

## **Appendix 4**

### **Monitor Updates**

#### **Questions and Answers About Monitor Review of Decisions**

## Monitor Update: Late Claim Deadline

Originally Issued: August 14, 2000

**Date Revised: October 1, 2003**

Update 001

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Office of the Monitor  
*Pigford v. Veneman (D.D.C.)*  
*Brewington v. Veneman (D.D.C.)*  
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**This is not a USDA publication.**

## Late Claim Deadline

### 1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected the filing of late claims. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000, Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

### 2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

### 3. Some late claims were allowed

In some cases, it was possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allowed a person to be a part of the case if the person could show that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."<sup>1</sup> The Court directed the Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

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<sup>1</sup> This language is found in section 5(g) of the Consent Decree.

#### **4. Judge's Order—deadline to request permission to file a late claim**

The Judge's July 14, 2000, Order set a deadline for submitting a written request to file a late claim. **That deadline was September 15, 2000.** In order to meet the deadline, the written request must have been postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

#### **5. How late claims were allowed**

Three important rules applied when a claimant filed a late claim.

First, the claimant must have filed with the Claims Facilitator a **written** request for permission to file a late claim.

Second, the written request had to explain the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed.

#### **6. After the Arbitrator decides about the late claim**

If the Arbitrator decides that the claimant **was** prevented from filing a timely Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a timely Claim Sheet and Election Form because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration.

#### **7. Reconsideration of the Arbitrator's denial**

The Arbitrator has established a limited reconsideration policy. When the Arbitrator denies a request for permission to file late, he sends a letter to the claimant. This letter will explain the Arbitrator's policy for reconsidering the request to file late.

#### **8. If the Arbitrator decides in favor of claimant—60 days to file a claim form**

If the Arbitrator grants a claimant's request to file a late claim, the claimant will receive a Claim Sheet and Election Form from the Claims Facilitator. The Claim Sheet and Election Form must be filled out and signed by an attorney, and it must be postmarked no later than 60 days from the date of the cover letter that accompanies the Claim Sheet and Election Form. No extension of this 60-day period will be granted for any reason.

#### **9. More information**

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

# Monitor Update: Cured Defective Claims

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## Cured Defective Claims

### 1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affects cures of defective claims. An Order from the Judge has the force of law.

The Order directs the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- The October 12, 1999, deadline for filing a claim.
- What defective claims are.
- How the October 12, 1999, deadline affects the cure of defective claims.
- The deadline for curing defective claims
- How to get more information from the Monitor.

### 2. The October 12, 1999, deadline for filing a claim

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that frames the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is therefore a late claim.

### 3. Defective claim sheet and election forms—sent back and returned

Many people sent in their Claim Sheet and Election Form on time—but failed to fill out the form completely, or made a mistake in filling out the form. For example, some people simply forgot to sign the claim form. In this case, the Facilitator notified the person of a problem with the way the Claim Sheet and Election Form was filled out, and asked the person to fix the problem.

**a. Corrected form returned—by the October 12, 1999, deadline**

If the person returned the corrected claim form to the Facilitator by the October 12, 1999, deadline, there was no problem. These people became claimants who are eligible for a Track A adjudication or a Track B arbitration.

**b. Corrected form returned—after October 12, 1999, deadline**

Many people, however, returned the corrected claim form to the Facilitator but did not do so until after the October 12, 1999, deadline. Until the Judge issued his recent Order, there had been a question as to whether these people would become claimants who are eligible for a Track A adjudication or a Track B arbitration. The Judge's Order settles this question. People who filed on time and then corrected their Claim Sheet and Election Form and submitted the correction to the Facilitator will be considered to have filed and completed their forms on time—even if they submitted the correction after the October 12, 1999, deadline.

**4. Deadline for correcting defective claim sheet and election forms—July 14, 2000**

The Judge's new Order sets a deadline for correcting defective Claim Sheets and Election Forms. As a result of the Judge's Order, a defective claim that was corrected by July 14, 2000, will be treated as if it was filed on time. In other words, if a person sent in a timely Claim Sheet and Election Form that was defective, the Facilitator asked that the form be corrected, and the person then corrected the defective claim form, that correction must have been postmarked by **July 14, 2000**. If the correction was not postmarked by then, the person is not a claimant and is not eligible for Track A adjudication or Track B arbitration.

**5. If the Claim Sheet and Election Form were not corrected by July 14, 2000**

A person who did not file a corrected Claim Sheet and Election Form by July 14, 2000, may, in "extraordinary circumstances," still have a chance to participate in the settlement. In order to do so, the person will need to file a written request for permission to file a late claim. Permission will be granted only in cases in which the Arbitrator determines that the need to file late was caused by extraordinary circumstances that were beyond the person's control. Please note that the deadline for submitting written requests for permission to file a late claim is **September 15, 2000**. The process for filing written requests for permission to file a late claim is described in Monitor Update #1: Late Claim Deadline. To get a copy of Monitor Update #1, call the Monitor's office toll-free at 1-877-924-7483.

**6. More Information from the Monitor**

Anyone who has questions regarding the problem of curing defective claims should feel free to call the Facilitator toll free at 1-800-646-2873 or the Monitor toll-free at 1-877-924-7483.

# Monitor Update: Deadlines for Petitions for Monitor Review

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## Deadlines for Petitions for Monitor Review

### 1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affected petitions for Monitor Review. An Order from the Judge has the force of law.

The Order directed the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14, 2000 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This Update explains:

- What petitions for Monitor review are.
- The deadline for petitions for Monitor review.

### 2. Petitions for Monitor review

In the *Pigford* lawsuit, both Claimants and the Government are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any party who received a wholly or partly adverse final decision in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone may request a copy of the letter and pamphlet (which was updated on June 1, 2003) by calling the Monitor's office toll free at 1-877-924-7483.

### 3. Judge's Order created a deadline for most petitions for Monitor review

The Judge's Order created a deadline for filing petitions for Monitor review. The deadline worked in two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply. Information about Monitor Review of Facilitator denials can be found in "Monitor Update 5: Eligibility and Monitor Review".)

**a. Decision on or before July 14, 2000—deadline was November 13, 2000**

If the decision by the Track A Adjudicator or the Track B Arbitrator was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000. (This deadline was affected by the Register process in Orders dated November 8, 2000; April 27, 2001; and May 15, 2001.)

**b. Decision after July 14, 2000—deadline 120 Days After Decision**

If the decision by the Track A Adjudicator or the Track B Arbitrator was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

**4. Deadlines created by the Order are firm**

The deadlines explained in this Update are firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

**5. More information from the Monitor**

Anyone who has questions for the Monitor's Office regarding deadlines for petitions for Monitor review should call toll-free at 1-877-924-7483.

# Monitor Update: Injunctive Relief in *Pigford v. Veneman*

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## Injunctive Relief in *Pigford v. Veneman*

### **I. Introduction and the Monitor's Role**

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Veneman*—the nationwide class action brought by black farmers alleging race discrimination by the United States Department of Agriculture (USDA). Injunctive relief is the remedy in the lawsuit that is separate from money damages. The Consent Decree in *Pigford* provides for injunctive relief.

The Monitor is independent of the parties and was appointed by the Honorable Paul L. Friedman, the judge in this case. Part of the Monitor's job is to help class members who have difficulty getting injunctive relief.

### **II. Only a Brief Summary**

This Update is intended to give only a brief summary of injunctive relief rights in this case. To learn about the current state of your rights in detail, please contact an attorney. You may also contact the Monitor's office for more information.

