IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al., Plaintiffs, v. DAN GLICKMAN, Secretary, The United States Department of Agriculture, Defendant.	Civil Action No. 97-1978 (PLF)
CECIL BREWINGTON, et al., Plaintiffs, v. DAN GLICKMAN, Secretary, The United States Department of Agriculture, Defendant.	Civil Action No. 98-1693 (PLF)

MONITOR'S REPORT AND RECOMMENDATIONS REGARDING IMPLEMENTATION OF THE CONSENT DECREE FOR THE PERIOD OF MARCH 1, 2000 THROUGH AUGUST 31, 2000

I. INTRODUCTION

This is the first in a series of Monitor reports concerning the implementation of the Consent Decree in this case. This report covers the initial six-month period of the Monitor's operations: March 1, 2000, through August 31, 2000. A second report addressing events between September 1, 2000 and February 28, 2001, will be released in the spring. In several places in

this report, footnotes provide brief interim updates regarding events that have transpired between September 1, 2000, and the present.

II. EXECUTIVE SUMMARY

Overall, significant progress was made in implementing the Consent Decree during this initial six-month period. Highlights of the progress during this reporting period include:

- Nearly 9,000 Track A cases were adjudicated.[1]
- The Government paid out more than $265 million to class members in Track A.[2]
- The Monitor reexamination process was defined in a series of Court Orders.
- Track B arbitrations began.
- The United States Department of Agriculture (USDA) issued important procedural rules regarding injunctive relief.
- The parties resolved issues that led to the processing of thousands of claims that had been on hold.

Notwithstanding this progress, important implementation challenges and problems remain. One of the most important

[1] In total, as of December 18, 2000, 19,770 Track A cases were adjudicated.

[2] In total, as of December 18, 2000, nearly $492 million has been paid out to class members.

issues not resolved in this reporting period concerns relief for claimants who prevailed on non-credit claims.[3]

During this reporting period, the parties and the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) all worked in good faith to implement this Consent Decree.

The background section of this report explains the Monitor's authority to issue reports and provides basic statistics concerning the processing of claims. Later sections of the report regarding this six-month period explain the Monitor's activities and observations, significant Court Orders, the status of several important issues, good faith implementation of the Consent Decree, and Monitor recommendations.

III. Background

A. Authority to Issue Reports

Paragraph 12(b)(i) of the Consent Decree in this case requires the Monitor to:

> Make periodic written reports (not less than every six months) to the Court, the Secretary, class counsel, and defendant's counsel on the good faith implementation of this Consent Decree[.]

The chief goals of this report are to discuss key developments in the case and to assess the good faith

[3] As of the filing of this report, this issue has still not been

implementation of the Consent Decree during this six-month period.

B. Statistics About Processing of Claims

Statistics regarding the number of claimants, adjudication rates and results, and payment rates as of March 1, 2000, and as of August 31, 2000, are summarized in the table below.[4]

Statistical Reports as of:	**Mar. 1, 2000**		**Aug. 28, 2000**	
Item	**Number**	**%**	**Number**	**%**
Eligible class members	19,427	100%	21,069	100%
Cases in Track A (Adjudications)	19,287	99%	20,878	99%
Cases in Track B (Arbitrations)	140	1%	191	1%
Adjudication Completion Figures:				
Adjudications complete	9,552	50%	18,347	88%
Adjudications not yet complete	9,735	50%	2,531	12%
Adjudication Approval/Denial Rates:				
Adjudication decisions approved	5,728	60%	11,083	60%
Adjudication decisions denied	3,824	40%	7,264	40%
Adjudication Approvals Paid/Not Paid:				
Approved adjudications already paid	1,839	32%	7,143	64%
Approved adjudications not yet paid	3,889	68%	3,940	36%
Dollars Paid Out to Class Members:	$91,950,000		$357,150,000	

resolved.

[4] To provide a brief interim update, statistics as of December 18, 2000, are provided in Appendix 1. As of December 18, 2000, 19,770 Track A adjudications had been completed, and the Government had paid out nearly $492 million dollars to class members. The USDA posts updated statistics on their web site: http://www.usda.gov/da/status.htm. Additionally, current statistics are available upon request from the Monitor's office (1-877-924-7483).

IV. MONITOR'S ACTIVITY AND OBSERVATIONS DURING THE SIX-MONTH REPORTING PERIOD

The Court appointed the Monitor in an Order entered on January 4, 2000. The Order provided that the appointment was effective as of January 18, 2000, and that the Monitor was to begin operations on or about March 1, 2000.

A. General Start-Up of Operations

During this reporting period the Monitor's office undertook the necessary steps to start up Monitor operations. These steps included:

1. Conducting legal research and consultation regarding the scope of the Monitor's responsibilities and powers as a judicial adjunct;

2. Staffing, including hiring senior staff (Ed Cheeseboro as Deputy Monitor and Stephen Carpenter as Senior Counsel); hiring staff attorneys and support staff; recruiting contract attorneys; training staff and contract attorneys; contracting with, training, and providing support to phone operators;

3. Conducting introductory meetings with the parties' lawyers (Class Counsel, the Justice Department, and USDA's General Counsel) and with the neutrals (the Arbitrator, the Adjudicator, and the Facilitator);

4. Setting up and implementing a system of regular meetings with the parties and the neutrals;

5. Participating in introductory meetings with many groups of class members (see Appendix 2 for detailed listing);

6. Putting systems in place to implement the April 4, 2000, Order of Reference;

7. Preparing written materials for class members (a booklet that explains the rules for Monitor review, which is included as Appendix 3 and six Monitor Updates, which are included as Appendix 4);

8. Completing basic legal research regarding legal issues that arise in the petition process; and,

9. Leasing and setting up physical office space, and purchasing and configuring computer systems.

B. Reporting – Paragraphs 12(a) and 12(b)(i) of the Consent Decree

1. Reporting Directly to Secretary of Agriculture

Paragraph 12(a) of the Consent Decree says that the Monitor shall report directly to the Secretary of Agriculture. As Monitor, I met directly with Secretary Dan Glickman on January 19, 2000, and on May 3, 2000. Additionally, I have had many meetings and frequent phone conversations with USDA's General Counsel, Charles Rawls.

