

Randi Ilyse Roth

Attorney at Law

Monitor

Pigford v. Glickman (D.D.C.)

Brewington v. Glickman (D.D.C.)

Office of the Monitor

P.O. Box 64511

Saint Paul, MN 55164-0511

Toll-Free Phone:

1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #1 — June 2000

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* and *Brewington* cases. This booklet was written by the Monitor. It is current as of May 26, 2000. Please read this booklet carefully before you prepare your Petition for Monitor Review.

1. Who can ask the Monitor to review their case?

Anyone who filed a Track A or Track B claim under this Consent Decree and was denied any aspect of relief has the right to ask my office to review what happened. You can ask for review if your claim was denied, and you can ask for review if your claim was partly approved and partly denied. For example, if the decision in your Track A case granted you \$50,000 in cash, and some debt relief, but you believe that you were entitled to more debt relief, you may Petition for Monitor Review.

The government can also ask the Monitor to review approved decisions that it believes should have been denied or that it believes contain errors in the relief awarded.

My staff and I will review every Petition for Monitor Review that I receive. Please note, though, that I have the power to require reexamination of your claim only if I find a "clear and manifest error" in your case. "Clear and manifest error" is explained in question 5 below.

2. How can I get the Monitor to review my case?

Your case will be reviewed only if you file a Petition for Monitor Review. You can do this through your lawyer, or you can do it on your own. I strongly suggest that you use a lawyer. (See question 3 below.)

If you choose to file your Petition for Monitor Review without a lawyer, I suggest that you use the sample form enclosed with this letter (it is called "Monitor Form # 1: Petition for Monitor Review"). I strongly suggest that you use the form, but you are not required to use it—a letter that covers all of the information asked for on the form will do if you prefer that.

The most important thing about the Petition for Monitor Review is your careful, detailed explanation of why you think the decision made by the Facilitator, Adjudicator, or Arbitrator was a "clear and manifest error." "Clear and manifest error" is described in question 5 below.

You or your lawyer can send your Petition for Monitor Review to me at:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

3. Should I get a lawyer to help me with this Petition for Monitor Review?

You have the right to proceed without a lawyer, but I very strongly encourage you to have a lawyer to help you write your Petition for Monitor Review. I think it is a good idea because a thorough legal analysis of what has happened in your case will help you to write the strongest possible Petition. If, however, you choose to file your Petition without a lawyer, I will accept it. My staff and I will review all of the details of your Petition and the other papers in your file very closely whether or not you have a lawyer.

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. I understand that the lawyers who represented the class of farmers in this case have agreed to give you legal help at no charge. They are called “Class Counsel.” They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

Alexander J. Pires, Jr.
Conlon, Frantz, Phelan and Pires, LLP
1818 N Street NW, Suite 700
Washington, DC 20036
Phone: 202-331-7050 or
Toll-free: 1-800-448-FARM
Fax: 202-331-9306

Lawyers other than Class Counsel may also agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

No. The Consent Decree provides that the Monitor does not have the power to reverse or change any decisions. I do have the power to “direct their reexamination” by the Facilitator, Adjudicator, or Arbitrator. That means that I can require them to review your case again.

The Adjudicator’s office has informed me that when I direct reexamination, a different Adjudicator will be assigned to do the reexamination in your case. (The Adjudicator is the decision maker for all eligible Track A claims.)

5. When can the Monitor require that a claim be reviewed again?

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a “clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice.” I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will

explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

In general, the Monitor's office will review your case and make a decision based only on the following: (a) the claim form that you submitted when you first made your claim; (b) the materials that the government submitted in response to your claim form; (c) the decision of the Facilitator, Adjudicator, or Arbitrator that you or the government thinks is wrong; (d) your Petition for Monitor Review or the government's Petition for Monitor Review; and (e) any response to the Petition for Monitor Review.

If you are requesting Monitor review, you (or your lawyer) only need to send me your Petition for Monitor Review. If the government is requesting Monitor review, you (or your lawyer) may send me a response to the government's Petition for Monitor Review. I have access to the claim form, the materials the government submitted, and the initial decision in your case.

7. Can I send in additional information and papers for the Monitor to review as part of my Track A case?

You were responsible for raising all of the issues and presenting all of the facts of your case in your original claim form. Although that is the rule, in some limited, special circumstances the Monitor's office will consider additional information and papers that you send in with your Petition for Monitor Review.

