

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 JANUARY 1, 2002, THROUGH DECEMBER 31, 2003

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This is the third in a series of Monitor reports concerning the implementation of the Consent Decree in this case. Prior reports covered the good faith implementation of the Consent Decree from March 1, 2000, through August 31, 2000, and from September 1, 2000, through December 31, 2001.¹ This report provides information regarding claims processing activities, Court orders, Monitor activities and observations, significant Consent Decree implementation issues, and the parties' good faith during the two-year period of January 1, 2002, through December 31, 2003. Current statistics regarding many of the items discussed in this report can be found on the Monitor's web site.²

I. EXECUTIVE SUMMARY

During this reporting period, the parties and the neutrals³ continued to work in good faith to implement the Consent Decree. Highlights of progress during calendar years 2002 and 2003 include:

- a. The Adjudicator issued initial adjudication decisions in 21,678 Track A claims as of the end of 2003.
- b. The Government paid out \$10,500,000 to successful class members in Track A credit matters in 2002 and an additional \$13,600,000 to successful class members in Track A credit matters in 2003. Combined with payments in earlier years, Track A cash payments for credit claims totaled \$638,350,000 as of the end of 2003.
- c. The Government provided debt relief by forgiving approximately \$21,930,937 in outstanding debt owed by prevailing class members (principal and interest) as of the end of 2003.
- d. The Arbitrator issued decisions in a total of 77 Track B claims as of the end of 2003. The average damage award for prevailing Track B claimants was \$545,686.

¹ Prior reports are available on the Monitor's web site at <http://www.pigfordmonitor.org/reports/>.

² The web site address is <http://www.pigfordmonitor.org>.

³ The neutrals include the Facilitator, the Adjudicator, and the Arbitrator.

e. The Arbitrator continued review of the requests for class membership submitted under the process set forth in paragraph 5(g) of the Consent Decree (the “late claims” process). The Arbitrator reported that 2,118 “late claim” applicants had been found eligible to file a “late claim” as of December 2003.

f. The Monitor’s Office continued to issue decisions in response to petitions for review. By the end of 2003, the Monitor had issued a total of 2,725 decisions in response to petitions for Monitor review.

g. The Adjudicator began issuing readjudication decisions for Track A claims. The Adjudicator issued 301 readjudication decisions as of the end of 2003.

Notwithstanding this good faith and substantial progress, important implementation challenges remain. This report provides information about both the progress and the challenges that occurred during calendar years 2002 and 2003. The report provides updated statistical information concerning the processing of claims under Track A and Track B during these years, as well as statistical information about the debt relief and injunctive relief provided by the Government from the beginning of the litigation. The report also describes substantive matters addressed by the Court during 2002 and 2003.

After summarizing the Monitor’s activities and observations during these two years, the report discusses significant Consent Decree implementation issues, including concerns presented to the Monitor by class members. The report concludes by discussing the parties’ good faith efforts to implement the Consent Decree.

II. BACKGROUND

A. Authority to Issue Reports

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports on the good faith implementation of the Consent Decree.⁴ This report is submitted pursuant to the March 24, 2003, Stipulation and Order, which states:

The Monitor shall make periodic written reports to the Court, the Secretary, class counsel, and defendant's counsel on the good faith implementation of the Consent Decree, as specified in paragraph 12(b)(i) of the Consent Decree, regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary.

B. Statistics About Processing of Claims

The Monitor did not independently compile most of the data discussed in this report.⁵ The Facilitator⁶ provided claims processing data, the Arbitrator⁷ provided statistics regarding Track B cases and the "late claims" process, and the United States Department of Agriculture (USDA)⁸ provided statistics regarding debt relief and injunctive relief. The Monitor relied on these sources for the information contained in this report.

⁴ In a Stipulation and Order dated April 20, 2004, the Court extended the Monitor's appointment until her duties under the Consent Decree are completed, or until March 1, 2007, whichever occurs first. The Monitor will continue filing reports pursuant to the March 24, 2003, Stipulation and Order through the conclusion of her appointment.

⁵ The exception is that the Monitor compiles data regarding Monitor decisions issued in the petition process.

⁶ The Facilitator is Poorman-Douglas Corporation. *See* Consent Decree, paragraph 1(h)(i).

⁷ The Arbitrator is Michael Lewis of ADR Associates and JAMS. *See* Consent Decree, paragraph 1(b).

⁸ USDA posts some statistics on the agency web site: <http://www.usda.gov/da/status.htm>. General information about the litigation is provided by the agency at <http://www.usda.gov/da/consent.htm>.

1. Track A

Paragraph 9 of the Consent Decree sets forth the process for deciding claims under Track A of the claims process. Prevailing class members with credit claims under Track A are entitled to a cash payment of \$50,000, as well as other relief.⁹ As of January 5, 2004, the Government had paid \$638,350,000 to class members who prevailed in Track A credit claims. Prevailing class members with non-credit claims under Track A are entitled to a cash payment of \$3,000.¹⁰ As of January 5, 2004, the Government had paid \$1,287,000 to class members who prevailed in non-credit claims under Track A. Additional statistics regarding the number of claimants, adjudication rates and results, and cash relief payment rates for calendar years 2002 and 2003 are summarized in Table 1.¹¹

⁹ Credit claims generally involve USDA farm loan programs. In addition to a cash payment of \$50,000, claimants who prevail on credit claims are also entitled to debt relief, injunctive relief, and tax relief pursuant to paragraph 9(a) of the Consent Decree.

¹⁰ Non-credit claims generally involve farm benefit or conservation programs. The Consent Decree does not specify the dollar amount of relief for non-credit claims. The parties have stipulated that successful claimants in non-credit Track A claims receive a cash payment of \$3,000. *See* Stipulation and Order, dated February 7, 2001, available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/>. In addition to the \$3,000 cash payment, relief for successful non-credit claims includes some aspects of injunctive relief. *See* paragraph 9(b) of the Consent Decree.

¹¹ Statistics for prior reporting periods are summarized in Appendix 1. Additionally, current statistics are available upon request from the Monitor's office (1-877-924-7483) and are updated regularly on the Monitor's web site at <http://www.pigfordmonitor.org/stats/>.

Table 1: Statistical Report Regarding Track A Claims						
Statistical Report as of:	End of 2001¹²		End of 2002¹³		End of 2003¹⁴	
	Number	Percent	Number	Percent	Number	Percent
A. Eligible class members	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	177	1	179	1	178	1
Adjudication Completion Figures						
D. Adjudications complete	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	40	~0	48	~0	420	~2
Adjudication Approval/Denial Rates						
F. Claims approved by Adjudicator ¹⁵	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator ¹⁶	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid						
H. Approved adjudications paid as of specified date ¹⁷	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date ¹⁸	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims ¹⁹	\$614,250,000		\$624,750,000		\$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims	\$1,284,000		\$1,284,000		\$1,287,000	

¹² These statistics are valid as of January 2, 2002.

¹³ These statistics are valid as of December 31, 2002.

¹⁴ These statistics are valid as of January 5, 2004.

¹⁵ These numbers include both credit and non-credit claims.

¹⁶ These numbers include both credit and non-credit claims. In row G, the number of claims denied by the Adjudicator decreased from December 31, 2002 to January 5, 2004. This decrease is a result of claims that were originally denied by the Adjudicator, but were later approved by the Adjudicator upon reexamination.

¹⁷ These numbers include both credit and non-credit claims.

¹⁸ These numbers include both credit and non-credit claims.

¹⁹ This figure includes only the cash award component of relief in Track A credit cases. Other monetary relief including tax payments and debt relief are reported in Tables 3 and 4 below.

2. Track B

Paragraph 10 of the Consent Decree sets forth the process for deciding claims under Track B of the claims process. Class members who prevail under Track B are entitled to recover actual damages, as well as other relief.²⁰ Table 2 provides statistics regarding Track B.²¹ 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 petitions for Monitor review that have not yet been decided by the Monitor. The amount of each Track B arbitration award is detailed in Appendix 3. Claimant names and geographic locations are not disclosed.

Table 2: Statistical Report Regarding Track B Claims			
Statistical Report as of:	End of 2001²²	End of 2002²³	End of 2003²⁴
A. Eligible Track B Claimants	235	236	237
B. Track B Cases Settled	57	61	71
C. Track B Cases Converted to Track A	50	54	55
D. Track B Cases Withdrawn	6	6	6
Arbitrations Complete/Not Complete			
E. Contested Track B Cases in Claims Process (Not Settled, Converted or Withdrawn)	122	115	105
F. Arbitration Decisions Issued	51	71	77
G. Arbitration Decisions Not Yet Issued (contested cases in which arbitration was not complete and/or decision was not yet issued)	71	44	28

²⁰ In addition to recovery of actual damages, successful class members are also entitled to debt relief and injunctive relief under paragraph 10 of the Consent Decree.

²¹ Most of these statistics are based on the Arbitrator's records, not the Facilitator's. There are differences between the record-keeping protocols of the Arbitrator and the Facilitator. The statistics are approximate. Statistics from prior reporting periods for Track B claims are set forth in Appendix 2.

²² These statistics are valid as of January 10, 2002.

²³ These statistics are valid as of January 1, 2003.

²⁴ These statistics are valid as of January 1, 2004.

Table 2: Statistical Report Regarding Track B Claims			
Statistical Report as of:	End of 2001²²	End of 2002²³	End of 2003²⁴
Arbitration Results			
H. Claimant Prevailed Before Arbitrator	8	15	17
I. Average Awards to Prevailing Claimants	\$531,373	\$560,309	\$545,686
J. Government Prevailed Before Arbitrator	43	56	60
Posture of Decision:			
J.1. Cases Dismissed Before Hearing	28	34	38
J.2. Full Hearing, Finding of No Liability	15	22	22
Petitions for Monitor Review²⁵			
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B Cases	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions (Regarding Class Membership Screening) in Track B Cases	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	7	12

3. *Debt Relief*

Paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree set forth the debt relief USDA must provide to prevailing class members. A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief. The following table provides statistics

²⁵ The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

reported by USDA regarding the debt relief implemented by USDA for prevailing class members. Because this is the first time the Monitor has reported statistics concerning debt relief, the information in Table 3 covers the period from the beginning of the Consent Decree implementation through January 12, 2004.

Table 3: Statistical Report Regarding Debt Relief²⁶	
Statistical Report as of:	January 12, 2004
A. Total Amount of Debt Forgiven	\$21,930,937
B. Debt Forgiven for Track A Claimants	\$19,583,425
C. Debt Forgiven for Track B Claimants	\$2,347,512
D. Number of Track A Claimants Who Received Debt Forgiveness	228
E. Number of Track B Claimants Who Received Debt Forgiveness	25
F. Average Amount of Debt Forgiven Per Track A Claimant Who Received Debt Forgiveness	\$85,892
G. Average Amount of Debt Forgiven Per Track B Claimant Who Received Debt Forgiveness	\$93,900

²⁶ These statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004.

4. Total Track A Monetary Relief

Table 4 details the monetary value of Track A relief provided to class members as of the end of 2003.

