

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,
Plaintiffs,
v.
ANN M. VENEMAN, Secretary,
United States Department of
Agriculture,
Defendant.

Civil Action No.
97-1978 (PLF)

CECIL BREWINGTON, et al.,
Plaintiffs,
v.
ANN M. VENEMAN, Secretary,
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 SEPTEMBER 1, 2000, THROUGH DECEMBER 31, 2001

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	4
II.	BACKGROUND	5
A.	Authority to Issue Reports	5
B.	Statistics About Processing of Claims	5
1.	Track A	5
Table 1:	Statistical Report Regarding Track A Claims	6
2.	Track B.....	7
Table 2:	Statistical Report Regarding Track B.....	7
III.	MONITOR’S ACTIVITY AND OBSERVATIONS DURING THE SIXTEEN-MONTH REPORTING PERIOD.....	8
A.	Reporting—Paragraphs 12(a) and 12(b)(i) of the Consent Decree	8
1.	Reporting Directly to Secretary of Agriculture	8
2.	Written Reports to the Court, the Secretary, Class Counsel, and Defendant’s Counsel.....	9
B.	“Resolving Any Problems”—Paragraph 12(b)(ii) of the Consent Decree	9
1.	Late Claims	10
2.	Debt Relief.....	10
a.	Implementation Difficulties.....	11
b.	Interpretation of Terms	12
3.	Tax Problems	12
4.	Injunctive Relief.....	14
5.	Payment Status Problems.....	15
a.	Payment Suspension	16
b.	Administrative Difficulties	16
6.	Notice of Deadline for Petitioning for Monitor Review.....	17
7.	Other Problems	18
D.	Reexamination of Claims—Paragraph 12(b)(iii)of the Consent Decree	20
E.	Toll-Free Telephone Number—Paragraph 12(b)(iv)of the Consent Decree	20
IV.	COURT ORDERS	21
V.	STATUS OF IMPORTANT ISSUES.....	23
A.	Issues Resolved in This Sixteen-Month Period	23
1.	Petition Response Time	23
2.	Deadline to Request Permission to File Late Claims.....	23
3.	Reconsideration Policy for Paragraph 5(g) Denials.....	24
4.	Injunctive Relief Policies Established by USDA.....	25
5.	Deadlines for Filing Petitions	25

6.	Debt Relief for Prevailing Class Members	28
7.	Non-Credit Claims	28
8.	Tax Issues in Cases Involving Decedents' Estates	29
9.	Other Tax Issues	29
B.	Issues to Be Resolved in the Near Future	29
1.	Sanctions	29
2.	Petitions from Facilitator Decisions.....	29
3.	Debt Relief.....	30
4.	Fate of Petitions Filed Late.....	30
5.	Tax Issues.....	30
6.	Notice of Petition Deadline.....	30
7.	Routing Schedule.....	31
VI.	GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE.....	31
VII.	RECOMMENDATIONS.....	32

This is the second in a series of Monitor reports concerning the implementation of the Consent Decree in this case. This report covers the period of September 1, 2000, through December 31, 2001.

I. EXECUTIVE SUMMARY

Significant progress was made in implementing the Consent Decree during this sixteen-month period. Highlights of the progress during the reporting period include:

- a. Approximately 2,835 additional Track A cases were adjudicated, bringing the total to 21,324 as of the end of 2001.
- b. The Government paid out an additional \$257,100,000 to class members in credit matters in Track A, bringing the total to \$606,100,000 as of the end of 2001.
- c. The Monitor's Office began reexamining Adjudicator decisions.
- d. A Court Order defined the parameters of debt relief for prevailing claimants.
- e. A Court Order defined the relief to be given to class members who prevail on non-credit claims.

During this reporting period, the parties and the neutrals (the Facilitator, the Adjudicator, and the Arbitrator) worked in good faith to implement this Consent Decree. Notwithstanding this good faith and substantial progress, important implementation challenges and problems remain.

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 sixteen-month period describe the Monitor's activities and observations, significant Court Orders, the status of several important issues, and the good faith implementation of the Consent Decree. Finally, the report includes recommendations from the Monitor.

II. 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 Monitor filed interim reports with the Court regarding progress in this case on twelve occasions during this sixteen-month period.¹ The chief goals of this comprehensive report are to discuss key developments in the case and to assess the good faith implementation of the Consent Decree during this sixteen-month period.

B. Statistics About Processing of Claims

The Facilitator² provided to the Monitor virtually all of the statistics listed in this report. The Arbitrator,³ however, provided some of the statistics regarding Track B cases. The Monitor does not independently house or compile this data and must rely on these sources for the information herein.⁴

1. Track A

Statistics regarding the number of claimants, adjudication rates and results, and payment rates as of August 28, 2000 (the statistical cut-off date for Track A claims for the last reporting

¹ The Monitor filed these reports on October 25, 2000; December 26, 2000; January 31, 2001; February 28, 2001; March 7, 2001; March 30, 2001; May 31, 2001; June 29, 2001; July 26, 2001; August 28, 2001; October 1, 2001; and November 7, 2001.

² The Facilitator is the Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(h)(i).

³ The Arbitrator is Michael Lewis of ADR Associates. *See* Consent Decree, paragraph 1(b).

⁴ The exception is that the Monitor compiles data regarding the Monitor's petition process.

period), and as of January 2, 2002 (the statistical cut-off date for Track A claims for this reporting period), are summarized in the table below.⁵

Table 1: Statistical Report Regarding Track A Claims				
Statistical Reports as of:	August 28, 2000		January 2, 2002	
ITEM	Number	Percent	Number	Percent
A. Eligible class members	21,069	100	21,541	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99
C. Cases in Track B (Arbitrations)	191	1	177	1
Adjudication Completion Figures				
D. Adjudications complete	18,347	88	21,324	~100
E. Adjudications not yet complete	2,531	12	40	~0
Adjudication Approval/Denial Rates				
F. Claims approved by Adjudicator	11,083	60	12,848	60
G. Claims denied by Adjudicator	7,264	40	8,476	40
Adjudication Approvals Paid/Not Paid				
H. Approved adjudications paid as of specified date	7,143	64	12,285	96
I. Approved adjudications not yet paid as of specified date	3,940	36	563	4
J. Dollars Paid to Class Members⁶	\$357,150,000		\$606,100,000	

Certain statistics regarding Track A will be made available by the Facilitator by state or by partial zip code.⁷

⁵ 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).

⁶ This figure includes cash relief awards in Track A credit cases only. It does not include debt relief, tax relief, awards for non-credit claims, or awards or settlements in Track B cases. The 12,848 successful claimants should each receive a \$12,500 credit, for a total of approximately \$160 million in tax relief. (This does not include additional tax relief equal to 25 percent of the principal amount of their debt relief.)

⁷ The parameters of such releases will be designed by the parties to balance the public's interest in obtaining information about the case and the claimants' interest in privacy.

2. Track B

The following table provides statistics regarding Track B.⁸ Please note that the information about Track B awards refers to Arbitrator decisions that may not be final. Some of these decisions are the subject of Monitor petitions that have not yet been decided by the Monitor.

Table 2: Statistical Report Regarding Track B		
Statistical Report as of:	September 18, 2000	January 10, 2002
A. Eligible Track B Claimants	177	235
B. Track B Cases Settled	11	57
C. Track B Cases Converted to Track A	27	50
D. Track B Cases Withdrawn	5	6
Arbitrations Complete/Not Complete		
E. Contested Track B Cases in Claims Process (Not Settled, Converted, or Withdrawn— A minus [B + C + D])	134	122
F. Arbitration Decisions Issued	15	51
G. Contested Cases in Which Arbitration Was Not Complete and/or Decision Was Not Yet Issued	119	71
Arbitration Results		
H. Claimant Prevailed Before Arbitrator	2	8
I. Average Awards to Prevailing Claimants	\$580,500	\$531,373
J. Government Prevailed Before Arbitrator	13	43
Posture of Decision:		
J(1) Cases Dismissed Before Hearing	10	28
J(2) Full Hearing, Finding of No Liability	3	15
Monitor Activity		
K. Claimant Petitions for Monitor Review of Arbitrator Decision	5	24
L. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening)	2	11
M. Government Petitions for Monitor Review of Arbitrator Decision	2	12
N. Track B Monitor Decisions Issued	0	0

⁸ These statistics are based on the Arbitrator's records, not the Facilitator's. There are differences between their record-keeping protocols. The statistics are approximate.

The amount of each Track B arbitration award is detailed in Appendix 1. Claimant names and geographic locations are not disclosed.

III. MONITOR'S ACTIVITY AND OBSERVATIONS DURING THE SIXTEEN-MONTH REPORTING PERIOD

The Consent Decree gives the Monitor four general areas of responsibility:

a. Reporting. Paragraphs 12(a) and 12(b)(i) give the Monitor reporting responsibilities.

b. Resolving Problems. Paragraph 12(b)(ii) gives the Monitor responsibility for attempting to resolve class members' problems relating to the Consent Decree.

c. Directing Reexamination of Claims. Paragraph 12(b)(iii) gives the Monitor responsibility for directing the Adjudicator, Arbitrator, and Facilitator to reexamine claims where the Monitor finds that a clear and manifest occurred in the screening, adjudication, or arbitration of the claim that has resulted or is likely to result in a fundamental miscarriage of justice.

d. Toll-Free Line. Paragraph 12(b)(iv) gives the Monitor responsibility for staffing a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints and gives the Monitor responsibility for expediting the resolution of the complaints.