As you may know, there have been many more claims in this case than anyone expected. Because of the large number of claims and for other reasons, there may have been problems in the claims process in some cases that caused a fundamental miscarriage of justice. In some of those cases, it may be impossible to correct an injustice without referring to additional information and papers that were not filed with the original claim form. Judge Friedman addressed this issue in an Order on April 4, 2000. The Order provides that in Track A cases, the Monitor may consider additional information and papers when they "address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed."

If you think that there was a flaw or mistake at any point in the processing of your claim, and you think that because of that mistake to fully tell your story you need to show the Monitor information or papers that were not included with your original claim form, please send that information and a copy of those papers to me along with your Petition. The flaw or mistake could have occurred when you or the attorney filled out your claim form, when the government made its submission, when the Adjudicator made its decision, or at any other stage of processing the form.

If you are going to send in additional papers with your Petition for Monitor Review of your Track A case, please be sure to describe the flaw or mistake in your Petition. I will not be able to consider your additional information or papers unless I understand how they address a flaw or mistake in the claims process.

8. Can I send in additional papers for the Monitor to review as part of my Track B case?

No. The Judge's Order of April 4 states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases.

9. Can I see what the government submitted in my Track A case before I write my Petition for Monitor Review?

The general rule is that the government's submission in your case may not be given out to anyone—not even to you—because it contains confidential information about the white farmer(s) who you named on your claim form.

The Privacy Act is a statute that applies to certain information about individuals and that places restrictions on the disclosure of that information. Judge Friedman entered a "Privacy Order" in this case. It allows certain people to get access to information that is protected by the Privacy Act if they sign the Privacy Order and agree to live by its terms. The rules about access to this information follow.

9a. If you are represented by Class Counsel. Class counsel in this case have signed the Privacy Order—if they are representing you, they can get access to the government's submission in your case. (See question 3 above for information about how to contact Class Counsel.)

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer, please call my office directly at 1-877-924-7483.

10. Can I talk with the Monitor's office about my Petition for Monitor Review?

No. Judge Friedman's Order of April 4, 2000, provides that this review process is a "paper-only" process. That means that I will base my decisions entirely on the papers in your file, not on any conversations that my staff or I have with you. Your Petition for Monitor Review is your only chance to explain why the decision was a "clear and manifest error." That is why you must be so careful to tell the complete story in writing in your Petition.

As I explained in the letter that I sent to you with this booklet, my staff and I will be happy to talk with you about any problems you may have other than problems with the decision in your case. For example, my staff and I can talk with you on the phone or in person to try to solve any problems you may have with injunctive relief. ("Injunctive relief" refers to approved claimants' rights to get priority consideration for certain loans, and for purchases and leases of inventory property, along with other rights. For a detailed explanation of those rights, call 1-877-924-7483 and ask for the "injunctive relief" booklet free of charge.)

11. Can USDA take action against me on a loan while the Monitor is reviewing my case?

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by either 90 calendar days after June 2 (that is, by August 31, 2000) or by 90 calendar days from the date the decision was issued in your case—whichever is later. Under the terms of the freeze, USDA agrees not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is successful, under certain circumstances USDA will refund any money that they recovered from you by offset.

The exact terms of the freeze will be described in a policy notice that will be issued by USDA shortly after the date of this letter. If you would like a copy of it, please call my office at 1-877-924-7483 to request it.

12. What if my Track A claim involved attempting to apply for a loan, and my claim was denied?

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these

claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

- a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.
- b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.
- c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.
- d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)
- e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).
- f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

13. What if I already submitted my Petition for Monitor Review?

If you or your lawyer submitted a Petition for Monitor Review in your case before you had all of the information in this booklet, it may be to your advantage to withdraw that Petition and submit a new one. For example, many claimants submitted Petitions that are simply one-sentence letters saying something like, "I was wrongfully denied, please review my case." After reading this booklet, those claimants will better understand how they can write a thorough Petition that will have the best chance of success.

If you or your lawyer already submitted a Petition for Monitor Review in your case, you will have 60 days from the date of this letter (until August 1, 2000) to withdraw that Petition and either (a) submit a new Petition, or (b) tell me that you are planning to submit a new Petition. You can use the form included with this letter for that purpose (it is called "Monitor Form #2: Withdrawal of Petition").