Table 4: Statistical Report Regarding Total Track A Monetary Relief²⁷	
Status of Payments	Amount
Cash Awards for Credit Claims (\$50,000 per prevailing claim)	\$638,350,000
Cash Awards for Non-Credit Claims (\$3,000 per prevailing claim)	1,287,000
Estimated Payments Due to IRS as Tax Relief ²⁸	163,387,500
Debt Relief (Principal and Interest)	19,583,425
Total Track A Relief	\$822,607,925

5. Injunctive Relief

Paragraph 11 of the Consent Decree describes the injunctive relief that prevailing class members are entitled to receive from USDA. Generally speaking, this relief requires USDA to consider any new Farm Ownership Loan, Farm Operating Loan, or inventory property application by the prevailing class member in the light most favorable to the class member.²⁹ It also requires USDA to offer prevailing class members technical assistance from a qualified

²⁷ These statistics are based on information provided by the Facilitator regarding cash awards. The debt relief statistics are based on information provided by USDA for debt relief implemented by USDA through January 12, 2004 (principal and interest). The tax relief payments are estimated based on the tax relief payments successful Track A credit claimants are entitled to receive.

²⁸ Under paragraph 9(a)(iii)(C) of the Consent Decree, successful Track A credit claimants receive a payment, made directly to the Internal Revenue Service, for partial payment of taxes. The amount for each successful claimant is 25 percent of the \$50,000 cash award (\$12,500) plus 25 percent of the principal amount of any debt that was forgiven. The tax relief in Table 4 was estimated as follows: 25 percent of the \$50,000 cash award (\$12,500) multiplied by the number of successful Track A credit claims (12,767) (this sub-total equals \$159,587,500), plus 25 percent of the approximately \$15,200,000 in principal debt that was forgiven for this group of successful claimants (this sub-total equals \$3,800,000). The total amount of estimated payments to successful claimants' IRS accounts is \$159,587,500 plus \$3,800,000, which equals \$163,387,500.

²⁹ Consent Decree, paragraph 11(c).

USDA official who is acceptable to the class member.³⁰ These two forms of injunctive relief are available to all prevailing class members. In addition, class members who prevail on credit claims are entitled to priority consideration for: one Farm Ownership Loan, one Farm Operating Loan, and one opportunity to acquire farmland from USDA inventory property.³¹ Under the Consent Decree, injunctive relief was to be available to prevailing class members for five years from the date of the order approving the Consent Decree.³² USDA has voluntarily agreed to extend the right to injunctive relief for one additional year through April 14, 2005.³³

Table 5 provides cumulative statistics reported by USDA concerning requests for priority consideration for Farm Ownership Loans, Farm Operating Loans, and the acquisition of inventory property.

Table 5: Statistical Report Regarding Injunctive Relief	
Statistical Report as of:	January 12, 2004
A. Farm Ownership Loans	
1. Number of Requests for Priority Consideration with Complete Application	56
2. Number of Applications Approved	15
B. Farm Operating Loans	
1. Number of Requests for Priority Consideration with Complete Application	112
2. Number of Applications Approved	39
C. Inventory Property	
1. Number of Requests for Priority Consideration	3
2. Number of Applications Approved	1

³⁰ Consent Decree, paragraph 11(d).

³¹ Consent Decree, paragraph 11(a)-(b).

³² Consent Decree, paragraph 11(a)-(c). The Consent Decree was signed April 14, 1999. Five years from that date is April 14, 2004.

³³ In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at: <http://www.pigfordmonitor.org/flp/>.

III. COURT ORDERS

Over the past two years, the Court has been presented with numerous issues relating to the implementation of the Consent Decree. In response to motions and stipulations by the parties, the Court has issued Orders relating to issues including:

- A. The Arbitrator's authority to alter deadlines in the Track B arbitration process;
- B. The requirements of the Second Supplemental Privacy Act Protective Order;
- C. The deadlines for responses by USDA to certain petitions for Monitor review;
- D. The request of certain individual class members to be excluded from the case;
- E. The request of certain individual class members to vacate the Consent Decree and remove Class Counsel;
- F. The deadline for petitioning for Monitor review when the Facilitator has rejected a claim on eligibility grounds;
- G. The award of attorneys' fees;
- H. The process for recusal of the Monitor;
- I. The fate of untimely petitions for Monitor review; and
- J. The impact of allegations regarding mail delays in the filing of late claims.

All substantive Orders filed during this reporting period are listed in Table 6.³⁴

Table 6: Court Orders				
#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
1	589	January 17, 2002	Memorandum Opinion and Order	Granting plaintiff's motion interpreting the Consent Decree to authorize Arbitrators to extend arbitration deadlines where justice requires. An appeal from this order was decided on June 21, 2002. See item #8 below. ³⁵
2	590	January 17, 2002	Memorandum Opinion and Order	Granting in part and denying in part defendant's motion for enforcement of the Second Amended Supplemental Privacy Act Protective Order and for sanctions; finding Class Counsel violated the Protective Order by providing Track A files to <i>pro bono</i> counsel, Covington and Burling, who serve as plaintiff's counsel in 16 Track B cases; finding that Covington and Burling may retain and consult the files under the terms of the Protective Order; permanently enjoining Class Counsel from releasing any similar protected files and directing <i>pro bono</i> counsel to seek from the government release of any additional protected files; and holding that the issue of sanctions against Class Counsel for the release of files will be decided at such time as the Court can consider all pending requests for sanctions.
3	595	February 15, 2002	Order	Denying defendant's motion for a stay pending appeal of the Court's January 17, 2002, Order concerning Arbitrators' authority to extend arbitration deadlines in Track B cases.
4	614	May 9, 2002	Order	Approving Arbitrator's second report on the late-claim petition process; posting the report on web site at http://www.dcd.uscourts.gov/district-court-2002.html .

³⁴ Procedural Orders that set briefing schedules, hearing dates, and the like and Orders relating to approval of the Monitor's budgets and invoices are not included in the list.

³⁵ On June 21, 2002, the Court's January 17, 2002, Memorandum Opinion and Order was reversed by the Court of Appeals and remanded for further proceedings. The Court of Appeals' opinion is described in more detail in item number 8 of Table 6. *Pigford v. Veneman*, 292 F.3d 918 (D.C. Cir. 2002).

Table 6: Court Orders

#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
5	615	May 14, 2002	Order	Ordering that petition for late filing under Consent Decree ¶ 5(g) will not be considered by the Court; directing that all putative class members seeking permission to late file under Consent Decree ¶ 5(g) must seek permission directly from the Arbitrator, Michael K. Lewis.
6	622	June 11, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 35-37 of claimant petitions for Monitor review; ordering defendant to file responses to Group 35 petitions on July 5, 2002; Group 36 petitions on July 19, 2002; and Group 37 petitions on August 2, 2002.
7	628	June 20, 2002	Order	Granting defendant's motion for an extension of an additional 14 days in which to respond to Groups 38 and 39 of claimant petitions for Monitor review.
8	—	June 21, 2002	D.C. Circuit Opinion	Reversing and remanding the Court's January 17, 2002 Order interpreting the Consent Decree to allow extension of Track B deadlines; holding counsel's failure to meet critical deadlines amounts to an "unforeseen obstacle" that makes the Consent Decree deadlines "unworkable;" and ordering on remand such further proceedings as may be just, including a "suitably tailored" order under Federal Rule of Civil Procedure 60(b)(5).
9	629	June 27, 2002	Memorandum Opinion and Order	Denying 11 motions by individual class members for exclusion from the certified class of plaintiffs; noting it is nearly two years past the deadline for opting out of the class; finding the individual class members provided no reason other than lack of individual service of process at the commencement of the action for missing the deadline to opt out of the class; and finding the lack of notice, while unfortunate, is not a sufficient reason to permit opt outs after the established period.
10	635	July 18, 2002	Stipulation and Order	Authorizing the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision; authorizing the Monitor to obtain information from USDA regarding a class member's debt in deciding petitions for Monitor review which raise an issue regarding debt relief.

Table 6: Court Orders

#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
11	665	Sept. 11, 2002	Memorandum Opinion and Order	Denying motion to vacate the Consent Decree and denying motion to remove lead Class Counsel.
12	666	September 12, 2002	Order	Denying emergency motion by <i>pro se</i> movant to order the government to reopen public facility; stating to the extent that any federal court has jurisdiction to act on this motion, it is the United States District Court for the Eastern District of Arkansas.
13	693	October 29, 2002	Order	Setting 120-day deadline for claimants to petition for Monitor review from adverse Facilitator decisions; establishing a reconsideration process for claimants who cannot petition for Monitor review; permitting the Monitor to consider additional materials with a petition for Monitor review of a Facilitator decision or with a response to such petitions; limiting claimants to one petition for review of the Facilitator's decision.
14	705	November 22, 2002	Order	Granting defendant's motion for a stay of consideration of counsel Conlon, Frantz motion for fees and costs; ordering any and all attorneys who wish to seek fees and/or costs for implementation work performed as Class Counsel or Of Counsel to submit petitions by December 6, 2002; and ordering the matter of fees and costs for implementation consolidated with the pending issue of sanctions.

Table 6: Court Orders

#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
15	727, 733	December 30, 2002; amended January 14, 2003	Amended Memorandum Opinion and Order	Ordering immediate payment in the amount of \$500,000 to Class Counsel for implementation fees and costs; ordering continued negotiation efforts toward settlement of the issues of fees and sanctions; setting forth briefing schedule should settlement not be reached; ordering continued negotiation on the issue of modified deadlines in Track B cases involving claimants who initially were represented by Class Counsel; setting forth process for quarterly filings for fees, costs, and expenses incurred by any Class or Of Counsel after June 30, 2002. An appeal from this order was decided on May 14, 2004. ³⁶
16	739	January 15, 2003	Memorandum Opinion and Order	Granting in part, denying in part, motion to extend time to pay \$500,000 to Class Counsel in fees and costs.
17	770	March 24, 2003	Stipulation and Order	Addressing the timing of the Monitor's obligation to file reports on good faith implementation; establishing a process for the Monitor to recuse herself from rendering decisions regarding petitions for Monitor review in certain situations.
18	771	March 24, 2003	Stipulation and Order	Directing the Arbitrator to timely decide pending motions to dismiss and to schedule hearing in Track B claim of Edith Frazier.
19	790	April 14, 2003	Memorandum Opinion and Order	Granting defendant's motion to strike from the record certain pleadings.
20	800	May 28, 2003	Memorandum Opinion and Order	Denying Class Counsel Chestnut, Sanders' motion for reconsideration of April 14, 2003, Order and denying motion to strike from the record certain pleadings.

³⁶ The Court's December 30, 2002, Memorandum Opinion and Order was superceded by an Amended Memorandum Opinion and Order issued on January 14, 2003. On January 15, 2003, the Court issued another Memorandum Opinion and Order pertaining to the \$500,000 fee payment. On February 2, 2003, USDA appealed these orders to the District of Columbia Court of Appeals. The Court of Appeals dismissed the appeal on May 14, 2004. *Pigford v. Veneman*, 369 F.3d 545 (D.C. Cir. 2004).

