. This tax relief is equal to 25 percent of the \$50,000 in cash relief for a credit claim, or \$12,500, plus 25 percent of the principal amount of any outstanding farm loan debt forgiven by USDA as a result of the *Pigford* claims process. The Government made tax deposits in early February 2007 for cash relief received by claimants in 2006. Prior to April 15, 2007, the Government made tax deposits for claimants who had received debt relief in 2006. The Monitor worked with the National Taxpayer Advocate and the Government to address the delay in the tax deposits for claimants who received debt relief in 2006.

In addition to tax deposits, prevailing claimants receive one or more IRS Forms 1099 for the relief they receive in the claims process. The responsibility for sending claimants IRS Forms 1099 is shared by the Facilitator and USDA. The Facilitator is responsible for preparing and mailing Forms 1099 for: (1) \$50,000 cash relief for Track A credit claims; (2) deposits made to IRS tax accounts for Track A credit claims (for 25 percent of the \$50,000 in cash relief and for 25 percent of the principal amount of any debt relief USDA provides); and (3) Track B damage awards and settlement payments. USDA is responsible for preparing and mailing Forms 1099 for (1) \$3,000 cash relief for Track A non-credit claims; (2) Track A debt relief; and (3) Track B debt relief. Table 14 indicates which entity is responsible for preparing and issuing the Forms 1099 to prevailing claimants.

Table 14: Responsibility for IRS Forms 1099	
Subject of the Form 1099	Who Prepares and Mails the Form 1099
A. Track A Credit Relief Payments (\$50,000)	Facilitator
B. Track A Non-Credit Relief Payments (\$3,000)	USDA
C. Track B Cash Payments (Settlements and Damage Awards)	Facilitator
D. Track A Debt Relief	USDA
E. Track B Debt Relief	USDA
F. Deposits to Claimants' IRS Accounts (25 percent of cash awards in Track A, 25 percent of debt relief in Track A, and any IRS deposits that are the result of a negotiated settlement in Track B)	Facilitator

During 2007, the parties considered the issues that arise for tax relief when claimants receive relief in a number of different years. Specifically, the parties considered the tax issues that arise when USDA provides claimants with debt relief in more than one calendar year.⁸⁵ The parties did not reach any conclusions regarding these issues in 2007.⁸⁶

3. Debt Relief

All claimants who prevail on one or more credit claims under Track A or Track B are eligible for *Pigford* debt relief. In the course of examining the debt relief provided to claimants

⁸⁵ Some claimants who prevailed early in the claims process received initial debt relief in 1999 or 2000 and then received additional debt relief in 2001, as the agency implemented the debt relief provisions of the February 7, 2001 Stipulation and Order. In addition, some claimants have received debt relief in 2007 or 2008, as USDA has implemented the principles adopted by the parties and set forth in Monitor Update No. 10. For example, in one claim, the claimant prevailed on a 1987 Operating Loan claim in 1999. USDA implemented debt relief in 1999 to forgive one of the claimant's outstanding Operating Loans, a loan which originated in 1987. Later, in 2001, USDA provided additional debt relief by forgiving another outstanding Operating Loan, which originated in 1988. Most recently, in 2008, USDA refunded payments the claimant had made in January and December 2000 on the Operating Loans that were subject to *Pigford* debt relief. Each of these debt relief events has potential tax consequences for the claimant.

⁸⁶ Work on a system for managing the tax consequences of debt relief has continued in 2008.

who received amended Adjudicator decisions, the Monitor and the parties became aware of a number of implementation issues that apply to all claimants who are entitled to debt relief.