### **III. Eligibility for Injunctive Relief**

#### **A. Must Prevail in Track A or Track B**

In order to be eligible for injunctive relief, a class member must prevail in either Track A or Track B of the settlement.

#### **B. Credit vs. Noncredit Claims—the Difference Matters**

Two types of claims are possible—credit claims and noncredit claims. A credit claim means a claim based on the class member's effort to get a farm loan. A noncredit claim is a claim that is not based on an effort to get a farm loan, but rather is based on the class member's effort to receive some other benefit from USDA. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

#### **C. What Law Applies for Injunctive Relief**

##### **1. Consent Decree**

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a



remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

## ***2. FSA Regulations and Most Favorable Light***

The regulations governing FSA programs must be met in providing injunctive relief to class members. For example, in order to get a loan from the Farm Service Agency (FSA), the farmer must still meet FSA eligibility requirements.

According to the Consent Decree, however, applications for farm ownership or farm operating loans, or for inventory property, must be viewed in the light most favorable to the class member. This provision applies every time a class member applies for an operating loan, for a farm ownership loan, or for inventory property.

## **IV. Types of Injunctive Relief**

Injunctive relief falls under two main categories—priority consideration and technical assistance.

### **A. Priority Consideration—Three Types**

The Consent Decree provides for priority consideration for three types of FSA benefits.

#### ***1. Inventory Property***

Priority consideration for the purchase, lease, or acquisition of some property that USDA owns—known as inventory property—is a part of injunctive relief. FSA will advertise inventory land at its appraised market value. Priority consideration comes into play in deciding who is allowed to buy the land at the appraised market value.

#### ***2. Farm Ownership Loan***

Priority consideration for one FSA direct farm ownership loan—known as an FO loan—is a part of injunctive relief.

#### ***3. Farm Operating Loans***

Priority consideration for one FSA direct operating loan—known as an OL loan—is a part of injunctive relief. Farm operating loans may be used to pay annual farm operating expenses; to pay farm or home needs, including family subsistence; to purchase livestock and farm equipment; to refinance other debt; and for other purposes.

#### ***4. How Priority Consideration Works***

Several general rules apply to priority consideration.

##### ***a. Request in Writing***

Priority consideration must be requested from FSA in writing.

##### ***b. One-Time Basis***

Priority consideration is available on a one-time basis.

***c. Credit Claims Only***

Priority consideration is available only to those who had credit claims.

**B. Technical Assistance and Service**

Technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property is a part of injunctive relief. Technical assistance is defined as USDA assistance in filling out loan forms, developing farm plans, and all other aspects of the application process.

***1. Credit and Noncredit Claims***

Technical assistance is available both for those with credit claims and noncredit claims.

***2. Must Be Requested***

The class member must request the technical assistance and service. Class members should consider making this request in writing.

***3. Qualified and Acceptable USDA Employees***

Technical assistance and service must come from qualified USDA employees who are acceptable to the class member.

**V. Getting an FSA Loan**

**A. Eligibility and Priority Consideration**

Priority consideration does not mean that getting the loan is automatic. FSA eligibility requirements continue to apply.

**B. Debt Forgiveness and Loan Eligibility**

Many class members will have problems getting a loan because of past debt forgiveness.

***1. General Rule—No FSA Direct Loan if Debt Forgiveness***

As a general rule, applicants who have had FSA debt forgiveness that resulted in a loss to FSA cannot get an FSA direct loan.

***a. Defining Debt Forgiveness***

Debt forgiveness, for this purpose, has a specific definition. It includes, for example, the write-down or write-off of an FSA debt. It also includes the discharge of a debt to FSA as a result of bankruptcy. In addition, it includes a loss paid by FSA on a guaranteed loan.

***b. Exceptions to the General Rule***

For operating loans, there are two exceptions to the debt forgiveness restriction. The first exception has two parts. The borrower must meet both parts of the exception to be eligible for an operating loan. First, the form of debt forgiveness must have been a restructuring with what FSA calls a primary loan servicing write-down. Second, the farmer must be applying for an operating loan that is intended to pay annual farm operating expenses. This includes family subsistence.

The second exception applies for operating loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan.

## **2. Debts Forgiven Under Pigford—or Affected by Discrimination**

Many claimants had outstanding FSA debt discharged under the Consent Decree. A debt discharged under the Consent Decree will not hurt the class member's eligibility for another FSA loan. Further, if discrimination was found in a loan that was previously written down or written off, this debt forgiveness will not hurt the class member's eligibility for another FSA loan. Debt Relief in the *Pigford* case can be complicated. For more information about Debt Relief, please see Monitor Update 10: Debt Relief for Prevailing *Pigford* Claimants.

### **C. Creditworthiness**

An applicant must be creditworthy to be eligible for an FSA loan. Credit history can be taken into account when FSA considers the creditworthiness of the applicant. FSA has a specific definition for creditworthiness. Many credit problems cannot be held against the applicant. In addition, if discrimination is found in a loan, and problems paying that debt caused a class member to miss payments, become delinquent, or so forth, these problems should not affect the class member's eligibility for a new loan.

### **D. Other Requirements for FSA Loans**

FSA has several other requirements for a loan. For example, borrowers must be unable to get credit elsewhere, they must meet a family farm requirement, and they must be able to cash flow the loan.

### **E. Where to go for Assistance**

The Monitor's Office has issued an Update that provides information for Class Members who are having difficulty getting loans or other assistance. For additional information, please contact the Monitor's office and request "Monitor Update 12: Resources for Pigford Claimants."

## **VI. If Injunctive Relief Efforts Fail**

If those seeking to use the injunctive relief described in this booklet fail in their efforts, they have several options.

### **A. Contact the Monitor**

Part of the Monitor's job according to the Consent Decree is to assist class members with problems they may be having with injunctive relief. Anyone with questions for the Monitor's Office may call toll-free 1-877-924-7483.

### **B. FSA Appeals**

Any FSA applicant—not just class members—who receives what is known as an adverse decision from FSA may appeal that decision within USDA. Under the current rules, to obtain a National Appeals Division (NAD) hearing, a participant must request the hearing not later than thirty days after the date on which he or she first received notice of the adverse decision.

### **C. Civil Rights Complaint**

Any person—not just class members—may file a discrimination complaint with USDA. In order for this complaint to be considered, it may not cover the claims raised in the *Pigford* lawsuit. In other words, an African-American farmer could use the complaint process if the discrimination occurred after December 31, 1996 (the last date covered by the lawsuit). Discrimination complaints may be filed with Director Office of Civil Rights, USDA, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC, 20250-9410.

### **VII. Timeline for injunctive Relief**

Injunctive Relief for Pigford claimants expires on April 14, 2005. Originally, Injunctive Relief was to expire in April of 2004. An internal FSA notice issued on July 21, 2003, formally extended the availability of Injunctive Relief for one year. The Notice, FSA FLP 313, Priority Consideration for Prevailing Claimants, is available from the Monitor. To receive a copy, please call the Monitor's toll-free line and request it.

### **VII. More Information on Injunctive Relief**

The Monitor's Office is in the process of preparing a much more detailed version of this Monitor Update. If you would like a copy of the much longer booklet, call the Monitor's office toll-free at 1-877-924-7483.

# Monitor Update: Eligibility and Monitor Review

Date Issued: August 31, 2000

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## 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.