Table 6: Court Orders

#	Court Docket Number	Date Filed	Title of Order	Major Issues Addressed Include:
21	801	June 2, 2003	Opinion and Order	Denying plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were deemed untimely filed by the Facilitator. Class Counsel moved for reconsideration of the Court's June 2, 2003, Order. On March 10, 2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals. At the time of this filing, that appeal is still pending.
22	804	June 4, 2003	Memorandum Opinion and Order	Denying plaintiffs' motion to reopen all late claims due to allegations of mail delays.
23	805	June 5, 2003	Order	Awarding \$2,345 in attorneys' fees and costs on behalf of claimant Cal Greely.
24	810	June 23, 2003	Order	Denying without prejudice motion for attorneys' fees and costs on behalf of claimant Sandy McKinnon; directing that counsel for McKinnon may refile once a final disposition has been reached on the claim.
25	842	September 4, 2003	Order	Denying plaintiffs' motion for sanctions concerning alleged violation of Second Amended Privacy Act Protective Order
26	845	September 11, 2003	Memorandum Opinion and Order	Denying motion for review of Arbitrator's final decision in Track B claim of Clarence Hardy; directing that claimant Hardy may file a petition for Monitor review within 120 days.
27	858	October 8, 2003	Order	Denying plaintiffs' motion for reconsideration of September 4, 2003, Order concerning alleged violation of Second Amended Privacy Act Protective Order.

IV. MONITOR'S ACTIVITY AND OBSERVATIONS

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 error 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 being available to class members and the public to facilitate the lodging of any Consent Decree complaints and to expedite their resolution.

An update regarding the Monitor's activity 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 states that the Monitor shall report directly to the Secretary of Agriculture. The Monitor met with the Secretary, Ann M. Veneman, in early 2003. The Monitor also fulfills this Consent Decree requirement in part through work with USDA's Office of General Counsel. The Monitor had many meetings and frequent phone conversations during 2002 and 2003 with James Michael Kelly, who during this reporting period was USDA's Acting General Counsel and then Deputy General Counsel.

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

Paragraph 12(b)(i) of the Consent Decree, as modified by Stipulation and Order dated March 24, 2003, requires the Monitor to make periodic written reports to the Court, the Secretary, Class Counsel, and defendant's counsel on the good faith implementation of the Consent Decree regarding each twelve-month period, upon the request of the Court or the parties, or as the Monitor deems necessary. The Monitor submits this third report on the good faith implementation of the Consent Decree pursuant to paragraph 12(b)(i), as modified by the March 24, 2003, Stipulation and Order. During the reporting period covered by this report, the

Monitor also filed with the Court a report on late petition filings; a report on good faith implementation of the Consent Decree for the period September 1, 2000, through December 31, 2001; and a report on the notice class members received of the 120-day deadline for filing petitions for Monitor review.³⁷

B. “Resolving Any Problems” — Paragraph 12(b)(ii) of the Consent Decree

Paragraph 12(b)(ii) of the Consent Decree states 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’s Office works with class members: (1) by phone; (2) through correspondence; (3) in person at meetings sponsored by claimant organizations and/or by USDA; 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 meetings sponsored by claimant organizations during 2002-2003 is listed in Appendix 4.

Copies of the written materials prepared or revised by the Monitor’s Office during 2002 and 2003 are attached as Appendix 5. During this reporting period, the Monitor issued two new Monitor Updates to convey important information to class members and putative class members.

³⁷ See Monitor’s Report on Late Petition Filings, dated February 27, 2002; Monitor’s Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, dated September 4, 2002; and Monitor’s Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition for Monitor Review, dated May 30, 2003. The Monitor also filed reports regarding funds in the reserve of the Court Registry from the Monitor’s budget. These reports are dated February 12, 2002; August 7, 2002; February 28, 2003; and August 7, 2003. Copies of Monitor reports may be obtained from the Monitor’s office (1-877-924-7483). Reports regarding substantive issues are available at the Monitor’s web site at <http://www.pigfordmonitor.org/reports/>.

In November 2002, the Monitor issued an update on “Understanding Who Is Part of the *Pigford Case*” (Update No. 11). This update explains what the deadlines were for becoming a part of the case and explains that certain categories of people will not be able to become part of the case.³⁸

In February 2003, the Monitor issued an update entitled “Resources for *Pigford* Claimants” (Update No. 12). This update describes the types of problems the Monitor’s Office can help to resolve and the types of problems that the Monitor’s Office cannot help to resolve. The update provides contact information for entities that may be able to provide claimants with some types of help that the Monitor cannot provide. Entities listed in Update No. 12 include: university and extension programs, farm advocacy groups, legal organizations, and government entities that may be of assistance to class members.

The Monitor also issued revisions to existing “Monitor Updates” to keep information provided to class members current during this reporting period. In 2002, the Monitor revised the updates on Procedural Rules for the Track B Petition Process (Update No. 8) and on Eligibility and Monitor Review (Update No. 5). In 2003, the Monitor issued revised updates on “late claims” deadlines (Update No. 1); deadlines for petitions for Monitor review (Update No. 3); injunctive relief (Update No. 4); USDA’s freeze on accelerations and foreclosures during the petition for Monitor Review process (Update No. 6); claimant and claimant attorney access to USDA documents (Update No. 7); non-credit claims (Update No. 9); and debt relief (Update No.

³⁸ In telephone calls to the Monitor’s toll-free line and in meetings throughout the country, the Monitor’s Office has received an increasing number of questions about “reopening” the case. All deadlines for filing a claim, requesting permission to file a late claim, and/or opting out of the class have now passed. Nonetheless, the Monitor continues to receive inquiries from people who wish to join the case or make a claim, but who have missed the deadlines for doing so.

10).³⁹ The Monitor also revised “Questions and Answers About Monitor Review of Decisions,” as an aid to claimants in the petition process in 2002 (Version 2) and in 2003 (Version 3).⁴⁰

Many of the class members who contacted the Monitor’s office during this reporting period expressed frustration about problems they were experiencing. Earlier Monitor reports discussed the many concerns brought to the Monitor’s attention by class members.⁴¹ Many of these concerns continue. The most significant recurring problems during this reporting period (calendar years 2002 and 2003) are discussed in the “Significant Consent Decree Implementation Issues” section below.

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

Paragraph 12(b)(iii) gives the Monitor responsibility to direct reexamination of a claim where the Monitor finds that a clear and manifest error has occurred in the screening, adjudication, or arbitration of a claim that has resulted or is likely to result in a fundamental miscarriage of justice. The Monitor considers whether reexamination is warranted in response to a petition for Monitor review by either a class member or USDA. As of the end of 2003, approximately 5,400 petitions for Monitor review had been filed and the Monitor had issued decisions in response to approximately 2,725 of those petitions.

³⁹ Copies of Monitor Updates are available on the Monitor’s web site at <http://www.pigfordmonitor.org/updates/>.

⁴⁰ Copies of these documents are available on the Monitor’s web site at <http://www.pigfordmonitor.org/class/>.

⁴¹ The Monitor’s Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, Through December 31, 2001, detailed these problems. A copy is available on the Monitor’s web site at <http://www.pigfordmonitor.org/reports>.

The vast majority of petitions for Monitor review seek reexamination of Adjudicator decisions in Track A claims. Under paragraph 8 of the Court’s Order of Reference,⁴² the Monitor may admit into the record supplemental information provided in the petition or petition response when such information addresses 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. Approximately 50 percent of the Track A decisions issued by the Monitor as of December 31, 2003, direct the Adjudicator to reexamine the claim. The Adjudicator began issuing reexamination decisions during 2002 and had issued a total of 301 reexamination decisions as of the end of 2003. Table 7 provides statistics regarding Monitor petition decisions and Adjudicator reexamination decisions issued as of the end of 2002 and the end of 2003.⁴³

Table 7: Statistical Report Regarding Petitions for Monitor Review		
Statistical Report as of:	End of 2002⁴⁴	End of 2003⁴⁵
Petitions for Monitor Review		
A. Number of Petitions for Monitor Review	5,160	5,401
A.1. Claimant Petitions	4,560	4,727
A.2. Government Petitions	600	674

⁴² The Order of Reference, dated April 4, 2000, addresses many aspects of the Monitor’s duties and is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/>.

⁴³ Statistics regarding the Monitor’s activity for Track B claims are contained in Table 2 of this report. The Monitor began issuing decisions in response to petitions in the Track B process during 2002 and issued 19 decisions as of the end of 2003 (12 of the 19 were petitions from Arbitrator decisions, and 7 were petitions from Facilitator decisions).

⁴⁴ These statistics are valid as of January 2, 2003.

⁴⁵ These statistics are valid as of January 2, 2004.

Table 7: Statistical Report Regarding Petitions for Monitor Review		
Statistical Report as of:	End of 2002⁴⁴	End of 2003⁴⁵
Monitor Decisions		
B. Petition Decisions Issued by Monitor	1,743	2,725
B1. Total Number of Petitions Granted	676	1,218
B.1.a. Claimant Petitions Granted	631	1,162
B.1.b. Government Petitions Granted	45	56
B.2. Total Number of Petitions Denied	1,067	1,507
B.2.a. Claimant Petitions Denied	609	1,040
B.2.b. Government Petitions Denied	458	467
Reexamination Decisions		
C. Reexamination Decisions Issued by Adjudicator	39	301
C.1. Reexamination Decisions After Claimant Petition Granted	39	291
C.1.a. Claimant Prevailed on Reexamination	39	279
C.1.b. Claimant Did Not Prevail on Reexamination	0	12
C.2. Reexamination Decisions After Government Petition Granted	0	10
C.2.a. Government Prevailed on Reexamination	0	10
C.2.b. Government Did Not Prevail on Reexamination	0	0

The Court issued several Orders during 2002 and 2003 clarifying the petition process. On July 18, 2002, the Court filed a Stipulation and Order permitting the Monitor to consolidate petitions for Monitor review when an individual class member and USDA petition for review from the same Facilitator, Adjudicator, or Arbitrator decision. This Stipulation and Order also authorized the Monitor to obtain information from USDA regarding the status of a class

member's farm loan debt in deciding petitions for Monitor review that raise an issue regarding debt relief.⁴⁶

On October 29, 2002, the Court issued an Order setting a 120-day deadline for claimants to petition from adverse class membership screening decisions made by the Facilitator.

Deadlines for petitions from Adjudicator and Arbitrator decisions had previously been set in a Stipulation and Order dated July 14, 2000. These deadlines for petitions for Monitor review are discussed in more detail in the section on "Significant Consent Decree Implementation Issues" below.

During this reporting period, the parties also agreed to a process for designation of the record in Track B petitions for Monitor review. The process is designed to make the Track B review process more efficient. The process is described in Monitor Update No. 8, "Procedural Rules for the Track B Monitor Petition Process." In general, the petitioning party will file a designation of record with the petition for Monitor review. The designation will identify the materials that are part of the record that should be considered by the Monitor in the review process. The responding party may file a designation of record of additional material that should also be considered. The Monitor may, in her discretion, review material in the record before the Arbitrator that was not designated by the parties.

On March 24, 2003, the Court issued an order approving the parties' agreement for a process of recusal for the Monitor. For any claim in which the Monitor determines, in her discretion, that she should not be the decision-maker on a petition for review, the Monitor may

⁴⁶ Stipulation and Order, paragraphs 3 and 5. A copy of the July 18, 2002, Stipulation and Order may be found on the Monitor's web site at <http://www.pigfordmonitor.org/orders/>.

designate Kenneth Saffold of the Office of the Monitor to carry out the Monitor's duties under paragraph 12(b)(iii) of the Consent Decree. The Monitor anticipates Kenneth Saffold will be designated to act as Monitor regarding fewer than five petitions.