An update regarding the Monitor's activities and observations in each of these areas of responsibility follows.

A. 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. The Monitor did not meet with the new Secretary, Ann M. Veneman, during this reporting period. The Monitor fulfills this Consent Decree requirement in part through contact with the United States Department of Agriculture's (USDA's) General Counsel. The Monitor had many meetings and frequent phone conversations during this reporting period

with USDA’s former General Counsel, Charles Rawls, and with USDA’s Acting General Counsel, J. Michael Kelly.

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. The Monitor submits this report pursuant to that provision. The Monitor has also filed with the Court twelve interim reports regarding specific issues during this period.⁹

B. “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

To fulfill this responsibility, the Monitor works with class members: (1) by phone; (2) through correspondence; (3) in person at regional meetings of claimants; and (4) by sending out “Monitor Updates” to disseminate important information to the whole class or to segments of the class affected by particular issues. Information about the Office of the Monitor’s attendance at regional meetings during this reporting period is listed in Appendix 2. The “Monitor Updates” that were issued during this reporting period are attached as Appendix 3.

Many of the class members who contacted the Monitor’s office during this reporting period expressed frustration about problems they were experiencing. The most significant recurring issues are explained below.

1. Late Claims

The Consent Decree required that Claim Sheets be filed by October 12, 1999. Paragraph 5(g) of the Consent Decree provides that claimants can petition the Court for permission to file late when their failure to file on time was due to extraordinary circumstances beyond their control. The Court delegated to the Arbitrator, Michael Lewis, its authority to make decisions about paragraph 5(g) petitions.¹⁰ A Stipulation and Order dated July 14, 2000, set September 15, 2000, as the deadline for the filing of paragraph 5(g) petitions, and stated that no extension of that deadline is to be granted for any reason.¹¹ Notification of this deadline was mailed to certain segments of the class and to certain putative class members.¹²

During this reporting period, claimants expressed much anger and disappointment about: (1) the imposition of a deadline on the opportunity to submit paragraph 5(g) petitions; (2) a perceived lack of advance notice of the paragraph 5(g) deadline; and (3) the Arbitrator's rate of rejection of paragraph 5(g) petitions.

2. Debt Relief

The Consent Decree provides for the following debt relief in Track A:

USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that

⁹ The Monitor filed these reports on October 25, 2000; December 26, 2000; January 31, 2001; February 28, 2001; March 7, 2001; March 30, 2001; May 31, 2001; June 29, 2001; July 26, 2001; August 28, 2001; October 1, 2001; and November 7, 2001. The parties were served with copies of these reports.

¹⁰ Order of December 20, 1999.

¹¹ Stipulation and Order of July 14, 2000.

¹² Class members who had requested a Claim Sheet and Election Form and who did not submit a timely Claim Sheet to the Facilitator were mailed a copy of the July 14, 2000, Stipulation and Order on August 11, 2000. This mailing was sent to 47,648 individuals.

The July 14, 2000 Stipulation and Order also set a deadline for the filing of petitions for Monitor review. On August 17, 2000, all individuals who had submitted timely Claim Sheets and Election Forms were mailed a copy of Monitor Update Number 3, which explains the deadlines for petitions for Monitor review. This mailing was sent to 20,652 individuals.

Additional copies of both mailings were sent to other individuals by request on later dates.

was/were the subject of the ECOA claim(s) resolved in the class member's favor by the adjudicator.¹³

The language for Track B is similar.¹⁴

A Stipulation and Order filed on February 7, 2001, further defined debt relief.¹⁵ In essence, the Order provides that USDA is to grant debt relief regarding: (a) all loans found to have been affected by discrimination; and (b) all loans in the affected loan program(s) from the date of the discriminatory event through the end of the class period. Certain exceptions apply and are explained in detail in the Order.

a. Implementation Difficulties

During this reporting period, USDA encountered difficulties in implementing debt relief. Administrative hurdles slowed the creation of a debt relief implementation system. Many claimants called the Monitor's office for assistance with debt relief matters. The Monitor's office worked with USDA to attempt to solve these problems, but claimants often waited several months or longer to get their concerns resolved.¹⁶ Some remain unresolved. The Monitor did not, however, refer this matter to Class Counsel under paragraph 12(c) because USDA cooperated in setting up systems to achieve implementation. The Monitor apprised Class Counsel of the situation throughout the reporting period.¹⁷

¹³ Consent Decree, paragraph 9(a)(iii)(A).

¹⁴ Consent Decree, paragraph 10(g) (ii).

¹⁵ The Order is attached as Appendix 4. The Order is explained in detail in Monitor Update Number 10, which is attached at Appendix 3. USDA issued an internal policy notice to implement the Order, which is attached as Appendix 5.

¹⁶ During this reporting period, many claimants called the Monitor's office for assistance with problems related to debt relief. The Monitor's office has brought approximately 17 of those claimants' cases to the attention of USDA. As of the filing of this report, 12 of those 17 have had their debt relief concerns resolved.

¹⁷ As of the date of this report, it appears that debt relief has been implemented for the majority of the claimants who are entitled to it. More detailed reporting about debt relief should be available in the next Monitor's Report on Good Faith Implementation of the Consent Decree.

b. Interpretation of Terms

The Consent Decree discusses debt relief in terms of “outstanding debt.” USDA chose to interpret the phrase “outstanding debt” in a manner that generally resolves implementation questions in favor of the class. In addition to granting debt relief for eligible debts that are still due and owing, USDA is also granting debt relief for eligible debts that are no longer technically “on the books.” This is important because under the Farm Service Agency (FSA) statute and USDA regulations, many adverse consequences can flow from a loan even if it is not “due and owing.” For example, if the borrower had received a “write-down” in the past that caused a loss to the government, the claimant may be barred from future FSA loans.¹⁸ Similarly, if the loan had been the subject of a “net recovery value buyout,” the claimant may still have liability under a “recapture agreement,”¹⁹ and if a real estate loan had been written down under certain regulatory authority, the claimant may still have liability under a “shared appreciation agreement.”²⁰

3. Tax Problems

The implementation phase of this lawsuit has been plagued with many federal income tax problems. They include:

- a. General lack of education for the class about the tax consequences of the settlement;
- b. Difficulties in issuing IRS Forms 1099 in a timely manner for cash relief, for debt relief, and for the previous year’s tax relief;
- c. Difficulties created by the treatment of the tax set-aside as income in the year subsequent to the cash payment;

¹⁸ See, for example, 7 C.F.R. § 1941.12(a)(10)(2002)(denying eligibility for an operating loan to those who caused the USDA a loss by receiving debt forgiveness on a loan).

¹⁹ See 7 C.F.R. § 1951.913(2002) for a discussion of how these agreements are serviced at present.

²⁰ 7 C.F.R. § 1951.909(d)(4)(vi), (j)(2)(2002).

d. The assessment of penalties against class members who failed to accurately report to the IRS regarding relief, or failed to pay taxes owed, or on behalf of whom the government failed to make timely transfers to tax accounts, and then the abatement of penalties for class members who cured their defaults, and for class members regarding whom the government cured defaults; and,

e. Difficulties in providing tax relief to claimants who prevailed on behalf of decedents.

During this reporting period, Class Counsel sent out to a portion of the class an information sheet about tax matters, prepared by the Internal Revenue Service (IRS).²¹ A copy of the information sheet is attached as Appendix 6.

The parties and neutrals struggled to improve implementation of solutions to tax-related problems. The Facilitator made great progress towards solving many types of problems that made it difficult for the IRS to establish tax accounts. The Facilitator receives referrals regarding problem cases both from the IRS and from Class Counsel. The procedure for solving these problem cases is awkward because of the privacy restrictions on tax-related information.²² The Facilitator is in daily contact with the IRS to attempt to solve tax problems related to individual claimants. The Facilitator was able to work with the IRS to resolve hundreds of claimant problems during this reporting period. The Facilitator worked to streamline the process of setting up tax accounts for the calendar year 2001 and 2002 payments to expedite the processing of tax relief in the future. Additionally, the Facilitator and the Monitor worked with the IRS to create a new procedure for handling decedents' estate issues.²³

²¹ On March 9, 2001, the information sheet was sent to the 9,059 claimants who had received cash awards in the year 2000.

²² When a claimant contacts the IRS with a *Pigford*-related problem, the IRS frequently tells the claimant to call the Facilitator to obtain certain clarifying information. The Facilitator then sends the needed information to the IRS.

²³ See section V.A.8. on page 29 for a detailed description of decedents' estate issues.

4. Injunctive Relief

As was the case in the previous reporting period, the main focus of class member attention has been on adjudications, late applications, and other issues that determine whether a claimant will prevail and receive the remedy provided by the Consent Decree. Even when class members are interested in getting loans from USDA, the class members are often not aware of the injunctive relief provided by the Consent Decree and are certainly not aware of its specific provisions. For example, many class members are not aware of USDA policies and regulations that require USDA to assist applicants in a number of ways, or of USDA loan eligibility regulations that are favorable to borrowers in many ways that would benefit class members. Lack of class member knowledge of injunctive relief limits the effectiveness of the relief.