If I do not hear from you about withdrawing your Petition by August 1, 2000, I will assume that you want me to go ahead with the Petition that you already submitted.

14. Is there a deadline for Petitioning for Monitor Review?

I have been appointed as Monitor for a five-year term that began on January 18, 2000. My appointment ends on January 17, 2005. All of my work must be completed by that date,

including all of my work involving Petitions for Monitor Review. The Court has not set a deadline for submissions of Petitions for Monitor Review, but it is possible that at some point the Court will set a deadline.

I strongly urge you to submit your Petition soon. I have many reasons for saying this. First, you must submit your Petition by one of the deadlines explained in question 11, above, to be included in the USDA freeze of adverse action. Second, you will be able to write a stronger Petition if you do it sooner rather than later—your memory will be stronger, it will be easier to get any documents you may need, the lawyers whom you may ask to represent you are actively involved in these issues now, etc. Third, it is possible that at some time the Judge will impose a deadline for submitting Petitions. You will be in a stronger position if you are not rushing to put a Petition together under the pressure of such a deadline.

15. What are the steps in the Monitor review process?

In general, there are four steps.

First, you or your lawyer must send me a written Petition for Monitor review.

Second, the government will have a chance to respond to your Petition.

Third, the Monitor's Office will review your file. If you sent additional information or papers with your Petition, I will decide whether to consider each piece of information and each paper. Then I will decide whether to require reexamination. As I explained above, I will require reexamination only if I find "a clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice" (see question 5 above).

Fourth, I will make a decision and send you a letter explaining it. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest errors that I found in your file—that letter, along with any documents that I have accepted into the record in your case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

16. Can USDA ask the Monitor to review cases too?

Yes. When USDA files Petitions for Monitor Review, USDA will be held to the same standards as those described above for claimants.

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* and *Brewington* lawsuits.

Monitor Form #1: Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

Are you represented by a lawyer regarding this Petition for Monitor Review?

Yes No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

If you check "yes" and give us your lawyer's name and address, we will send your lawyer copies of all of the papers that we send to you.

3. Additional Information or Papers

Are you submitting any additional information or papers along with your Petition for Monitor Review?

Yes No

If no, go to section 4 below.

If yes, please explain the flaw(s) or mistake(s) in the claims process in your case. (Please feel free to attach more pages.)

Please describe the additional information or papers that you would like the Monitor to review because of the flaw(s) or mistake(s). (Please feel free to attach more pages.)

Please explain why there would be a fundamental miscarriage of justice if the Monitor does not consider the additional information or papers. (Please feel free to attach more pages.)

4. Explain the Error

As explained in the letter and booklet that were sent with this form, the Monitor can only require reexamination of your decision if she finds that the decision was a “clear and manifest error” likely to result in a “fundamental miscarriage of justice.” Please explain why the decision in your case was that type of “clear and manifest error.” It is very important that you explain in full detail every reason why the decision was a “clear and manifest error.” (Please feel free to attach more pages.)

Monitor Form #2: Withdrawal of Petition

This form is for people who had already filed a Petition for Monitor Review before they received the Monitor's letter of June 2, 2000. If you would like to withdraw a Petition for Monitor Review that was already filed in your case, please fill out this form and send it to the Monitor. If you do not complete this form and send it to the Monitor by August 1, 2000, the Monitor will begin processing the request for Monitor review that is already on file in your case.

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Withdrawal Request

I hereby withdraw the request that was already filed in my case.

Signature

Date of Signature

3. New Petition (filling this part out is optional)

I am submitting a new Petition for Monitor Review along with this form.

I plan to submit a new Petition for Monitor Review in the future.

4. Submit This Form

Submit this form to:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

The Monitor's office will send you a letter confirming that they have received this Withdrawal of Petition from you. The letter will include a photocopy of your Withdrawal of Petition for your records.

c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.

d. Please state the type and amount of loan for which you were applying. ("Types" of loans mean, for example, operating loans or farm ownership loans.)

e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).

f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

6. Signature

Please sign here. By signing this Petition, you are promising that you believe that everything you are saying in this Petition is true.

Signature

Date

7. Submit Your Petition

Submit your completed Petition for Monitor Review to:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511

The Monitor's office will send you a letter confirming that they have received this Petition for Monitor Review from you. The letter will include a photocopy of your Petition for Monitor Review for your records.