The implementation of debt relief in individual cases can be complicated. During 2007, the Monitor and the parties reached agreement on a number of steps necessary to ensure that debt relief was properly implemented for all eligible prevailing class members. The Monitor filed several reports with the Court outlining these steps and the debt relief implementation issues that were addressed by the parties in 2007.⁸⁷

As part of the debt relief implementation process, USDA agreed to identify those claimants who prevailed on credit claims in Track A or Track B and who had outstanding USDA farm program debt from January 1, 1981 through the present year. USDA further agreed to a system that would allow the parties to agree to detailed procedures regarding debt relief implementation and to verify that all prevailing claimants received all of the debt relief which they were entitled to receive.⁸⁸ As part of that correction and verification process, USDA agreed to implement systems to: (1) determine the proper loans subject to discharge under the Consent Decree; (2) verify that those loans have been discharged; (3) provide refunds of any voluntary payments made after the loans became subject to discharge; (4) provide refunds of offsets taken by the Government after January 1, 1999, on loans subject to discharge; (5) manage the tax

⁸⁷ During 2007, the Monitor filed three progress reports with the Court summarizing the Monitor's investigation of debt relief implementation for claimants who received amended decisions. The Monitor also filed a report regarding issues that affect all class members who are eligible for debt relief. See Monitor's Report and Recommendations on Amended Decisions, at pages 23 through 25 (July 9, 2007). The Monitor's reports are available on the Monitor's website at <http://www.pigfordmonitor.org/reports/>.

⁸⁸ In 2008, Monitor Update No. 10 was issued by agreement of the parties. This Update summarizes the detailed debt relief rules and procedures to which the parties agreed. Monitor Update No. 10 is available on the Monitor's website.

consequences of any additional debt relief provided; and (6) provide county offices access to accurate information regarding *Pigford* debt forgiveness, to ensure that no adverse action is taken to deny new loans based upon debt that was subject to forgiveness under the Consent Decree.

The parties fully cooperated with the Monitor's requests for information regarding debt relief during 2007. As of the end of 2007, much work remained to research, correct, and verify the proper debt relief for all eligible prevailing claimants.⁸⁹

4. Injunctive Relief

The Consent Decree offers prevailing class members certain rights to injunctive relief.

These rights include:

- a. "Priority consideration" for one Farm Ownership Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property;
- b. Technical assistance with loan applications; and
- c. The right to have future loan and loan servicing applications considered in the "most favorable light."⁹⁰

Under the terms of a Stipulation and Order entered on April 21, 2005, prevailing class members can request technical assistance, "most favorable light," and priority consideration injunctive relief for up to two years after the date on which the prevailing class member completes the claims process. Under the April 21, 2005 Stipulation and Order, claimants who

⁸⁹ This work continues in 2008.

⁹⁰ All of these types of injunctive relief are available to claimants who prevail on Track A or Track B credit claims; some of these types of relief are available to claimants who prevail on non-credit claims. See Consent Decree paragraphs 9(a)(iii)(D), 9(b)(iii)(B), 10(g)(iii), and 11.

completed the claims process in 2005 or later were eligible for injunctive relief during calendar year 2007.⁹¹

Several class members contacted the Monitor in 2007 regarding problems in obtaining new loans after they had prevailed in the claims process. The Monitor worked with the parties to address any individual problems or concerns regarding injunctive relief and prevailing claimants' requests for new loans that were brought to the Monitor's attention in 2007.

VI. WIND-DOWN PROCESS

During 2007, the parties began to discuss the steps that would be necessary to wind down the Consent Decree implementation process. Each month, the Facilitator prepared a timeline with projections for the completion of claims-processing activity based on the number of pending claims in each phase of the claims process. The neutrals (the Facilitator, the Adjudicator, the Arbitrator, and the Monitor) continued to perform the tasks necessary to fulfill and complete their claims-processing responsibilities under the Consent Decree.

The Facilitator prepared a preliminary list of the tasks necessary to fully resolve class members' claims once final decisions are issued in all pending claims (including, for example, processing all outstanding cash relief payments and tax deposits, implementing debt relief, and issuing IRS Forms 1099 for cash relief, debt relief, and tax deposits). The parties discussed document retention and archive issues, the suspension of USDA's obligation to post certain Stipulations and Orders, and class members' access to information and assistance about the case,

⁹¹ See Stipulation and Order (D.D.C. April 21, 2005), available on the Monitor's website at <http://www.pigfordmonitor.org/orders/20050421stip&order.pdf> and Monitor Update No. 4, Injunctive Relief in *Pigford v. Schafer* (rev. May 18, 2005), available on the Monitor's website at <http://www.pigfordmonitor.org/updates/update04.htm>.

their claim, and/or their relief. Additional work remains to ensure responsible planning and implementation of the wind-down process.