D. Calls to Toll-Free Telephone Number — Paragraph 12(b)(iv) of the Consent Decree

Paragraph 12(b)(iv) gives the Monitor the responsibility to staff a toll-free telephone line that class members and the public can call to lodge Consent Decree complaints. The Monitor's Office continues to operate a toll-free telephone number: 1-877-924-7483. Individuals who call this number will reach phone operators who have been trained regarding issues in the case and who have access to a database containing certain factual information about each claimant. The operators are able to answer certain categories of questions at the time the claimant calls. For other categories of questions, including questions about debt relief, injunctive relief, and other complex issues or complaints, the operators may make an appointment for the caller to speak with a lawyer from the Office of the Monitor. The operators also have access to documents that can be sent to individuals upon request, including Court Orders, Farm Loan Program Notices, Monitor Reports, and Monitor Updates.

The Monitor's toll-free line received 20,901 incoming calls during 2002 and 19,235 incoming calls during 2003. Sometimes the operators also made outgoing calls to class members to follow up with callers or to provide additional information. The operators staffing the toll-free line made outgoing calls in this period, bringing the total number of calls staffed by the toll-free line operators to 21,671 during 2002 and 19,932 during 2003. Many of the calls concerned problems discussed more fully below in the "Significant Consent Decree Implementation Issues" section of this report.

V. SIGNIFICANT CONSENT DECREE IMPLEMENTATION ISSUES

Claimants continued to raise many concerns regarding the implementation of the Consent Decree during this reporting period. Some of these concerns expressed to the Monitor included the following:

- a. Concern about the length of time the entire claims process takes and about accumulation of interest on claimants' Farm Service Agency (FSA) loans while they are waiting for their claims to be resolved;
- b. Concern about the amount of time the petition for Monitor review process is taking for some claimants;
- c. Concern about the amount of time the Adjudicator's reexamination process takes following the approval of a petition for Monitor review;
- d. Concern about options for loan servicing for claimants when their claims are resolved;⁴⁷

⁴⁷ Paragraph 7 of the Consent Decree provides that USDA must cease actions to foreclose or accelerate a claimant's debt while his or her claim was pending. Once the claimant receives the final decision on his or her Track A or Track B claim, paragraph 7 protections cease. For those who timely file petitions for Monitor review, USDA voluntarily agreed to extend the adverse action freeze through the time of final disposition of the petition.

The loan servicing concern focuses on the fact that the claimants who still owe debt to the agency are accumulating interest while their claims and petitions are being processed. At the end of the *Pigford* claims processing and petitions processing, the amount of accumulated interest could be staggering. Loan servicing is a term of art in FSA loan programs—it refers to a package of mechanisms that FSA can use to restructure debt to make it more manageable. One of the mechanisms would allow write-down or write-off of interest in certain situations.

FSA loan servicing regulations are quite specific about when loan servicing can be offered. Under a strict interpretation, many *Pigford* claimants would have no loan servicing opportunities remaining at the end of the *Pigford* process.

To attempt to address this problem, on October 24, 2002, USDA issued guidance for servicing *Pigford* claimants who are financially distressed or delinquent on their FSA farm loan program debt, but whose loans had not been accelerated by USDA prior to the time they filed a claim under the Consent Decree. USDA has voluntarily agreed to extend loan servicing opportunities for *Pigford* claimants. USDA has stated that County Offices will re-notify claimants of their 1951-S loan servicing rights once a final decision has been rendered on their claim. The letter the County Office must send gives a claimant 60 days from the date of the letter within which to apply for loan servicing. See FLP-279, 1951-S Servicing of *Pigford* Cases Whose Claims Have Been Closed and National Office FLP Programmatic Review, Exhibit 1, at 2 (Oct. 24, 2002) (set to expire Nov. 1, 2003, made obsolete on Apr. 3, 2003), and FLP-299, Servicing of *Pigford* Claimants and National Office FLP Programmatic Review, Exhibit 1, at 2 (Apr. 3, 2003) (set to expire Dec. 1, 2004). These FLPS are available on the Monitor's web site at

e. 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;

f. Concern about the low rate of approvals in the late claims process;

g. 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;

h. Concern about the litigious nature and low claimant success rate in Track B arbitrations;

i. Concern that the FSA county office staff members are not sufficiently knowledgeable about the procedures for providing full injunctive relief to prevailing claimants;

j. Concern about USDA's failure to fully and promptly implement debt relief for prevailing claimants and failure to communicate that debt relief to the claimant's local FSA county office;

k. Concern that there will be retribution by FSA county office staff toward claimants who participated in the Consent Decree process; and

l. Concern about Federal Bureau of Investigation (FBI) investigations in claimant communities.

In general, the Monitor has addressed these concerns by: referring claimants to 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; using “other problem” authority to attempt to resolve individuals' difficulties in the debt relief and injunctive relief processes; explaining how the Consent Decree works; and working with claimants to solve other problems where appropriate.

<http://www.pigfordmonitor.org/flp/>. Loan servicing includes actions such as debt write-down, reamortization, rescheduling, reduction of interest rates, and loan deferral. *See* 7 C.F.R. part 1951, subp. S (2004).

Many aspects of the Consent Decree implementation process received significant attention from the parties and the neutrals during this reporting period. The progress made in addressing implementation issues regarding becoming a class member, the claims process, and relief for prevailing class members, along with issues regarding attorneys' fees, are discussed more fully below.

A. Becoming a Class Member

1. 65,900 Late Claims Requests

The Consent Decree required that Claim Sheets be filed by October 12, 1999.⁴⁸

Paragraph 5(g) of the Consent Decree provides that claimants may request permission to file a Claim Sheet after the October 12, 1999, deadline if extraordinary circumstances beyond a claimant's control prevented the claimant from filing a completed claim package by the October 12, 1999, deadline. This process is referred to as the "late claims" process. During this reporting period, class members continued to express much anger and frustration regarding the late claims process, including the lack of notice that such a process existed, the high rate of rejection of late claims requests, the length of time required for the late claims process, and the lack of access to legal assistance during the time claimants were completing their late claims requests.

On December 20, 1999, the Court delegated to the Arbitrator the review of "late claims" requests filed pursuant to paragraph 5(g) of the Consent Decree. A Stipulation and Order dated July 14, 2000, set September 15, 2000, as the deadline for filing these requests. The Arbitrator

⁴⁸ Paragraph 5(c) of the Consent Decree required completed claim sheets to be filed 180 days from the entry of the Consent Decree. The Consent Decree was approved April 14, 1999.

has reported that approximately 65,900 late claims requests were filed by the September 15, 2000 deadline.⁴⁹ By the end of calendar year 2003, the Arbitrator reported that a total of approximately 64,200 requests had been reviewed and decided by the Arbitrator. Of these requests, the Arbitrator has approved a total of approximately 2,100 late claims.⁵⁰

The Arbitrator has established a reconsideration process for claimants whose “late claims” requests are denied. As of December 9, 2003, approximately 20,400 timely requests for reconsideration had been filed, and decisions had been made in a total of 715 reconsideration requests, with 86 requests having been approved in the reconsideration process and 629 having been denied.⁵¹

On June 4, 2003, the Court issued a Memorandum Opinion and Order denying a motion by Class Counsel J.L. Chestnut on behalf of certain plaintiffs to reopen all late claims due to allegations of mail delays. The Court ruled that the Arbitrator had been given the authority and had established procedures for deciding all requests to file late, including those where the claimant alleges that he or she filed a timely claim through the U.S. mail.⁵²

⁴⁹ During this reporting period, the Arbitrator filed reports with the Court on May 3, 2002; November 4, 2002; June 2, 2003; and December 9, 2003. All of the Arbitrator’s reports on the late claims process are available on the Monitor’s web site at <http://www.pigfordmonitor.org/arbrpts/>.

⁵⁰ After a late claims request is approved by the Arbitrator, the Facilitator sends a Claim Sheet and Election Form, which must be filled out and returned to the Facilitator no later than 60 days from the date of the cover letter that accompanied the Claim Sheet sent by the Facilitator. For more information on the late claims process, see Monitor Update No. 1, “Late Claim Deadline,” available on the Monitor’s web site at <http://www.pigfordmonitor.org/updates/>.

⁵¹ See Arbitrator’s Fifth Report on the Late-Claim Petition Process, dated December 9, 2003, pages 5-6.

⁵² Memorandum and Order, at 2-3. The Court’s June 4, 2004, Order is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/>.

2. Petition Deadline for Claims Rejected by the Facilitator

Under the Consent Decree, the Facilitator may reject a claim package on the ground that the requirements for class membership have not been met, and a Claimant may seek review of that decision by submitting a petition to the Monitor. In the Monitor's second report on good faith implementation, the Monitor recommended that the parties set a deadline for Petitions for Monitor Review from decisions by the Facilitator. The Monitor further recommended that notice be provided to those persons eligible to petition from a decision by the Facilitator rejecting a completed claim package on eligibility grounds. The parties agreed with the Monitor's recommendation, and on October 29, 2002, the Court issued an Order setting deadlines for petitions from adverse Facilitator eligibility screening decisions.⁵³ The Court's Order permits the Monitor to consider supplemental information with a petition for Monitor review of a Facilitator class membership screening decision or with a response to such a petition in certain limited circumstances.⁵⁴ As of the end of 2003, the Monitor had received 92 petitions for review of eligibility screening decisions. As of the end of 2003, the Monitor had issued decisions in response to nine of those petitions.

⁵³ For claimants who filed a completed claim package that was rejected by the Facilitator on or before October 29, 2002, the Order required a petition for Monitor review be postmarked within 120 days of the date of the Order, or by February 26, 2003. For claimants who filed a completed claim package that was rejected by the Facilitator after October 29, 2002, the Order requires a petition for Monitor review be filed within 120 days of the date of the Facilitator's rejection notification. The Order required the Facilitator to mail a copy of the Order to every person rejected by the Facilitator in the screening process. The October 29, 2002 Order is available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/>.

⁵⁴ The October 29, 2002, Order states that the Monitor may consider additional materials submitted with a petition or a petition response 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 is within the discretion of the Monitor. Order, paragraph 5.

For those claimants rejected by the Facilitator for failure to submit a timely completed claim package, the Order requires the Facilitator to establish a reconsideration process. Through the reconsideration process, claimants may communicate with the Facilitator if they believe the Facilitator committed an error in determining that they failed to timely complete a claim package. The Facilitator reports that as of the end of 2003 it had received 116 requests for reconsideration. Of those 116, four were granted and 112 were denied.

B. The Claims Process

1. Untimely Petitions From Adjudicator and Arbitrator Decisions

In July 2002, Class Counsel filed a motion entitled “Plaintiffs’ Motion for Relief for Four Groups of Claimants Who Filed Petitions for Monitor Review.”⁵⁵ The motion addressed the application of the deadline for petitions for Monitor review to certain specific claimants. The Consent Decree did not provide a deadline for filing petitions for Monitor review. In the July 14, 2000, Stipulation and Order, a deadline was established.⁵⁶ For adjudication and arbitration decisions issued prior to July 14, 2000, the deadline for submitting a petition for Monitor review was 120 days from the date of the Order, or November 13, 2000. For adjudication and arbitration decisions issued after July 14, 2000, the deadline was 120 days from the date of the adjudication or arbitration decision.

⁵⁵ Plaintiffs initially brought this issue before the Court in a motion filed under seal on December 11, 2001. Plaintiffs withdrew this motion and filed a subsequent motion on July 19, 2002.

⁵⁶ A copy of the Order is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/>.