2. Written Reports to the Court, the Secretary, Class Counsel, and Defendant's Counsel

Paragraph 12(b)(i) of the Consent Decree says that the Monitor shall make periodic written reports (not less than every six months) to the Court, the Secretary, Class Counsel, and Defendant's Counsel on the good faith implementation of the Consent Decree. This report is being filed pursuant to that provision in the Consent Decree.

C. "Resolving Any Problems"--Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree says that the Monitor shall:

> Attempt to resolve any problems that any class member may have with respect to any aspect of this Consent Decree . . . .

Thousands of class members contacted the Monitor's office, some by phone, some by letter, and others in person at the meetings listed in Appendix 2. Many of these class members expressed frustrations about problems they were experiencing. Some were problems that the Monitor's office could help with; others were not. The most significant recurring issues are explained below.

1. Injunctive Relief Problems

The Consent Decree's injunctive relief provisions provide successful class members with priority consideration for three types of benefits from USDA's Farm Service Agency (FSA): (1) the purchase, lease, or acquisition of some property that USDA owns – known as inventory property; (2) one FSA direct farm ownership loan; and (3) one FSA direct operating loan. The injunctive relief provisions also include technical assistance from USDA in getting operating loans and farm ownership loans and acquiring inventory property. Technical assistance and service must come from qualified USDA employees who are acceptable to the class member. Further, as a part of injunctive relief, class member applications are to be viewed in the light most favorable to the class member.

So far, the main focus of class member attention in the case has been on adjudications, late applications, and other issues that determine whether a claimant will prevail and receive the remedy provided for in the Consent Decree. The Monitor's office expects that class member concern will turn to injunctive relief issues. Several grass roots farm organizations have already concluded that for the purpose of a real, long-term remedy for the class, injunctive relief is as important as any other aspect of the case. The Monitor's Office has met with several such organizations regarding injunctive relief, and spoken at a number of farmer meetings at which injunctive relief was a topic.

Class members and the leadership of the farm organizations routinely express a deep cynicism regarding the prospects for injunctive relief to function as is described in the Consent Decree. These concerns typically raise three points. First, class members often doubt that local FSA officials will actually provide the benefits described in the Consent Decree. Second, class members often contend that there is no system of accountability within the Department to insure that loan making and other services are conducted in a nondiscriminatory manner. Class members raise vigorous doubts regarding whether the Monitor's office will be able to make any headway on this perceived problem. Third, class members frequently suggest that

they will be the victims of retribution if they exercise their rights for injunctive relief. This is an especially common response when class members are told that they have a right to technical assistance from a "qualified and acceptable" USDA employee and that class members may ask that an unacceptable USDA employee be removed from the class member's case and replaced by an acceptable USDA employee.

In sum, the Monitor's office expects that it will receive many requests to assist class members in making use of injunctive relief, and anticipates the need to attempt to resolve problems that class members have with this aspect of the Consent Decree.[5]

2. Payment Status Problems

When claimants were approved for payment of cash relief in Track A cases, they received a letter that told them to expect payment within approximately sixty or ninety days.[6] For some

[5] As of August 31, 2000, the Monitor's Office had little opportunity to evaluate the effectiveness and actual implementation of the injunctive relief portion of the Consent Decree. As of the filing of this report, the Monitor's office still does not have enough information to evaluate the implementation of the injunctive relief provisions by USDA's local offices.

[6] In the beginning of this reporting period, the standard letter told approved claimants to expect payment within approximately 60 days. In July, 2000, the standard letter was changed to say that approved claimants should expect payment within approximately 90 days.

claimants, the sixty or ninety days passed, but the check did not arrive.[7] These claimants' situations fell into one of two categories: (1) cases in which checks were put on "hold" in the administration of this case, and (2) cases in which payment delays were caused by administrative difficulties regarding the payment mechanism used in this case.

a. Payment Suspension Due to "Holds"

The implementation process created two circumstances within which approved claimants' checks could be put on "hold." The first was "constructive application" holds. Constructive applications are explained in Section VI.A.2 below. A total of 1,209 claimants were on constructive application hold in this case. Claimants in this situation were able to find out about their "hold" status only by contacting their counsel or by contacting the Monitor's office. Class Counsel did not make any proactive effort to communicate with these claimants about their checks being held. As is noted in the constructive application section below, the constructive application issue has been resolved.

[7] Of the 9,838 claimants who had been paid as of the date of the Facilitator report on this matter: (1) in 3,511 cases, checks were sent in less than 90 days; (2) in 2,936 cases, checks were sent in 90 – 120 days; (3) in 3,391 cases, checks were sent in more than 120 days. In the third group (3,391 cases), 1,008 were constructive application cases.

The second circumstance within which approved claimants' checks could be put on hold concerned Government petitions for Monitor review. In cases in which the Government intended to petition for Monitor review, the Government placed the claimants' checks on hold. The Government notified the Facilitator, Class Counsel, and the Monitor's office of the list of claimants who were in the status of "petition hold." Claimants in this situation were able to find out about their "hold" status only by contacting their counsel or by contacting the Monitor's office. Class Counsel did not make any proactive effort to communicate with these claimants about their checks being held.[8]

b. Administrative Difficulties

In some cases, administrative difficulties were the reason why payments were not made within the sixty or ninety-day timeframe. To understand this problem, it is helpful to understand the payment mechanism that was being used to process successful claimants' checks. The Consent Decree provides that payments to Track A claimants who prevail on their credit claims are to be made by the Judgment Fund.[9]

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[8] A system is now in place to communicate with claimants about "petition holds"; "constructive application holds" no longer exist.

[9] For a description of the Judgment Fund, see 31 U.S.C. § 1304.

The Judgment Fund is a free-standing mechanism within the Treasury Department that is responsible for making certain types of payments on behalf of all federal agencies. The Government has explained that before a payment can be made by the Judgment Fund, the agency requesting the payment must complete a number of specified forms reflecting both the Government's liability and the propriety of the payment being made by the Judgment Fund. The Government has further explained that the Judgment Fund makes approximately 5,000 payments in a normal year, and it generally takes six to twelve weeks for the Fund to make a payment from the time it receives a qualifying request. Due to the number of successful Track A credit claims, the Judgment Fund has had to process approximately 10,000 requests for payments to successful Track A claimants in the past year, in addition to the approximately 5,000 non-Pigford payments that it otherwise had to process.