Many class members and grassroots African-American farm organizations are aware of and are potentially interested in injunctive relief. For some class members, injunctive relief offers the prospect of long-term change and is at least as important as any other aspect of the case. Among those who are aware of injunctive relief provisions, several problems remain. The previous Monitor's Report on Good Faith Implementation²⁴ discussed class member and farm group leadership cynicism regarding the prospects for injunctive relief. These doubts about injunctive relief continue. Many class members believe that injunctive relief will not function as is described in the Consent Decree. Three particular points are often raised. 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 doubts regarding whether the Monitor's office will be able to make

²⁴ This report was filed on December 26, 2000.

any progress regarding this perceived problem. Third, class members frequently suggest that they will be the victims of retribution if they exercise their rights to 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. These problems are compounded when class members learn that an applicant using injunctive relief must continue to meet the USDA loan eligibility requirements. Because several of these requirements are somewhat subjective, these requirements suggest to some class members that USDA will be permitted to act as they perceive USDA has acted in the past.

During this reporting period, the Monitor’s Office met with several farm organizations regarding injunctive relief, and spoke at a number of claimant meetings at which injunctive relief was a primary topic. (See Appendix 2.) The Monitor’s Office also revised its class-wide update on injunctive relief on February 19, 2001. (Attached as Appendix 7.)

The Monitor’s office continues to receive many requests to assist class members in making use of injunctive relief and anticipates the continued need to attempt to resolve problems that class members have with this aspect of the Consent Decree.

5. 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. In practice, once the 120-day deadline for filing petitions for Monitor review was established by the Court,²⁵ checks generally were not issued until some time after that deadline had passed. The Facilitator is able to report data about the number of prevailing claimants who have waited more

²⁵ This deadline was established by the Stipulation and Order issued on July 14, 2000.

than sixty days after the 120-day deadline has passed.²⁶ These claimants' situations fell into one of two categories: (1) cases in which payments were withheld because the government filed a petition for Monitor review; and (2) cases in which payment delays were caused by administrative difficulties regarding the payment mechanism used in this case.

a. Payment Suspension

The implementation process allows for approved claimants' payments to be suspended in cases in which the Government petitions for Monitor review. Claimants in this situation were able to find out about their "hold" status by contacting their counsel or by contacting the Monitor's office.

b. Administrative Difficulties

In some situations, payments were not issued within the time frame explained above due to administrative difficulties. To understand this problem, it is helpful to understand the payment mechanism that is 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.²⁷

The Judgment Fund is a freestanding 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

²⁶ As of September 1, 2000, 114 Track A claimants had been approved for a \$50,000 cash payment, were not in a "hold" status (and had not recently been released from a hold status), and had been waiting for more than 180 days after their adjudication decision without receiving a check. As of December 31, 2001, 58 Track A claimants were in that position. As of the filing of this report this situation is continuing to improve. As of June 30, 2002, for example, the number of Track A claimants in that posture had been reduced to 43.

²⁷ For a description of the Judgment Fund, see 31 U.S.C. § 1304 (2002).

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. During this reporting period, approximately 1,765 Track A decisions were issued that necessitated payment by the Judgment Fund.²⁸ This number of payments was in addition to approximately 5,000 payments that the Judgment Fund issues each year that are unrelated to the *Pigford* litigation.

6. Notice of Deadline for Petitioning for Monitor Review

The Consent Decree did not set a deadline for petitions for Monitor review. The July 14, 2000, Stipulation and Order set the deadline as either 120 days from the date of the Order, or 120 days from the date of a wholly or partially adverse Track A or Track B decision, whichever was later.²⁹

There is a question as to whether all class members who were affected by this deadline received timely and adequate notice of the deadline.

Notice of the 120-day deadline was provided at various times to segments of the class through at least four different means. First, the July 14, 2000, Stipulation and Order directed the Facilitator to send a copy of the Order to every person who requested a Claim Sheet and Election Form but did not submit a completed Claim Form to the Facilitator within the period prescribed by the Consent Decree.³⁰ Second, the July 14, 2000, Stipulation and Order required that the Order be posted in a conspicuous public place in every USDA Farm Service Agency county

²⁸ See Table 1, p. 6.

²⁹ The exact terms of the deadline are set forth in the Order. One hundred and twenty days from the date of the Order was November 13, 2000.

³⁰ See footnote 12 for details regarding the universe of individuals who were mailed copies of the Order and the dates of the mailings.

office. Third, on August 14, 2000, the Monitor's Office issued a Monitor Update explaining the July 14, 2000, Order as it applied to petition deadlines.³¹ Fourth, in meetings with class members and in phone calls, the Monitor's Office, the Facilitator, and likely Class Counsel orally explained the 120-day deadline to hundreds of class members.

Notice of the 120-day deadline was not included, however, in the text of the class members' adjudication decisions. The decision explained that Monitor review by petition was possible, but it did not state that there was a deadline for such a petition. As a result, during this reporting period none of the Track A adjudication decision letters informed claimants that there is a deadline for petitioning for Monitor review.³²

The Monitor is investigating this situation and will submit a separate report to the Court on various aspects of the problem of notice of the 120-day deadline.

7. Other Problems

Claimants continue to raise many other problems and concerns, including the following:

- a. 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;
- b. Concern about the litigious nature of Track B arbitrations;
- c. 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;
- d. Concern about Federal Bureau of Investigation (FBI) investigations in claimant communities;

³¹ Monitor Update No. 3: Deadlines for Petitions for Monitor Review (August 14, 2000). See footnote 12 for details regarding the distribution of this Monitor Update.

³² This situation was corrected. All Adjudicator decisions issued after November 18, 2001, included notice to the parties of the 120-day deadline.

- e. Concern that it is taking too much time for the Government to pay approved claims;
- f. 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;
- g. Concern about difficulties in reaching Class Counsel to communicate about individual concerns;
- h. Concern that decisions issued by the Adjudicator after July 14, 2000, did not contain any information about a deadline for petitioning for Monitor review;
- i. Concern that many people who otherwise met the class definition failed to sign up for the lawsuit because the advertising campaign described in paragraph 4 of the Consent Decree did not reach them;
- j. Concern that the fixed \$3,000 amount for non-credit relief that was imposed by the February 7, 2001, Stipulation and Order is too low;
- k. Concern that while USDA refrains from taking certain kinds of adverse action against claimants during the claims process and the Monitor review process, interest continues to accrue on the claimants' debt, and many claimants are not aware of this accrual or of what options they might have regarding the resolution of the debt;
- l. Concern about the effect these cash payments have on the claimants' eligibility for public assistance benefits, such as social security disability payments, food stamps, etc.;
- m. Concern about the impact on class members of administrative offset of government payments;
- n. Concern that some petitions for Monitor review likely will not be decided until after the deadline has passed for injunctive relief,³³ claimants who ultimately prevail after the expiration of injunctive relief will not be able to benefit from that provision of the Consent Decree; and,
- o. Concern about many of the issues described in Section V below ("status of important issues").

³³ Injunctive relief is authorized for a period of five years from the date of the Consent Decree (April 14, 1999). *See* paragraph 11 of the Consent Decree. The Monitor has five years to complete her work from the date of her appointment (operations commenced on March 1, 2000). *See* paragraph 12(a) of the Consent Decree. There is a gap between the termination date for injunctive relief (April 14, 2004) and the termination date for the Monitor's appointment (March 1, 2005). It is likely that some petitions for Monitor review will be decided during that gap.

In general, the Monitor has addressed these particular concerns by: explaining how the Consent Decree works; referring claimants to their Class Counsel; making sure that the parties, the Secretary, and the Court are aware of the concerns; explaining how the petition for Monitor review process can be used to seek redress in individual cases in which errors occurred; and working with farmers to solve other problems where appropriate.

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

During this reporting period, the Monitor's office issued 501 decisions in response to Track A petitions for Monitor review. The Adjudicator issued no readjudication decisions during this period. The Monitor did not issue any decisions in response to Track B petitions during this reporting 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 or legal assistant from the Office of the Monitor. The Monitor's toll-free line received 41,723 incoming calls between September 1, 2000, and December 31, 2001.³⁴

Sometimes the caller required a return call with follow-up information. The operators staffing the Monitor's toll-free line made 6,055 outgoing calls during this period, bringing the total number of calls staffed by the toll-free line operators to 47,778 during this reporting period. This represents an average of 2,986 calls per month.

³⁴ This number represents the number of calls, not the number of callers.

IV. COURT ORDERS

During this reporting period, the Court issued several Orders that further defined the rules for implementation of the Consent Decree. All substantive Orders filed during this reporting period are listed below. (Procedural Orders that set briefing schedules, hearing dates, and the like are not included in the list.)

Date Order Filed	Title of Order	Major Issues Addressed Include:
September 1, 2000	Order	Strikes from record certain objections to July 14, 2000 Order, and affirms that Order stands unamended, in full force and effect.
September 12, 2000	Stipulation and Order	Petitions for Monitor review shall be filed with Facilitator; Facilitator shall route not more than 125 petitions per week; non-petitioning parties shall have 60 days to respond.
November 7, 2000	Order	Makes certain provisions of Second Amended Privacy Act Protective Order applicable to Monitor decisions.
November 8, 2000	Order	Establishes and defines "Register" process; sets deadlines for counsels' filing of petitions for claimants on Register; requires Monitor to file monthly reports about Register progress.
November 17, 2000	Order	Denies movants' motion to reconsider August 31 Order (filed September 1 and noted above).
November 20, 2000	Order	Orders Ms. Shirley Reed to file report regarding allegation concerning taking of fees for assisting claimant in claims process; requires persons who are aware of any attorney who requires compensation for Claim Sheet work to report same to Monitor.
December 15, 2000	Order	Orders Ms. Shirley Reed to file supplemental report.
December 22, 2000	Order Amending, by Reference, the Consent Decree to Include J.L. Chestnut as Class Counsel	Amends Consent Decree to include J.L. Chestnut as Class Counsel.
December 22, 2000	Order Granting Class Counsel's Motion to Allow Class Counsel to Make One Register of Petitions	Combines Register of Conlon, Frantz firm with Register of Chesnut, Sanders firm.