VII. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

The Consent Decree implementation process has been ongoing since 1999. The parties and the neutrals continued in 2007 to work in good faith to implement the Consent Decree. The Monitor will continue to report on the implementation progress and wind-down of the case, as required by the Consent Decree and as the Court and/or the parties request.

Dated: _____, 2008.

Respectfully submitted,

Randi Ilyse Roth
Monitor
Post Office Box 64511
St. Paul, Minnesota 55164-0511
877-924-7483

Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS¹

Statistical Report as of:	Aug. 28, 2000		End of 2001		End of 2002		End of 2003		End of 2004	
	Number	%	Number	%	Number	%	Number	%	Number	%
A. Eligible Class Members	21,069	100	21,541	100	21,774	100	22,276	100	22,391	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99	21,595	99	22,098	99	22,218	99
C. Cases in Track B (Arbitrations) ²	191	1	177	1	179	1	178	1	173	1
Adjudication Completion Figures										
D. Adjudications Complete	18,347	88	21,324	~100	21,547	~100	21,678	98	22,168	~100
E. Adjudications Not Yet Complete	2531	12	40	~0	48	~0	420	~2	50	~0
Adjudication Approval/Denial Rates										
F. Claims Approved by Adjudicator	11,083	60	12,848	60	12,987	60	13,260	61	13,676	62
G. Claims Denied by Adjudicator ³	7,264	40	8,476	40	8,560	40	8,418	39	8,492	38
Adjudication Approvals Paid/Not Paid										
H. Approved Adjudications Paid	7,143	64	12,285	96	12,690	98	12,968	98	13,300	97
I. Approved Adjudications Not Yet Paid	3,940	36	563	4	297	2	292	2	376	3
J. Cash Relief Paid to Class Members for Track A Credit Claims ⁴	\$357,150,000		\$614,250,000		\$624,750,000		\$638,350,000		\$654,550,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims			\$1,284,000		\$1,284,000		\$1,287,000		\$1,269,000 ⁵	

(See next page for 2005 through 2007.)

¹ These statistics were provided by the Facilitator.

² The decrease in the number of Track B claims is a result of claimants converting their claims, with the consent of the Government, to Track A.

³ The decrease in denials is a result of decisions being overturned on reexamination.

⁴ This figure includes only the \$50,000 cash relief award in Track A credit cases. It does not include debt relief or tax payments for Track A credit claims.

⁵ The cumulative dollars reported by the Facilitator for non-credit payments (\$3,000 per successful claim) decreased from the amount reported as of the end of 2003 due to the Facilitator's reconciling of payment data from USDA for non-credit claims.

Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS

(continued)

Statistical Report as of:	End of 2005		End of 2006		End of 2007 ⁶	
	Number	%	Number	%	Number	%
A. Eligible Class Members	22,415	100	22,440	100	22,691	100
B. Cases in Track A (Adjudications)	22,243	99	22,269	99	22,519	99
C. Cases in Track B (Arbitrations) ⁷	172	1	171	1	172	1
Adjudication Completion Figures						
D. Adjudications Complete	22,240	~100	22,268	~100	22,271	99
E. Adjudications Not Yet Complete	3	~0	1	~0	248	1
Adjudication Approval/Denial Rates						
F. Claims Approved by Adjudicator	14,257	64	14,751	66	15,237	68
G. Claims Denied by Adjudicator ⁸	7,983	36	7,517	34	7,034	32
Adjudication Approvals Paid/Not Paid						
H. Approved Adjudications Paid	13,916	98	14,494	98	15,079	99
I. Approved Adjudications Not Yet Paid	341	2	257	2	158	1
J. Cash Relief Paid to Class Members for Track A Credit Claims ⁹	\$685,300,000		\$714,900,000		\$745,300,000	
K. Cash Relief Paid to Class Members for Track A Non-Credit Claims	\$1,326,000		\$1,254,000 ¹⁰		\$1,299,000	

⁶ These statistics are as of December 31, 2007.