There have been instances in which payments have taken longer than ninety days despite the fact that the claimant's check is not on any kind of hold. These timing problems were due to administrative difficulties involving the Judgment Fund. Where the Government has been informed that a successful Track A claimant has not been paid within approximately ninety days, it has generally undertaken a prompt inquiry to determine the

source of the delay, and has generally resolved the situation quickly.

3. Other Problems

Claimants raised many other problems and concerns, including the following:

- Concern about the 40 percent denial rate in Track A adjudications – many in the claimant community had been under the impression that payment would be "virtually automatic" upon completion of claim forms;
- Concern about the litigious nature of Track B arbitrations;
- Cynicism about whether the appropriate people are being paid – many in the claimant community express suspicion that often individuals who had no real interaction with farming or USDA have been approved for payment, while individuals who had a long and troubled relationship with USDA have been denied relief;
- Concern about Federal Bureau of Investigation investigations in claimant communities;
- Concern that it is taking too much time for the Government to pay approved claims;
- Concern that the Farm Service Agency (FSA) county office staff is not sufficiently knowledgeable about the procedures for affording approved claimants their full rights to injunctive relief;
- Concern about difficulties in reaching Class Counsel to communicate about individual concerns;
- Concern about many of the issues described in Section VI below ("status of important issues").

In general, the Monitor has addressed these particular concerns by: (1) explaining how the Consent Decree works; (2) referring claimants to their Class Counsel; (3) making sure that the parties, the Secretary and the Court are aware of the concerns; and, (4) explaining how the petition for Monitor review process can be used to seek redress in individual cases in which errors occurred.

D. Reexamination of Claims – Paragraph 12(b)(iii) of the Consent Decree

The rules regarding reexamination of claims were set forth by the Court in the Order of Reference entered on April 4, 2000. On June 2, 2000, the Monitor's office sent to every class member an introductory letter along with a booklet entitled, "Questions and Answers About Monitor Review of Decisions" (included as Appendix 3). This booklet provided a plain-language explanation of the rules for petitioning for Monitor review.

During this period, the Monitor's office also focused on preparing to issue decisions in response to petitions for Monitor review. No petitions became ripe for decision in this period.

E. Toll-Free Telephone Number – Paragraph 12(b)(iv) of the Consent Decree

The Monitor's office established a toll-free telephone number (1-877-924-7483). Callers reach a bank of phone

operators who have been trained regarding the basics of the case and who have access to a database containing certain factual information about each claimant. The operators are able to answer specific categories of questions at the time of the call. For other categories of questions or complaints, the operators make appointments for the caller to speak with a lawyer from the Office of the Monitor. The toll-free telephone number became operational as of May 29, 2000. The line received approximately 10,157 calls between May 29, 2000 and August 31, 2000.[10]

V. COURT ORDERS

A. Major Court Orders Furthering Implementation of Consent Decree

During this reporting period the Court issued several Orders that further defined the rules for implementation of the Consent Decree. They include:

Date of Order	**Title of Order**	**Major Issues Addressed Include:**
March 9, 2000	Order	Review of interlocutory Arbitrator decisions in Track B cases
April 4, 2000	Order of Reference	Defines responsibilities, powers and protections of Monitor; sets forth many of the rules for Monitor review of petitions for reexamination

[10] This number represents the number of calls, not the number of callers.

Date of Order	Title of Order	Major Issues Addressed Include:
July 14, 2000	Stipulation and Order	Late cures; deadline for seeking permission to file a late claim under paragraph 5(g) of the Consent Decree; for those who are granted permission to file a late claim, deadline for filing Claim Sheet and Election Form; deadline for petitioning for Monitor review of decisions under Track A or Track B; limits parties to only one petition for Monitor review in each case under Track A or Track B; decision of Monitor on petition, and decision of Adjudicator or Arbitrator on reexamination not subject to any further review in any forum.
July 14, 2000	Second Amended Supplemental Privacy Act Protective Order	Protective Order amended to allow Adjudicator and Arbitrator to release written decisions to counsel representing other class members in this action (but only after they have signed the Protective Order).

B. Appeal to D.C. Circuit Court of Appeals

One claimant appealed the Court's approval of the Consent Decree in this case. On March 31, 2000, the United States Court of Appeals for the District of Columbia Circuit entered an Order affirming Judge Friedman's approval of the Consent Decree.[11]

C. Challenge to Fairness of Consent Decree

On January 18, 2000, seven claimants filed a challenge to the fairness of the Consent Decree in this case. A hearing on

[11] Pigford v. Glickman, 206 F.3d 1212 (D.C. Cir. 2000).

the matter was held on July 31, 2000. The Court did not rule regarding this challenge during this reporting period.

VI. STATUS OF IMPORTANT ISSUES

A. What Important Issues Were Resolved in This Six-Month Period?

1. Process of Monitor Review

In this period the process for Monitor review was established by the Order of Reference and was explained to the class in the Monitor's June 2, 2000, letter and booklet (Appendix 3).

2. Constructive Applications

This issue involves claimants whose allegations of discrimination focused on unsuccessful attempts to apply for credit or benefits.

The class definition in paragraph 2(a) of the Consent Decree begins as follows:

> All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981, and December 31, 1996; (2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program . . . .[12]

Although the class definition includes language explicitly referring to individuals who attempted to farm, it does not include language explicitly referring to individuals who

[12] Consent Decree, paragraph 2(a)(emphasis added).

attempted to apply for credit or benefit programs. The Government took the position that these claimants were not eligible class members.

This issue is very important. Many class members allege that the way in which USDA discriminated against them was by refusing to give them application forms and/or by actively discouraging them from filing applications.

The parties entered into an agreement on April 17, 2000, stating that a claimant who had attempted to apply would be deemed to have "constructively" applied whenever certain criteria are met. The parties' agreement, called the "constructive application principles," is included with this report as Appendix 5.

Shortly after the parties entered into this agreement, they instructed the Adjudicator to review all of the Track A decisions that had been made in cases in which the claimants' allegations involved "attempts" to apply. The parties instructed the Adjudicator to identify those cases that failed to meet the new constructive application principles. This process was stopped before it was completed. The parties decided to apply the constructive application principles prospectively (that is, the principles would be applied in all Adjudication decisions made on or after April 17, 2000), but

they agreed that the principles would not be used to change the decision in any Track A case that had already been decided.

3. The Freeze

USDA voluntarily agreed to give all claimants who timely submit their petitions for Monitor review the protection of a "freeze" of certain USDA actions. Under the terms of the freeze, USDA agrees not to accelerate or foreclose on the claimant's loan(s)and agrees not to dispose of any inventory property that once belonged to the claimant. The details of the freeze are explained in Monitor Update No. 006, which is included with this report at Appendix 4.