Notice of the 120-day deadline was provided at various times to segments of the class through at least four different means.⁵⁷ However, it was not until November 15, 2001, that the Adjudicator's decision letters in Track A claims began to include notice of the 120-day deadline for petitions for Monitor review.⁵⁸ Thousands of claimants whose claims were decided prior to this date received decision letters that did not inform them of the 120-day deadline for filing a petition for Monitor review.

At the time of the second Monitor report on good faith implementation, the parties were in the midst of briefing plaintiffs' motion for relief for 350 claimants whose petitions for Monitor review were determined by the Facilitator to be untimely filed.⁵⁹ In May 2003, the Monitor filed a report with the Court on notice issues regarding the late petition filings.⁶⁰ On June 2, 2003, the Court issued an Opinion and Order denying the plaintiffs' motion for relief. The Court ruled that the deadlines established in prior Court orders govern when petitions for Monitor review must be filed. Class Counsel moved for reconsideration of the Court's June 2, 2003 Order. On March 10,

⁵⁷ 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. Second, the July 14, 2000, Stipulation and Order required that the Order be posted in a conspicuous public place in every USDA FSA county office. Third, on August 14, 2000, the Monitor's Office disseminated a Monitor Update explaining the July 14, 2000 Order as it applied to petition deadlines. 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 class members.

⁵⁸ Although the Arbitrator began to include notice of the 120-day deadline for petitions for Monitor review in Arbitrator decisions shortly after the July 14, 2000 Stipulation and Order, claimants whose claims had been decided by the Arbitrators prior to July 14, 2000, did not receive notification of the 120-day deadline other than through methods listed in the previous footnote.

⁵⁹ Plaintiffs originally sought relief for a total of 387 claimants. As the Court's Order of June 2, 2003, sets forth, the parties reached agreement on a number of claims, reducing the total to 350 claimants. Opinion and Order, at 2, footnote 2.

⁶⁰ Monitor's Report to the Court Regarding Notice to the Class of the 120-Day Deadline to File a Petition For Monitor Review, dated May 30, 2003.

2004, the Court issued an Order denying reconsideration. On April 9, 2004, Class Counsel appealed this Order to the Court of Appeals.⁶¹

2. Track B Hearing Deadlines

The issue of the authority of the Arbitrator to modify pre-hearing arbitration deadlines established by the Consent Decree was considered by the Court and the Court of Appeals during this reporting period.⁶² In response to a motion by *pro bono* counsel who had recently taken over the representation of a class member in the Track B claims process, the District Court held that the Arbitrator had discretion to revise Consent Decree deadlines in Track B proceedings, so long as justice required the revisions and provided that the burden on the Government was not so great as to outweigh the interests of the claimant in fully presenting his or her claim. The Government appealed this ruling. Finding that the District Court had limited authority to modify Consent Decree deadlines that had been negotiated between the parties, the Court of Appeals reversed and remanded the case to the District Court to consider a modification that would be “suitably tailored,” suggesting a proposed modification for the one claim at issue in the appeal.⁶³

During this reporting period, the Monitor has reviewed many pending petitions for Monitor review in Track B files. This review suggests that changes in Consent Decree deadlines have been common in Track B claims. In the majority of the approximately fifty Track B petition

⁶¹ The Court’s Opinion and Order, issued June 2, 2003, and the Court’s order denying reconsideration on March 10, 2004, are available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/>.

⁶² Paragraph 10 of the Consent Decree contains deadlines pertaining to Track B arbitration claims.

⁶³ The Court of Appeals ruled that the District Court could modify the Consent Decree if the requirements of Federal Rule of Civil Procedure 60(b)(5) were met. *See Pigford v. Veneman*, 292 F.3d 918 (D.C. Cir. 2002).

files received by the Monitor through December 31, 2003, the record received from the Arbitrator shows changes to Consent Decree deadlines during the time the claims were pending before the Arbitrator. Records received from the Arbitrator show that revisions in arbitration schedules have been made due to: the unanticipated number of claims filed, efforts by the parties to explore settlement, discovery or pre-hearing motions and disputes, problems with securing representation for claimants, and/or difficulty encountered by the Government in providing representation for every claim.

The Court has previously ruled that arbitration deadlines may be changed by mutual consent.⁶⁴ The parties have submitted additional memoranda to the District Court on the scope of the Court of Appeals' remand and whether it extends to the claims of Track B class members represented by counsel other than class counsel. The Court of Appeals' remand order remains pending with the District Court.

C. Prevailing Class Members

1. Payment of Cash Relief

Prior Monitor reports explained significant delays in the payment of cash relief to prevailing class members, which had occurred early in the Consent Decree implementation process.⁶⁵ During this reporting period, the number of prevailing claimants who had to wait more than 180 days to receive their cash award was substantially reduced. A small number of claimants continue to experience payment status problems and to contact the Facilitator and the

⁶⁴ In an Order dated March 1, 2000, the Court delegated to the Arbitrator the authority to stay arbitrations or postpone evidentiary hearings beyond the Consent Decree deadlines when both parties consent.

⁶⁵ See Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 15-17.

Monitor for assistance in attempting to resolve these problems.⁶⁶ The Monitor will continue to work with the parties to help solve any remaining problems relating to payment delays to prevailing class members.

2. Tax Issues

While some progress has been made in resolving tax problems arising from implementation of the Consent Decree, class members continue to experience many of the tax-related problems that were explained in prior Monitor reports.⁶⁷ These problems are significant and include:

- a. General lack of information for the class about the tax consequences of prevailing under the settlement;
- b. Difficulties caused by a failure to issue Internal Revenue Service (IRS) Forms 1099 in a timely manner regarding cash relief, debt relief, and tax relief;⁶⁸
- c. Difficulties created by the treatment of tax relief as taxable income;⁶⁹
- d. The assessment and abatement 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
- e. Difficulties in providing tax relief to the decedents' estates when successful claims were brought on behalf of deceased class members.

⁶⁶ As of August 4, 2004, the number of claimants who have been waiting more than 180 days to receive a cash award has been reduced to two. Both of these claims are delayed due to paperwork requirements for estate claims.

⁶⁷ See Monitor's Report and Recommendations Regarding Implementation of the Consent Decree for the Period of September 1, 2000, through December 31, 2001, at pages 12-13, 29-30.

⁶⁸ For any year in which a class member receives cash relief, debt relief, and/or tax relief, the class member should receive an IRS Form 1099 regarding that cash relief, debt relief, and/or tax relief.

⁶⁹ Paragraph 9(a)(iii)(C) of the Consent Decree provides that relief to prevailing Track A credit claimants shall include a payment to the claimant's Internal Revenue Service account as partial payment of the taxes owed by the claimant. The payment is 25% of the principal amount of any debt forgiven under the Consent Decree plus 25% of the \$50,000 in cash relief granted pursuant to the Consent Decree provisions.

The parties and neutrals made progress in addressing possible solutions to tax-related problems. The Facilitator continued to be in regular contact with the IRS to attempt to solve tax problems related to individual claimants and was able to work with the IRS to resolve hundreds of claimant problems during this reporting period. Most of the successful resolutions relate to decedents' estate issues. The Monitor met with the National Taxpayer Advocate and with representatives of the Internal Revenue Service in an effort to seek additional assistance for class members with tax issues. Substantial work has been done to expedite issuance of Forms 1099 to claimants who have received cash payments or debt relief and to resolve the tax problems created when Forms 1099 were not promptly issued.

Many tax account problems involved proper identification of estates. The Facilitator has continued to work with the IRS to establish a procedure for processing claims brought on behalf of decedents in Track A. Class members may call the Facilitator at 1-800-646-2873 for information about what to do in this situation and for help with other tax problems associated with implementation of the Consent Decree claims process.

Notwithstanding these successes and the establishment of these procedures, many successful claimants still have unresolved tax-related problems, and there is reason to believe that as implementation progresses, many more tax-related problems will rise to the surface.

3. Debt Relief

The Consent Decree provides for the following debt relief for successful Track A credit claimants:

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 claim(s) resolved in the class member's favor by the adjudicator.⁷⁰

The language for Track B is similar regarding the extent of debt relief.⁷¹

A Stipulation and Order filed on February 7, 2001, further defined the scope of debt relief available to class members.⁷² 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.

During this reporting period, USDA made substantial progress in implementing debt relief. Many successful claimants contacted the Monitor for assistance with obtaining their debt relief awards. The Monitor and the parties worked together to solve many problems in the debt relief implementation process, and, at the end of the reporting period, continued to work on open issues regarding debt relief. USDA reports that as of January 12, 2004, the agency had forgiven \$21,930,937 in outstanding debt owed by 253 class members.

4. *Injunctive Relief*

Under the Consent Decree, class members who prevail are entitled to injunctive relief in addition to other remedies. The majority of claims under the Consent Decree are credit claims. Claimants who prevail on credit claims are entitled to priority consideration for one Farm Ownership Loan, for one Farm Operating Loan, and for one opportunity to acquire farmland

⁷⁰ Consent Decree, paragraph 9(a)(iii)(A).

⁷¹ Consent Decree, paragraph 10(g)(ii) states:

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.

⁷² The Order is available on the Monitor's web site at <http://www.pigfordmonitor.org/orders/>.

from USDA inventory property.⁷³ During 2002 and 2003, however, relatively few farmers made use of their right to priority consideration. According to information provided by USDA, 171 successful claimants requested priority consideration from USDA from the beginning of this litigation through January 12, 2004.⁷⁴ These requests resulted in a total of fifteen Farm Ownership Loans, thirty-nine Farm Operating Loans and one lease or purchase of inventory property from USDA.

The Monitor's Office continued to receive questions, requests for assistance, and reports of concern from class members relating to the implementation of injunctive relief during this reporting period. Prior Monitor reports described this concern in detail. Many prevailing claimants are skeptical about whether local Farm Service Agency officials will act in a nondiscriminatory manner. They fear that FSA officials will try to retaliate against them because they prevailed in the Consent Decree claims process. Class members also report difficulty meeting the eligibility requirements for loans. Some claimants are concerned that injunctive relief may expire by the time they ultimately prevail on their claims.

Several factors may be contributing to the relatively low rate of use of injunctive relief. First, it is possible that only a small percentage of successful claimants wish to pursue farming at this time. A second, related factor may be the current difficult agricultural economy. A third

⁷³ Consent Decree, paragraph 11(a)-(b). The Consent Decree also requires USDA to consider any new application by a prevailing class member in a light most favorable to the applicant, and to provide technical assistance from a USDA employee who is acceptable to the prevailing class member. Consent Decree, paragraph 11(c)-(d).

⁷⁴ Under paragraph 11(a)-(b) of the Consent Decree, class members must notify USDA in writing that they are exercising their right to priority consideration.

factor may be statutory restrictions that make many farmers ineligible for FSA loan programs. Finally, many prevailing class members may lack a detailed understanding of their injunctive relief rights. The Monitor's Office has continued its efforts to give class members information about injunctive relief, both by distributing a Monitor Update on this topic,⁷⁵ and by making presentations about injunctive relief at claimant meetings.⁷⁶

To address the concern about the expiration of injunctive relief, in January 2003 USDA announced plans to voluntarily extend the time for prevailing class members to participate in injunctive relief. Under the terms of the Consent Decree, injunctive relief was to expire on April 14, 2004, five years from the date the Consent Decree was approved.⁷⁷ USDA has announced that prevailing class members will now have one year longer, until April 14, 2005, to participate in injunctive relief.⁷⁸

⁷⁵ This update, "Injunctive Relief in *Pigford v. Veneman*" (Monitor Update No. 4), is available from the Monitor's office (1-877-924-7483) or on the Monitor's web site at <http://www.pigfordmonitor.org/updates/>.