⁷ The decrease in the number of Track B claims is a result of claimants converting their claims, with the consent of the Government, to Track A.

⁸ The decrease in denials is a result of decisions being overturned on reexamination.

⁹ This figure includes cash relief awards in Track A credit cases only. It does not include debt relief, tax relief, awards for non-credit claims, or awards or settlements in Track B cases.

¹⁰ The cumulative dollars reported by the Facilitator for non-credit payments decreased from the amount reported as of the end of 2005 due to the Facilitator's internal reconciliation of paid non-credit claims for certain claimants who prevailed on both credit and non-credit claims.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS¹

Statistical Report as of:	Sept. 18, 2000	End of 2001	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007²
A. Eligible Track B Claimants	177	235	236	237	238	239	240	241
B. Track B Cases Settled	11	57	61	71	69 ³	71	71	71
C. Track B Cases Converted to Track A	27	50	54	55	62	64	65	65
D. Track B Cases Withdrawn	5	6	6	6	9	9	9	9
Arbitrations Complete/Not Complete								
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105	98	95	95	96
F. Arbitration Decisions Issued	15	51	71	77	81	87	90	91
G. Arbitration Decisions Not Yet Issued	119	71	44	28	17	8	5	5

¹ These statistics are provided by the Arbitrator for the columns through the end of 2005. The Arbitrator and the Facilitator worked to reconcile their record-keeping protocols for Track B claims during 2006, and the Facilitator provided the statistics for Track B claims through the end of 2006 and through the end of 2007.

² These statistics are as of January 1, 2008.

³ This number is lower than the prior year's number because the Arbitrator learned that reports that some cases had settled were in error.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS

(continued)

Statistical Report as of:	Sept. 18, 2000	End of 2001	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007
Arbitration Results								
H. Claimant Prevailed Before Arbitrator	2	8	15	17	18	19	22	23
I. Average Award to Prevailing Claimants	\$580,500	\$531,373	\$560,309	\$545,686	\$551,587	\$526,626	\$499,057	\$476,679
J. Government Prevailed Before Arbitrator	13	43	56	60	63	68	68	68
Posture of Decisions in Which Government Prevailed								
K. Cases Dismissed Before Hearing	10	28	34	38	40	44	44	44
L. Full Hearing, Finding of No Liability	3	15	22	22	23	24 ⁴	24	24

⁴ This number includes a claim where the decision was signed by the Arbitrator on November 30, 2005, but the decision was not postmarked until January 4, 2006.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS¹

Claimant	Sept. 18, 2000	End of 2001	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007²
Claimant A	\$544,400.00							
Claimant B	616,600.00							
Claimant C	<N/A>	\$615,090.00						
Claimant D	<N/A>	100,000.00						
Claimant E	<N/A>	780,000.00						
Claimant F	<N/A>	625,566.00						
Claimant G	<N/A>	507,954.88						
Claimant H	<N/A>	[liability found but damages not awarded as of the end of 2001]	[damages award issued in 2002 reexamined in 2006]				\$411,248.91	
Claimant I	<N/A>	<N/A>	\$1,447,917.00					
Claimant J	<N/A>	<N/A>	879,920.58					
Claimant K	<N/A>	<N/A>	594,444.00					

¹ These awards were reported by the Arbitrator for the columns through the end of 2005. The Facilitator provided the statistics for the individual Track B awards reported as of the end of 2006 and as of the end of 2007.

