

111TH CONGRESS
2D SESSION

S. 3838

To appropriate funds for the final settlement of lawsuits against the Federal Government for discrimination against Black Farmers and to provide relief for discrimination in a credit program of the Department of Agriculture under the Equal Credit Opportunity Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2010

Mrs. LINCOLN (for herself, Ms. LANDRIEU, and Mrs. HAGAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To appropriate funds for the final settlement of lawsuits against the Federal Government for discrimination against Black Farmers and to provide relief for discrimination in a credit program of the Department of Agriculture under the Equal Credit Opportunity Act.

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. APPROPRIATION OF FUNDS FOR FINAL SET-**
4 **TLEMENT OF CLAIMS FROM IN RE BLACK**
5 **FARMERS DISCRIMINATION LITIGATION.**

6 (a) DEFINITIONS.—In this section:

1 (1) PIGFORD CLAIM.—The term “Pigford
2 claim” has the meaning given the term in section
3 14012(a) of the Food, Conservation, and Energy
4 Act of 2008 (Public Law 110–246; 122 Stat. 2209).

5 (2) SETTLEMENT AGREEMENT.—The term
6 “Settlement Agreement” means the settlement
7 agreement dated February 18, 2010 (including any
8 modifications agreed to by the parties and approved
9 by the court under that agreement) between certain
10 plaintiffs, by and through their counsel, and the Sec-
11 retary of Agriculture to resolve, fully and forever,
12 the claims raised or that could have been raised in
13 the cases consolidated in *In re Black Farmers Dis-*
14 *crimination Litigation*, No. 08–511 (D.D.C.), includ-
15 ing Pigford claims asserted under section 14012 of
16 the Food, Conservation, and Energy Act of 2008
17 (Public Law 110–246; 122 Stat. 2209).

18 (b) APPROPRIATION OF FUNDS.—

19 (1) IN GENERAL.—There is hereby appro-
20 priated to the Secretary of Agriculture
21 \$1,150,000,000, to remain available until expended,
22 to carry out the terms of the Settlement Agreement
23 if the Settlement Agreement is approved by a court
24 order that is or becomes final and nonappealable.

1 (2) RELATION TO OTHER FUNDING.—The
2 funds appropriated by this subsection—

3 (A) are in addition to the \$100,000,000 of
4 funds of the Commodity Credit Corporation
5 made available by section 14012(i) of the Food,
6 Conservation, and Energy Act of 2008 (Public
7 Law 110–246; 122 Stat. 2212); and

8 (B) shall be available for obligation only
9 after those Commodity Credit Corporation
10 funds are fully obligated.

11 (3) EFFECT OF SETTLEMENT AGREEMENT.—If
12 the Settlement Agreement is not approved as pro-
13 vided in this subsection, the \$100,000,000 of funds
14 of the Commodity Credit Corporation made available
15 by section 14012(i) of the Food, Conservation, and
16 Energy Act of 2008 (Public Law 110–246; 122
17 Stat. 2212) shall be the sole funding available for
18 Pigford claims.

19 (c) USE OF FUNDS.—The use of the funds appro-
20 priated by subsection (b) shall be subject to the express
21 terms of the Settlement Agreement.

22 (d) TREATMENT OF REMAINING FUNDS.—If any of
23 the funds appropriated by subsection (b) are not obligated
24 and expended to carry out the Settlement Agreement, the
25 Secretary of Agriculture shall return the unused funds to

1 the Treasury and may not make the unused funds avail-
 2 able for any purpose related to section 14012 of the Food,
 3 Conservation, and Energy Act of 2008 (Public Law 110–
 4 246; 122 Stat. 2212), for any other settlement agreement
 5 executed in *In re Black Farmers Discrimination Litiga-*
 6 *tion*, No. 08–511 (D.D.C.), or for any other purpose.

7 (e) EFFECT OF LEGISLATION.—Nothing in this sec-
 8 tion—

9 (1) requires the United States, an officer or
 10 agency of the United States, or any other person to
 11 enter into the Settlement Agreement or any other
 12 settlement agreement; or

13 (2) creates the basis for a Pigford claim.