Date Order Filed	Title of Order	Major Issues Addressed Include:
January 4, 2001	Memorandum Opinion and Order	Denies motion of individual plaintiffs to reconsider the fairness of the Consent Decree.
January 16, 2001	Order	Requires filing of a joint report to the court by class counsel and the government regarding implementation of non-credit benefits.
February 7, 2001	Stipulation and Order	Defines non-credit relief; defines debt relief for prevailing class members in credit cases.
March 8, 2001	Opinion and Order	Grants in part and denies in part Class Counsel's and Of Counsels' motion regarding entitlement to attorneys' fees; defines legal principles governing awards of fees.
March 8, 2001	Order	Denies without prejudice motion for interim fees; denies request for hearing regarding fees.
March 29, 2001	Order	Denies motion for suspension of deadline for filing of petitions for Monitor review; denies motion for expeditious hearing on fees.
April 6, 2001	Order	Orders status conference regarding Class Counsel's handling of petition process.
April 27, 2001	Memorandum Opinion and Order	Suspends deadlines set forth in the Court's Order of November 8, 2000; sets forth potential schedule of fines.
May 15, 2001	Memorandum Opinion and Order	Permanently suspends deadlines set forth in Order of November 8, 2000; extends Register petition deadline to September 15, 2001; requires Class Counsel to file a weekly report about petition progress; defines schedule of fines.
June 28, 2001	Memorandum Opinion and Order	Requires Facilitator to contact all claimants subject to a USDA Petition for Monitor Review; requires Class Counsel to file a Memorandum with Facilitator for every decision not to respond to a government Petition for Monitor Review; requires Class Counsel to submit to the Facilitator a list of Petitions withdrawn for non-merit based reasons.
August 29, 2001	Order	Exempts the non-credit claims of Abraham Carpenter, Jr., (filed for benefits denied to "Carpenters Produce") from the \$3,000 damages cap established by the February 7, 2001, Stipulation and Order.
September 17, 2001	Memorandum Opinion and Order	Denies motion for attorneys fees and costs of Law Office of David A. Branch.
September 27, 2001	Order	Relieves defendant from responsibility for responding to certain motions to vacate.

Date Order Filed	Title of Order	Major Issues Addressed Include:
November 26, 2001	Memorandum Opinion and Order	Denies motions by 29 individuals for Court review of Michael Lewis' denials of paragraph 5(g) petitions.
December 14, 2001	Order	Denies plaintiff's motion to show cause regarding delayed payment of seven successful Track A claims; instructs plaintiff to comply with notice requirements of the Consent Decree if plaintiff wishes to raise payment delays with the Court.

V. STATUS OF IMPORTANT ISSUES

A. Issues Resolved in This Sixteen-Month Period

1. Petition Response Time

Once a party files a petition for Monitor review, the non-petitioning party has the opportunity to file a petition response. 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 time frame 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.

2. Deadline to Request Permission to File Late Claims

Background regarding the late claim issue is explained in section III(B)(1), above.

The July 14, 2000, Stipulation and Order ("Order"), 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.

As of December 31, 2001, the Arbitrator had received approximately 68,750 requests to submit a late claim package. Of the 68,750 requests, approximately 61,000 were filed by the September 15, 2000, deadline and were eligible for consideration under paragraph 5(g). The Arbitrator had denied approximately 34,000 such requests by December 31, 2001.

3. Reconsideration Policy for Paragraph 5(g) Denials

Background regarding the late claim issue is explained in section III(B)(1), above.

Many claimants who had received denials from the Arbitrator in the paragraph 5(g) process wrote to the Arbitrator asking for “reconsideration.” In November 2001, the Arbitrator instituted a formal reconsideration policy. Under its terms, an individual who was denied permission to file a late claim under paragraph 5(g) has sixty days from the date of the denial letter to file a request for reconsideration. The Arbitrator’s standard letter informing petitioners of their right to reconsideration is attached as Appendix 8.³⁵

If an individual demonstrates to the Arbitrator in the reconsideration process that he or she meets the paragraph 5(g) Consent Decree standard, he or she will receive instructions for filing a Claim Sheet and Election Form. If on reconsideration the individual is found not to meet the Consent Decree standard, he or she will have no opportunity to participate in the settlement.

In a November 26, 2001, Memorandum Opinion and Order, the Court denied motions by twenty-nine individuals for Court review of Michael Lewis’s decisions to deny their paragraph 5(g) requests for permission to file late claims.

³⁵ The “Arbitrator’s Report on the Late Claim Petition Process,” (Arbitrator’s Report) filed on November 26, 2001, explains the reconsideration process in some detail. The Arbitrator’s Report is available by request from the Facilitator.

4. Injunctive Relief Policies Established by USDA

USDA's Farm Service Agency (FSA) has issued 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.³⁶ 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.

In 2001, USDA began an extra effort to assist class members with injunctive relief. FSA authorized state offices to hire contractors to assist loan applicants in ways that furthered the aims of injunctive relief. Contractors were authorized to help applicants complete loan applications, prepare balance sheets and farm business plans, and develop feasible loan plans, along with a variety of other tasks designed to provide direct assistance to applicants. This contracting authority targeted FSA offices with the potential to receive large numbers of priority consideration requests under *Pigford* injunctive relief. Seven states were selected: Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. These efforts were not required by the Consent Decree; they represent a conscientious effort by FSA's national office to implement the injunctive relief portion of the Consent Decree in good faith.

5. Deadlines for Filing Petitions

The July 14, 2000, Stipulation and Order set the deadline for petitions for Monitor review: generally, the deadline was either 120 days from the date of the Order (November 13, 2000) or 120 days from the date of a wholly or partially adverse Track A or Track B decision, whichever was later. The Order provided that "no extensions of these deadlines will be granted

³⁶ The notice in effect at the end of this reporting period was FSA Notice FLP-225, Priority Consideration for Prevailing Claimants (October 18, 2001)(set to expire on June 1, 2004). Policy notices

for any reason.” The November 13, 2000, deadline applied to about 17,000 Track A claimants, or approximately 80 percent of the class.

At Class Counsel’s request, on November 8, 2000, the Court held a hearing regarding the impending deadline. Class Counsel explained at the hearing that they could not complete all of their petitions in a careful and thorough manner by the November 13, 2000, deadline. The Court issued an Order immediately after the hearing. The November 8, 2000, Order established the “Register” process. This process allowed Class Counsel, the Government, and any other counsel to file a Register listing the names and claim numbers of all claimants regarding whom they intended to file a petition for Monitor review.³⁷ The Register process was available only for petitions that were subject to the November 13, 2000, deadline. The deadline for counsel to file their Registers was November 13, 2000.³⁸

If a Register listed 400 or fewer claimants, all supporting materials or withdrawals regarding those claimants had to be filed by Counsel by December 15, 2000. If a Register listed more than 400 claimants, counsel had to file supporting materials or withdrawals regarding at least 400 listed claimants per month. The ultimate deadline for filing supporting materials or withdrawals was May 15, 2001. The November 8, 2000, Order directed the Monitor to file reports with the Court each month regarding the lawyers’ progress regarding these filings.

On March 15, 2001, Class Counsel filed a motion requesting entry of an order suspending the deadline to file petitions for Monitor review.³⁹ That motion was denied.⁴⁰ On April 6, 2001,

are available upon request from the Monitor’s Office (1-877-924-7483) and are available from USDA’s web site, <http://www.fsa.usda.gov/dam/forms/noticedate.asp>.

³⁷ The Government chose not to file a Register of Petitions.

³⁸ Other conditions applied to the Register process. See Order of November 8, 2000, for details.

³⁹ Class Counsel’s Motion for Entry of an Order Suspending the Deadline to File Petitions of Appeal to the Monitor and to Respond to the Government’s Petitions to Appeal, and for an Expedious Hearing on Interim Fees (filed March 15, 2001).

the Court issued an Order that set a status conference for April 19, 2001. On April 27, 2001, the Court issued an Order regarding the matters discussed at the April 19 status conference. The April 27, 2001, Memorandum Opinion and Order explained that it appeared that Class Counsel might be unable to meet the final May 15, 2001, deadline established by the November 8, 2000, Order. The Court stressed Class Counsel's obligation to file fully researched, fully briefed, fully documented materials in support of all remaining Petitions for Monitor review, or to file withdrawals of petitions, where appropriate. The Court also encouraged Class Counsel to obtain assistance from pro bono counsel. Finally, in the April 27, 2001, Order the Court set forth a schedule of fines that would be imposed if Class Counsel were to ultimately need an extension of the May 15, 2001, deadline.

On May 15, 2001, the Court issued a Memorandum Opinion and Order further addressing the petition deadline issue. This Order permanently suspended the deadlines that had been set by the November 8, 2000, Order, and set September 15, 2001, as the new final deadline for filing supporting materials and withdrawals. The Order further set weekly reporting deadlines for Class Counsel, and elaborated on the schedule of fines set forth in the April 27, 2001, Order.