4. Procedure for Reporting Suspected Fraud

Some members of the public attempted to call the Facilitator's office and the Monitor's office to report suspected fraud. Investigating and/or otherwise acting upon these reports of suspected fraud does not fall within the Facilitator's or the Monitor's duties. The Government has determined that individuals wishing to report suspected fraud should call the USDA Inspector General's hotline at 1-800-424-9121.

5. Late Cures

This issue involves claimants who submitted their Claim Sheets and Election Forms ("claim packages") on time, but who

had defects in their paperwork that were not corrected until after the deadline.

Paragraph 5(c) of the Consent Decree provides that:

> [T]o be eligible for relief . . . a claimant must submit his completed claim package to the [F]acilitator postmarked within 180 days of the date of entry of this Consent Decree, except that a claimant whose claim is otherwise timely shall have not less than 30 days to submit a declaration pursuant to subparagraph (b)(iii), above, after being directed to do so without regard to the 180-day period.

This paragraph established that October 12, 1999, was the deadline for submitting a completed claim package (with the exception noted above).

There are approximately 1,270 claimants who: (1) submitted their claim packages on time; (2) were notified by the Facilitator that there were defects in their claim packages; and, (3) cured those defects after October 12, 1999 (or after their thirty-day deadline pursuant to paragraph 5(c) of the Consent Decree). For a number of months these claimants, who can be referred to as "late cures," were not processed because the parties had not reached an agreement about what rules should apply to their cases.

The July 14, 2000, Stipulation and Order established that:

> All timely filed but defective Claim Sheet and Election Forms that were corrected and resubmitted after the conclusion of the period prescribed by ¶ 5(c) of the Consent Decree – October 12, 1999 –

> shall be deemed to have been timely filed within the period prescribed by ¶5(c).

As a result of this Stipulation and Order, the Facilitator accepted all of the "late cures" for processing.

6. Deadline to Request Permission to File Late Claims

This issue involves individuals who sought permission to submit a completed claim package after the October 12, 1999, deadline. The procedure for doing so is set forth in paragraph 5(g) of the Consent Decree:

> A claimant who satisfies the definition of the class in ¶2(a), above, but who fails to submit a completed claim package . . . [by October 12, 1999] may petition the Court to permit him to nonetheless participate in the claims resolution procedures . . .. The Court shall grant such a petition only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.

In Orders dated December 20, 1999, and July 14, 2000, the Court delegated to the Arbitrator authority to determine whether to grant the petitions referred to above.

In the July 14, 2000, Stipulation and Order ("Order"), the Court established September 15, 2000, as the final deadline for requesting permission to file late claims. The Order provided that:

> All putative class members who seek relief under ¶5(g) of the Consent Decree shall submit written requests for such relief to the Facilitator--

without a Claim Sheet and Election Form--postmarked not later than September 15, 2000. No extensions of that deadline will be granted for any reason.

7. Injunctive Relief Policies Established by USDA

FSA issued two administrative notices that set out the agency's view of the meaning of injunctive relief, and set the procedure that the agency will use in providing injunctive relief within the context of existing FSA regulations.[13] These notices track the requirements of the Consent Decree, and, if followed, should provide an effective mechanism through which class members may make use of injunctive relief.

8. Government Petitions After Payment

During this reporting period, many claimants expressed concern that although they have received their $50,000 checks, they do not know whether they can count on the funds because they do not know whether the Government will petition for Monitor review in their cases. The Government responded to this concern by voluntarily agreeing that, in general, if a claimant has received a $50,000 check, his or her approval for payment is final and will not be submitted by the Government for Monitor review. The Government noted that in extraordinary circumstances there might be exceptions to this rule.

9. Claimant Access to Government Submissions

When the Adjudicator made decisions in Track A cases, the record before the Adjudicator included the claimant's completed claim package and the Government's response to that claim package. In preparing their petitions for Monitor review, many claimants wish to see copies of that Government response. During this reporting period, the parties did much of the work of figuring out the rules that must govern when and how claimants may have access to those files.[14]

10. Track B Interlocutory Matters

Several claimants contacted the Monitor's office during this reporting period to express dissatisfaction with rulings that the Arbitrator made regarding discovery, witnesses, and other matters as they prepared for their hearings in Track B cases. These rulings, which come before the final ruling in the case, are called interlocutory rulings.

Court Orders issued during this reporting period established that while the case is in progress, the Monitor does not have the power to review Arbitrator actions for "clear and

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[13] These policy notices are available upon request from the Monitor's Office (1-877-924-7483).

[14] The rules were finalized shortly after the end of this reporting period, and are described in detail in Monitor Update No. 7, which was issued on October 10, 2000 (included with this report in Appendix 4).

manifest error."[15] When a Track B case is completed, the claimant and the Government each have the right to petition for Monitor review.

11. Petition Response Time

Once a party files a petition for Monitor review, the non-petitioning party has a chance to file a response to the petition. In paragraph 8(d) of the Order of Reference, the response time was set at thirty days. Once the parties began participating in the petition process, they determined that the thirty-day timeframe was too short. In the September 12, 2000, Stipulation and Order the rule was changed to provide that

> The non-petitioning party shall have 60 days from the date of his or her receipt of any such petition to file a response thereto.

12. Tax Problems

Under the Consent Decree, prevailing Track A claimants are entitled to a federal tax credit equal to 25 percent of the sum of the claimant's $50,000 cash payment and the principal amount of any discharged debt. The Consent Decree also provides that the transfer of funds necessary to cover the tax credits is to be made through electronic means by the Judgment Fund directly

[15] See the chart of Court Orders in Section V of this report: both the March 9, 2000, Order and the April 4, 2000, Order of Reference (paragraph 10) addressed this issue.

to the Internal Revenue Service (IRS). Once the transfer is accomplished, the IRS has the responsibility to ensure that the transferred funds are deposited to the claimant's individual IRS account.

In some instances, there was a delay in depositing the tax credit to the claimant's account resulting in a situation in which the claimant was temporarily held responsible for satisfying the tax obligation on the cash payment. Early on, claimants in this category received deficiency notices from the IRS. Eventually, however, the Government resolved this issue and the IRS stopped issuing deficiency notices.