# Monitor Update: Freeze on USDA Acceleration and Foreclosures

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## Freeze on USDA Acceleration and Foreclosures

### 1. Introduction

Many claimants in the *Pigford* case continue to have outstanding debts with USDA. Under the Consent Decree, USDA is free to take action on a debt during the Monitor petition process. USDA, however, has voluntarily agreed to “freeze” some actions on debts for claimants who filed a petition for Monitor Review.

The exact terms of the freeze were described in a policy notice, FLP-279, that was issued by USDA.

This Monitor Update explains:

- What the USDA freeze does.
- Who benefits from the USDA freeze.
- What claimants should do to benefit from the freeze.
- The timing of the freeze.

### 2. A USDA freeze—on what?

Any USDA borrower with outstanding debt may be subject to a number of USDA actions on the debt if the borrower is in default. In most cases, default is caused by a failure to make a payment on time. Three of these possible actions are the subject of the current USDA freeze. For borrowers who are covered by the freeze, the government will not do any of the following.

#### ***a. Acceleration***

Under the freeze, USDA will not accelerate the loans of certain claimants. When a loan is accelerated, the borrower is told that he or she must pay the whole amount owed right away. For example, if a borrower fails to make a payment on a \$100,000 loan, an acceleration will mean that the borrower must pay the full amount owed. USDA’s right to accelerate is a part of the standard loan agreement that most claimants signed when they borrowed from USDA.

***b. Foreclosure***

Under the freeze, USDA will not foreclose on certain claimant debts. In a foreclosure, the claimant loses possession of his or her property.

***c. Inventory property***

Under the freeze, USDA will not dispose of inventory property that USDA acquired through foreclosure that once belonged to certain claimants. Inventory property is land that is in the possession of USDA. Normally, USDA would try to sell inventory property soon after it takes possession of the property.

***d. Other USDA actions—not covered***

Other actions that USDA may take on the debt are not covered by the freeze.

**3. Who can benefit from the freeze?**

Two groups of claimants may benefit from USDA's freeze. First, the freeze can benefit a claimant who had a credit claim that was denied by the Adjudicator or Arbitrator, or who applied for membership in the *Pigford* class but was found by the Facilitator to be ineligible for class membership. Under the terms of the freeze, if a claimant petitioned for Monitor review by his or her deadline, the freeze applies to him or her.

Second, in some cases the freeze can benefit a claimant who had a credit claim approved by the Adjudicator or Arbitrator but who has debts owed to USDA that survive after the approval of the credit claim. For example, a claimant may have had two loans with USDA. If an Adjudicator found discrimination on one loan but not the other loan, and the second loan is still owed to USDA. Under USDA regulations, USDA will try to collect on the second loan. Under the terms of the freeze, however, if the claimant believes that the Adjudicator made a mistake in adjudicating his or her claim, the claimant may have filed a petition with the Monitor asking for a review of that decision. If the claimant filed a petition for Monitor review on the second loan within a certain period, the freeze applies to the second loan.

**4. For the freeze to apply, claimant must petition for Monitor review**

To benefit from the freeze, a claimant must file a petition for Monitor review by the petition filing deadline. The deadline for Track A Adjudication and Track B Arbitration is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." The deadline for petitions for Monitor review of a Facilitator denial of class eligibility is explained in more detail in Monitor Update Number Five, "Eligibility and Petitions for Monitor Review." Anyone who would like copies of these Updates may request them by calling the Monitor toll-free at 1-877-924-7483.

***a. Track A or Track B Decision on or before July 14, 2000—deadline was November 13, 2000***

If the decision by the Adjudicator (Track A) or Arbitrator (Track B) was made on or before July 14, 2000, the deadline for filing a petition for Monitor review was November 13, 2000.

***b. Track A or Track B Decision after July 14, 2000—Deadline 120 Days After Decision***

If the decision by the Adjudicator (Track A) or the Arbitrator (Track B) was made after July 14, 2000, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if an Adjudicator made a decision on August 1, 2000, the deadline for filing a petition for Monitor review was November 29, 2000.

***c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—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.

***d. Eligibility Decision made by the Facilitator after October 29, 2002—deadline 120 days after Decision***

If the decision by the Facilitator was 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.

**5. When the freeze begins and ends**

The timing of the protection of the freeze can vary with different claimants. The beginning and the end of the freeze work in the following way.

First, the freeze does not protect people who have never filed a claim in the case. Even if a person was eligible to file a claim but failed to do so, the freeze does not protect that person.

Second, the freeze protects a claimant from the time of the Adjudicator, Arbitrator, or Facilitator decision until the claimant's deadline for filing a petition for Monitor review. As noted above, that deadline can vary from claimant to claimant.

Third, if the claimant files a timely petition for Monitor review, the freeze protects the claimant from the time the petition is filed until the claimant's case is resolved. If the Monitor grants reexamination, the resolution of the case will occur when the Adjudicator, Arbitrator, or the Facilitator reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the protection of the freeze will end with the Monitor's decision.

**6. Freeze does not stop administrative offsets—but refunds possible**

The freeze does not stop USDA from recovering debts owed to the government by using administrative offset. If, however, a claimant eventually succeeds in his or her claim, in some cases USDA will refund any money that was taken by the government by offset. If class members have questions about administrative offset, they should call the Monitor's office toll free at 1-877-924-7483 and ask to speak to an attorney on the Monitor's staff.

### **7. After the freeze ends**

After the freeze ends for each claimant, USDA may accelerate the loan, seek a foreclosure of the loan, and/or dispose of inventory land once owned by the claimant and acquired by USDA through foreclosure.

### **8. More information**

Anyone who has questions regarding the freeze should feel free to call the Monitor toll-free at 1-877-924-7483.

# Monitor Update: Claimant and Claimant Attorney Access to USDA Documents

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Update 007

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Office of the Monitor  
*Pigford v. Veneman (D.D.C.)*  
*Brewington v. Veneman (D.D.C.)*  
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## 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.

# Monitor Update: Procedural Rules for the Track B Monitor Petition Process

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## Procedural Rules for the Track B Monitor Petition Process

### 1. General Procedures and Deadlines

All of the Court orders referenced below may be found on the Court's web site at <http://www.dcd.uscourts.gov>.

- a. **General Procedures.** The general procedures for the Monitor review process can be found in the Court's April 4, 2000, Order of Reference. Further detail can be found in the Monitor's booklet entitled "Questions and Answers About Monitor Review of Decisions," which is available from the Office of the Monitor.
- b. **Deadline for Petitions for Monitor Review.** The deadlines for filing petitions for Monitor review are found in the Court's Order of July 14, 2000. In general, petitions must have been filed by November 13, 2000, or by 120 days from the date of the Arbitrator decision, whichever is later.
- c. **Deadline for Responses to Petitions.** The deadline for responding to petitions for Monitor review is found in the Court's Order of September 12, 2000. In general, responses to petitions must be filed within sixty days from the non-petitioning party's receipt of the petition for Monitor review.