On June 28, 2001, the Court issued the third and final Memorandum Opinion and Order in this series regarding petitions for Monitor review. This Order addressed Class Counsel's increased rate of withdrawing petitions and addressed Class Counsel's decision not to respond to many Government petitions. The Order required the Facilitator to notify claimants directly whenever the Government petitions for Monitor review;⁴¹ required Class Counsel to file a memorandum with the Facilitator each time Class Counsel decided not to file a response to a

⁴⁰ See Order of March 29, 2001.

⁴¹ Prior to this Order, Class Counsel was responsible for providing notice to claimants in this situation.

Government petition for Monitor review; and, finally, required Class Counsel to submit to the Facilitator a list of all claimants whose petitions were withdrawn for primarily non-merit based reasons prior to the date of the Order.

The Monitor reported monthly to the Court on Class Counsel's progress regarding the Registers of Petitions. In a final report filed on November 7, 2001, the Monitor found that Class Counsel had provided supporting materials or withdrawals on behalf of all individuals listed on the Register.

Several problems arose during the implementation of the Register process. As a result of these problems, the processing of many claimants' petitions were delayed, suspended or terminated. In December 2001, Class Counsel filed a motion regarding some of these claimants.⁴²

6. Debt Relief for Prevailing Class Members

Background about debt relief is provided in section III(B)(2) above. The February 7, 2001, Stipulation and Order resolved important debt relief issues in this case.

7. Non-Credit Claims

The Consent Decree provides that a class member who prevails in a non-credit claim is to receive "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[.]"⁴³ The February 7, 2001, Stipulation and

⁴² The Motion was entitled, "Plaintiffs' Motion for Relief for 97 Class Members Whose Petitions for Monitor Review Were Filed On or Before September 15, 2001, But Have Been Designated by the Facilitator as Late" ("97 Late"). On February 27, 2002, the Monitor filed a report regarding the subject matter of the "97 Late" motion. The "97 Late" motion was later withdrawn. Class Counsel filed a different motion regarding late petitions in July 2002. That motion is entitled, "Plaintiffs' Motion for Relief for Four Groups of Claimants Who Filed Petitions for Monitor Review."

⁴³ Consent Decree, paragraph 9(b)(iii)(A). The Class Member would also be entitled to some types of injunctive relief. See Consent Decree, paragraph 9(b)(iii)(B).

Order provided that a class member who prevails on a non-credit claim would receive a cash payment of \$3,000.

8. Tax Issues in Cases Involving Decedents' Estates

Claimants in this case were allowed to file claims on behalf of deceased individuals who met the criteria for class membership. When these claimants prevailed, the checks were ordinarily issued to the estate of the deceased. In some cases, though, the checks identified the payee as the individual who filed the claim. In those cases, a tax problem arose because the tax liability attached to the tax account of the claimant (the living individual) while the tax benefit (the 25 percent amount) attached to the tax account of the estate. During this reporting period the Facilitator and the Monitor worked with the Internal Revenue Service (IRS) to establish a procedure for linking the tax benefit to the person who had the tax liability. Class members can call the Facilitator at 1-800-646-2873 for information about this procedure.

9. Other Tax Issues

The progress made regarding other tax problems is described in section III(B)(3).

B. Issues to Be Resolved in the Near Future

1. Sanctions

The Orders issued in April, May, and June 2001 discussed the issue of sanctions against Class Counsel. The sanctions issue was briefed by the parties and is pending with the Court.

2. Petitions from Facilitator Decisions

The July 14, 2000, Order set deadlines for petitioning for Monitor review of wholly or partially adverse Track A or Track B decisions. The Monitor Update on Deadlines for Petitions for Monitor Review informed class members that the July 14, 2000, Order applied to decisions

by the Adjudicator and Arbitrator, but not the Facilitator.⁴⁴ It is important to ensure that any petitions from Facilitator decisions are filed sufficiently in advance of the expiration of the Monitor's appointment, and that a process is implemented for ensuring that class members receive notice of the process for petitioning for review of Facilitator decisions. This is the subject of a recommendation in Section VII, below.

3. Debt Relief

USDA has worked conscientiously over the past year to establish a system to implement debt relief in accordance with the Court's February 7, 2001, Order. In the near future we hope to see the remaining difficulties in the system worked out and to see full implementation of the debt relief provisions of the Consent Decree and of the February 7, 2001, Order.

4. Fate of Petitions Filed Late

In July 2002, Class Counsel filed a motion entitled "Plaintiffs' Motion for Relief for Four Groups of Claimants Who Filed Petitions for Monitor Review." The parties are in the midst of briefing this motion.

5. Tax Issues

A number of tax issues are ongoing. Because of the particular types of tax difficulties presented in this case and the large number of individual transactions involved, there likely will be a need for work to continue solving tax issues throughout the implementation of the settlement.

6. Notice of Petition Deadline

The Monitor is preparing a report to the Court on the issue of notice to the class of the 120-day deadline to petition the Monitor. The report will be completed in the near future.

⁴⁴ Monitor Update No. 3, Deadlines for Petitions for Monitor Review (August 14, 2000).

7. Routing Schedule

The September 12, 2000, Order established some basic parameters for the routing of petitions. It states:

The Facilitator shall deliver to the Monitor and the non-petitioning party copies of all petitions for Monitor review under . . . [par.] 12(b)(iii) of the Consent Decree, at a rate of not more than 125 petitions per week.

There is a dispute between the parties about how fast or slow routing should be within these parameters. At the end of 2001 and the beginning of 2002, there was apparently a three-month period in which the Facilitator did not route any files to the government for response. Class Counsel has asked the Monitor to report that Class Counsel is dissatisfied with the Facilitator's decision to stop routing during that three-month period.

VI. 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 continuously working on this case in good faith.

Class Counsel, the Government, and each of the three neutrals have 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" ⁴⁵ The Monitor believes that all of

⁴⁵ West's Legal Thesaurus/Dictionary (William P. Statsky ed., 1986).

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.

VII. RECOMMENDATIONS

Section V(B)(2), above, explained that there is a need for clarification and notice regarding the process for filing petitions from Facilitator class membership screening petitions. Based upon discussion of this issue with the parties, the Monitor recommends that the Court take action to resolve this problem. The Monitor proposes a structure for resolution in the Proposed Draft Order that is attached as Appendix 9. The Monitor recommends that the Court give the parties a fixed period of time in which to indicate their consent or file any objections to the Proposed Draft Order.

Dated: September 4, 2002

Respectfully submitted,

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

Appendix 1	—	Statistics for Individual Track B Cases
Appendix 2	—	List of Monitor Office Training Events
Appendix 3	—	Monitor Updates 7-10
Appendix 4	—	February 7, 2001, Stipulation and Order
Appendix 5	—	USDA Policy Notice—“USDA Criteria for Discharging Loans Under the Consent Decree”
Appendix 6	—	Tax Information on USDA Settlement
Appendix 7	—	Monitor Update 4—Injunctive Relief, revised February 19, 2001
Appendix 8	—	Paragraph 5(g) Reconsideration Letter
Appendix 9	—	Proposed Draft Order

Appendix 1

INDIVIDUAL TRACK B CLAIMANT AWARDS

Claimant	September 18, 2000	January 10, 2002
Claimant A	\$544,400.00	\$544,400.00
Claimant B	616,600.00	616,600.00
Claimant C	<N/A>	615,090.00
Claimant D	<N/A>	100,000.00
Claimant E	<N/A>	780,000.00
Claimant F	<N/A>	625,566.00
Claimant G	<N/A>	507,954.88
Claimant H	<N/A>	[liability found but damages not awarded as of January 10]

Appendix 2

LIST OF MONITOR OFFICE TRAINING EVENTS
SEPTEMBER 1, 2000 – DECEMBER 31, 2001

The Monitor’s office appeared at many speaking engagements in this reporting 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:

Date	Monitor Staff in Attendance	Location	Sponsor	Approximate Number of Participants
Sept. 9, 2000	Stephen Carpenter, Samantha Gemberling, Anita Weitzman	Oklahoma City, Oklahoma	Oklahoma Black Farmers and Agriculturalists Association	400
Sept. 14, 2000	Stephen Carpenter, Randi Roth	Washington, D.C.	Congressional Black Caucus	50
Sept. 28, 2000	Stephen Carpenter	Annapolis, Maryland	USDA	50
Oct. 4, 2000	Randi Roth, Stephen Carpenter, Samantha Gemberling	Baton Rouge, LA	Southern University and A&M College Family Farm Technical Assistance Project	100
Oct. 13, 2000	Randi Roth; Stephen Carpenter; Anita Weitzman	Houston, Texas	Texas Landowners’ Association	60
Oct. 20, 2000	Stephen Carpenter	Fargo, Arkansas	Arkansas Land And Farm Development Corporation	65
Feb. 8, 2001	Randi Roth; Stephen Carpenter; Kenneth Saffold; Samantha Gemberling	Albany, Georgia	Federation Of Southern Cooperatives	220

