

111TH CONGRESS
1ST SESSION

H. R. 4264

To provide for resolution of certain discrimination claims against the
Department of Agriculture, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 2009

Ms. DELAURO (for herself and Ms. ESHOO) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Agriculture and Ways and Means, 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 for resolution of certain discrimination claims
against the Department of Agriculture, and for other
purposes.

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 “Equality for Women
5 Farmers Act”.

1 **SEC. 2. RESOLUTION OF CERTAIN DISCRIMINATION**
2 **CLAIMS AGAINST THE DEPARTMENT OF AG-**
3 **RICULTURE.**

4 (a) NOTICE TO POTENTIAL CLAIMANTS.—

5 (1) IN GENERAL.—Within 120 days after the
6 date of the enactment of this Act, the Secretary
7 shall attempt to notify each person who may be an
8 eligible claimant of the opportunity, during the 3-
9 year period that begins with such date of enactment,
10 to submit a claim under this section for damages re-
11 sulting from discrimination described in section 6(4).

12 (2) METHODS.—The Secretary shall provide the
13 notice—

14 (A) by United States mail and electronic
15 mail, to each such person whose address can be
16 determined from the records of the Department
17 or records provided by counsel for eligible
18 claimants; and

19 (B) by posting in public places, such as
20 local Farm Service Agency offices and on the
21 website of the Department, in a manner des-
22 ignated to reach all such persons.

23 (b) SUBMISSION OF CLAIMS.—A person desiring to
24 submit a claim under this section shall file with the Special
25 Master a sworn statement that contains the following:

26 (1) The full name of the person.

1 (2) The mailing address of the person.

2 (3) To the best of the person's ability, each
3 date in the claims period on which the person re-
4 quested from, or submitted to, the Department an
5 application for a farm loan, farm loan servicing, or
6 a disaster loan.

7 (4) With respect to each such request or sub-
8 mission—

9 (A) the identity of the office of the Depart-
10 ment to which the request or submission was
11 originally made;

12 (B) the type of loan or loan servicing
13 sought, including a copy of any document sub-
14 mitted;

15 (C) the amount of damages suffered by the
16 person as a result of the failure of the Depart-
17 ment to provide, act on, or approve (in whole or
18 in part) the application; and

19 (D) a claim for compensation for the dam-
20 ages.

21 (c) PROCESSING OF CLAIMS.—

22 (1) PERSONNEL.—

23 (A) FMCS APPOINTEES.—

24 (i) SPECIAL MASTER.—Within 60
25 days after the date of the enactment of

1 this Act, the Federal Mediation and Con-
2 ciliation Service (in this subparagraph re-
3 ferred to as the “FMCS”) shall appoint a
4 Special Master to process, review, and ad-
5 judicate claims under this section.

6 (ii) ASSISTANT SPECIAL MASTERS.—

7 At the request of the Special Master, the
8 FMCS shall designate assistant special
9 masters, as necessary, to assist the Special
10 Master in processing, reviewing, and adju-
11 dicating claims under this section.

12 (iii) COMPENSATION.—From funds

13 made available to carry out this section,
14 the Special Master and any assistant spe-
15 cial masters designated under this para-
16 graph shall be paid on an hourly basis,
17 consistent with the payment processes and
18 procedures of the FMCS, for services pro-
19 vided under this section.

20 (B) DEPARTMENTAL EMPLOYEES.—On re-

21 quest of the Special Master, the Secretary may
22 detail employees of the Office of Civil Rights of
23 the Department to assist persons who request
24 assistance in submitting claims under this sec-
25 tion.

1 (2) PROCEDURE FOR REVIEW OF CLAIMS.—

2 (A) DEADLINE FOR CLAIMS SUBMIS-
3 SION.—An award under this section may not be
4 made with respect to a claim submitted after
5 the 3-year period that begins with the date of
6 the enactment of this section.

7 (B) EXPEDITIOUS CLAIMS REVIEW.—The
8 Special Master shall process, review, and adju-
9 dicate claims under this section as expeditiously
10 as possible.

11 (C) EVIDENTIARY RULES.—

12 (i) IN GENERAL.—The Special Master
13 may permit a claimant to present evidence
14 and testimony to substantiate a claim
15 under this section.

16 (ii) INAPPLICABILITY OF CERTAIN
17 RULES.—The Federal Rules of Civil Proce-
18 dure, the Federal Rules of Evidence, sec-
19 tion 554 of title 5, United States Code,
20 and the legal standards and precedents
21 otherwise required to state a legally cog-
22 nizable prima facie discrimination case in
23 the courts of the United States shall not
24 apply to a claim under this section.

1 (D) PUBLICATION OF CLAIMS PROCE-
2 DURES.—Within 90 days after the date of the
3 enactment of this Act, the Special Master shall
4 cause to have published in the Federal Register
5 the procedures and criteria to be used in re-
6 viewing and adjudicating claims under this sec-
7 tion.

8 (E) IMPLEMENTATION OF PROCEDURES
9 AND CRITERIA.—The procedures and criteria
10 shall be established and implemented so as to
11 effectuate the remedial purpose of giving each
12 claimant the opportunity to obtain full relief for
13 past discrimination.

14 (d) ADJUDICATION OF CLAIM OF GENDER DISCRIMI-
15 NATION IN DENIAL, OR FAILURE TO PROVIDE NOTICE
16 OF ACTION ON, AN APPLICATION FOR A FARM LOAN,
17 FARM LOAN SERVICING, OR A DISASTER LOAN.—The
18 Special Master shall award \$5,000 to an eligible claimant
19 who has submitted a claim under this section, for each
20 calendar year in the claims period with respect to which—

21 (1) the claim includes an allegation that the
22 Secretary denied a request from the claimant for an
23 application for a farm loan, farm loan servicing, or
24 a disaster loan, or failed to notify the claimant of
25 any action taken by the Department on such an ap-

1 plication submitted by the claimant, on the basis of
2 the gender of the claimant; and

3 (2) the Secretary fails to prove by a preponder-
4 ance of the evidence that the allegation is false.