### 2. Filing Petitions for Monitor Review

Under Track B, any party seeking Monitor review of the Arbitrator's decision must:

- a. Timely file with the Facilitator an original petition for Monitor review ("petition") and one copy of the petition. Petitions will be deemed "filed" as of the date of postmark. Petitions should be sent to:

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



- b. File with the petition a Designation of Record. The Designation of Record shall include material before the Arbitrator in the petitioning Track B proceeding and shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review.
- c. Timely serve one copy of the petition, including the designation of record, on the opposing party. Petitions will be deemed "served" as of the date of postmark.
- d. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

### **3. Responding to Petitions for Monitor Review**

Under Track B, any party responding to a petition must:

- a. Timely file with the Facilitator an original response to the petition for Monitor review ("response") and one copy of the response. Responses will be deemed "filed" as of the date of postmark. Responses should be sent to:

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

- b. In addition, the responding party may file a Designation of Record of additional material not identified by the petitioning party. The Designation of Record of the additional material shall specifically identify: (a) documentation; (b) exhibits; (c) testimony; (d) transcripts; and any other information that is a part of the record that should be considered by the Monitor for review. The Designation of Record of additional material, if filed, must be filed within sixty days from receipt of the petition for Monitor review.
- c. Timely serve a copy of the response, including the responding party's designation of record, if any, on the petitioning party. Responses will be deemed "served" as of the date of postmark.
- d. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

The Monitor may, in her discretion, review material in the record before the Arbitrator that has not been designated by the parties.

### **4. Publication of Rules**

The Arbitrator shall include copies of these rules whenever he sends to parties copies of decisions in their Arbitration cases. He shall also immediately send copies to all parties who have already received Arbitration decisions. The Arbitrator, the Monitor, and the parties shall also be free to send copies out to the public upon request.

# Monitor Update: Noncredit Claims—\$3,000 for Each Prevailing Class Member

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## Noncredit Claims—\$3,000 for Each Prevailing Class Member

### 1. Introduction

The Consent Decree divided *Pigford* claims into two types—credit claims and noncredit claims. The vast majority of class members in the case have credit claims. Several hundred class members, however, have both a credit claim and a noncredit claim, or have only a noncredit claim. This Monitor Update describes noncredit claims, and describes the payment that class members with prevailing noncredit claims will receive.

### 2. Noncredit Claims and Credit Claims—Defining the Difference

In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to receive some other type of benefit, including the payment of money, from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

### 3. Award for Noncredit Claimants

The amount to be given to class members who prevail on a noncredit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties that was entered as an official Order by the Court fills in many of the details.

#### a. Consent Decree—Receive Amount Denied

The Consent Decree provides that a class member who prevails on a noncredit claim is to receive the amount of the benefit that was wrongly denied to the class member. In addition, according to the Consent Decree, these payments will only be made if there are certain funds available in the USDA budget.

#### **b. February 7, 2001, Stipulation and Order—\$3,000 Payment**

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the award that class members will receive in noncredit cases.

The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel believe that deciding the amount that should be paid for noncredit claims for each person would be difficult, if not impossible.

The Government and Class Counsel therefore agreed, and the Court has ordered, that a class member who prevails on one or more noncredit claims will receive a single payment from USDA in the amount of \$3,000.

#### **4. Other Details about the \$3,000 Payment**

Several other details about the \$3,000 noncredit payment were explained in the February 7, 2001, Stipulation and Order. These are discussed below.

##### **a. Only One \$3,000 Payment Per Class Member**

Each class member who prevails on a noncredit claim may receive only one \$3,000 payment. This is true even if the class member prevailed on more than one noncredit claim. This means, for example, that if the class member had a successful claim for a disaster payment in both 1990 and 1992, he or she would receive only one payment of \$3,000.

##### **b. Credit and Noncredit Claim Combined**

If a class member prevailed on both a credit claim and a noncredit claim, the class member will receive a payment for both the credit claim and the noncredit claim. A class member, therefore, could receive both a \$50,000 payment for a credit claim and a \$3,000 payment for a noncredit claim.

##### **c. No Tax Payments for Noncredit Claims**

Class members who receive a \$3,000 payment for a noncredit claim will not receive any more funds—either paid to them or paid directly to the Internal Revenue Service—to cover any tax obligations the class member might incur as a result of the \$3,000 payment.

#### **5. More Information**

Anyone who has any question regarding noncredit payments should feel free to call the Office of the Monitor at 1-877-924-7483. For more information about the Judge's Order, or for a copy of the Order, please call the Monitor's Office.

# Monitor Update: Debt Relief for Prevailing Class Members

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## Debt Relief for Prevailing Class Members

### 1. Introduction

The Consent Decree in *Pigford* provided debt relief for prevailing credit claimants. This Monitor Update describes recent developments regarding debt relief and describes the debt relief class members will receive.

### 2. Debt Relief Available Only for Successful Credit Claims

In *Pigford*, debt relief can be granted only as a result of a successful Track A or Track B credit claim. In general, a credit claim is a claim based on the class member's effort to get a farm loan from USDA. For example, if a class member claimed that USDA discriminated against him or her in the making of a Farm Operating Loan or a Farm Ownership Loan, the class member made a credit claim.

A noncredit claim, on the other hand, is a claim that is not based on an effort to get a farm loan—but instead is based on the class member's effort to obtain some other benefit from USDA. For example, if a class member claimed that USDA discriminated against him or her in providing a USDA disaster payment, or in implementing a USDA conservation cost-share program, the class member made a noncredit claim.

### 3. Consent Decree and Court Order

Debt relief for class members who prevail on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

#### a. Consent Decree

The Consent Decree provides that a class member who prevails on a credit claim is to receive a discharge of certain outstanding USDA debts. The discharge applies to those debts that were incurred under, or affected by, the USDA program or programs that were the subject of the credit claim.

#### b. February 7, 2001, Stipulation and Order

On February 7, 2001, Judge Paul L. Friedman signed a Stipulation and Order that spells out the details regarding the debt discharge that class members will receive in credit

cases. The Order is based on an agreement that was reached by the government and Class Counsel. According to the Order, the government and Class Counsel had certain debts in mind when they wrote the part of the Consent Decree that provides for debt relief. These debts are more clearly defined in the Order.

#### **4. Debts to be Discharged**

Certain USDA debts will be discharged as a result of the *Pigford* settlement. These are discussed below. Three types of debts will be discharged. However, an important exception applies to the debt discharge.

##### **a. Debts Affected by Discrimination**

In general, if the Adjudicator or Arbitrator specifically identified a certain debt as being affected by discrimination, this debt will be discharged.

##### **b. Some Debts Incurred After the Discrimination Occurs**

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan program (EM) is a separate program, and so forth.

If, after the date of discrimination, the class member incurred additional debt that was of the same type as the debt that was subject to discrimination, the additional debt will be discharged. For example, if the Adjudicator found that USDA discriminated against the class member in denying a Farm Operating Loan in 1994, and the USDA then made a Farm Operating Loan to the class member in 1995, the 1994 and 1995 Operating Loans will be discharged. This is true even though the Adjudicator did not find discrimination in the 1995 Operating Loan.

##### **c. Some Debts Incurred at the Same Time as the Discrimination**

The Adjudicator or Arbitrator will have found discrimination based on a certain event—for example, the denial of a loan or of loan servicing. Two important points flow from this finding of discrimination.

First, the date of the discrimination matters for the purposes of debt discharge. For example, if the Adjudicator found that there was discrimination in a loan denial that took place on April 15, 1990, that date creates an important starting point for debt discharge purposes.

Second, the type of loan that was found to be the subject of discrimination matters for the purpose of debt discharge. A loan is of the same type if it was incurred under the same program. The FSA Operating (OL) Loan Program is one FSA program, the FSA Farm Ownership (FO) Loan Program is a separate program, the Emergency Loan (EM) Program is a separate program, and so forth.

If the class member incurred additional debt of the same type as the debt that was subject to discrimination, and incurred the additional debt at the same time as the discriminatory act, the additional debt will be discharged. For example, suppose the Adjudicator found that discrimination occurred in 1990 in USDA's servicing of a 1989 Farm Operating Loan. If at the same time in 1990 USDA made a Farm Operating Loan to the class member, the 1990 Farm Operating Loan will be discharged. This is true even though the Adjudicator or Arbitrator did not find discrimination in the making of the 1990 Farm Operating Loan.