Date	Monitor Staff in Attendance	Location	Sponsor	Approximate Number of Participants
Feb. 9, 2001	Randi Roth; Stephen Carpenter; Kenneth Saffold; Samantha Gemberling	Tuskegee, Alabama	Tuskegee University	270
Mar. 24, 2001	Stephen Carpenter, Samantha Gemberling	Pine Bluff, Arkansas	Arkansas Black Farmers and Agriculturists Association	40
July 11, 2001	Stephen Carpenter; Samantha Gemberling	Perry, Georgia	USDA Outreach	120
July 23-25	Stephen Carpenter, Samantha Gemberling	Memphis, Tennessee	USDA Risk Management	175 Overall; 30 in Monitor Break-out Session
July 25, 2001	Stephen Carpenter, Samantha Gemberling	Fargo, Arkansas	Arkansas Land and Farm Development Corporation	150
Aug. 17, 2001	Kenneth Saffold, Stephen Carpenter, Samantha Gemberling	Epes, Alabama	Federation of Southern Cooperatives	150
Sept. 1, 2001	Stephen Carpenter, Samantha Gemberling	Oklahoma City, Oklahoma	Oklahoma Black Farmers and Agriculturalists Association	350-400
Oct. 9, 2001	Stephen Carpenter, Samantha Gemberling	Alcorn State, Mississippi	Alcorn State University	45
Oct. 18, 2001	Randi Roth, Kenneth Saffold, Stephen Carpenter, Samantha Gemberling, Eric Cooperstein	Fargo, Arkansas	Arkansas Land And Farm Development Corporation	150
Nov. 17, 2001	Stephen Carpenter, Samantha Gemberling	Oklahoma City, Oklahoma	Oklahoma Department of Agriculture	350
Dec. 3-4, 2001	Stephen Carpenter, Samantha Gemberling	Tuskegee, Alabama	Professional Agricultural Workers Conference	20

Appendix 3

MONITOR UPDATES 7-10

Monitor Update: Claimant and Claimant Attorney Access to USDA Documents

Date Issued: **October 10, 2000**

Update 007

© Copyright 2000, Office of the Monitor.

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.

Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Many claimants and claimant attorneys are now preparing petitions for Monitor review. These claimants have already received a copy of the Adjudicator's decision. Most claimants have not, however, been sent information from USDA files that may have been used by the Adjudicator in making a decision on the claimant's case.

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

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are not Class Counsel or Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

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

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

Some claimants are being assisted by attorneys who are not either Class Counsel or Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting USDA files for the claimant's case.

c. Not Assisted by an Attorney—Pro Se

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

3. Types of Information Available to Claimant Varies

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

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

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

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information from USDA that was used by the Adjudicator.

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

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

b. Read the Form Closely and Sign It

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

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

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

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

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

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain a copy the Government's submission in the claimant's case.

a. Get Copies of Privacy Order and Acknowledgement Form

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

b. Sign Form and Return to USDA

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

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

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

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

Date Issued: **October 10, 2000**

Update 008

© Copyright 2000, Office of the Monitor.

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.

Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

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

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

2. Filing Petitions for Monitor Review

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

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

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

2. Timely serve one copy of the petition on the opposing party. Petitions will be deemed "served" as of the date of postmark.
3. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

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

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

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

2. Timely serve a copy of the response on the petitioning party. Responses will be deemed "served" as of the date of postmark.
3. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

4. Publication of Rules

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

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

Date Originally Issued: **October 10, 2000**

Date Revision Issued: **April 20, 2002**

Update 008

© Copyright 2002, Office of the Monitor.

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

Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

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

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

2. Filing Petitions for Monitor Review

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

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

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

2. Attach a completed original certificate of service to the original petition at the time of filing and attach a copy of the certificate of service to each copy of the petition.

3. Responding to Petitions for Monitor Review

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

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

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

2. Timely serve a copy of the response on the petitioning party. Responses will be deemed "served" as of the date of postmark.
3. Attach a completed original certificate of service to the original response at the time of filing and attach a copy of the certificate of service to each copy of the response.

4. Publication of Rules

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

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

Date Issued: **March 6, 2001**

Update 0009

© Copyright 2001, Office of the Monitor.

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.

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

1. Introduction

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

2. Noncredit Claims and Credit Claims—Defining the Difference

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

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

3. Award for Noncredit Claimants

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

a. Consent Decree—Receive Amount Denied

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

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

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

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

The Government and Class Counsel, therefore, agreed that a class member who prevails on a noncredit claim will receive a payment from the USDA of \$3,000.

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

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

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

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

b. Credit and Noncredit Claim Combined

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

c. No Tax Payments for Noncredit Claims

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

5. Formal Objections to the February 7, 2001, Stipulation and Order

The February 7, 2001, Order provided a mechanism that any person could use to file formal objections to the Order by March 9, 2001. An objection must have been officially filed using the filing process required by the United States District Court for the District of Columbia. In other words, a simple letter to the Court would not have been accepted as an objection to the Order. For more information about this provision of the Order, or for a copy of the Order, please call the Monitor's Office (see below). Also, the Order should be posted in conspicuous public places in every FSA county office.

6. More Information

Anyone who has any question regarding noncredit payments should feel free to call the Monitor at 1-877-924-7483.

Monitor Update: Debt Relief for Prevailing Class Members

Date Issued: **March 19, 2001**

Update 0010

© Copyright 2001, Office of the Monitor.

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.

Debt Relief for Prevailing Class Members

1. Introduction

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

2. Debt Relief Available Only for Successful Credit Claims

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

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

3. Consent Decree and Court Order

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

a. Consent Decree

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

b. February 7, 2001, Stipulation and Order

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

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

4. Debts to be Discharged

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

a. Debts Affected by Discrimination

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

b. Some Debts Incurred After the Discrimination Occurs

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

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

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

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

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

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

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

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

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

d. Important Exception Affecting Debt Relief—Older Lawsuits

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

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

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

Shared Appreciatoin Agreement Debts

Some class members will have outstanding Shared Appreciatoin Agreements with USDA.

5. Formal Objections to the February 7, 2001, Stipulation and Order

The February 7, 2001, Order provided a mechanism that any person could use to file formal objections to the Order by March 9, 2001. An objection must have been officially filed using the filing process required by the United States District Court for the District of Columbia. In other words, a simple letter to the Court would not have been accepted as an objection to the Order. For more information about this provision of the Order, or for a copy of the Order, please call the Monitor's Office. The phone number is listed below. Also, the Order should be posted in conspicuous public places in every FSA county office.

6. More Information

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

Appendix 4

FEBRUARY 7, 2001, ORDER

FILED

FEB 07 2001

NANCY MAXER WHITTINGTON, CLERK
U.S. DISTRICT COURT

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.
DANIEL R. GLICKMAN,
Defendant.

Civil Action No.
98-1693 (PLF)

STIPULATION AND ORDER

WHEREAS on April 14, 1999 this Court approved and entered a Consent Decree in these consolidated actions that is designed to bring resolution and finality to the claims of race discrimination of those plaintiff class members who opted to have their claims resolved under the adjudication or arbitration processes provided in the Consent Decree; and

WHEREAS the Consent Decree provides that class members who prevail on claims of discrimination in Department of Agriculture ("USDA") non-credit benefit programs are entitled, *inter alia*, to the amount of the benefit wrongly denied, see ¶ 9(b)(iii)(A); and

WHEREAS determining the precise amount of any non-credit benefits that individual class members were wrongly denied would be difficult, if not impossible; and

WHEREAS the Consent Decree provides that a class member who prevails on a claim of discrimination in connection with a credit transaction shall be entitled, inter alia, to the discharge of all of his outstanding debt to the Farm Services Agency ("FSA") of the USDA that was incurred under, or affected by, the program(s) that was/were the subject of the discrimination claim(s) resolved in the class member's favor, see ¶¶ 9(a)(iii)(A) & 10(g)(ii); and

WHEREAS the relief provided in ¶¶ 9(a)(iii)(A) & 10(g)(ii) of the Consent Decree remedies consequential harm to a prevailing class member caused by discrimination, and thus would encompass all debts which were identified by the Adjudicator or the Arbitrator as having been affected by the discrimination, and additionally all debts incurred at the time of, or after, the first event upon which a finding of discrimination is based; and

WHEREAS, the parties to the Consent Decree did not intend that the words "incurred under" in ¶¶ 9(a)(iii)(A) & 10(g)(ii) would encompass (a) debts that were incurred under FSA programs other than those as to which a specific finding of discrimination was made by the Adjudicator or Arbitrator with respect to the class member (e.g., the Operating Loan program [OL program], the Farm Ownership loan program [FO program], the Emergency Loan

program [EM program], etc.); (b) debts that were incurred by the class member prior to the date of the first event upon which a finding of discrimination is based; or (c) debts that were the subject of separate litigation in which there was a final judgment as to which all appeals have been forgone or completed;—

NOW, THEREFORE, plaintiffs and defendant, through their undersigned counsel, hereby agree and stipulate as follows:

1. A class member who prevails in a Track A adjudication or a Track B arbitration on a claim of discrimination involving a USDA non-credit benefit program shall be entitled to a payment by USDA in the total amount of \$3,000, without regard to the number of such claims upon which the class member prevails.

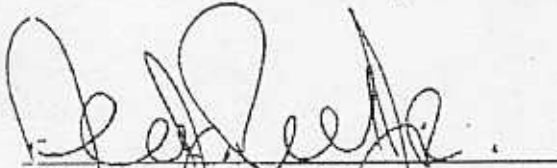
2. The relief to be provided in ¶¶ 9(a) (iii) (A) & 10(g) (ii) of the Consent Decree to a class member who prevails on a claim of credit discrimination includes all debts which were identified by the Adjudicator or the Arbitrator as having been affected by the discrimination.¹ Additionally, such relief includes all debts incurred at the time of, or after, the first event upon which a finding of discrimination is based, except that such relief shall not include: (a) debts that were incurred under FSA programs other than those as to which a specific finding of discrimination was made by the Adjudicator or Arbitrator with respect to the class

¹ Debts "affected by" the discrimination will not be forgiven to the extent that they were the subject of separate litigation in which there was a final judgment as to which all appeals have been forgone or completed.

member (e.g., the Operating Loan program [OL program], the Farm Ownership loan program [FO program], the Emergency Loan program [EM program], etc.); (b) debts that were incurred by the class member prior to the date of the first event upon which the Adjudicator's or Arbitrator's finding of discrimination is based, or (c) debts that were the subject of litigation separate from this action in which there was a final judgment as to which all appeals have been forgone or completed.