² These awards were reported by the Facilitator for decisions issued by the Arbitrator during the period from January 1, 2007, through December 31, 2007.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS

(continued)

Claimant	Sept. 18, 2000	End of 2001	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007³
Claimant L	<N/A>	<N/A>	557,800.00					
Claimant M	<N/A>	<N/A>	427,363.00					
Claimant N	<N/A>	<N/A>	172,000.00					
Claimant O	<N/A>	<N/A>	52,000.00					
Claimant P	<N/A>	<N/A>	<N/A>	\$750,048.00				
Claimant Q	<N/A>	<N/A>	<N/A>	121,978.00				
Claimant R	<N/A>	<N/A>	<N/A>	<N/A>	\$651,903.00			
Claimant S	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$77,321.00		
Claimant T	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$277,115.11	
Claimant U	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$269,524.90	
Claimant V	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	\$181,138.00
Claimant W	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	<N/A>	302,290.87

³ These awards were reported by the Facilitator for decisions issued by the Arbitrator during the period from January 1, 2007, through December 31, 2007.

Appendix 4

STATISTICAL REPORT REGARDING DEBT RELIEF¹

Statistical Report as of:	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007²
A. Total Amount of Debt Forgiven (Principal and Interest)	\$21,930,937	\$22,657,917	\$26,093,911	\$30,291,397	\$33,313,408
B. Debt Forgiven for Track A Claimants	\$19,583,425	\$20,253,962	\$23,191,245	\$26,626,924	\$29,635,934
C. Debt Forgiven for Track B Claimants	\$2,347,512	\$2,403,955	\$2,902,666	\$3,664,473	3,677,474
D. Number of Track A Claimants Who Received Debt Forgiveness	228	239	268	307	319
E. Number of Track B Claimants Who Received Debt Forgiveness	25	25	17 ³	18	18
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$85,892	\$84,745	\$86,535	\$86,733	\$92,903
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$93,900	\$96,158 ⁴	\$170,745	\$203,582	\$204,304 ⁵

¹ These statistics are provided by USDA.

² These statistics are as of December 31, 2007.

³ USDA reported to the Monitor that the number of Track B claimants who received debt relief decreased in 2005 because USDA discovered that the number of Track B claimants reported for prior years had included claimants who did not actually receive debt relief.

⁴ The average amount of Track B debt relief increased in 2004 even though the number of Track B claimants who received debt relief remained the same as in 2003. This is because one Track B claimant who had been awarded debt relief prior to 2004 was awarded additional debt relief in calendar year 2004.

⁵ The average amount of Track B debt relief increased in 2007 even though the number of Track B claimants who received debt relief remained the same as in 2006. This is because one Track B claimant who had been awarded debt relief prior to 2007 was awarded additional debt relief in calendar year 2007.

Appendix 4

STATISTICAL REPORT REGARDING DEBT RELIEF

(continued)

Total Amount of Debt Forgiven (Principal and Interest) for Track A and Track B Claimants, by Residence of Claimants	
Alabama	\$ 947,764
Arkansas	7,633,239
California	8,016
Florida	43,064
Georgia	2,627,803
Illinois	200,189
Kansas	80,275
Kentucky	139,039
Louisiana	2,589,899
Minnesota	11,911
Mississippi	9,215,670
Missouri	562,870
North Carolina	3,135,690
Oklahoma	809,699
South Carolina	994,720
Tennessee	1,315,820
Texas	1,494,830
Virginia	1,444,685
Virgin Islands	58,224

Appendix 5

**STATISTICAL REPORT REGARDING
PREVAILING PAID CLAIMANTS BY STATE OF RESIDENCE¹**

State, Province, or Territory of Claimants' Residence	Total Number of Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2007 (Track A and Track B)
Alaska	2	\$ 100,000
Alabama	3,343	164,789,500
Arkansas	1,475	74,330,969
Arizona	4	200,000
California	146	7,834,600
Colorado	6	300,000
Connecticut	5	250,000
District of Columbia	16	830,000
Delaware	2	100,000
Florida	274	13,331,000
Georgia	1,956	96,881,742
Idaho	1	50,000
Illinois	178	8,906,000
Indiana	13	650,000
Kansas	30	1,500,000
Kentucky	63	3,115,500
Louisiana	572	28,571,000
Massachusetts	5	250,000
Maryland	35	1,709,000
Michigan	95	4,728,000
Minnesota	6	300,000
Missouri	89	4,471,000
Mississippi	3,090	156,060,914
North Carolina	1,147	60,791,583

¹ These statistics are provided by the Facilitator and are as of December 31, 2007. Cash relief for Track A claimants includes payment of credit relief (\$50,000) and non-credit relief (\$3,000) to class members who prevailed in the claims process as of the end of 2007. Cash relief for Track B claimants includes payment of damage awards for prevailing class members and payments to class members who settled their claims.