**d. Important Exception Affecting Debt Relief—Older Lawsuits**

An important exception applies to all of the above debt discharge discussion. No debt discharge will apply to any debts that were the subject of litigation separate from this lawsuit if there was what is known as a final judgment in that separate lawsuit, and if all of the appeals for that separate lawsuit have been forgone or completed. For example, if a class member was involved in a lawsuit with USDA that was begun and completed in 1990, and the result of the 1990 lawsuit was that USDA got a judgment against the class member, and all appeals have been exhausted, debt discharge in the *Pigford* settlement will not change the result of the 1990 lawsuit.

**e. Loans Made after December 31, 1996—No Debt Discharge**

Loans made after the period covered by the Consent Decree—December 31, 1996—are not subject to discharge as a result of the Consent Decree. For example, if a class member received a Farm Operating Loan in 2000, this loan cannot be discharged as a result of the Consent Decree.

**5. More Information**

For more information about the February 7, 2001, Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below.

Anyone who has any question regarding debt relief should call the Monitor toll free at 1-877-924-7483.

# Monitor Update: Understanding Who Is Part of the *Pigford* Case

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Update 011

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## Understanding Who Is Part of the *Pigford* Case

### A. Introduction

People who are interested in being part of the *Pigford* case fall into three groups: (1) people who are in the case, (2) people who might get into the case, and (3) people who will not get into the case. This Update explains the rules that determine who is in each group and gives some statistics about each group (as of November 26, 2002).

### B. Definitions

Before explaining the three groups, it is important to explain what some basic terms mean.

- 1. What is the "Consent Decree"?** The Consent Decree is the document that explains what the parties agreed to when they settled the case. The Court approved the Consent Decree after a Fairness Hearing.
- 2. What is a "Claim Sheet"?** The term "Claim Sheet" refers to the Claim Sheet and Election Form—the package of forms that one fills out to file an official claim in the case. The deadline for filing a timely Claim Sheet was October 12, 1999.
- 3. What is a "Petition for Monitor Review"?** Petitions for Monitor Review are the papers that one files to ask the Monitor to review the decision that was made by the Facilitator, Adjudicator, or Arbitrator. There are deadlines for filing Petitions for Monitor Review: people may call the Facilitator's office at 1-800-646-2873 to find out about deadlines.
- 4. What is a "Late Claim Application"?** There are many people who did not file a Claim Sheet on time who believe that they should be part of the case. A person cannot file a Claim Sheet after the deadline (after October 12, 1999) without first getting permission to do so from the Arbitrator. A "Late Claim" application asks the Arbitrator for permission to file a late Claim Sheet. This procedure is sometimes called "5(g)" because it is explained in paragraph 5(g) of the Consent Decree. The Arbitrator is allowed to approve a "Late Claim" application only if he determines that a person was unable to file his or her Claim Sheet on time because of extraordinary circumstances beyond his or her control. The deadline for filing "Late Claim" applications was September 15, 2000.
- 5. What is "Late Claim Reconsideration"?** If a person filed a "Late Claim" application on time (by September 15, 2000) and the Arbitrator rejected his or her application, the

person has a chance to ask the Arbitrator to reconsider his decision. Requests for reconsideration must generally be filed within 60 days after the date of the Arbitrator's rejection letter.<sup>1</sup>

## **C. The Three Groups: Who Is In the Case?**

### **1. Group One: People Who Are In the Case**

In general, the people who are in the case or have permission to join the case consist of those who:

- a. *Filed Claim Sheet On Time.* There are approximately 21,776 people who filed a Claim Sheet by October 12, 1999, and were determined "eligible" by the Facilitator.<sup>2</sup>
- b. *Filed "Late Claim" Application, Request Approved.* There are approximately 1,631 people who did not file a Claim Sheet on time but who did file a "Late Claim" application on time and had the "Late Claim" application approved by the Arbitrator.<sup>3</sup> These people have permission to file a late Claim Sheet. The Facilitator either gave them or will give them a deadline for filing a Claim Sheet. Once the Claim Sheet is filed, if the Facilitator finds them eligible, they will be part of the case.

### **2. Group Two: People Who Might Get Into the Case**

In general, the people who might get into the case consist of those who:

- a. *Filed Timely "Late Claim" Application, No Decision Yet.* There are approximately 7,341 people who did not file a Claim Sheet on time (by October 12, 1999) but who did file a "Late Claim" application on time (by September 15, 2000) and have not yet received a decision on their "Late Claim" application.
- b. *"Late Claim" Application Rejected, Filed "Late Claim" Reconsideration Request.* There are approximately 17,891 people who filed timely requests for reconsideration after they had their "Late Claim" applications rejected by the Arbitrator and have not yet received decisions on their requests for reconsideration.

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<sup>1</sup> When the Arbitrator first officially established a reconsideration policy, the deadline was different. Call the Facilitator at 1-800-646-2873 to find out about reconsideration deadlines.

<sup>2</sup> Approximately 23,148 people filed timely Claim Sheets. Of those, the Facilitator found that approximately 21,776 are eligible. People in certain categories who were found ineligible have the opportunity to file a Petition for Monitor Review up until their petition deadline. The Facilitator has identified approximately 163 people who have the right to petition the Monitor regarding eligibility determinations. Monitor Update No. 5 explains eligibility and the rules and deadlines in the Monitor petition process as it relates to eligibility (available from the Monitor's office; call toll-free, 1-877-924-7483).

<sup>3</sup> Statistics in this Update concerning the "Late Claims" process are current as of October 1, 2002.



### **3. Group Three: People Who Will Not Get Into the Case**

The Consent Decree and Court Orders in this case establish cutoff dates for getting into the case. These Orders provide that the following people will not get into the case:

- a. *Did Not File Timely Claim Sheet and Did Not File Timely "Late Claim" Application.* People who did not file a Claim Sheet on time (by October 12, 1999) and did not file a "Late Claim" application on time (by September 15, 2000) will not get into the case. There are approximately 8,025 people who filed "Late Claim" applications after the deadline (after September 15, 2000)—these people will not get into the case. **IT IS NOW TOO LATE TO FILE A "LATE CLAIM" APPLICATION.**

**ACCORDING TO THE RULES IN THIS CASE, ANYONE WHO DID NOT FILE A CLAIM SHEET BY OCTOBER 12, 1999, OR A "LATE CLAIM" APPLICATION BY SEPTEMBER 15, 2000, CANNOT BE PART OF THE CASE.**

- b. *Filed Timely "Late Claim" Applications, But Lost in "Late Claim" Process.* There are approximately 52,256 people who filed timely "Late Claim" applications that were rejected by the Arbitrator. Some of those people had their deadlines for filing reconsideration requests pass without filing a timely request for reconsideration: those people will not get into the case. Additionally, some people filed timely requests for reconsideration, but the Arbitrator denied their request for reconsideration: those people will not get into the case. There is no Monitor review of decisions in the "Late Claim" process.

### **D. Results for People Who Are In the Case**

Most people who are in the case chose Track A (Adjudication). A chart showing the results for people in Track A is attached to this update. A chart showing the results for people in Track B is available from the Monitor's Office (1-877-924-7483).

People who believe that the decision of the Facilitator, Adjudicator, or Arbitrator in their case is wrong have an opportunity to petition for Monitor review. Deadlines apply in the Monitor review process.<sup>4</sup> Call the Facilitator at 1-800-646-2873 find out about deadlines for petitioning for Monitor review and to request a booklet that explains the Monitor review process.