3. Copies of this Stipulation and Order shall be posted in a conspicuous public place in every FSA county office.

4. Any person who objects to any aspect of this Stipulation and Order shall submit his/her objections to the Court in writing not later than 30 days from the date of the entry of this Order.



ALEXANDER J. PIRES, Jr.
Conlon, Frantz, Phelan
& Pires
1818 N. St., N.W.
Washington, D.C. 20036
(202) 331-7050

STUART E. SCHIFFER
Deputy Assistant Attorney
General

Phillip I. Fraas
PHILLIP I. FRAAS
Tuttle, Taylor & Heron
1025 Thomas Jefferson St., N.W.
Washington, D.C. 20007
(202) 342-1300

J. L. Chestnut
J. L. CHESTNUT
Chestnut, Sanders, Sanders,
Pettaway, Campbell & Albright
100 Union Street
Selma Alabama
(334) 875-9264

Of counsel:
Othello Cross
Willie Smith
Gerald R. Lear
Hubbard I Sanders, IV

It is so ORDERED

DATED: February 7, 2001

DENNIS G. LINDER
Director, Federal Programs
Branch

Michael Sitcov
MICHAEL SITCOV
ELIZABETH GOITEIN
Department of Justice
Civil Division
901 E Street, N.W.
Washington, D.C. 20004
(202) 514-1944

Paul L. Jordan
UNITED STATES DISTRICT JUDGE

Appendix 5

USDA POLICY NOTICE—
“USDA CRITERIA FOR DISCHARGING LOANS
UNDER THE CONSENT DECREE”

USDA Criteria for Discharging Loans Under the Consent Decree

Background

USDA's criteria for discharging debts under the Consent Decree is based on the Consent Decree itself and the February 7, 2001 Stipulation and Order. Relevant to the discharge of debts, those documents provide as follows:

1. Consent Decree dated April 14, 1999

As per paragraph 9 (a) (iii) (A):

“USDA shall discharge all of the class member’s outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the subject of the ECOA (Equal Credit Opportunity Act) claim(s) resolved in the class member’s favor by the adjudicator.”

As per paragraph 10 (g) (ii):

“USDA shall discharge all of the class member’s outstanding debt to the Farm Service Agency that was incurred under, or affected by, the program(s) that were the subject of the claim(s) resolved in the class member’s favor by the arbitrator.”

2. Stipulation and Order dated February 7, 2001

As per paragraph 2:

“The relief to be provided in paragraph 9 (a) (iii) (A) & 10 (g) (ii) of the Consent Decree to a class member who prevails on a claim of credit discrimination includes all debts which were identified by the Adjudicator or the Arbitrator as having been affected by the discrimination. * Additionally, such relief includes all debts incurred at the time of, or after, the first event upon which a finding of discrimination is based, except that such relief shall not include: (a) debts that were incurred under FSA programs other than those as to which a specific finding of discrimination was made by the Adjudicator or Arbitrator with respect to the class member (e.g., the Operating Loan program (OL program), the Farm

Ownership loan program (FO), the Emergency Loan program (EM program), etc.): (b) debts that were incurred by the class member prior to the date of the first event upon which the Adjudicator's or Arbitrator's finding of discrimination is based, or (c) debts that were the subject of litigation separate from this action in which there was a final judgment as to which all appeals have been forgone or completed."

* "Debts "affected by" the discrimination will not be forgiven to the extent that they were the subject of separate litigation in which there was a final judgment as to which all appeals have been forgone or completed."

Debt Discharge

Based on these authorities, USDA will discharge the debt of claimants who prevail on a credit claim as follows:

1. USDA will discharge any debt specifically identified by the Adjudicator in Track A claims (in the "Relief" section) or the Arbitrator; and
2. USDA will discharge all debts incurred at the time of the first event that is the basis of the finding of discrimination by the Adjudicator or Arbitrator through the end of the class period, December 31, 1996

Examples

The following examples illustrate how USDA will discharge debt:

(a) If the Adjudicator or Arbitrator determines that the claimant prevails on his or her credit claim(s) and is entitled to a cash payment and that a specific debt or debts is to be discharged (such as an Operating loan (OL) for 1984) then:

Any amount outstanding for the 1984 OL and any other OL s made after the 1984 OL up to December 31, 1996 will be discharged.

If no amount is outstanding for the 1984 OL, but other OLs made after the 1984 OL are outstanding, these OLs made up to December 31, 1996 will still be discharged.

No other types of loans, such as EM or FO loans, will be discharged, unless USDA determines, in its sole discretion, that an outstanding EM that was made for operating purposes should be discharged.

No OLs made prior to the 1984 OL named by the Adjudicator or Arbitrator will be discharged, (for instance, a 1983 OL would not be discharged), unless the Adjudicator or Arbitrators's decision makes a finding of discrimination on a year prior to 1984. For example, if the decision also found discrimination in the denial of a 1982 OL, any outstanding OLs from 1982 (rather than 1984) up to December 31, 1996, will be discharged.

(b) If the Adjudicator or Arbitrator determines that the claimant is entitled to a cash payment but does not identify any loans to be discharged in the decision, then:

Any outstanding debts made from the year of the finding(s) of discrimination up to December 31, 1996, will be discharged. For example, if the finding of discrimination concerns the denial of an application for a 1982 OL, then any outstanding OLs made from 1982 up to December 31, 1996 will be discharged.

No other types of loans, such as EM or FO loans, will be discharged, unless USDA determines, in its sole discretion, that an outstanding EM clearly was made for operating purposes.

(c) Same case scenario as (a) above, but in addition, the Adjudicator or Arbitrator also identifies a 1995 EM loan to be discharged. Then, in addition to what the claimant receives in (a), he or she is also entitled to:

The discharge of all EM loans with amounts outstanding made after the identified 1995 EM loan up to December 31, 1996, even if the identified loan did not have any outstanding balance.

Appendix 6

TAX INFORMATION ON
USDA SETTLEMENT

LAW OFFICES
CONLON, FRANTZ, PHELAN & PIRES, LLP
SUITE 700
1818 N STREET, N.W.
WASHINGTON, D.C. 20036

DAVID J. FRANTZ *
BRIAN P. PHELAN *
MICHAEL J. CONLON *
ALEXANDER J. PIRES, JR. *
ANURAG VARMA
MICHELLE A. PILGRIM *
INGRID HUTTO
MALCOLM C. GRACE *

(202) 331-7050
FAX: (202) 331-9306
e-mail: firm@cfppllaw.com

RICHARD A. MEHLER
(1920-1987)

OF COUNSEL
F. JOSEPH BRING *
LAWRENCE BERNSTEIN

* ALSO ADMITTED IN VA
* ALSO ADMITTED IN MD
* ALSO ADMITTED IN NY

March 9, 2001

Dear Claimant:

The attached information has been provided by the Internal Revenue Service to help you and your tax preparer file tax returns on your settlement. We hope that it will be helpful.

Pursuant to the settlement, a payment of \$12,500 will be deposited to your IRS tax account. You may call the IRS Customer Service representative listed on the IRS letter you received regarding the settlement to find out more information about your tax account.

You should know that this \$12,500 sum, when deposited into your tax account, is taxable income that will have to be reported when you file your 2001 taxes next year.

Sincerely,

Alexander J. Pires, Jr.
Phillip L. Fraas
J.L. Chestnut, Jr.

TAX INFORMATION ON USDA SETTLEMENT

The IRS has provided the following guidelines to help claimants correctly report the settlement they received in tax year 2000. This information is provided to assist you in preparing and filing your 2000 individual income tax return.

Cash Payment

The USDA cash payment you received of \$50,000 is considered taxable farm income for 2000. Income of this nature is reported on line 10 of the Schedule F, Profit or Loss From Farming, and is subject to self-employment tax if you were engaged in the business of farming during the 2000 tax year. Please identify the payment on line 10 as "USDA Settlement". If you are reporting your settlement as farm income, you may be eligible to file a Schedule J, Farm Income Averaging.

Loan Cancellation Amounts

Loan cancellation amounts are considered taxable farm income for 2000. Income of this nature is reported on the Schedule F, Profit or Loss From Farming, and is subject to self-employment tax if you were engaged in the business of farming in 2000. Please identify this amount on line 10 as "USDA Settlement". If you are reporting your loan cancellation amounts as farm income, you may be eligible to file a Schedule J, Farm Income Averaging.

Loan cancellation amounts are not included in income if you were insolvent at the time the loan was cancelled or if the loan was qualified farm debt. If you meet these requirements, you must file Form 982 with Form 1040. To determine if you meet the requirements for either of these exclusions, see IRS Publication 908 and IRS Publication 225.

Tax Payments

The 25% tax payment made by the USDA on your behalf has been deposited by the IRS to your 2000 account. You should report this amount on Line 59, Estimated Tax Payment, of Form 1040, Individual Income Tax Return, for tax year 2000.