⁷⁶ See Appendix 4 for a listing of the meetings attended by the Office of the Monitor during 2002 and 2003.

⁷⁷ See Consent Decree, paragraph 11(a)-(c).

⁷⁸ This announcement was publicly made in a press release dated January 16, 2003. The press release is available on USDA's web site at <http://www.usda.gov/news/releases/2003/01/0017.htm>. In July 2003, FSA issued Notice FLP-313, "Priority Consideration for Prevailing Claimants" which provides guidance about priority consideration and other injunctive relief and which extends the period for injunctive relief to April 14, 2005. FLP-313 is available on USDA's web site and on the Monitor's web site at <http://www.pigfordmonitor.org/flp/>. In September of 2002, USDA also announced a series of steps to assist minority and disadvantaged farmers, including the creation of the Office of Minority and Socially Disadvantaged Farmer Assistance to work with minority and socially disadvantaged farmers who have concerns and questions about loan applications they have filed in their County Offices. The Office may be contacted toll-free by calling 1-866-538-2610 or sending an email to msda@wdc.usda.gov or writing to Office of Minority and Socially Disadvantaged Farmers, Farm Service Agency, USDA, 1400 Independence Ave SW, Mail Stop 0501, Washington D.C. 20250-0501.

D. Attorneys' Fees and Sanctions

Several Orders issued by the Court and referenced in the second Monitor report on good faith implementation discussed the issue of possible sanctions against Class Counsel. The parties submitted additional briefing on the issue of sanctions during this reporting period, and all sanctions issues were decided by the Court in March 2004.⁷⁹

Some aspects of attorneys' fees issues are still pending. During this reporting period, Class Counsel filed requests for attorneys' fees and costs associated with implementation of the Consent Decree. The Court ordered an interim payment of \$500,000 in an Amended Memorandum Opinion and Order, issued January 14, 2003, which the Government appealed. The Court of Appeals dismissed the appeal on May 14, 2004.

On November 25, 2003, the Arbitrator issued Findings and Recommendations to the Court regarding the January 1 through March 31, 2003, fee request of one of the Class Counsel law firms, Conlon, Frantz, Phelan and Pires, for time spent assisting in the implementation of the Consent Decree. Subsequent to the issuance of the Arbitrator's Findings and Recommendations, the parties resolved that fee petition. The issue of fees will be subject to further proceedings.

VI. GOOD FAITH IMPLEMENTATION OF THE CONSENT DECREE

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"⁸⁰ During this reporting period, January 1, 2002, through December 31, 2003, the parties and all three of the neutrals (the

⁷⁹ The Court's Opinion and Order, issued March 10, 2004, is available on the Court's web site at <http://www.dcd.uscourts.gov/district-court-2004.html>.

⁸⁰ West's Legal Thesaurus/Dictionary (William P. Statsky ed., 1986).

Facilitator, the Adjudicator, and the Arbitrator) continued to work to implement the Consent Decree in good faith.

The Monitor notes that despite significant challenges, substantial progress was made during calendar years 2002 and 2003 to implement the Consent Decree claims process and relief provisions. During this reporting period, the Monitor continued to meet and work on an ongoing basis with all of those who are charged by the Court with the responsibility for carrying out implementation of this Consent Decree. The Monitor believes all of the parties involved met the test for good faith during this reporting period.

Dated: August 19, 2004.

Respectfully submitted,

s/Randi Ilyse Roth

Randi Ilyse Roth

Monitor

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Appendix 1

STATISTICAL REPORT REGARDING TRACK A CLAIMS

Statistical Report as of:	Aug. 28, 2000		End of 2001¹		End of 2002²		End 2003³	
ITEM	Number	Percent	Number	Percent	Number	Percent	Number	Percent
A. Eligible class members	21,069	100	21,541	100	21,774	100	22,276	100
B. Cases in Track A (Adjudications)	20,878	99	21,364	99	21,595	99	22,098	99
C. Cases in Track B (Arbitrations)	191	1	177	1	179	1	178	1
Adjudication Completion Figures								
D. Adjudications complete	18,347	88	21,324	~100	21,547	~100	21,678	98
E. Adjudications not yet complete	2,531	12	40	~0	48	~0	420	2
Adjudication Approval/Denial Rates								
F. Claims approved by Adjudicator	11,083	60	12,848	60	12,987	60	13,260	61
G. Claims denied by Adjudicator	7,264	40	8,476	40	8,560	40	8,418	39
Adjudication Approvals Paid/Not Paid								
H. Approved adjudications paid as of specified date	7,143	64	12,285	96	12,690	98	12,968	98
I. Approved adjudications not yet paid as of specified date	3,940	36	563	4	297	2	292	2
J. Cumulative Dollars Paid to Class Members for Track A credit claims ⁴	\$357,150,000		\$614,250,000		\$624,750,000		\$638,350,000	
K. Cumulative Dollars Paid to Class Members for Track A non-credit claims			\$1,284,000		\$1,284,000		\$1,287,000	

¹ These statistics are valid as of January 2, 2002.

² These statistics are valid as of December 31, 2002.

³ These statistics are valid as of January 5, 2004.

⁴ 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.

Appendix 2

STATISTICAL REPORT REGARDING TRACK B CLAIMS

Statistical Report as of:	Sept. 18, 2000	End of 2001¹	End of 2002²	End of 2003³
A. Eligible Track B Claimants	177	235	236	237
B. Track B Cases Settled	11	57	61	71
C. Track B Cases Converted to Track A	27	50	54	55
D. Track B Cases Withdrawn	5	6	6	6
Arbitrations Complete/Not Complete				
E. Contested Track B Claims in Claims Process (Not Settled, Converted or Withdrawn)	134	122	115	105
F. Arbitration Decisions Issued	15	51	71	77
G. Contested Cases in Which Arbitration Was Not Complete and/or Decision Was Not Yet Issued	119	71	44	28
Arbitration Results				
H. Claimant Prevailed Before Arbitrator	2	8	15	17
I. Average Awards to Prevailing Claimants	\$580,500	\$531,373	\$560,309	\$545,686
J. Government Prevailed Before Arbitrator	13	43	56	60
Posture of Decision:				
J.1. Cases Dismissed Before Hearing	10	28	34	38
J.2. Full Hearing, Finding of No Liability	3	15	22	22
Petitions for Monitor Review⁴				
K. Claimant Petitions for Monitor Review of Facilitator Decision (Regarding Class Membership Screening) in Track B cases	4	8	9	14
L. Monitor Decisions Issued on Petitions for Review of Facilitator Decisions	0	0	0	7
M. Claimant Petitions for Monitor Review of Arbitrator Decisions	5	26	33	38
N. Government Petitions for Monitor Review of Arbitrator Decisions	2	4	10	14
O. Monitor Decisions Issued on Petitions for Review of Arbitrator Decisions	0	0	7	12

¹ These statistics are valid as of January 10, 2002.

² These statistics are valid as of January 1, 2003.

³ These statistics are valid as of January 1, 2004.

⁴ The Facilitator provided the statistics on the number of petitions for Monitor review; the Monitor's Office provided the statistics on the number of Monitor decisions issued.

Appendix 3

STATISTICS FOR INDIVIDUAL TRACK B CLAIMANT AWARDS

Claimant	Sept. 18, 2000	End of 2001¹	End of 2002²	End of 2003³
Claimant A	\$544,400.00			
Claimant B	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 the end of 2001]	\$483,580.50	
Claimant I	<N/A>	<N/A>	\$1,447,917.00	
Claimant J	<N/A>	<N/A>	879,920.58	
Claimant K	<N/A>	<N/A>	594,444.00	
Claimant L	<N/A>	<N/A>	557,800.00	
Claimant M	<N/A>	<N/A>	427,363.00	
Claimant N	<N/A>	<N/A>	172,000.00	
Claimant O	<N/A>	<N/A>	52,000.00	
Claimant P	<N/A>	<N/A>	<N/A>	\$750,048.00
Claimant Q	<N/A>	<N/A>	<N/A>	121,978.09

¹ These awards were granted in Arbitrator decisions issued as of January 10, 2002.
² These awards were granted in Arbitrator decisions issued as of January 1, 2003.
³ These awards were granted in Arbitrator decisions issued as of January 1, 2004.

Appendix 4

LIST OF MONITOR OFFICE TRAINING EVENTS
 JANUARY 1, 2002 – DECEMBER 31, 2003

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 (including the rules of the petition process, the injunctive relief process, and the debt relief process). 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 speaking engagements included:

Date	Location	Sponsor	Approximate Number of Participants
Feb. 8, 2002	Tuskegee University; Tuskegee, Alabama	Tuskegee University	150
Feb. 9, 2002	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	250
Apr. 10, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	70
Apr. 30, 2002	Bladen County, North Carolina	Congressman McIntyre	250
June 12, 2002	Tchula, Mississippi	Mississippi Family Farmers	150
Aug. 16, 2002	Epes, Alabama	Federation of Southern Cooperatives	200
Aug. 22, 2002	Arlington, Virginia	National Black Farmers Association Meeting	250
Sept. 11, 2002	Washington, D.C.	Congressional Black Caucus	50
Oct. 12, 2002	Alcorn State, Mississippi	Alcorn State University	5
Oct. 18, 2002	Brinkley, Arkansas	Arkansas Land and Farm Development Corporation	125
Nov. 7, 2002	Fort Valley, Georgia	Fort Valley State University	40
Nov. 23, 2002	Oklahoma City, Oklahoma	Oklahoma Department of Agriculture	700

Date	Location	Sponsor	Approximate Number of Participants
Jan. 11, 2003	Kingstree, South Carolina	United Farmers of South Carolina	205
Jan. 25, 2003	Oklahoma City Langston University Campus	Oklahoma Department of Agriculture	150
Feb. 7, 2003	Albany Civic Center; Albany, Georgia	Federation of Southern Cooperatives	75
Feb.13, 2003	Tallulah, Louisiana	Northeastern Louisiana Farmers and Ranchers	90
Feb. 20, 2003	Tuskegee University; Tuskegee, Alabama	Tuskegee, University	100
Aug. 1, 2003	Arkansas-Pine Bluff University Pine Bluff, Arkansas	Arkansas-Pine Bluff University	125
Aug. 15, 2003	Epes, Alabama	Federation of Southern Cooperatives	150
Nov. 21, 2003	Fort Valley, Georgia	Fort Valley University	75
Nov. 22, 2003	Oklahoma City, Oklahoma	USDA Oklahoma Dept. of Food & Forestry	200

Appendix 5

MONITOR PUBLICATIONS

ISSUED OR REVISED JANUARY 1, 2002 – DECEMBER 31, 2003

- Monitor Update No. 1: Late Claim Deadline, revised October 1, 2003.
- Monitor Update No. 3: Deadlines for Petitions for Monitor Review, revised October 1, 2003.
- Monitor Update No. 4: Injunctive Relief in *Pigford v. Veneman*, revised October 1, 2003.
- Monitor Update No. 5: Eligibility and Monitor Review, revised October 30, 2002.
- Monitor Update No. 6: Freeze on USDA Acceleration and Foreclosures, revised October 1, 2003.
- Monitor Update No. 7: Claimant and Claimant Attorney Access to USDA Documents, revised October 1, 2003.
- Monitor Update No. 8: Procedural Rules for the Track B Monitor Petition Process, revised April 20, 2002.
- Monitor Update No. 9: Non-credit Claims — \$3000 for Each Prevailing Class Member, revised October 1, 2003.
- Monitor Update No. 10: Debt Relief for Prevailing Class Members, revised October 1, 2003.
- Monitor Update No. 11: Understanding Who Is Part of the *Pigford* Case, November 27, 2002.
- Monitor Update No. 12: Resources for *Pigford* Claimants, February 3, 2003.
- Questions and Answers About Monitor Review of Decisions (Version 2), June 2003.
- Questions and Answers About Monitor Review of Decisions (Version 3), October 2003.