Appendix 5

**STATISTICAL REPORT REGARDING
PREVAILING PAID CLAIMANTS BY STATE OF RESIDENCE**

(continued)

State, Province, or Territory of Claimants' Residence	Total Number of Paid Claimants (Track A and Track B)	Total Cash Relief Paid as of December 31, 2007 (Track A and Track B)
Nebraska	3	150,000
New Jersey	36	1,800,000
New Mexico	2	100,000
Nevada	3	150,000
New York	36	2,161,249
Ohio	28	1,443,000
Oklahoma	589	29,216,000
Ontario	1	50,000
Oregon	1	50,000
Pennsylvania	16	800,000
South Carolina	881	44,693,500
Tennessee	473	24,679,755
Texas	324	17,448,400
Utah	1	50,000
Virginia	175	9,720,780
Virgin Islands	25	1,250,000
Washington	4	200,000
Wisconsin	16	855,000

Appendix 6

STATISTICAL REPORT REGARDING INJUNCTIVE RELIEF¹

Cumulative Statistical Report as of:	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007²
A. Farm Ownership Loans					
1. Number of Requests for Priority Consideration with Complete Application	56	75	124	125	125
2. Number of Applications Approved	15	21	29	29	29
B. Farm Operating Loans					
1. Number of Requests for Priority Consideration with Complete Application	112	138	210	215	217
2. Number of Applications Approved	39	52	72	75	75
C. Inventory Property					
1. Number of Requests for Priority Consideration	3	4	10	10	10
2. Number of Applications Approved	1	1	1	1	1

¹ These statistics are provided by USDA.

² These statistics are as of December 31, 2007.

Appendix 7

LIST OF MONITOR OFFICE TRAINING EVENTS AND MEETINGS ATTENDED
JANUARY 1, 2007 – DECEMBER 31, 2007

The Monitor's office appeared at the speaking engagements listed below to explain the rules that govern the Monitor's discharge of her responsibilities (including the rules of the petition process, the injunctive relief process, and the debt relief process) and to meet individually with class members to address their particular concerns. These speaking engagements included:

Date	Location	Sponsor	Approximate Number of Participants
10/26/07	Brinkley, Arkansas	Arkansas Land Farm Development Corporation	150
11/16/07	Fort Valley State University, Fort Valley Georgia	African American Family Farmers, Inc.	50
12/14/07	Community Family Enrichment Center, Inc, Arkadelphia, Arkansas	South West Arkansas Small Farmers	20

Appendix 8

STATISTICAL REPORT REGARDING
PETITIONS FOR MONITOR REVIEW¹

Cumulative Statistical Report as of:	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007
Timely Petitions for Monitor Review						
A. Number of Petitions for Monitor Review	5,160	5,401	5,617	5,668	5,701	5,707
1. Claimant Petitions	4,560	4,727	4,901	4,938	4,945	4,950
2. Government Petitions	600	674	716	730	756	757
Monitor Decisions						
B. Petition Decisions Issued by Monitor	1,743	2,725	3,310	4,189	5,243	5,688
1. Total Number of Petitions Granted	676	1,218	1,510	2,049	2,627	2,904
a. Claimant Petitions Granted	631	1,162	1,439	1,971	2,508	2,776
b. Government Petitions Granted	45	56	71	78	119	128
2. Total Number of Petitions Denied	1,067	1,507	1,800	2,140	2,616	2,784
a. Claimant Petitions Denied	609	1,040	1,319	1,622	2,011	2,157
b. Government Petitions Denied	458	467	481	518	605	627

¹ These statistics are provided by the Facilitator.