In 1999, 752 claimants received their $50,000 cash payment. However, some of these claimants received the $12,500 tax credit that corresponded to this payment in the calendar year 2000, not in 1999. Difficulties resulted from the fact that these two events may have occurred in two different tax years. Also, during this reporting period none of the claimants received their IRS Form 1099 for the tax credit. Combined, these situations created for the claimants a significant amount of confusion regarding the tax consequences flowing from the receipt of the cash payment and the credit. Counsel and Of Counsel for the class worked to provide accurate tax advice to the claimants. The Government immediately started working on a

plan to resolve these difficulties and to avoid this sort of confusion in the future.

B. What Important Issues Remain to be Resolved in the Near Future?

1. Non-Credit Relief

This issue involves payments of approved non-credit claims. Although 137 claimants were approved for cash payment on non-credit claims during this reporting period, and at least 419 have been approved to date, none have been paid.[16]

Paragraph 9(b)(iii)(A) of the Consent Decree explains how the cash payments are to be calculated for approved non-credit claimants:

> USDA shall pay to the class member the amount of the benefit wrongly denied, but only to the extent that funds that may be lawfully used for that purpose are then available . . . .

The parties have not yet agreed upon a method for calculating benefits for approved non-credit claimants. Processing of these payments will not proceed until either (1) the parties reach an agreement about a method for calculation of benefits; or, (2) the Court orders that payments

[16] Some have been approved for both credit and non-credit claims: although they may have been paid on the credit portion of their claims, none have been paid on the non-credit portion of their claims.

be calculated in a particular way. This problem is the subject of the Monitor's recommendation in Section VIII of this report.

2. Tax Issues

The Government is working to implement a plan in which the tax problems described above do not repeat themselves in the year 2001.

Additionally, an issue arose as to whether or not prevailing claimants in the United States Virgin Islands are entitled to a tax credit on the cash payment and debt relief. Virgin Island residents are not required to pay United States federal income tax; however, they do pay an income tax that is collected by their highest taxing authority, the Internal Revenue Board of the Virgin Islands (IRB). Some of these claimants contend that the Consent Decree tax credit should be applicable toward their tax burden owed to the IRB. They argue that the Consent Decree language providing for the tax credit should be interpreted broadly to mean that the claimant should receive a tax credit payable to the claimant's highest taxing authority. This issue has not yet been resolved.

3. Injunctive Relief

The Monitor's office expects that class member concern will turn to injunctive relief issues, and that the work of the Monitor's office will increasingly be devoted to assisting

eligible class members with the difficulties they may have in exercising their right to injunctive relief.

The task of ensuring that injunctive relief is effective for class members divides into three types of issues. First, class members seek to understand the nature of injunctive relief and how it can be useful. The Monitor's office plans to assist class members by providing them with written materials, making presentations to farm groups, and providing individual assistance to class members upon request. Second, class members often need to be directed to groups or individuals that can help them with farm planning and provide advice regarding other aspects of farm production. Nongovernmental organizations, universities, USDA extension offices, and other entities are candidates for such referrals. Third, the office will assist claimants who feel that they have not received appropriate injunctive relief, and compile information regarding the effectiveness of the USDA in implementing this aspect of the Consent Decree.

4. Petitions for Monitor Review

Class Counsel, Of Counsel, other lawyers who represent members of the class, and individual claimants who choose to represent themselves are faced with filing thousands of petitions for Monitor review. Issues arising from this

obligation will be discussed in the Monitor's report covering the next reporting period.

VII. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

It is apparent to the Monitor that both of the parties and all three of the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) are working on this case in good faith.

Class Counsel, the Government, and each of the three neutrals have highly demanding jobs in the implementation of this landmark settlement: it is virtually impossible to complete this kind of undertaking without making some mistakes and taking some unpopular positions. Although many may be critical of specific aspects of the work being done to implement this Consent Decree, it is important to keep in mind that the test for good faith focuses on honesty. One standard legal dictionary defines good faith as, "A state of mind characterized by honest belief, absence of malice or intent to defraud, absence of a design to seek unconscionable advantage or of knowledge that such advantage is likely to occur . . . . "[17]

All of those who are charged by the Court with the responsibility for carrying out implementation of this Consent Decree met that test during this reporting period.

[17] West's Legal Thesaurus/Dictionary (William P. Statsky ed., 1986)

VIII. RECOMMENDATIONS

As this report explains, the parties have not yet implemented paragraph 9(b)(iii)(A) of the Consent Decree regarding non-credit benefits. This is a serious problem that currently affects more than 400 claimants. The Monitor has repeatedly urged the parties to work out a mechanism to implement this provision of the Decree, but the parties have not done so. The Monitor recommends that the Court take action to require the parties to report directly to the Court regarding this problem by January 12, 2001. Once the parties have reported to the Court, the Court will have the information it needs to determine what further action, if any, is necessary.

Dated: December 26, 2000 Respectfully submitted,

_____

Randi Ilyse Roth
Monitor
Post Office Box 64511
St. Paul, Minnesota 55164-0511
877-924-7483

Appendix 1 - Statistical Reports as of December 18, 2000
Appendix 2 - List of Monitor Office Training Events
Appendix 3 - Monitor's Letter Dated June 2, 2000, and Questions and Answers About Monitor Review of Decisions
Appendix 4 - Monitor Updates
Appendix 5 - Constructive Application Principles

Appendix 1
STATISTICAL REPORT AS OF DECEMBER 18, 2000

Item	Number	Percentage
Eligible class members	21,288	100%
Cases in Track A (Adjudications)	21,100	99%
Cases in Track B (Arbitrations)	188	1%
Adjudication Completion Figures:		
Adjudications complete	19,770	94%
Adjudications not yet complete	1,330	6%
Adjudication Approval/Denial Rates:		
Adjudication decisions approved	11,932	60%
Adjudication decisions denied	7,838	40%
Adjudication Approvals Paid/Not Paid:		
Approved adjudications already paid	9,839	82%
Approved adjudications not yet paid	2,093	18%
Dollars Paid Out to Class Members:	$491,950,000	

Appendix 2
LIST OF MONITOR OFFICE TRAINING EVENTS

The Monitor's office appeared at many speaking engagements in this six-month period to meet groups of claimants and Government officials and to explain the rules that govern the Monitor's discharge of her responsibilities. In many cases, several staff attorneys from the Monitor's office attended these events; that made it possible for one or two attorneys to address the large group while the other attorney(s) worked with individuals to address their particular concerns. These "training" events included:[1]