Monitor Update: Late Claim Deadline

Originally Issued: August 14, 2000

Date Revised: October 1, 2003

Update 001

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This is not a USDA publication.

Late Claim Deadline

1. Introduction

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

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

This update sets out to explain:

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

2. Late claims—what are they?

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

3. Some late claims were allowed

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

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

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

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

5. How late claims were allowed

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

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

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

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

6. After the Arbitrator decides about the late claim

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

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

7. Reconsideration of the Arbitrator's denial

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

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

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

9. More information

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

Monitor Update: Deadlines for Petitions for Monitor Review

Originally Issued: November 9, 2000

Date Revised: October 1, 2003

Update 003

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Deadlines for Petitions for Monitor Review

1. Introduction

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

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

This Update explains:

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

2. Petitions for Monitor review

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

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

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

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

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

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

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

4. Deadlines created by the Order are firm

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

5. More information from the Monitor

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

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

Originally Issued: August 16, 2000

Date Revised: October 1, 2003

Update 004

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Injunctive Relief in *Pigford v. Veneman*

I. Introduction and the Monitor's Role

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

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

II. Only a Brief Summary

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

III. Eligibility for Injunctive Relief

A. Must Prevail in Track A or Track B

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

B. Credit vs. Noncredit Claims—the Difference Matters

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

C. What Law Applies for Injunctive Relief

1. Consent Decree

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

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

2. FSA Regulations and Most Favorable Light

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

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

IV. Types of Injunctive Relief

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

A. Priority Consideration—Three Types

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

1. Inventory Property

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

2. Farm Ownership Loan

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

3. Farm Operating Loans

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

4. How Priority Consideration Works

Several general rules apply to priority consideration.

a. Request in Writing

Priority consideration must be requested from FSA in writing.

b. One-Time Basis

Priority consideration is available on a one-time basis.

c. Credit Claims Only

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

B. Technical Assistance and Service

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

1. Credit and Noncredit Claims

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

2. Must Be Requested

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

3. Qualified and Acceptable USDA Employees

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

V. Getting an FSA Loan

A. Eligibility and Priority Consideration

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

B. Debt Forgiveness and Loan Eligibility

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

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

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

a. Defining Debt Forgiveness

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

b. Exceptions to the General Rule

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

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

2. Debts Forgiven Under Pigford—or Affected by Discrimination

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

C. Creditworthiness

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

D. Other Requirements for FSA Loans

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

E. Where to go for Assistance

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

VI. If Injunctive Relief Efforts Fail

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

A. Contact the Monitor

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

B. FSA Appeals

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

C. Civil Rights Complaint

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

VII. Timeline for injunctive Relief

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

VII. More Information on Injunctive Relief

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

Monitor Update: Eligibility and Monitor Review

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Eligibility and Monitor Review

1. Introduction

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

This Monitor Update is intended to:

- a. Explain who is eligible to be a member of the class;
- b. Describe how eligibility decisions are made; and
- c. Explain how Monitor review works when a claimant is denied on the basis of eligibility.

2. Eligibility—what is it?

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

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

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

Application, for this purpose, has a special meaning. Anyone with questions about what it means to have "applied," or when an attempt to apply counts as an "application," may contact the Monitor's Office for further explanation. The Monitor may be contacted toll free at 1-877-924-7483.

Third, he or she must have filed a discrimination complaint regarding USDA's treatment of the farm credit or benefit application. This discrimination complaint must have been made on or before July 1, 1997.

Filing a discrimination complaint, for this purpose, has a special meaning. In order to qualify as having filed a discrimination complaint, a person must have communicated directly with either USDA or another government official. In some cases, a communication, for this purpose, does not need to have been written. For example, it could have been spoken. The detailed rules are described below.

3. Proof for filing a discrimination complaint

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

a. Copy of complaint or response

To be eligible for class membership, a claimant may submit as proof a copy of the discrimination complaint that was filed. In addition, the claimant could submit as proof a USDA document that refers to the discrimination complaint. Many claimants do not have a copy of the complaint or a response from USDA. Other forms of proof are possible, however.

b. Declaration from another person about complaint

The claimant may submit as proof a declaration by another person. A declaration is a written statement of facts, and in this case is made under penalty of perjury. In order to serve as proof for the claimant, the declaration must state that the person making the declaration had firsthand knowledge that the claimant filed a discrimination complaint with USDA. The declaration must describe the way in which the discrimination complaint was filed. In addition, the declaration must be from a person who is not a member of the claimant's family.

c. Copy of correspondence to non-USDA officials

A claimant may submit as proof a copy of correspondence sent by the claimant complaining about USDA discrimination. Correspondence is a written communication, such as a letter. In order for this type of proof to be effective, the correspondence must have been sent to a member of Congress, the White House, or a state, local, or federal official. If USDA does not have a copy of this correspondence, the claimant may have to submit a declaration stating that he or she sent the correspondence to the person to whom it is addressed.

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

A claimant may submit as proof a declaration by another person regarding statements made at a USDA Listening Session or at some other in-person meeting. A declaration is a written statement of facts, and in this case is made under penalty of perjury. The declaration must state that the person has firsthand knowledge that while the claimant was attending a USDA listening session or other meeting with USDA officials, a USDA official told the claimant that the official would investigate the specific claimant's oral complaint of discrimination. In addition, the declaration must be from a person who is not a member of the claimant's family.

4. If not eligible, no relief under *Pigford*

A claimant who is not an eligible member of the class will not receive any of the relief set out in the *Pigford* Consent Decree. A claimant who is not a member of the *Pigford* class may, however, have other legal rights and remedies.

5. Facilitator decides eligibility

The Facilitator has the job of determining which claimants meet the class definition. Only after the Facilitator determines that a claimant is eligible does he or she move on to a Track A adjudication or a Track B arbitration.

6. Monitor review of Facilitator eligibility decisions

Any claimant who is denied eligibility by the Facilitator may petition the Monitor for review. The Monitor then reviews the Facilitator's eligibility decision. If the Monitor finds that the Facilitator has made a clear and manifest error in screening for eligibility and that the error has resulted or is likely to result in a fundamental miscarriage of justice, the Monitor sends the eligibility decision back to the Facilitator to be reexamined.

A booklet from the Monitor's office dated June 2002 describes in detail how Monitor review works. Anyone who would like a copy of the booklet should call toll free at 1-877-924-7483.

7. Timing of petitions for Monitor review for eligibility

a. Judge's Order creates deadline for petitions

Judge Friedman issued an important order addressing petitions for Monitor review of eligibility decisions on October 29, 2002. This Order establishes a deadline for filing petitions for Monitor review. The deadline will work in one of two ways. The difference depends on when the Facilitator Decision about eligibility was made.

1. Decision on or before October 29, 2002—deadline is February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review is February 26, 2003.

2. Decision after October 29, 2002—deadline 120 Days After Decision

If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

b. Deadline created by the Order is firm

The deadline explained in this Update is firm. If a claimant does not meet the deadline for petitioning the Monitor, they will not be able to participate in the settlement.

8. Submitting additional information and documents with Petitions for Monitor Review

A booklet available from the Monitor's Office entitled "Questions and Answers about Monitor Decisions" explains the rules for the petition for Monitor review process. That booklet is available at no charge by contacting the Monitor at 1-877-924-7483.

Paragraph 7 of that booklet explains the rules for submitting information or documents that were not included with the original Claim Sheet. The Court's Order dated October 29, 2002, provides that those rules apply to all eligibility petitions (both Track A and Track B).

9. If eligible, on to adjudication or arbitration

If, after reexamination, the Facilitator decides that a claimant is eligible to be a member of the class, he or she will move on to either a Track A adjudication or a Track B arbitration.

10. If not eligible, not a class member

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

11. More information

If you would like more information on eligibility issues from the Monitor's Office, call toll-free at 1-877-924-7483.

Monitor Update: Freeze on USDA Acceleration and Foreclosures

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Freeze on USDA Acceleration and Foreclosures

1. Introduction

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

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

This Monitor Update explains:

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

2. A USDA freeze—on what?

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

a. Acceleration

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

b. Foreclosure

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

c. Inventory property

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

d. Other USDA actions—not covered

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

3. Who can benefit from the freeze?

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

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

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

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

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

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

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

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

c. Eligibility Decision made by the Facilitator on or before October 29, 2002, deadline—deadline was February 26, 2003.

If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.

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

If the decision by the Facilitator was made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

5. When the freeze begins and ends

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

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

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

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

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

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

7. After the freeze ends

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

8. More information

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

Monitor Update: Claimant and Claimant Attorney Access to USDA Documents

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Claimant and Claimant Attorney Access to USDA Documents

1. Introduction

Some claimants and claimants' attorneys have questions about how to gain access to documents submitted into their *Pigford* case file by USDA. Usually these documents include: USDA's Response to the initial Claim Sheet and Election Form; USDA's petition for Monitor review; or USDA's Response to the claimant's petition for Monitor review.

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

2. Three Types of Cases for This Purpose

For this purpose, claimants should fall into one of three categories: (1) assisted by Class Counsel or Of-Counsel; (2) assisted by attorneys who are neither Class Counsel nor Of-Counsel; and (3) filing a petition without the help of an attorney.

a. Assisted by Class Counsel or Of-Counsel

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

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

Some claimants are being assisted by attorneys who are neither Class Counsel nor Of-Counsel. For the purpose of this Update, these attorneys are referred to as Unaffiliated Counsel. Section 5 of this Update explains how these lawyers should go about getting papers that USDA submitted in the claimant's *Pigford* claim.

c. Not Assisted by an Attorney—Pro Se

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

3. Types of Information Available to Claimant Varies

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

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

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

4. Pro Se Claimants—How to Get USDA Submissions

Pro se claimants—that is, claimants who are not being assisted by an attorney—need to take the following steps to get copies of information listed in paragraph 1 above.

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

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

b. Read the Form Closely and Sign It

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

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

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

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

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

The Facilitator will check that the Privacy Order Acknowledgment Form has been signed and forward the claimant's request to USDA. USDA will send the documents directly to the claimant. USDA will not, however, send the claimant any information about people

other than the claimant. This means they will not send any information about persons named as similarly situated white farmers.

5. Unaffiliated Counsel—How to Get USDA Submissions

If the claimant is assisted by unaffiliated counsel, the following steps need to be taken by the attorney to obtain copies of the materials listed in paragraph 1 above.

a. Get Copies of Privacy Order and Acknowledgement Form

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

b. Sign Form and Return to USDA

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

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

Once these requirements have been met, the Government will authorize the Facilitator to send the materials listed in paragraph 1 above. Once an attorney has successfully signed and submitted a form, he or she does not need to sign another form to receive the files on other claimants.

