

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)

MONITOR'S REPORT TO THE COURT
REGARDING NOTICE TO THE CLASS OF
THE 120-DAY DEADLINE TO
FILE A PETITION FOR MONITOR REVIEW

I. INTRODUCTION

Claimants in *Pigford v. Veneman* who receive an adverse decision from the Facilitator, Adjudicator, or Arbitrator generally have the right to petition the Monitor for review of the decision. Paragraph 12(b)(iii) of the Consent Decree provides that the Monitor shall direct the Facilitator, Adjudicator, or Arbitrator to reexamine the claim whenever the Monitor finds that a clear and manifest error has resulted or is likely to result in a fundamental miscarriage of justice.

The Court defined the Monitor's petition process in detail in the Court's April 4, 2000, Order of Reference.

This Report focuses on the notice that was sent to Track A claimants in *Pigford* regarding the deadline to file a petition with the Monitor. Claimants who miss the deadline lose their right to file a petition.

II. SETTING THE DEADLINE TO FILE A PETITION

The Consent Decree and the Order of Reference set forth the Monitor's duties regarding review of Facilitator, Adjudicator, and Arbitrator decisions but did not contain a deadline for the filing of petitions. Under the Decree and the Order of Reference alone, the Monitor could have reviewed any claim for error at any time up to the expiration of the Monitor's appointment in 2005. A July 14, 2000, Stipulation and Order (July 14 Order), however, set a deadline for the filing of petitions for Monitor review. The deadline is either 120 days from the date of the July 14 Order (November 13, 2000) or 120 days from the date of the claimant's adverse decision, whichever is later. According to the July 14 Order, no extension of these deadlines is to be granted for any reason.

III. WAYS THE CLASS RECEIVED NOTICE OF THE 120-DAY DEADLINE

Many claimants were sent some form of notice of the 120-day deadline. Notice was provided in at least three ways: (1) a copy of the July 14 Order was sent to some claimants, (2) a copy of the July 14 Order was supposed to be posted at United States Department of Agriculture (USDA) offices, and (3) a Monitor Update describing the 120-day deadline was distributed to some claimants. These three methods of notice, and the populations that were targeted by each method, are described in the following sections of this Report.

A. Copy of the Order Sent to Certain Class Members

The July 14 Order directed the Facilitator to send a copy of the Order to every person who requested a Claim Sheet and Election Form (“Claim Sheet”) and did not submit a completed Claim Sheet to the Facilitator within the period set by Paragraph 5(c) of the Consent Decree. This mailing, therefore, targeted people who were likely affected by some important aspects of the July 14 Order;¹ it did not, however, target claimants who would have been eligible to file a petition with the Monitor. In fact, few people eligible to file a petition with the Monitor would have received direct notice of the 120-day deadline from this mailing.²

B. Copy of the Order Posted at USDA Offices

The July 14 Order required that a copy of the July 14 Order be posted in a conspicuous public place in every USDA Farm Services Agency county office. Two factors limit the effectiveness of this form of notice. First, many claimants would not see such a posting. A large number of claimants are not now farming actively and would have little reason to visit a USDA office. Many active farmers do not participate in USDA programs and would not likely visit a USDA office with any frequency. Further, African-American farmers are disproportionately likely not to participate in USDA programs.³ Even those class members who are active farmers and who participate in USDA programs often do not visit the USDA office on a regular basis. As a result, even from the most optimistic perspective, notice via posting in a USDA office would not have reached many claimants.

¹ In particular, the letter seems to target putative class members who might seek relief under Paragraph 5(g) of the Consent Decree.

² In general, only those who had filed completed Claim Sheets would be in a position to file a Monitor petition.

³ See, for example, the discussion found in a USDA Economic Research Service analysis, Judy Kalbacher & Doug Rhoades, Profiling Black Farmers in the U.S, Agricultural Outlook, Dec. 1993, at 25.

Second, the July 14 Order is a legal document that could be difficult for many non-lawyers to interpret. Nothing in the heading or label of the July 14 Order suggests that it affects deadlines for filing a Monitor petition.

C. Monitor Update Sent or Given to Some Class Members

Because the July 14 Order is complicated, the Monitor drafted a Monitor Update (Monitor Update Number 3) to explain the petition deadline portion of the Order in plain language. A copy of that Monitor Update is attached to this Report as Appendix A. Both parties approved the content of the Monitor Update. It was issued on August 14, 2000. (Later, an updated version was issued on November 9, 2000, to incorporate the Court's Order of November 8, 2000.)

The Monitor Update was distributed to class members in several ways. First, a copy of the Monitor Update was mailed to some claimants. The Monitor's records show that the Monitor Update was sent to claimants who had filed a completed Claim Sheet by August 17, 2000 (the approximate time of the mailing of the Update). This mailing was sent to approximately 20,652 claimants and likely represents the widest notification of claimants of the 120-day deadline. Second, the Monitor Update was sent to claimants who called the Monitor's toll-free line and asked to receive a copy.⁴ Third, the Office of the Monitor distributed the Monitor Update at a number of claimant meetings.