14 (f) CONFORMING AMENDMENTS.—Section 14012 of
 15 the Food, Conservation, and Energy Act of 2008 (Public
 16 Law 110–246; 122 Stat. 2209) is amended—

17 (1) in subsection (c)(1)—

18 (A) by striking “subsection (h)” and in-
 19 serting “subsection (g)”; and

20 (B) by striking “subsection (i)” and insert-
 21 ing “subsection (h)”;

22 (2) by striking subsection (e);

23 (3) in subsection (g), by striking “subsection
 24 (f)” and inserting “subsection (e)”;

25 (4) in subsection (i)—

1 (A) by striking “(i)” and all that follows
 2 through “Of the funds” and inserting the fol-
 3 lowing:

4 “(h) FUNDING.—Of the funds”;

5 (B) by striking “subsection (g)” and in-
 6 serting “subsection (f)”; and

7 (C) by striking paragraph (2);

8 (5) by striking subsection (j); and

9 (6) by redesignating subsections (f), (g), (h),
 10 and (k) as subsections (e), (f), (g), and (i), respec-
 11 tively.

12 **SEC. 2. RELIEF FOR DISCRIMINATION IN A CREDIT PRO-**
 13 **GRAM OF THE DEPARTMENT OF AGRI-**
 14 **CULTURE UNDER THE EQUAL CREDIT OP-**
 15 **PORTUNITY ACT.**

16 (a) DEFINITIONS.—In this section:

17 (1) ELIGIBLE COMPLAINT.—The term “eligible
 18 complaint” means any written complaint—

19 (A) that is not employment related;

20 (B) that was filed with the Department of
 21 Agriculture after December 31, 1997, and be-
 22 fore the earlier of—

23 (i) 2 years after the date of the al-
 24 leged violation of the Equal Credit Oppor-
 25 tunity Act (15 U.S.C. 1691); and

1 (ii) the date of the enactment of this
2 Act;

3 (C) with respect to which the complain-
4 ant—

5 (i) was not a party to the consent de-
6 cree in the case entitled “Pigford v. Glick-
7 man”, approved by the United States Dis-
8 trict Court for the District of Columbia on
9 April 14, 1999; and

10 (ii) has not obtained relief from the
11 Department of Agriculture or a court of
12 competent jurisdiction; and

13 (D) does not arise from the same causes of
14 action addressed in the Settlement Agreement
15 (as defined in section 1(a)).

16 (2) FILING PERIOD.—The term “filing period”
17 means the 2-year period beginning on the date of en-
18 actment of this Act.

19 (3) SECRETARY.—The term “Secretary” means
20 the Secretary of Agriculture.

21 (b) AUTHORIZATION.—To the extent permitted by
22 the Constitution, and notwithstanding any other period of
23 limitations, in the case of an eligible complaint alleging
24 discrimination in violation of the Equal Credit Oppor-
25 tunity Act (15 U.S.C. 1691) involving a credit program

1 of the Department of Agriculture, a complainant may, be-
 2 fore the end of the filing period—

3 (1) file a civil action under subsection (c); or

4 (2) request administrative review under sub-
 5 section (d).

6 (c) CIVIL ACTION.—A civil action may be filed under
 7 this subsection if, with respect to the eligible complaint,
 8 the complainant—

9 (1) has not requested administrative review; or

10 (2) has requested administrative review, and
 11 the Secretary, with respect to each request, has ei-
 12 ther—

13 (A) issued a determination; or

14 (B) failed to issue a determination by a
 15 date that is 180 days after the date on which
 16 the request was made.

17 (d) ADMINISTRATIVE REVIEW.—Administrative re-
 18 view may be requested under this subsection as follows:

19 (1) DETERMINATION ON THE MERITS.—A com-
 20 plainant may request a determination on the merits
 21 if the complainant, with respect to the eligible com-
 22 plaint, has not filed a civil action.

23 (2) HEARING ON THE RECORD.—A complainant
 24 may request a hearing on the record if the complain-
 25 ant, with respect to the eligible complaint—

1 (A) has not filed a civil action;

2 (B) has requested a determination on the
3 merits, and the Secretary has not issued such
4 determination by the issuance deadline in sub-
5 section (f)(2)(A); and

6 (C) requests such hearing not later than
7 180 days after the issuance deadline in sub-
8 section (f)(2)(A).