Date	Monitor Staff in Attendance	Location	Sponsor	Approximate Number of Participants
February 12	Randi Roth, Stephen Carpenter	Albany, Georgia	Federation of Southern Cooperatives	200

[1] As a brief interim update, the Monitor's speaking and/or training events subsequent to August 31, 2000 have included: (1) a presentation at the Congressional Black Caucus Foundation's annual legislative conference in Washington, D.C. on September 14; (2) a presentation to USDA's state directors in Annapolis, Maryland on September 28; (3) a presentation to claimants in Baton Rouge, Louisiana, on behalf of Southern University and A&M College Louisiana Family Farm Technical Assistance Project on October 4, 2000; (4) a presentation to the Texas Landowners' Association in Houston, Texas on October 13; and, (5) conference call presentations to the Federation of Southern Cooperatives and to the Coordinating Council of Black Farm Groups.

Date	Monitor Staff in Attendance	Location	Sponsor	Approximate Number of Participants
March 21	Randi Roth	Washington, D.C. (Methodist Center)	Federation of Southern Cooperatives	75
May 2	Randi Roth Stephen Carpenter	Atlanta, Georgia	Coordinating Council of Black Farm Groups	15
March 22	Randi Roth	Fargo, Arkansas	Arkansas Land and Farm Development Corporation	175
July 18	Randi Roth Ed Cheeseboro Stephen Carpenter	Walnut Grove, Tennessee	Tennessee Chapter of Black Farmers' and Agriculturalists Association	100
July 19	Randi Roth Ed Cheeseboro Stephen Carpenter	Memphis, TN	Tennessee Chapter of Black Farmers' and Agriculturalists Association	15
July 20	Randi Roth Stephen Carpenter	Fargo, Arkansas	Arkansas Land and Farm Development Corporation	100
August 18	Randi Roth Stephen Carpenter Melissa Rosenbaum	Epes, Alabama	Federation of Southern Cooperatives	200
August 25	Randi Roth Stephen Carpenter Anita Weitzman Samantha Gemberling	Richmond, Virginia	National Black Farmers Association	150
August 29	Stephen Carpenter	Oklahoma City, Oklahoma	FSA State Directors	250-300

Appendix 3
MONITOR'S LETTER DATED JUNE 2, 2000, AND QUESTIONS AND ANSWERS ABOUT MONITOR REVIEW OF DECISIONS

Randi Ilyse Roth
Attorney at Law
Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)

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

Toll-Free Phone:
1-877-924-7483

June 2, 2000

Dear Claimant:

I was recently appointed to be the Monitor in *Pigford v. Glickman*—this is the case in which African-American farmers sued the United States Department of Agriculture (USDA) alleging race discrimination. I am writing to you and to all of the other people who filed claims in *Pigford* (and its sister case, *Brewington*) to explain my role as Monitor and how I might be able to assist you.

I. Introduction

A. The Consent Decree

As you know, the *Pigford* and *Brewington* cases settled—that means that the parties entered into an agreement which they pledged to follow instead of going to trial. That agreement is written up in a document called the "Consent Decree," which was approved by the Honorable Paul L. Friedman, the judge who presided over these cases. The Consent Decree sets forth the rules and procedures that the claimants and the government must follow in carrying out the settlement of this case. ("Claimants" are those who filed claims in this case.) If you would like to see the Consent Decree, please call my office toll-free at 1-877-924-7483, and we will send you a copy at no charge. If you have access to the internet, you can find a copy of the Decree at www.dcd.uscourts.gov/97-1978h.pdf.

B. The Monitor's Role

One part of the Consent Decree calls for the appointment of a Monitor. It provides that the Monitor is *independent*. I do not work for the lawyers on either side of this case. I was chosen by Judge Friedman and, for the next five years, I will work as an agent and officer of the Court in carrying out the jobs assigned to the Monitor. These jobs are explained below.

C. My Background

For the past 14 years I have worked as a lawyer at a nonprofit organization that provides legal assistance to family farmers throughout the United States. I have spent most of my time working with farmers throughout the Southeast and Midwest on issues related to government loans. A significant part of my practice has involved work on behalf of African-American farmers.

D. Office in Memphis, Tennessee

My office in Minnesota is very distant from most of the claimants in this case. To make it easier for you to meet with my staff and me in person, I will set up office hours in Memphis, Tennessee, on a regular basis. Our first meetings with claimants in Memphis will be in July 2000. To make an appointment to meet with us in person, please call my office toll-free at 1-877-924-7483.

I will be able to meet with you about many types of problems, including any problems you may have with injunctive relief (see explanation below). However, as I will explain below, under the terms of a recent court order, I will *not* be able to meet with you regarding the decision made by the Adjudicator, Arbitrator, or Facilitator in your case.

II. The Monitor's Jobs

I have three basic jobs as Monitor. They are: (A) reviewing decisions, (B) solving problems, and (C) issuing reports.

A. Reviewing Decisions

This part of my job involves reviewing Petitions for Monitor Review. You may send me a Petition for Monitor Review if you filed a Track A or Track B claim under the Consent Decree and you were denied any aspect of relief. When you ask me to review your Petition, my job is to determine whether the decision in your case contained a "clear and manifest error resulting in or likely to result in a fundamental miscarriage of justice." I put those words in quotes because they came from the Consent Decree. If I find such an error, I will send your claim back to the Adjudicator, Arbitrator, or Facilitator with a letter explaining the error. The Adjudicator, Arbitrator, or Facilitator must then reexamine the decision they made in your case.

The government likewise has the right to petition for Monitor review if it believes that a decision approving a claim contained a "clear and manifest error resulting in or likely to result in a fundamental miscarriage of justice."

I enclose a booklet that gives detailed answers to many important questions about the review process.

My office will review your case if you write to me yourself *or* if you have an attorney prepare a Petition for Monitor Review for you. Under the terms of a recent Court order, I cannot talk with you about your Petition for Monitor Review—I must base my review only on the papers in your file and the papers that are submitted in the Petition process in your case.

Preparing your paperwork can be complicated. You are not required to have a lawyer, but I strongly suggest that you contact a lawyer to represent you in your Petition for Monitor Review. Assistance from a lawyer can give you some important advantages (see question number 3 in the enclosed booklet).

