

Monitor Update: Claimant and Claimant Attorney Access to USDA Documents

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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.

Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

This Monitor Update explains how claimants and their attorneys can go about getting copies of these USDA documents.

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

Claimants who are being assisted by Class Counsel or Of-Counsel should not have any problem with access to papers that USDA filed in their *Pigford* claims. Class Counsel should have a copy of these files, and Of-Counsel should be able to get a copy from Class Counsel.

b. Assisted by an Attorney Who Is Not Class Counsel or Of-Counsel

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

Some claimants are not being assisted by an attorney at all. In legal terms, these claimants are acting "pro se"—that is to say, they are acting without legal counsel. Section 4 of this Update explains how these claimants should go about getting papers that USDA filed in their *Pigford* claims.

3. Types of Information Available to Claimant Varies

In general, USDA files used by the Adjudicator in deciding the claimant's case include two types of information. First, files sometimes include information about the claimant. This may include documents from old FmHA files, for example, or the results of USDA interviews about the claimant.

Second, USDA files may include information about people other than the claimant. This may include, for example, information about people named by the claimant as similarly situated white farmers. Information about claimants and similarly situated white farmers that is contained in USDA's responses to Track A claims is covered by the Privacy Act. A claimant can generally obtain private information about him- or herself but cannot obtain private information about other people. Therefore, a claimant who is not represented by a lawyer will not be able to obtain copies of any materials concerning similarly situated white farmers that USDA gave to the Adjudicator.

Therefore, if a claimant is acting pro se, he or she will not receive USDA information about other people.

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

a. Get a Copy of Privacy Order and the Acknowledgement Form

Claimants need to get a copy of the Privacy Order and the Privacy Order Acknowledgment Form. They can have these sent to them by calling toll-free at 1-877-924-7483.

b. Read the Form Closely and Sign It

Claimants should then read the Privacy Order and the Privacy Order Acknowledgment Form very closely and sign the Acknowledgment Form. When signed, that form is a binding legal document. It limits the claimant's right to use, distribute, or publish the information.

c. Send the Signed Form to the Facilitator—and Include Claimant Mailing Address

Claimants should then send the signed Acknowledgment Form to the Facilitator at:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

It is important that the claimant send a current mailing address to the Facilitator along with the signed form.

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

Attorneys need to get a copy of the Second Amended Supplemental Privacy Act Protective Order ("Privacy Order") and the Privacy Order Acknowledgment Form. They can request them by calling toll-free at 1-877-924-7483.

b. Sign Form and Return to USDA

Attorneys then sign the form and return it to USDA through the Facilitator at the following address:

Black Farmers' Settlement
Claims Facilitator
PO Box 4390
Portland, OR 97208-4390

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.