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

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Procedural Rules for the Track B Monitor Petition Process

1. General Procedures and Deadlines

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

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

2. Filing Petitions for Monitor Review

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

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

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

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

3. Responding to Petitions for Monitor Review

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

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

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

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

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

4. Publication of Rules

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

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

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

1. Introduction

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

2. Noncredit Claims and Credit Claims—Defining the Difference

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

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

3. Award for Noncredit Claimants

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

a. Consent Decree—Receive Amount Denied

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

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

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

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

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

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

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

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

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

b. Credit and Noncredit Claim Combined

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

c. No Tax Payments for Noncredit Claims

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

5. More Information

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

Monitor Update: Debt Relief for Prevailing Class Members

Originally Issued: March 19, 2001

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Update 010

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Pigford v. Veneman (D.D.C.)
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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 on a credit claim is controlled by two legally binding documents. First, the Consent Decree sets the general rules. Second, an agreement by the parties was entered as an official Order by the Court and fills in many of the details.

a. Consent Decree

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

b. February 7, 2001, Stipulation and Order

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

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

4. Debts to be Discharged

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

a. Debts Affected by Discrimination

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

b. Some Debts Incurred After the Discrimination Occurs

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

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

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

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

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

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

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

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

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

d. Important Exception Affecting Debt Relief—Older Lawsuits

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

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

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

5. More Information

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

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

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

Date Issued: **November 27, 2002**

Update 011

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This is not a USDA publication.

Understanding Who Is Part of the *Pigford* Case

A. Introduction

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

B. Definitions

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

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

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

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

1. Group One: People Who Are In the Case

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Results for People Who Are In the Case

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

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

E. Questions

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

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

Monitor Update: Resources for *Pigford* Claimants

Date Issued: **February 3, 2003**

Update 0012

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This is not a USDA publication.

Resources for *Pigford* Claimants

1. Introduction

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

2. Debt Relief Available Only for Successful Credit Claims

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

a. Other Resources May Be Helpful

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

b. Monitor Cannot Vouch for Groups Mentioned

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

3. When the Monitor Can Help

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

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

a. Debt Relief

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

b. Injunctive Relief

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

c. Other Problems Related to the Consent Decree Settlement

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

4. How to Contact the Monitor

a. By Phone – 1-877-924-7483

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

b. In Writing

The Monitor can be reached by writing:

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

5. When the Monitor Cannot Help

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

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

a. University and Extension Programs

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

1) *Alcorn State Cooperative Extension (Mississippi)*

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

Service Area: Southwest Mississippi.

2) *Tuskegee University (Alabama)*

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

Service area: State of Alabama.

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

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

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

Service Area: State of North Carolina.

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

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

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

5) *Southern University*

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

Service Area: Nineteen parishes in Northeastern Louisiana.

b. Farm Advocacy Group

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

1) *Arkansas Land and Farm Development Corporation*

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

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

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

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

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

c. Legal Organizations

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

1) Land Loss Prevention Project

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

Service Area: State of North Carolina.

2) Farmers' Legal Action Group, Inc.

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

Service Area: Nationwide.

d. State Departments of Agriculture

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

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

e. USDA

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

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

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

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

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

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

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

3) *Farm Service Agency Appeals*

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

Office of the Monitor

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

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

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Questions and Answers About Monitor Review of Decisions

Version #2 — June 2002

This booklet contains questions and answers about the Monitor's review of decisions made by the Adjudicator, Arbitrator, and Facilitator in the *Pigford* case. This booklet was written by the Monitor. It is current as of May 2002. Please read this booklet carefully before you prepare your Petition for Monitor Review.

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

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

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

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

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

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

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

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

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

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

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

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

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

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

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

Phillip L. Fraas
555 13th Street NW
Washington, DC 20004
Phone: 202-637-6624
Fax: 202-637-5910

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

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

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

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

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

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

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

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

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

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

in Track A cases, the Monitor may consider additional information and papers when they “address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed.”

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

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

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

No. The Judge’s Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases.

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

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

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

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

9b. If you are represented by a lawyer other than Class Counsel. If you are represented by a lawyer other than Class Counsel, your lawyer may sign the Privacy Order and go through a simple procedure to get a copy of whatever the government

submitted to the Adjudicator in your case. Your lawyer may call my office at 1-877-924-7483 to obtain a copy of the Privacy Order. Once (1) you sign a form indicating that the lawyer represents you; (2) your lawyer signs the Privacy Order Acknowledgement Form; and (3) both papers are filed with the Facilitator, the Facilitator will send your lawyer a copy of the government's submission in your case.

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

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

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

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

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

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agrees not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

The freeze does not prevent USDA from recovering debts you owe to the federal government through administrative offset. However, if your Track A or Track B claim is

successful, under certain circumstances USDA will refund any money that they recovered from you by offset.

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

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

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

- a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.
- b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.
- c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.
- d. Please state the type and amount of loan for which you were applying. (“Types” of loans mean, for example, operating loans or farm ownership loans.)
- e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).
- f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

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

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

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

Yes. A court order dated July 14, 2000, established deadlines for Petitions for Monitor Review.

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

b. Decisions dated after July 14, 2000. If the Adjudicator or Arbitrator decision was dated after July 14, 2000, the Petition must be postmarked by 120 days after the date of the Adjudicator or Arbitrator decision.

No Petitions or additional Petition information can be submitted after your deadline has passed. For more information about the petition deadline, please call our office at 1-877-924-7483 and request Monitor Update Number 3.

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

In general, there are three steps.

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

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

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

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

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

17. Can I appeal the Monitor's decision?

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

Monitor Form #1: Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

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

Yes No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

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

3. Additional Information or Papers

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

Yes No

If no, go to section 4 below.

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

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

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

4. Explain the Error

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

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

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

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

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

6. Signature

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

Signature

Date

7. Submit Your Petition

Submit your completed Petition for Monitor Review to:

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

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

Monitor Form #1: Petition for Monitor Review

1. Background

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Claim #: _____ Tracking #: _____

Today's Date: _____

2. Representation

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

Yes No

If yes, who?

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

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

3. Additional Information or Papers

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

Yes No

If no, go to section 4 below.

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

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

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

4. Explain the Error

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

Office of the Monitor

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

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

Post Office Box 64511

St. Paul, Minnesota 55164-0511

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

Questions and Answers About Monitor Review of Decisions

Version #3 —October 2003

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

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

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

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

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

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

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

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

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

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

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

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

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

You have the right to be represented by any lawyer whom you might choose in the process of petitioning for review. If you plan to submit a petition, you may want to contact a local lawyer for assistance. Alternatively, Class Counsel in this case may be able to help you. They asked me to tell you that if you want their help, you should send them (a) a letter giving them permission to represent you, and (b) a photocopy of the decision denying you relief. Class Counsel may be contacted at:

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

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

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

Some lawyers may agree to represent you at no charge—they may be willing to try to seek payment of their fees from the government rather than from you.

4. Can the Monitor actually change decisions?

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

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

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

I have the power to require that your claim be reviewed again, but only if I find that the initial decision contained a "clear and manifest error . . . [that] has resulted or is likely to result in a fundamental miscarriage of justice." I put those words in quotations because that is what the Consent Decree says. When I find an error that meets that test, I will require that the claim be reviewed again. In the letter I write requiring the review, I will explain the error(s) that I found. You will be sent a copy of any such letter that I write in your case. If I do not find an error that meets that test, your request for reexamination will be denied.

6. What papers can the Monitor review?

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

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

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

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

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

in Track A cases, the Monitor may consider additional information and papers when they “address a potential flaw or mistake in the claims process that . . . would result in a fundamental miscarriage of justice if left unaddressed.”

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

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

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

No. The Judge’s Order of April 4, 2000, states that the Monitor may not review additional papers in Track B cases. The Order explains that the rule is different for Track B because of the more expanded opportunities to develop an official record in Track B cases. Monitor Update #8, “Procedural Rules for Track B Cases” addresses the rules for Monitor Review of Track B cases.

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

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

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

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

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

9c. If you are not represented by a lawyer. If you have decided to write your Petition for Monitor Review on your own without a lawyer and you would like to see a copy of the government's submission in your case, please call my office directly at 1-877-924-7483. We will make arrangements for you to see the parts of the submission that are not prohibited from disclosure by the Privacy Order.

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

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

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

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

USDA voluntarily agreed to give all claimants who submit their Petitions for Monitor Review by a certain date the protection of a "freeze" of certain USDA action. To benefit from the freeze, your Petition must be mailed and postmarked by the deadline in your case. The deadline for filing a petition for Monitor Review is discussed in question number 14, below. Under the terms of the freeze, USDA agreed not to accelerate your loan, foreclose on your loan, or dispose of any inventory property that USDA acquired through foreclosure that once belonged to you while the freeze is in effect. The freeze will be in effect until the Monitor's review of the Petition is complete and the reexamination, if any, is complete.

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

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

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

Some claims that focused on attempts to apply for a loan or other farm benefit may be denied by the Adjudicator or Arbitrator for failing to meet the rules that govern these claims. If you have one of these claims, please be sure to answer the following questions in your Petition for Monitor Review:

- a. Did you contact a USDA office (or employee of that office) and state that you wanted to apply for a particular loan or benefit? If yes, please explain.
- b. Did a USDA employee (or employees) refuse to provide you with loan or benefit application forms or otherwise discourage you from applying? If yes, please explain in detail.
- c. Please state the year and general time of year (month or season) when you tried to apply. If you tried more than once, please list every time you tried.
- d. Please state the type and amount of loan for which you were applying. (“Types” of loans mean, for example, operating loans or farm ownership loans.)
- e. Please state how you planned to use the money (for example, to plant corn or to buy a tractor).
- f. Please explain why your farm plans were consistent with farming operations in your area in that year. (For example, please explain why your farm plans would work in your type of climate and soil, or explain how the crops or livestock in your plan were typical for your area.)

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

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

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

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

a. Track A Adjudication or Track B Arbitration

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

b. Facilitator Review of Eligibility Determinations

- (1) **Decision on or before October 29, 2002—deadline was February 26, 2003.** If the decision by the Facilitator was made on or before October 29, 2002, the deadline for filing a petition for Monitor review was February 26, 2003.
- (2) **Decision after October 29, 2002—deadline 120 days after Decision.** If the decision by the Facilitator is made after October 29, 2002, the deadline for filing a petition for Monitor review is 120 days from the date of the decision. For example, if the Facilitator made a decision on November 4, 2002, the deadline for filing a petition for Monitor review would be March 4, 2003.

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

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

In general, there are three steps.

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

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

Third, the Facilitator will route your file to the Monitor for decision, and the Monitor's office will review your case. If I decide to direct reexamination, I will write a "reexamination letter" that explains the clear and manifest error(s) that I found in your file—that letter, along with any documents that I have accepted into the record in your

case, will be sent to the Facilitator, Adjudicator, or Arbitrator, and copies of the letter will be sent to you and to the government. If I decide not to direct reexamination, I will send you a letter explaining my reasoning.

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

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

17. Can I appeal the Monitor's decision?

No. The Monitor's decision is final. If the Monitor decides not to grant reexamination in your case, there are no more opportunities for appeal under the Consent Decree in the *Pigford* lawsuit. If you think there was an important clerical or administrative error in your decision, you may ask the Monitor to review the decision and consider issuing an amended decision.