You have the right to be represented by any lawyer whom you choose. The lawyers who represented the class of farmers in this case will provide you with a lawyer at no charge. They are called "Class Counsel." They asked me to tell you that if you want their help, you should send them (1) a letter giving them permission to represent you, and (2) a photocopy of the decision denying you relief.

They can be contacted as follows:

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

Lawyers other than Class Counsel may also agree to represent you at no charge and seek payment of their fees from the government. See question number 3 in the enclosed booklet.

If you choose not to use a lawyer, which is your right, and you want to have your case reviewed, you must write to me to ask me to review your claim. The best way to write that letter is by filling out the enclosed form entitled "Petition for Monitor Review." My staff and I will review all the details of your Petition and the other papers in your file very closely whether or not you use a lawyer.

If you have any questions about how the review process will work, please contact my office at 1-877-924-7483. Please remember, though, that I cannot discuss the details of your individual Petition for Monitor Review.

B. Solving Problems Not Related to the Decision About Your Claim

My office has broad power to try to find solutions to many types of problems that you may encounter with the Consent Decree. Examples of problems that the Monitor's office can help you with include:

1. Problems with "injunctive relief." Injunctive relief includes approved claimants' rights to:

    - Priority consideration for certain kinds of new loans;
    - Priority consideration for buying or leasing land from the government;
    - Adequate technical assistance from someone acceptable to them at their local USDA offices;
    - Have their applications for certain kinds of loans and for the purchase or lease of inventory property viewed in the "light most favorable" to them.

2. Farmers with approved claims not receiving their relief on a timely basis.

If you are having these or other problems as a class member, please call my office toll-free at 1-877-924-7483, and the phone operators can make an appointment for you to talk with my staff or me on the phone or to meet with us in person in Memphis. **My goal is to do what it takes to get your problem solved.**

Also, to learn more about injunctive relief, call my office and ask to be sent the "injunctive relief booklet" free of charge. The booklet should be available in June 2000.

Please note, though, that my staff and I cannot talk to you to try to solve problems related to your Adjudicator, Arbitrator, or Facilitator decision—any problems with those decisions must be handled though the Petition for Monitor Review process described above.

C. Issuing Reports

As Monitor, I will issue reports to the Secretary of Agriculture, the Court, and the lawyers for both sides of the case at least every six months. These reports are about the "good faith implementation of the Consent Decree." The reports will explain how the implementation of the Consent Decree is going, and they will talk about whether the organizations and individuals involved in this process are getting their jobs done properly.

These reports will be available to the public. If you would like to receive a copy of the first report when it is issued this summer, please call 1-877-924-7483 and ask to be put on a list to receive reports.

III. Contact Information

You may contact my office by writing or calling toll-free to:

Office of the Monitor
P.O. Box 64511
St. Paul, MN 55164-0511
Toll-free phone: 1-877-924-7483

When you call, trained phone operators will try to assist you. They will ask you to explain what kind of help you need from the Monitor's office. They will be able to help you on the spot with answers to some basic kinds of questions. If the phone operators are not able to help you, they will direct your call to me or to the right person in my office.

Sincerely,

Randi Ilyse Roth
Monitor

Randi Ilyse Roth
Attorney at Law
Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)

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

Toll-Free Phone:
1-877-924-7483

Questions and Answers About Monitor Review of Decisions

Version #1 — June 2000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Can the Monitor actually change decisions?

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

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

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

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

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

6. What papers can the Monitor review?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.

b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.

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

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

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

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

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

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

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

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

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

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

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

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

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

In general, there are four steps.

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

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

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

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

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

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

17. Can I appeal the Monitor's decision?

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

Monitor Form #1:
Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

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

☐ Yes ☐ No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

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

3. Additional Information or Papers

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

☐ Yes ☐ No

If no, go to section 4 below.

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

_____

_____

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

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

4. Explain the Error

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

_____

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5. Claims Involving Attempts to Apply

If your claim of discrimination involved your attempt to apply for a loan, please answer the following questions. (If your claim is not about an attempt to apply for a loan, please go to part 6.) (Please feel free to attach more pages.)

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.)

_____

_____

6. Signature

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

_____ _____

Signature Date

7. Submit Your Petition

Submit your completed Petition for Monitor Review to:

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

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

Monitor Form #2:
Withdrawal of Petition

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

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Withdrawal Request

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

_____ _____

Signature Date of Signature

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

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

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

4. Submit This Form

Submit this form to:

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

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

Appendix 4
MONITOR UPDATES

Monitor Update:
Late Claim Deadline

Date Issued: **August 14, 2000**
Update 001

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

Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affects the filing of late 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:

- 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 new 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 are allowed

In some cases, it is possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allows a person to be a part of the case if the person has shown that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] In other words, someone whose Claim Sheet and Election Form was postmarked after October 12, 1999, can be eligible for Track A adjudication or Track B arbitration if the reason the claimant was late in filing was due to extraordinary circumstances beyond the claimant's control. The Court has directed the

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[1] This language is found in section 5(g) of the Consent Decree.

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.

4. How late claims are allowed

Three important rules apply when a claimant files a late claim. First, the claimant must file a **written** request for permission to file a late claim. Please note that the request may not be by phone or other means—it must be in writing. These requests must be filed with the Facilitator. The Facilitator's address is Claims Facilitator, P.O. Box 4390, Portland, OR 97208-4390. The Facilitator records the requests and sends them to the Arbitrator.

Second, the written request must explain **in detail** the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time. The Arbitrator needs to know exactly why the person could not file the claim on time and why that reason was beyond the control of the person.

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. This makes it all the more important for people to make sure that the written request for permission to file a late claim explains **all** of the relevant facts.

5. Judge's new Order—deadline to request permission to file a late claim

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

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant **was** unable to file a 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 Claim Sheet and Election Form on time because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration. No appeals from this decision are possible, and a person may not seek another ruling from the Arbitrator.

7. 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 may file a Claim Sheet and Election Form with the Facilitator. The Claim Sheet and Election Form must be postmarked no later than sixty days from the date of the letter from the Arbitrator notifying the claimant that his or her request for relief has been granted. No extension of this sixty-day period will be granted for any reason.

8. 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

Date Issued: **August 14, 2000**
Update 002

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

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

Date Issued: **August 14, 2000**
Update 003

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

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 affects petitions for Monitor Review. 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:

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

2. Petitions for Monitor review

Claimants in the *Pigford* lawsuit are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any person who received an adverse decision—either in whole or in part—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 who would like a copy of the letter and pamphlet may call toll free at 1-877-924-7483.