D. Notice to the Class in Letters of Denial

The most effective method of notifying claimants of the 120-day deadline to petition the Monitor for Review would have been to include a description of the deadline in the decision letter from the Facilitator, Adjudicator, or Arbitrator. The following describes the extent to which

⁴ A total of 212 claimants have received notice of the 120-day deadline as a result of direct requests.

this form of notification occurred for Track A claimants. If the Court requests it, the Monitor could file a subsequent Report to discuss notification in letters of decision for Track B claimants.

The extent to which Track A decision letters contained information about the petition deadline can be divided into three periods: (1) denial letters sent before the July 14, 2000, Order was issued; (2) denial letters sent after the July 14, 2000, Order was issued and up to November 15, 2001; and (3) denial letters sent after November 15, 2001.

1. Denial Letters Sent Before July 14, 2000

More than 6,500 Track A denial letters were sent to claimants before the July 14, 2000, Order was issued by the Court. When these letters were sent, therefore, there was not yet a deadline to petition for Monitor review.⁵

2. Denial Letters Sent Between July 14, 2000, and November 15, 2001

Track A denial letters sent between July 14, 2000, when the Order setting the 120-day deadline was issued, through November 15, 2001, did not include notice of the deadline. According to the Facilitator, more than 1,700 Track A claimants received denial letters during this period.⁶

3. Denial Letters Sent After November 15, 2001

All Track A decision letters sent after November 15, 2001, included notice of the 120-day deadline.⁷ About 160 Track A claimants have received denial letters during this period.⁸

⁵ About 17,000 Track A decision letters were issued during this period. Of these, roughly 10,500 granted relief, and 6,500 denied relief.

⁶ About 4,200 Track A decision letters were issued during this period. Roughly 2,500 claimants were granted relief, and 1,700 denied. Letters to successful Track A claimants stated that the award would not be final until 120 days had passed because that was the time within which the government could petition for review of the decision.

⁷ No Track A decision letters were issued from November 15, 2001, to July 8, 2002.

⁸ A total of about 381 Track A decision letters were sent during this period. About 221 claimants were granted relief, and about 160 were denied relief.

IV. CONCLUSION

This Report to the Court summarizes efforts to notify claimants of the 120-day deadline to file a petition for Monitor review. Many claimants were notified of the 120-day deadline through various methods—most notably by a Monitor Update describing the 120-day deadline that was mailed to most claimants in mid-August 2000. In thousands of Track A decision letters announcing to individual claimants that their claims were being denied, however, no notice of the deadline for the claimant to file a petition for Monitor review was included. It is likely that many Track A claimants who received decision letters in late 2000 or in 2001 did not remember the deadline explained in the Monitor Update they had received in August 2000 and were therefore not aware of a deadline for petitioning the Monitor. Claimants who failed to petition the Monitor within the deadline lost the right to have their adverse decision reviewed by the Monitor.

Dated: May 30, 2003

Respectfully submitted,

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Appendix A

**Monitor Update #3:
Deadlines for Petitions for Monitor Review
August 14, 2000**

**Revised Monitor Update #3:
Deadlines for Petitions for Monitor Review
November 9, 2000**

Monitor Update: Deadlines for Petitions for Monitor Review

Date Issued: **August 14, 2000**

Update 003

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Office of the Monitor
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Deadlines for Petitions for Monitor Review

1. Introduction

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

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

This update sets out to explain:

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

2. Petitions for Monitor review

Claimants in the *Pigford* lawsuit are able to petition the Monitor for review of decisions by the Facilitator, the Adjudicator, or the Arbitrator. Any person who received an adverse decision—either in whole or in part—in a Facilitator eligibility decision, a Track A adjudication, or a Track B arbitration may petition the Monitor for review of that decision. A letter and pamphlet from the Monitor's office dated June 2, 2000, was sent to every class member. It described in detail how Monitor review works. Anyone who would like a copy of the letter and pamphlet may call toll free at 1-877-924-7483.

3. Judge's Order creates deadline for petitions

The Judge's new Order creates a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Adjudicator or Arbitrator's decision was made. The important date to keep in mind is July 14, 2000. (If the Facilitator made the decision, this deadline does not apply.)

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

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

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

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

4. Deadline created by the Order is firm

The deadline explained in this update for petitions for Monitor review is firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. More information from the Monitor

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

Monitor Update: Deadlines for Petitions for Monitor Review

Date Issued: August 14, 2000
Date Revised: **November 9, 2000**
Update 003
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The deadline explained in this Update for petitions for Monitor review is firm. The Judge's Order says that no extension of these deadlines will be granted for any reason.

5. November 8, 2000, Order changes

On November 8, 2000, the Judge issued an Order that affects the deadline for filing a petition for Monitor review. The Order applies only to those petitions that have a deadline of November 13, 2000, and only to those petitions that are to be filed by an attorney.

Instead of filing a fully supported petition on or by November 13th, 2000, the attorney of a claimant may submit instead a Registry of Petitions. The Registry must list the claimants that have asked the attorney for assistance in the filing of a petition, and must list the claim numbers of those claimants. The Registry of Petitions may not include a claimant who already has had an attorney file a petition for him or her, and the Register of Petitions must be filed by November 13, 2000. If a petition for Monitor Review is filed in this way, the attorney may file supporting materials for the claim at a later date. Strict limits, however, control the time allowed to file additional supporting materials.

Included with this Update is a copy of the November 8, 2000 Order.

6. More information from the Monitor

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