

Office of the Monitor

Pigford v. Veneman (D.D.C.)

Brewington v. Veneman (D.D.C.)

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St. Paul, Minnesota 55164-0511

Phone (toll-free): 1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of October 2003. Please read this booklet carefully before you prepare your Petition for Monitor Review or if you have questions about the Monitor Review process.

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. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. 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
Fax: 202-331-9306

J. L. Chestnut
Chestnut, Sanders, Sanders, Pettway, Campbell & Albright, LLP
One Union Street
Selma, AL 36701
Phone: 334-875-9264
Fax: 334-875-9375

Phillip L. Fraas
Attorney at Law
3050 K Street NW, Suite 400
Washington, DC 20007-5108
Phone: 202-342-8864
Fax: 202-342-8451

Some lawyers may 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 his 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, 2000, 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. Monitor Update #8, “Procedural Rules for Track B Cases” addresses the rules for Monitor Review of 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 the government maintains 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 and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

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" update 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 the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agreed not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that USDA acquired through foreclosure 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 money that they recovered from you by offset.

The exact terms of the freeze are described in a policy notice that was issued by USDA. If you would like a copy of it, please call my office at 1-877-924-7483 to request it. You may also call and request Monitor Update Number 6, which explains the freeze.

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’ve already submitted your petition, you may call my office at 1-877-924-7483 to find out the status of the petition—we can tell you whether it has been sent to the government for response, and whether the Facilitator has routed your case file to the Monitor’s office for a decision. We are working on thousands of petitions, and we are doing a very careful review of each one. Because there are so many petitions in the process, we cannot predict the date when the Monitor will make a decision in your case.

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

Yes. Two court orders established deadlines for Petitions for Monitor Review. One order, dated July 14, 2000, established deadlines for Petitions for Monitor Review in Track A and Track B cases. The other Order, dated October 29, 2002, established a deadline for filing Petitions for Monitor review of Facilitator Eligibility determinations.

a. Track A Adjudication or Track B Arbitration

- (1) **Decisions dated on or before July 14, 2000.** If the Adjudicator or Arbitrator decision was dated on or before July 14, 2000, the Petition must have been submitted by November 13, 2000 (or, if the claimant was listed on a Register of Petitions, the petitions submitted by the claimant's attorney must have been postmarked by September 15, 2001, as described by Court Orders dated November 8, 2000, and May 15, 2001).
- (2) **Decisions dated after July 14, 2000.** If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

b. Facilitator Review of Eligibility Determinations

- (1) **Decision on or before October 29, 2002—deadline was 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 was 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.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483.

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

In general, there are three 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 Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) 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 of the letter 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* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.