

109TH CONGRESS
1ST SESSION

H. R. 4398

To provide relief for African-American farmers filing claims in the cases
of Pigford v. Veneman and Brewington v. Veneman.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2005

Mr. DAVIS of Alabama (for himself, Mr. BUTTERFIELD, and Mr. BISHOP of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide relief for African-American farmers filing claims
in the cases of Pigford v. Veneman and Brewington
v. Veneman.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “African-American
5 Farmers Benefits Relief Act of 2005”.

6 **SEC. 2. EXTENSION OF DEADLINE FOR FILING CLAIM IN**

7 **PIGFORD V. VENEMAN.**

8 (a) FINDINGS.—Congress finds the following:

(1) In 1998, a lawsuit was filed against the Department of Agriculture (referred to in this subsection as the “USDA”), the second largest agency of the Federal Government, alleging that the USDA had violated the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) and the Administrative Procedure Act (5 U.S.C. 551 et seq.) by maintaining a pattern and practice of discrimination against African-American farmers. Such pattern and practice delayed, denied, or otherwise frustrated the efforts of African-American farmers to obtain loan assistance and to engage in the vocation of farming.

(2) In January 1999, the United States District Court of the District of Columbia approved the largest civil rights settlement in the history of the United States. Following the settlement, the African-American farmers and the USDA entered into a five-year consent decree.

(3) In April 1999, the court approved the settlement and assigned four entities to facilitate implementation of the consent decree.

(4) According to a USDA Inspector General report, many discrimination complaints were never processed, investigated, or otherwise resolved, and the discrimination complaint process at the Farm

1 Services Agency lacked “integrity, direction, and ac-
2 countability”.

3 (5) Delays in processing the discrimination
4 claims of many African-American farmers resulted
5 in numerous farmers losing their right to file claims.

6 (6) As of July 14, 2000, the statute of limita-
7 tions provided under the Equal Credit Opportunity
8 Act has run on many of the claims.

9 (7) On November 18, 2004, the Subcommittee
10 on the Constitution of the Committee on the Judici-
11 ary of the House of Representatives received sworn
12 testimony that alleged serious violations of the right
13 to notice as it applied to the consent decree and to
14 all those who had viable claims of discrimination
15 against the USDA.

16 (8) Such testimony further alleged that al-
17 though the consent decree notice campaign was
18 deemed to be effective by the court, that campaign
19 proved deficient because approximately 66,000 po-
20 tential class members submitted their claims in an
21 untimely fashion.

22 (9) Approximately 73,800 petitions were filed
23 before the September 15, 2000, late filing deadline,
24 of which only 2,131 were approved.

1 (10) Of the approximately 21,000 timely re-
2 requests for reconsideration, 10,745 of those requests
3 have been decided, but only 140 have been approved.

4 (b) DE NOVO REVIEW OF CERTAIN CLAIMS FILED
5 IN PIGFORD V. VENEMAN.—A person who submitted a pe-
6 tition for redress in the settlement of the relevant case
7 before the date of the enactment of this Act may obtain
8 de novo consideration of the petition before an adjudicator
9 assigned by the facilitator of the consent decree of such
10 case if—

11 (1) the petition was denied on the grounds of
12 untimely filing;

13 (2) not later than one year after the date of the
14 enactment of this Act, such person submits a subse-
15 quent petition for redress in such settlement; and

16 (3) such person submits an affidavit to the ad-
17 judicator asserting that such person did not receive
18 effective notice of the filing deadline in such consent
19 decree.

20 (c) NOTICE TO USDA.—Not later than 30 days after
21 a person submits a petition pursuant to subsection (b)(2),
22 the facilitator of the consent decree of the relevant case
23 shall provide notice to the Secretary of Agriculture of such
24 petition.

25 (d) LOAN DATA.—

1 (1) REPORT TO PERSON SUBMITTING PETI-
2 TION.—Not later than 60 days after the Secretary
3 of Agriculture receives notice pursuant to subsection
4 (c) of a petition filed pursuant to subsection (b)(2),
5 the Secretary shall provide to the person that filed
6 such petition a report on farm credit loans made
7 within the claimant’s State by the Department dur-
8 ing the period beginning on January 1, 1992, and
9 ending on the date of the enactment of this Act.
10 Such report shall contain information on all persons
11 whose application for a loan was accepted, includ-
12 ing—

13 (A) the race of the applicant;

14 (B) the date of application;

15 (C) the date of the loan decision;

16 (D) the location of the office making the
17 loan decision; and

18 (E) all data relevant to the process of de-
19 ciding on the loan.

20 (2) NO PERSONALLY IDENTIFIABLE INFORMA-
21 TION.—The reports provided pursuant to paragraph
22 (1) shall not contain any information that would
23 identify any person that applied for a loan from the
24 Department of Agriculture.