Appendix 9

STATISTICAL REPORT REGARDING
ADJUDICATOR REEXAMINATION DECISIONS¹

Statistical Report as of:	End of 2002	End of 2003	End of 2004	End of 2005	End of 2006	End of 2007
Adjudicator Reexamination Decisions						
Reexamination Decisions Issued by Adjudicator	39	301	664	1,355	1,957	2,606
1. Reexamination Decisions After Claimant Petition Granted by Monitor	39	291	631	1,295	1,880	2,494
a. Claimant Prevailed on Reexamination	39	279	571	1,189	1,704	2,229
b. Claimant Did Not Prevail on Reexamination	0	12	60	106	176	265
2. Reexamination Decisions After Government Petition Granted by Monitor	0	10	33	60	77	112
a. Government Prevailed on Reexamination	0	10	31	52	68	102
b. Government Did Not Prevail on Reexamination	0	0	2	8	9	10

¹ These statistics are provided by the Facilitator.

Appendix 10

SAMPLE AFFIDAVIT IN SUPPORT OF PETITION TO FILE A LATE CLAIM
AND SAMPLE LATE CLAIM AFFIDAVIT

Tracking #«TRACKING»
«NAME1»

PIGFORD, ET AL. v. GLICKMAN

AFFIDAVIT IN SUPPORT OF PETITION TO FILE A LATE CLAIM

[Please complete one of the three sections below.]

CATEGORY 1: HURRICANE FLOYD

I, _____, reside and/or farm in one of the North Carolina counties declared by the
(insert your name)
federal government to be a disaster area as a result of Hurricane Floyd.

I, _____, was unable to submit my claim before the October 12, 1999 deadline because
(insert your name)
of this disaster.

CATEGORY 2: HOMEBOUND

I, _____, became homebound due to illness and/or physical disability, and remained
(insert your name)
homebound, during the time-period beginning on August 12, 1999, and ending on October 12, 1999.

CATEGORY 3: OTHER EXTRAORDINARY CIRCUMSTANCES BEYOND YOUR CONTROL

[*Please note that “extraordinary circumstances” does not include “I did not know about the case” or “I did not know about the deadline.” It means you were prevented from completing the forms on time by unique circumstances over which you had no authority.]

I, _____, did not file a claim before the October 12, 1999 deadline because of the
(insert your name)
following circumstances which were beyond my control (use additional paper, if necessary):

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature

Date

Pigford, et al. v. Glickman, et al.

Late Claim Affidavit

The Consent Decree in the *Pigford v. Glickman* case established the deadline for filing a claim as October 12, 1999. Any claim filed after October 12, 1999 is considered a late claim, the conditions for which are set out in ¶ 5 (g) of the consent decree. Paragraph 5(g) provides that a farmer attempting to file a late claim must establish that circumstances beyond the farmer's control prevented him or her from filing a claim by the October 12, 1999 deadline. **On July 14, 2000, Judge Friedman issued an order establishing September 15, 2000 as the final date by which a farmer can seek permission to file a late claim.** The July 14, 2000 order also established that the decision of whether a farmer meets the standard specified in the consent decree would be made by the Arbitrator.

The Arbitrator will review all late claim petitions postmarked by September 15, 2000. The standard he will use is that contained in Paragraph 5 (g) of the consent decree – circumstances beyond the control of the farmer that prevented the farmer from filing a timely claim.

You do not have to use this form to file a petition for a late claim, but **all late claim petitions must be in writing**. It is important to include as much detailed information about the circumstances of the late filing as possible, because you have to convince the Arbitrator that circumstances or conditions beyond your control prevented you from filing a claim by October 12, 1999. If you have documents that help you explain why your claim is late, please include copies with your petition.

You will receive a letter from the Arbitrator telling you whether you have been given permission to file a claim or not. If the Arbitrator approves your petition, a claim form will be forwarded to you.

I, _____, did not file a claim by the October 12, 1999 because of the following circumstances which were beyond my control (use additional paper if necessary): _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Signature

Date