### **E. Questions**

Individuals may call the Monitor's office toll-free at 1-877-924-7483 with questions.

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<sup>4</sup> The exception is that some decisions made by the Facilitator are not subject to Monitor review. The Facilitator can answer individuals' questions about whether or not they have the right to petition.

# Monitor Update: Resources for *Pigford* Claimants

Date Issued: **February 3, 2003**

Update 0012

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*Pigford v. Glickman (D.D.C.)*  
*Brewington v. Glickman (D.D.C.)*  
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**This is not a USDA publication.**

## Resources for *Pigford* Claimants

### 1. Introduction

Claimants frequently contact the Office of the Monitor and request information and assistance.<sup>1</sup> One of the Monitor's duties is to assist claimants with "other problems" that they are having with regard to the Consent Decree. Many claimants, however, have problems that are not within the authority of the Monitor to solve. This Monitor Update provides a few suggestions for other resources that may be helpful to these claimants.

### 2. Debt Relief Available Only for Successful Credit Claims

Before using the resources mentioned in this Update, a claimant should be aware of two warnings.

#### a. Other Resources May Be Helpful

This Update mentions only a few of the possible places that a claimant might turn to for help. There are likely many others that are not mentioned here that could be helpful. If a group or agency is not listed here, this does not mean that the Monitor's Office thinks the group or agency does poor work.

#### b. Monitor Cannot Vouch for Groups Mentioned

Several groups and agencies are mentioned in this Update. The Monitor's Office cannot vouch for these groups or agencies. Each claimant should investigate the group or organization carefully before taking advice from them.

### 3. When the Monitor Can Help

The Consent Decree permits the Monitor to help claimants resolve problems that claimants have with the Consent Decree. For example, the Monitor can help solve claimant problems of the following types.

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<sup>1</sup> The Monitor's duties and responsibilities are outlined in the Consent Decree and the Order of Reference. Claimants can receive a copy of the Consent Decree and/or the Order of Reference by calling our toll free number (1-877-924-7483) and requesting a copy.

#### **a. Debt Relief**

Successful Track A credit claimants may be entitled to have part or all of their USDA debt forgiven. Debt relief is confusing, however. If a claimant believes that he or she has USDA debt that should be forgiven, the Monitor may be able to help. The Monitor has also written a short guide, "Monitor Update Number 10, Debt Relief." This Update is available by calling the Monitor's toll-free number. Claimants with questions can contact the Monitor's Office for further assistance.

#### **b. Injunctive Relief**

Successful Track A credit claimants are entitled to receive Injunctive Relief. This may include, for example, priority consideration for a new USDA loan. If a claimant believes his or her right to Injunctive Relief is being denied, the Monitor may be able to help. Successful non-credit claimants also are entitled to a limited form of Injunctive Relief. A short written guide, "Monitor Update Number 4, Injunctive Relief," may also be of help. This Update is available by calling the Monitor's toll-free number.

#### **c. Other Problems Related to the Consent Decree Settlement**

Prevailing claimants may have other problems related to the Consent Decree. These could include, for example, the timing of cash payments, non-credit relief, some tax-related problems, and other matters. Claimants with these types of questions should contact the Monitor.

### **4. How to Contact the Monitor**

#### **a. By Phone – 1-877-924-7483**

Claimants may contact the Office of the Monitor by calling toll free 1-877-924-7483. If the operator who answers the call is unable to assist a Claimant, Claimants may make an appointment to speak with a member of the Monitor's legal staff.

#### **b. In Writing**

The Monitor can be reached by writing:

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

### **5. When the Monitor Cannot Help**

Problems faced by claimants often are not related to the *Pigford* Consent Decree. The Monitor is not allowed to help claimants with these kinds of problems.

For example, many claimants find it hard to develop the cash flow plans and other financial plans that lenders often want to see before a loan is made. Further, some claimants find it difficult to deal with private lenders and other creditors. In both cases, since the problems are not related to the Consent Decree, the Monitor cannot provide the kind of help the claimant may need. The following groups and organizations may, however, be of some help in these situations.

**a. University and Extension Programs**

A number of colleges and universities have programs that are designed to help farmers. The programs mentioned below actively aim to assist African American farmers.

**1) *Alcorn State Cooperative Extension (Mississippi)***

Alcorn State University Cooperative Extension Program  
Small Farm Outreach Training and Technical Assistance Project  
1000 A.S.U Dr. # 479  
Alcorn State, MS 39096-7500  
Phone: 601-877-6128  
Fax: 601-877-6694  
Web site: none

Service Area: Southwest Mississippi.

**2) *Tuskegee University (Alabama)***

Tuskegee University Cooperative Extension Program  
204 Morrison Mayberry Hall  
Tuskegee, Alabama 36088  
Phone: 334-724-4441  
Fax: 334-727-8812  
Web site: [www.tusk.edu](http://www.tusk.edu)

Service area: State of Alabama.

**3) *North Carolina A & T Small Farm Outreach Training & Technical Assistance Program (North Carolina)***

North Carolina A & T State University  
Cooperative Extension Program  
Greensboro, NC 27411  
Phone: 336-334-7024  
Fax: 336-334-7207

Web site: <http://www.ag.ncat.edu/extension/programs/sfottap/index.htm>

Service Area: State of North Carolina.

**4) *University of Arkansas of Pine Bluff (Arkansas)***

University of Arkansas of Pine Bluff Small Farms Program  
1200 North University Drive  
UAPB Mail Slot 4906  
Pine Bluff AR, 71601  
Phone: 870-575-8142, 7246  
Fax: 870-543-8035  
Web site: none

Service Area: Thirteen Arkansas counties: Jefferson; Lincoln; Drew; Desha; Chicot; Ashley; Crittenden; St. Francis, Woodruff; Lee; Phillips; Monroe; Arkansas.

**5) *Southern University***

Louisiana Family Farm Technical Assistance Project  
Southern University  
Baton Rouge, LA  
Phone: 225-771-3863  
Fax: 225-771-5728  
Web site: none

Service Area: Nineteen parishes in Northeastern Louisiana.

**b. Farm Advocacy Group**

The following groups are generally private nonprofit organizations that work closely with African American farmers. They are not part of a college or university.

**1) *Arkansas Land and Farm Development Corporation***

Arkansas Land and Farm Development Corporation  
Route 2 Box 291  
Brinkley, AR 72021  
Phone: 870-734-1140  
Fax: 870-734-4197  
Web site: none

**2) *Federation of Southern Cooperatives/Land Assistance Fund***

Administrative Office  
2769 Church Street  
East Point, GA 30344  
Phone: 404-765-0991  
Fax: 404-765-9178

Georgia Field Office  
P.O. Box 3092  
Albany, GA 31706  
Phone: 912-432-5799  
Fax: 912-439-0894

Rural Training & Research Center  
P.O. Box 95  
Epes, AL 35460  
Phone: 205-652-9676  
Fax: 205-652-9678  
Web site: <http://www.federationsoutherncoop.com/>

**c. Legal Organizations**

Claimants may have questions about other legal problems. The Monitor is not allowed to provide legal advice to class members. Claimants experiencing legal problems may wish to contact one of the following nonprofit organizations that assist family farmers, including African American family farmers.