3. Judge's Order creates deadline for petitions

The Judge's new Order creates a deadline for filing petitions for Monitor review. The deadline will work in one of 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.)

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

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

If the decision by the Track A Adjudicator or the Track B Arbitrator is 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 is November 29.

4. Deadline created by the Order is firm

The deadline explained in this update for petitions for Monitor review is 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 feel free to call toll free at 1-877-924-7483.

Monitor Update: Injunctive Relief in *Pigford v. Glickman*

Date Issued: **August 16, 2000**
Update 004

This is not a USDA publication.

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

Injunctive Relief in *Pigford v. Glickman*

I. Introduction and the Monitor's Role

This Monitor Update summarizes class members' rights to injunctive relief in *Pigford v. Glickman*—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 instead is based on the class member's effort to receive some other benefit from USDA. 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.

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.

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.

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.

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. More Information on Injunctive Relief

The Monitor's Office will prepare a much more detailed version of this Monitor Update for class members who request it. 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**
Update 005

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

This is not a USDA publication.

Eligibility and Monitor Review

1. Introduction

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

This Monitor Update is intended to:

a. Explain who is eligible to be a member of the class;

b. Describe how eligibility decisions are made; and

c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

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

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

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

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor can be contacted toll free at 1-877-924-7483.7

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application.

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. A communication, for this purpose, does not need to have been written. For example, it could have been spoken. The communication with another government official must have been to one of the following: a member of Congress, the White House, or a state, local, or federal official. The government official must have forwarded the communication to USDA.

3. Proof for filing a discrimination complaint

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

a. Copy of complaint or response

A claimant can 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 can 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 first-hand 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 can 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.

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

A claimant can submit as proof a declaration by another person regarding a USDA Listening Session or other oral complaint. 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 first-hand 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 reconsidered.

A 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 who would like a copy of the pamphlet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

As of the release of this Monitor Update—August 25, 2000—there is no deadline for seeking Monitor review of a Facilitator's eligibility decision. Although a deadline exists for other types of petition for Monitor review, for Facilitator eligibility decisions, there is no deadline. It is possible, though, that the Court will set a deadline at some later time.

8. If eligible, on to adjudication or arbitration

If, after reconsideration, 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. Track A adjudications and Track B arbitrations may, in turn, be the subject of a petition for Monitor review.

9. If not eligible, not a class member

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

10. 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

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

Date Issued: **August 31, 2000**
Update 006

This is not a USDA publication.

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 even if the claimant has petitioned for Monitor review. USDA, however, has voluntarily agreed to "freeze" some actions on debts for claimants who petition for Monitor Review.

The exact terms of the freeze will be described in a policy notice that will be issued by USDA shortly.

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 fit under the protection of 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 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 types 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 had a credit claim and was denied on the basis of eligibility by the Facilitator. Under the terms of the freeze, if a claimant petitions for Monitor review within a certain period, 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 second 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 file a petition with the Monitor asking for a review of that decision. If the claimant files 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 is explained in more detail in Monitor Update Number Three, "Deadlines for Petitions for Monitor Review." Anyone who would like a copy of Update Number Three may request a copy by calling the Monitor toll-free at 1-877-924-7483.

In general, the deadline for a petition for Monitor Review will work in one of two ways. The difference depends on when the Adjudicator's or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000.

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

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

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

If the decision by the Adjudicator, Arbitrator, or Facilitator is 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 is November 29, 2000.

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 is eligible to file a claim and may still try to do so later, 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 petition for review with the Monitor, 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 end of the case will be after the Adjudicator or Arbitrator, or in some cases the Facilitator, reaches a final decision upon reexamination. If the Monitor does not grant reexamination, the case 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. A future Monitor Update will explain administrative offsets in more detail. For a copy of this Monitor Update, call toll free at 1-877-924-7483 to request it.

7. After the freeze ends

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

8. More information

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

"Constructive Application" Principles

Background

The Consent Decree refers only to applications, and does not recognize attempts to apply:

A. Paragraph 2(a), "Class Definition," states as an element that the claimant "applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program . . . ."

B. Paragraph 9(a)(i)(B) [Track A Adjudications] includes the requirement that the claimant show that "he applied for a specific credit transaction at a USDA county office . . . ." See also paragraph 9(b)(i)(A).

C. The parties agree that "attempts to apply" by themselves are not included in the Class Definition, but recognize the concept of "constructive application."

Definition

"Constructive application" is defined as having the following elements:

A. The claimant contacted an appropriate USDA office (usually his/her county USDA office) or employee of that office, and stated that he/she wanted to apply for a particular loan or benefit.

B. A USDA employee or employees refused to provide loan or benefit application forms, or otherwise actively discouraged the claimant from applying. Examples include:

   1. Stated that there were no funds available, and therefore no application would be provided.

   2. Stated that there were no application forms available.

   3. Stated that the office was not then accepting or processing applications.

Supporting Statements or Evidence

A. For Track A claims, in addition to meeting the definition of "constructive application," Part V of the claim sheet and election form ("Adjudication Claim Affidavit") should include specific facts which support a conclusion that the

claimant made a bona fide effort to obtain funds for farming purposes, such as:

1. The year in which he/she applied and the general time period within that year (e.g., late fall, early spring, sometime in January, February, or March);

2. The type and amount of loan for which he/she was applying;

3. How he/she planned to use the funds, i.e., did he/she identify crops, equipment, acreage, etc.; and

4. The claimant's plans for a farm operation were consistent with farming operations in that county/area in that year.[1]

B. For Track B claimants, the evidence adduced responds to the four elements in A above, and in addition provides testimony or documents to corroborate the assertion that the claimant contacted a USDA official to participate in a federal farm program or programs, and that he/she had a farm plan which listed specific crops, equipment, and acreage.

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[1] In addition to meeting this definition, a Track A claimant must establish the elements set forth in paragraph 9(a)(i) of the Consent Decree, including that specifically identified similarly situated white farmers were afforded better treatment on contemporaneous applications for the same loan or benefit program, i.e., that the similarly situated white farmers did not encounter similar barriers to the application process. "Contemporaneous" is defined as relating to the same time period within the crop year (e.g., late fall, early spring, or a specific month).