

Monitor Update: Eligibility and Monitor Review

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Office of the Monitor
Pigford v. Schafer (D.D.C.)
Brewington v. Schafer (D.D.C.)
Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483
www.pigfordmonitor.org

This is not a USDA publication.

Eligibility and Monitor Review

1. Introduction

Some *Pigford* claimants have been denied relief on the grounds of class eligibility. In other words, they have been found not to be members of the class.

This Monitor Update is intended to:

- a. Explain who is eligible to be a member of the class;
- b. Describe how eligibility decisions are made; and
- c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

In order to be a class member in the *Pigford* case, eligibility requirements must be met. In addition to being African-American, the following three things must be true about a person.

First, he or she had to farm, or attempt to farm, between January 1, 1981, and December 31, 1996.

Second, he or she must have applied to USDA between January 1, 1981, and December 31, 1996, to participate in a federal farm credit or benefit program. He or she must also have believed he or she was discriminated against on the basis of race in USDA's response to that application.

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

A claimant must submit proof that he or she filed a discrimination complaint. Listed below are the four types of proof that may be used by a claimant to show that he or she filed the discrimination complaint.

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

d. Declaration from another person about listening session or verbal complaint

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

If, after reexamination, the Facilitator rules that a claimant is not an eligible member of the class, he or she may not receive any of the relief found in the Consent Decree.

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.