**1) Land Loss Prevention Project**

Land Loss Prevention Project  
P.O. Box 179  
Durham, NC 27702  
Phone: 919-682-5969  
Toll-Free: 1-800-672-5839  
Fax: 919-688-5596  
Web site: [www.landloss.org](http://www.landloss.org)

Service Area: State of North Carolina.

**2) Farmers' Legal Action Group, Inc.**

Farmers' Legal Action Group, Inc.  
46 E. 4th St., Suite 1301  
St. Paul, MN 55101-1109  
Phone: 651-223-5400  
Fax: 651-223-5335  
Web site: [www.flaginc.org](http://www.flaginc.org)

Service Area: Nationwide.

**d. State Departments of Agriculture**

Each state maintains a state Department of Agriculture. Claimants may want to contact their state department of agriculture for additional assistance. A listing of all of the states departments of agriculture can be found on the web at:

<http://www.accesskansas.org/kda/stateags.html>

**e. USDA**

USDA maintains the following resources that may be of help to claimants.

**1) USDA Hot Line for Minority and Socially Disadvantaged Farmers (MSDA)**

The Farm Service Agency (FSA) has established an Office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) to work with minority farmers who have concerns about loan applications filed with local FSA offices. The MSDA Office will operate Monday to Friday, 8 to 5 p.m. Eastern Time.

Office of Minority and Socially Disadvantaged Farmers  
Farm Service Agency  
USDA  
1400 Independence Ave SW  
Mail Stop 0501  
Washington, DC 20250-0501  
Phone: 1-866-538-2610 (toll-free) or 202-720-1584 (local)  
FAX: 1-888-211-7286 (toll-free) or 202-690-3432 (local)  
E-mail: [msda@wdc.usda.gov](mailto:msda@wdc.usda.gov)

**2) *USDA Office of Civil Rights – Discrimination Complaints***

USDA maintains an Office of Civil Rights. The Office of Civil Rights is unable to address matters arising under the Consent Decree. This Office investigates and acts on claims of discrimination involving events in USDA-sponsored programs that occur after the close of the *Pigford* class period—that is, after December 31, 1996.

Office of Civil Rights  
USDA  
1400 Independence Avenue SW  
Mail Stop 9410  
Washington, D C 20250  
Phone: 202-720-5964  
TTY 202-402- 0216  
Fax: None  
Web site: <http://www.usda.gov/da/cr.html>

**3) *Farm Service Agency Appeals***

Farm Service Agency (FSA) applicants may appeal many adverse FSA decisions. To appeal an FSA decision, the applicant must ask for a hearing within thirty days after he or she received notice of the adverse decision. If an applicant receives a letter of denial from FSA, there should be directions about how to go forward with an appeal.

# Monitor Update: The *Pigford* Case Is Closed

Date Issued: **June 28, 2004**

Update 013

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Office of the Monitor  
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*Brewington v. Glickman (D.D.C.)*  
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**This is not a USDA publication.**

## The *Pigford* Case Is Closed: No One Can Get Into the Case If They Did Not Apply by Deadlines

### 1. Introduction

The Consent Decree and Court Orders set strict cutoff dates for getting into the *Pigford* case. The deadlines have now passed.

### 2. *Pigford* Is Closed

The *Pigford* case is now closed. Anyone who did not meet one of the two deadlines explained below cannot be a part of the case.

### 3. Two Deadlines for the Case

Two important deadlines govern whether a person is eligible in the case.

#### a. Claim Sheet Deadline — October 12, 1999

The deadline to file a Claim Sheet and Election Form was October 12, 1999. Anyone who did not meet this deadline could only get into the case by filing a late claim request.

Processing of claims filed on time continues.

#### b. Late Claim Request Deadline — September 15, 2000

Anyone who missed the October 12, 1999, Claim Sheet deadline and wanted to be in the case needed to file a late claim request. The deadline to file a late claim request was September 15, 2000.

Those who did file a late claim request will get a response.

#### c. Two Deadlines Are Final

Anyone who missed both of these deadlines cannot get into the case.

### 4. Questions

Anyone with questions about these deadlines may call the Monitor's office toll-free at 1-877-924-7483 or may call the Facilitator at 1-800-646-2873. Several other Monitor Updates discuss the case in more detail. See [www.pigfordmonitor.org](http://www.pigfordmonitor.org).



## **Monitor Update: No Adverse Effect**

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Update 014

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# **No Adverse Effect: Future Loans and Future Loan Servicing for Prevailing Class Members**

## **A. Introduction**

According to the Consent Decree in the *Pigford* case, debt forgiveness required by the Consent Decree will not “adversely affect” a claimant’s eligibility to participate in a USDA loan program or a USDA loan servicing program. This Monitor Update is intended to explain how the no adverse effect part of the Consent Decree works for claimants.

## **B. Two Types of USDA Debt Forgiveness — Consent Decree and Non-Consent Decree**

Many claimants have had USDA debt forgiven, or they will have USDA debt forgiven in the future. There are several different ways that a claimant might receive debt forgiveness, and the difference can be important for the future.

### **1. Debt Relief Under *Pigford***

As part of the Consent Decree, USDA must discharge many outstanding debts owed by successful claimants. According to the Consent Decree, debts that were incurred under, or affected by, a USDA program that was the subject of the Adjudicator’s or Arbitrator’s finding of discrimination on credit claims are to be forgiven. A Court Order explains the debt forgiveness rules in more detail. In addition, if the Adjudicator or Arbitrator finds discrimination regarding a particular loan, a claimant is also entitled to discharge of any debt of that loan type incurred at the time of the earliest event on which there is a finding of discrimination through December 31, 1996.

Claimants who have questions about what debts should be forgiven may call the Monitor’s toll-free number, 1-877-924-7483. Callers may also request Monitor Update 10, which explains debt relief.

### **2. Other USDA Debt Forgiveness**

The Consent Decree is not the only way that claimants may have received debt forgiveness from USDA. USDA regulations require debts to be forgiven under certain

conditions. In addition, a bankruptcy court can give relief from a USDA debt. One way or another, many claimants have had debt written off outside of the Consent Decree process.

### **3. Why the Difference Is Important — Future Dealings With USDA**

The difference between Consent Decree debt forgiveness and other USDA debt forgiveness is important. The Consent Decree says that debt forgiven because of the Consent Decree shall not adversely affect the eligibility of a claimant who wants to participate in a USDA loan program or a USDA loan servicing program. Other forms of USDA debt forgiveness can make a claimant not eligible for a USDA loan or for USDA loan servicing. The following sections of this Update explain how the difference in the type of debt forgiveness can affect a claimant.

## **C. Debt Forgiveness and Getting a USDA Loan**

Debt forgiveness can affect a borrower's right to a future USDA loan.

### **1. General Rule — Debt Forgiveness and Future USDA Loans**

Applicants who have had USDA debt forgiveness outside of the Consent Decree process may be ineligible by law for a new USDA direct or guaranteed loan. Debt forgiveness, for this purpose, includes the write-down or write-off of a USDA debt. Although there are some exceptions to the rule, in general the majority of applicants who received a write-down from USDA will normally not be eligible for a future USDA loan.

### **2. Consent Decree Debt Forgiveness and Future USDA Loans**

The general rule is changed by the Consent Decree.

#### ***a. Debt Discharged Due to Consent Decree***

A debt discharged because of the Consent Decree will not hurt a claimant's eligibility for another USDA loan.

#### ***Example:***

Suppose a claimant got a farm ownership loan in 1994. As a result of the Adjudicator decision, USDA discharged the rest of the loan. This discharge does not affect the claimant's eligibility for a new loan.