Even if you don't owe any taxes, you may be entitled to a refund due to the 25% tax payment. To receive any refund that you may be entitled to, you must file a return within three years of April 15, 2001.

This tax payment is also considered taxable farm income and is eligible for farm income averaging. If you use the cash method of accounting, you should report it on your Form 1040 Schedule F for tax year 2001. You will receive a Form 1099MISC by January 31, 2002, showing this payment as miscellaneous income. Please report this amount on Schedule F of your 2001 Form 1040. This income is subject to self-employment tax if you were engaged in the business of farming in the year 2001.

If your 2000 tax return results in an overpayment, you may choose to have all or part of your overpayment applied to your 2001 tax return as an estimated tax payment. Use line 67 of Form 1040 for 2000 to do this.

Appendix 7

MONITOR UPDATE 4—
INJUNCTIVE RELIEF,
REVISED FEBRUARY 19, 2001

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

Date Issued: August 16, 2000
Date Revised: February 19, 2001
Update 004
© Copyright 2000, Office of the Monitor.

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.

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. For example, a disaster payment is a noncredit benefit. The difference between credit claims and noncredit claims is important because some parts of injunctive relief are available only for credit claims.

C. What Law Applies for Injunctive Relief

1. Consent Decree

In general, the Consent Decree sets the terms of the settlement of the lawsuit. This includes injunctive relief. In light of the purpose of the Consent Decree—to provide a remedy for class members—the Consent Decree is to be liberally construed. A liberal construction in favor of class members, therefore, means that when someone tries to

understand the meaning of the Consent Decree, he or she should resolve all reasonable doubts as to its meaning in favor of the class member.

2. FSA Regulations and Most Favorable Light

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

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

IV. Types of Injunctive Relief

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

A. Priority Consideration—Three Types

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

1. Inventory Property

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

2. Farm Ownership Loan

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

3. Farm Operating Loans

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

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

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

B. Technical Assistance and Service

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

1. Credit and Noncredit Claims

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

2. Must Be Requested

The class member must request the technical assistance and service.

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.

Appendix 8

PARAGRAPH 5(G) RECONSIDERATION LETTER

Black Farmers' Settlement

P.O. Box 4390
Portland, OR 97208-4390
1-800-646-2873

RE: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

Dear Claimant,

As you know, you previously received a letter from me that denied your petition to file a late claim in the Black Farmers' Settlement. This letter is to inform you that there is a process for me to reconsider your application. Such a request must be sent in writing to the address above, postmarked within 60 days of the date of this letter. If you previously have requested reconsideration, you do not need to respond to this letter.

Before you make a request for reconsideration, I ask that you think about any circumstances that make stronger your argument that you should be permitted to participate in the settlement. As I said in my first letter to you, the standard established in the consent decree is that only circumstances beyond the control of the claimant should be considered. Only information or documents I do not already have will convince me to change my decision.

All written information must be accompanied by a cover letter signed by the potential claimant. The following sentence must be written above the claimant's signature: "I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT."

As you may be aware, there were thousands of people who petitioned to file late claims. Although you have received a decision from me, many others have not. Fairness dictates that before I review your petition for a second time, I must decide the petitions of those who have not heard from me once. In time, I will review your petition if you send me a request for reconsideration, but please be advised that it may be as much as a year before you hear from me again.

Sincerely,



Michael K. Lewis
Arbitrator

Appendix 9

PROPOSED DRAFT ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, et al.,
Plaintiffs,

v.

ANN M. VENEMAN, Secretary,
The United States Department
of Agriculture,
Defendant.

Civil Action No. 97-1978 (PLF)

CECIL BREWINGTON, et al.,
Plaintiffs,

v.

ANN M. VENEMAN, Secretary,
The United States Department
of Agriculture,
Defendant.

Civil Action No. 98-1693 (PLF)

PROPOSED DRAFT ORDER

WHEREAS, the Consent Decree in this case provides that the Monitor may direct the Facilitator, Adjudicator, or Arbitrator to reexamine a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of a claim and has resulted or is likely to result in a fundamental miscarriage of justice;¹ and

WHEREAS the Monitor's appointment is scheduled to expire on March 1, 2005; and,

WHEREAS, the Order of Reference issued by this Court on April 4, 2000, further defines the petition for Monitor review process, but does not set deadlines regarding that process; and

¹ Consent Decree, paragraph 12(b)(iii).

WHEREAS, a Stipulation and Order issued by this Court on July 14, 2000, established a deadline for the filing of Monitor petitions from wholly or partially adverse decisions under Track A or Track B; and

WHEREAS, the Adjudicator and Arbitrator have implemented procedures for giving each claimant notice of the 120-day deadline from their decisions under Track A or Track B; and

WHEREAS, the Consent Decree also permits petitions for Monitor review of decisions made by the Facilitator in the class membership screening process; and

WHEREAS, it is important that all claimants who wish to file petitions for Monitor review from Facilitator decisions complete their filings in a timeframe that will allow resolution of their claim before the expiration of the Monitor's appointment; and,

WHEREAS, the Facilitator reports the following class membership screening activity as of August 6, 2002:

1. Approximately 138,911 individuals made inquiries regarding the claims procedure;
2. Approximately 34,179 individuals requested blank Claim Sheets and Election Forms ("claim packages"), and had the blank claim packages sent to them, but never returned them to the Facilitator;²
3. Approximately 76,654 individuals requested blank claim packages but were never sent them, because the claim filing deadline had passed and the parties agreed that packages should not be sent;³
4. Approximately 3,320 putative class members returned incomplete claim packages to the Facilitator, and, upon notice of the deficiency in the claim package and a chance to cure, successfully cured the deficiency;⁴

² This number does not screen out duplicate requests from individuals.

³ Most of these individuals were sent a package of materials regarding the filing of a late claim affidavit (request for permission to file late under paragraph 5(g) of the Consent Decree).

⁴ This includes more than 1,000 claimants who filed timely claim packages but cured their deficiencies after the deadline set in ¶5(c) of the Consent Decree but who were deemed timely by the July 14, 2000, Stipulation and Order.

5. Approximately 1,255 putative class members returned incomplete claim packages to the Facilitator, and, upon notice of the deficiency in the claim package and a chance to cure, failed to cure the deficiency;

6. Approximately 21,766 putative class members sent the Facilitator complete claim packages which were accepted by the Facilitator in the screening process; and

7. Approximately 129 putative class members sent the Facilitator complete claim packages which were rejected by the Facilitator in the screening process; and

WHEREAS, several thousand claims are currently pending for resolution in the Monitor petition process; and

WHEREAS, in cases in which no completed claim package was ever filed, there is no cognizable claim within the meaning of Consent Decree paragraph 12(b)(iii); and

WHEREAS, the parties agree it is important to provide notice concerning the Facilitator decisions that may be the subject of a petition for Monitor review; and

WHEREAS, the parties agree it is important to provide notice concerning the process for petitioning for Monitor review from Facilitator class membership screening decisions where the Facilitator determined a claim package was complete and rejected the claim on the ground that the claimant failed to meet the class membership screening criteria;

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Any party who filed a complete claim package and received a wholly or partially adverse decision from the Facilitator in the screening process as of the date of this Order shall have 120 days from the date of this Order to petition the Monitor for review under paragraph 12(b)(iii) of the Consent Decree. Any party who filed a complete claim package and receives a wholly or partially adverse decision from the Facilitator in the screening process after the date of this Order shall have 120 days from the date of the Facilitator's class membership screening decision to petition the Monitor for review under paragraph 12(b)(iii) of the Consent Decree.

2. There shall be no Monitor review of cases in which the Facilitator rejected the putative class member's claim package because the putative class member failed to timely complete a claim package after notice of the defect and an opportunity to cure.⁵

3. The Facilitator shall promptly establish a reconsideration process through which claimants can communicate with the Facilitator if they believe the Facilitator committed error in determining that they failed to timely complete a claim package after notice of the defect and an opportunity to cure.

4. In cases in which the Facilitator received timely, complete claim packages and rejected the claim on the ground that the claimant failed to meet the class membership screening criteria, the claimant shall have the opportunity to petition for Monitor review in accordance with the Consent Decree and the Order of Reference.

5. The Monitor may consider additional materials with a Petition for Monitor Review of a Facilitator class membership screening decision or with a response to such Petition only when such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed. The decision to consider additional materials regarding this flaw or mistake and to permit those materials to be made part of the record for review upon reexamination by the Facilitator is within the discretion of the Monitor.

6. Any claimant who is rejected by the Facilitator in the class membership screening process after filing a complete claim package shall be entitled to file only one petition for review

⁵ The Stipulation and Order of July 14, 2000, provided in its first numbered paragraph that certain claim packages that were timely filed but corrected and resubmitted after the paragraph 5(c) deadline are to be deemed timely. The Facilitator should not have rejected the claimants who are the subject of that paragraph. All of the provisions of the July 14, 2000, Stipulation and Order continue in full force and effect, and are not modified by this Order.

of the Facilitator's decision under paragraph 12(b)(iii) of the Consent Decree, and neither the Monitor's decision on the petition for review, nor the decision of the Facilitator upon reconsideration shall be subject to further review of any type in any forum.

7. Copies of this Order shall be: (a) posted in a conspicuous public place in every USDA Farm Services Agency county office; and (b) mailed by the Facilitator to every person who was rejected by the Facilitator in the screening process.

SO ORDERED.

Date: _____

PAUL L. FRIEDMAN
United States District Judge