1 (e) LIMITATION ON FORECLOSURES.—Notwith-
2 standing any other provision of law, the Secretary of Agri-
3 culture may not foreclose a loan if the borrower makes
4 a prima facie case to an adjudicator assigned by the
5 facilitator of the consent decree of the relevant case that
6 the foreclosure is proximately related to discrimination by
7 the Department of Agriculture.

8 (f) NOTICE.—

9 (1) KNOWN CLASS MEMBERS.—Not later than
10 45 days after the date of the enactment of this Act,
11 the Secretary of Agriculture shall provide to all
12 known members of the class in the relevant case no-
13 tice of the de novo review available under subsection
14 (b).

15 (2) ADVERTISEMENTS.—The Secretary of Agri-
16 culture shall announce the de novo review available
17 under subsection (b) by arranging to—

18 (A) broadcast 40 commercials on the cable,
19 Internet, network, and radio broadcast outlets
20 throughout the United States with the largest
21 African-American audiences during a 30-day
22 period;

23 (B) broadcast 40 commercials on the cable,
24 Internet, network, and radio broadcast outlets

1 in the relevant region with the largest African-
2 American audiences during a 30-day period;

3 (C) broadcast 50 commercials on the cable,
4 Internet, network, and radio broadcast outlets
5 with the largest national audiences during a 30-
6 day period;

7 (D) have one-quarter page advertisements
8 placed in 27 general circulation newspapers and
9 115 African-American newspapers in the rel-
10 evant region during a 14-day period;

11 (E) have a full page advertisement placed
12 in the editions of the magazine TV Guide that
13 are distributed in the relevant region; and

14 (F) have half-page advertisements placed
15 in the national editions of magazines with the
16 highest percentages of African-American read-
17 ership.

18 (g) MONITOR.—

19 (1) SELECTION.—Not later than 45 days after
20 the date of the enactment of this Act, the parties to
21 the relevant case shall select an independent Monitor
22 who shall report directly to the Secretary of Agri-
23 culture. If the parties are unable to agree on a Mon-
24 itor after good faith negotiations, the plaintiffs and
25 the defendants shall each submit two persons to the

1 Chief Judge of the United States Court of Appeals
2 for the District of Columbia Circuit who shall ap-
3 point a Monitor from among such persons.

4 (2) DUTIES.—The Monitor—

5 (A) not later than 180 days after the date
6 of the enactment of this Act, and at least semi-
7 annually thereafter, shall submit to the Sec-
8 retary of Agriculture and make publicly avail-
9 able on the Internet a report detailing the im-
10 plementation of this Act and whether such im-
11 plementation is being done in good faith;

12 (B) if the Monitor determines that a clear
13 and manifest error has occurred in the screen-
14 ing, adjudication, or arbitration of a claim and
15 such error has resulted or is likely to result in
16 a fundamental miscarriage of justice, may di-
17 rect the adjudicator or facilitator to review the
18 claim;

19 (C) shall be available to class members and
20 the public through a toll-free telephone number
21 in order to facilitate the lodging of any com-
22 plaints relating to this Act or the consent de-
23 cree of the relevant case and to expedite the
24 resolution of such complaints; and

1 (D) if the Monitor is unable to resolve a
2 problem brought to the attention of the Monitor
3 pursuant to subparagraph (C), may file a re-
4 port with the counsels of the parties who may
5 then seek enforcement of this Act and such con-
6 sent decree pursuant to paragraph 13 of such
7 consent decree.

8 (3) TERM.—The Monitor shall remain in exist-
9 ence for a period of 5 years and shall not be re-
10 moved except for good cause.

11 (4) EXPENSES.—The Secretary of Agriculture
12 shall pay the fees and expenses of the Monitor.

13 (h) DEFINITIONS.—In this section:

14 (1) LARGEST AFRICAN-AMERICAN AUDI-
15 ENCES.—The term “largest African-American audi-
16 ences” means those audiences determined to have
17 the largest number of African-American listeners,
18 viewers, or users as determined by the Arbitron or
19 Nielsen rating systems.

20 (2) LARGEST NATIONAL AUDIENCES.—The
21 term “largest national audiences” means those audi-
22 ences determined to have the largest number of lis-
23 teners, viewers, or users as determined by the
24 Arbitron or Nielsen rating systems.

1 (3) RELEVANT CASE.—The term “relevant
2 case” means the consolidated class action lawsuits
3 entitled *Pigford v. Veneman* and *Brewington v.*
4 *Veneman* (United States District Court for the Dis-
5 trict of Columbia, Civil Action Numbers 97–1978
6 and 98–1693).

7 (4) RELEVANT REGION.—The term “relevant
8 region” means the States of Alabama, Arkansas,
9 California, Florida, Georgia, Kentucky, Louisiana,
10 Maryland, Mississippi, North Carolina, Oklahoma,
11 South Carolina, Tennessee, Texas, Virginia, and
12 West Virginia and the District of Columbia.

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