#### ***b. Debt Write-Down of Loan Later Forgiven Due to Consent Decree***

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would often mean that the claimant would not be eligible for a new USDA loan. If, however, discrimination was found in a loan that was previously written down or written off, this earlier debt forgiveness will not hurt the claimant's eligibility for another USDA loan.

#### ***Example:***

Suppose a claimant got an operating loan in 1990 and, due to payment problems, USDA wrote off part of that debt in 1995. If the Adjudicator found that there had been discrimination in the making of the 1990 operating loan,

the fact that the claimant had that write-down in 1995 could not affect the claimant's eligibility for a future USDA loan.

***c. Subsequent Debt in Same Program Written Down and Later Forgiven Due to Consent Decree***

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. This type of write-down also cannot hurt the claimant's eligibility for another FSA loan.

***Example:***

Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. The 1991 loan had been paid in full, and the balance due on the 1994 loan had been forgiven through FSA's debt write-down process in 1998. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan cannot affect the claimant's eligibility for a future USDA loan.

**D. Getting a Loan and USDA's Creditworthiness Test**

Creditworthiness can affect a borrower's right to a future USDA loan.

**1. The General Rule — Creditworthiness and Future USDA Loans**

As a general rule, an applicant must be creditworthy to be eligible for a USDA loan. Credit history is taken into account when USDA considers the creditworthiness of the applicant. Credit history includes the applicant's past loan history with USDA. Therefore, if an applicant has had difficulty making payment on USDA loans in the past, he or she might not meet the USDA creditworthiness requirement for a future USDA loan.

**2. Claimant Creditworthiness and Future USDA Loans**

If the claimant had an outstanding debt discharged by the Consent Decree, in many cases the farmer will have missed payments on the debt and the debt will have been delinquent. Under the USDA regulations, missing payments on a USDA loan, being delinquent on a USDA loan, and so forth could make the farmer ineligible for another loan.

***a. Loan Affected by Discrimination and Future USDA Loan Decisions***

The Consent Decree says that the forgiveness of debt because of the Consent Decree shall not affect the claimant's eligibility for a new loan. As a result, if a loan is forgiven because of the Consent Decree, any problems the claimant may have had with that loan in the past, such as missed payments or late payments, should not affect the claimant's creditworthiness for the purpose of getting a new USDA loan.

**Example:**

Suppose a borrower received an operating loan in 1996 and became delinquent on the loan in 2001. The Adjudicator found discrimination in the making of the 1996 operating loan. The farmer's delinquency on the loan cannot be considered a creditworthiness problem for the farmer when USDA is considering making the claimant a new loan.

**b. Subsequent Debt in Same Program Is Forgiven Due to Consent Decree**

The same result is true for any debt that is forgiven because of the Consent Decree.

**Example:**

Suppose a claimant received two operating loans: one in 1994 and one in 1996, and both loans still had a balance. If the Adjudicator found discrimination in the making of the 1994 loan, both loans would be forgiven under the Consent Decree. USDA may not consider payment problems for either loan as a factor in a decision about the making of a new loan.

**c. Subsequent Written Off Debt in Same Program Is Forgiven Due to Consent Decree**

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no debt left for the claimant to pay because of a USDA write-down. Payment problems for the loan that is now forgiven cannot affect the creditworthiness of the claimant.

**Example:**

Suppose a claimant got two operating loans: one in 1994 and one in 1996. The claimant paid the 1994 loan in full, but the agency wrote off the 1996 loan because the claimant had been unable to make the payments on that note. If the Adjudicator found discrimination in the making of the 1994 loan, the 1996 loan would also be forgiven under the Consent Decree—except that there is no balance left on the 1996 loan. Any payment problems the claimant had in the past on the 1996 loan would not affect the claimant's future creditworthiness if he or she tried to get a new loan from USDA.

## **E. Eligibility for Future Loan Servicing**

Farmers who have borrowed from USDA sometimes have difficulty making loan payments, or have other problems meeting the requirements of the loan. In such cases, USDA is required to provide borrowers with the chance for what USDA calls loan servicing. If the borrower is eligible, USDA loan servicing can provide a number of ways to help the farmer stay on the land. If the borrower meets certain criteria, the loan servicing can include, for example, a reduced interest rate, a restructuring of the loan, or other measures that help the borrower. The right to future loan servicing—including future write-downs—is affected by past USDA loan servicing.

## **1. General Rule — Debt Forgiveness and Future Loan Servicing**

The eligibility rules for loan servicing take into account the borrower's previous experience with USDA. For example, in general, USDA cannot provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct loan.

## **2. Claimant Debt Forgiveness and Future Loan Servicing**

### ***a. Debt Discharged Because of Consent Decree***

In many cases, USDA cannot, by law, provide debt forgiveness to a borrower who had previous debt forgiveness on another USDA direct or guaranteed loan. USDA regulations contain some limited exceptions to this rule, but for many people USDA rules will prevent a borrower with debt forgiveness from getting certain kinds of loan servicing in the future. A debt discharged under the Consent Decree, however, will not hurt the claimant's eligibility for future USDA loan servicing.

#### ***Example:***

Suppose a claimant got a farm ownership loan in 1992, the Adjudicator found that USDA had discriminated in making the loan, and, as a result of the Adjudicator decision, USDA discharged the remainder of the loan. This discharge does not affect the claimant's eligibility for loan servicing in the future.

### ***b. Debt Write-Down in Loan Affected by Discrimination, Later Forgiven Due to Consent Decree***

Many claimants had loans that were written down or written off before the Adjudicator's decision. According to USDA regulations, this would normally mean that the claimant might not be eligible for future loan servicing. If, however, discrimination was found in a loan that was written down or written off before the Adjudicator's decision but after the date of the discriminatory event, this debt forgiveness will not hurt the claimant's eligibility for future loan servicing.

#### ***Example:***

Suppose a claimant got an operating loan in 1989 and, due to payment problems, USDA wrote off part of that debt in 1991. If the Adjudicator found that there had been discrimination in the making of the 1989 operating loan, the fact that the claimant had a write-down in 1991 should not affect the claimant's eligibility for future USDA loan servicing.

### ***c. Subsequent Debt in Same Program Had Debt Write-Down, Later Forgiven Due to Consent Decree***

Many claimants had loans that would have been forgiven under the Consent Decree because the loan was in the same program as the loan that was the subject of discrimination—but there is no more left for the claimant to pay because of a USDA write down. This write-down cannot affect the claimant's right to future loan servicing.

***Example:***

Suppose a claimant got an operating loan in 1991 and an operating loan in 1994. Suppose a balance remained on the 1991 loan, but nothing was left to be paid on the 1994 loan because USDA forgave the loan in 1995. If the Adjudicator found that there had been discrimination in the making of the 1991 loan, the 1994 loan would also have been forgiven under the Consent Decree—except that there was no balance left on the 1994 loan. The write-down of the 1994 loan would not affect the claimant's right to future loan servicing.

**F. Consent Decree Discharge Can Never Harm Claimant**

This Update provides a few examples of the no adverse effect rule found in the Consent Decree. The rule may apply in other ways not illustrated by these examples. The most important rule is that discharge of debt because of the Consent Decree should never harm the claimant in his or her future dealings with the USDA.

**G. More Information**

For more information call the Monitor's office at 1-877-924-7483 or write to the Monitor at P.O. Box 64511, St. Paul, MN 55164-0511. The Monitor also has a website: [www.pigfordmonitor.org](http://www.pigfordmonitor.org).

**Office of the Monitor**

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

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

Post Office Box 64511

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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.