9 (e) SETTLEMENT.—Notwithstanding any other provi-
10 sion of this section, the Secretary may settle an eligible
11 complaint with a complainant.

12 (f) SPECIAL RULES FOR ADMINISTRATIVE RE-
13 VIEW.—For purposes of this section:

14 (1) REQUESTS FOR ADMINISTRATIVE RE-
15 VIEW.—A request for administrative review shall
16 be—

17 (A) in writing; and

18 (B) filed in accordance with procedures es-
19 tablished by the Secretary.

20 (2) RESPONSIBILITY OF SECRETARY.—If a
21 complainant requests a determination on the merits
22 under subsection (d)(1), then, unless a complainant,
23 with respect to the eligible complaint, files a civil ac-
24 tion or requests a hearing on the record, the Sec-

retary shall, with respect to the eligible complaint,
take the following actions:

(A) ISSUANCE OF DETERMINATION.—The
Secretary shall, not later than an issuance
deadline that is 1 year after the date on which
the complainant requests a determination on
the merits—

(i) investigate the eligible complaint;

and

(ii) issue a written determination.

(B) NOTICE OF FAILURE TO ISSUE TIMELY
DETERMINATION.—If the Secretary does not
issue a written determination by the issuance
deadline in subparagraph (A), the Secretary
shall promptly issue to the complainant, in writ-
ing and by registered mail, notice—

(i) that the Secretary has not issued
a timely determination; and

(ii) of the period of time during which
the complainant may bring a civil action or
request a hearing on the record.

(3) FINALITY OF DETERMINATION WITH RE-
SPECT TO HEARING ON THE RECORD.—A determina-
tion with respect to a hearing on the record shall be
final.

1 (4) JUDICIAL REVIEW OF ADMINISTRATIVE DE-
 2 TERMINATION.—A determination on the merits or a
 3 determination with respect to a hearing on the
 4 record shall be subject to de novo review.

5 (g) FILING PERIOD.—The running of the filing pe-
 6 riod, for the purpose of filing a civil action under sub-
 7 section (c) or requesting a hearing on the record under
 8 subsection (d)(2), shall be tolled for the period that, with
 9 respect to the eligible complaint—

10 (1) begins on the date of a request for a deter-
 11 mination on the merits; and

12 (2) ends on the date on which the Secretary
 13 issues a determination with respect to a determina-
 14 tion on the merits or a hearing on the record.

15 (h) RELIEF.—

16 (1) AMOUNT.—Subject to paragraph (2), a
 17 complainant shall, under subsection (b), and may,
 18 under subsection (e), be awarded such relief as the
 19 complainant would be afforded under the Equal
 20 Credit Opportunity Act (15 U.S.C. 1691), includ-
 21 ing—

22 (A) actual damages;

23 (B) the costs of the action, together with
 24 a reasonable attorney's fee; and

25 (C) debt relief, including—

- 1 (i) write-downs or write-offs of the
2 principal on a loan;
- 3 (ii) write-downs or write-offs of the in-
4 terest on a loan;
- 5 (iii) reduction of the interest rate on
6 a loan;
- 7 (iv) waiver or reduction of penalties
8 with respect to a loan; or
- 9 (v) other modification of the terms of
10 a loan.

11 (2) LIMITATIONS ON RELIEF.—

12 (A) IN GENERAL.—The total amount
13 awarded under this section for all claims shall
14 not exceed \$100,000,000.

15 (B) ACTUAL DAMAGES, COSTS, AND AT-
16 TORNEY'S FEES.—The sum of the total amount
17 awarded under paragraph (1)(A) for all claims,
18 plus the total amount awarded under paragraph
19 (1)(B) for all claims, shall not exceed
20 \$40,000,000.

21 (C) DEBT RELIEF.—The total amount
22 awarded under paragraph (1)(C) for all claims
23 shall not exceed \$60,000,000.

24 (3) EXEMPTION FROM TAXATION.—Any award
25 under clauses (ii), (iii), or (iv) of subparagraph (C)

1 of paragraph (1) shall not be included in gross in-
2 come for purposes of chapter 1 of the Internal Rev-
3 enue Code of 1986.

4 (i) FUNDING.—There is hereby appropriated to the
5 Secretary, for relief awarded under subsection (h)(1),
6 \$100,000,000, to remain available until expended.

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