5 (e) ADJUDICATION OF CLAIM OF GENDER DISCRIMI-
6 NATION IN DENIAL OF FARM LOAN, FARM LOAN SERV-
7 ICING, OR DISASTER LOAN.—

8 (1) IN GENERAL.—In addition to any amount
9 awarded under subsection (d), the Special Master
10 shall award an amount determined in accordance
11 with paragraph (2) of this subsection to an eligible
12 claimant who has submitted a claim under this sec-
13 tion in which there is an allegation that the Sec-
14 retary denied an application by the claimant for a
15 farm loan, farm loan servicing, or a disaster loan on
16 the basis of gender of the claimant, if the Special
17 Master finds that the discrimination occurred.

18 (2) DETERMINATION OF AWARD AMOUNT.—In
19 determining the amount to award a claimant under
20 paragraph (1), the Special Master shall presume
21 that the amount to be awarded is \$109,000, and
22 shall increase or decrease the amount, as appro-
23 priate, based on factors to be determined by the
24 Special Master, including—

1 (A) the duration of ownership or operation
2 of a farm by the claimant;

3 (B) the type of farming operation of the
4 claimant;

5 (C) the past production by the claimant of
6 agricultural products;

7 (D) the availability of contemporaneously
8 created documents and witness testimony con-
9 cerning the allegations of discrimination made
10 by the claimant;

11 (E) the inappropriateness of the conduct of
12 employees of the Department with regard to the
13 claimant; and

14 (F) the damages suffered by the claimant.

15 (f) ATTORNEY'S FEES.—

16 (1) COUNSEL FOR PLAINTIFFS AND CLASS
17 MEMBERS IN LOVE V. VILSACK.—Within 120 days
18 after the date of the enactment of this Act, counsel
19 of record for the plaintiffs and putative class mem-
20 bers at the time of the filing of the complaints in
21 Love v. Vilsack, C.A. No. 1:00–CV–02502 (U.S.
22 District Court for the District of Columbia) may
23 present to the Special Master a petition for reason-
24 able compensation for all services the counsel have
25 provided to the plaintiffs and putative class members

1 from calendar year 2000 through the date the peti-
2 tion is presented, which shall be determined by the
3 Special Master in accord with the legal precedents of
4 the United States Court of Appeals for the District
5 of Columbia Circuit pertaining to awards of attor-
6 neys' fees for the litigation of actions where a favor-
7 able result is obtained for the common benefit of a
8 class.

9 (2) OTHER COUNSEL.—The Special Master
10 may, in accordance with procedures and guidelines
11 established by the Special Master, award fees to
12 counsel who represent a claimant in a proceeding
13 under this section, not exceeding \$10,000 per
14 claimant, for services the counsel have provided to
15 the claimant in connection with the proceeding, re-
16 gardless of whether the claimant receives an award
17 under this section.

18 (g) FINALITY OF DETERMINATIONS.—An adjudica-
19 tion of a claim under this section shall be final and not
20 reviewable by any court.

21 (h) ACCEPTANCE OF AWARD CONSTITUTES SATIS-
22 FACTION OF ALL CLAIMS OF DISCRIMINATION DURING
23 THE CLAIMS PERIOD.—A claimant who accepts an award
24 under this section may not bring or pursue an action in
25 any Federal or State court, or an administrative pro-

1 ceeding, for damages based on any claim of discrimination
2 by the Department on the basis of gender in the issuance
3 or review of an application for a farm loan, farm loan serv-
4 icing, or a disaster loan during the claims period.

5 (i) AWARD EXEMPT FROM FEDERAL TAXATION.—
6 An award under this section shall be exempt from taxation
7 under the Internal Revenue Code of 1986.

8 (j) REPORTS TO THE CONGRESS.—On each anniver-
9 sary of the date of the enactment of this Act, the Special
10 Master shall submit to the Committees on Agriculture and
11 on Appropriations of the House of Representatives and the
12 Committees on Agriculture, Nutrition, and Forestry and
13 on Appropriations of the Senate a report (with a copy to
14 the Department) regarding—

15 (1) the number of claims made under this sec-
16 tion;

17 (2) the number of the claims that have been ad-
18 judicated under this section; and

19 (3) the total of the amounts awarded under this
20 section.

21 (k) APPROPRIATION.—Out of any funds in the Treas-
22 ury of the United States not otherwise appropriated, there
23 are appropriated \$4,500,000,000, without fiscal year limi-
24 tation, for payment by the Special Master to carry out
25 this section.

1 (1) DEFINITIONS.—In this section:

2 (1) DAMAGES.—The term “damages” includes
3 economic loss.

4 (2) SPECIAL MASTER.—The term “Special Mas-
5 ter” means the Special Master appointed under sub-
6 section (c)(1)(A)(i).

7 **SEC. 3. REMEDIAL MEASURES.**

8 (a) LIMITATION ON FORECLOSURES.—During the 3-
9 year period that begins with the date of the enactment
10 of this Act, the Secretary may not initiate foreclosure on
11 collateral or secured property, assist any creditor or any
12 State in connection with a foreclosure on collateral or se-
13 cured property, or expend any money relating to fore-
14 closure or sale of collateral or secured property, of an eligi-
15 ble claimaint.

16 (b) PROCESSING OF APPLICATIONS FOR FARM LOAN,
17 FARM LOAN SERVICING, OR DISASTER BENEFIT.—

18 (1) ELIGIBILITY DETERMINATIONS.—The Sec-
19 retary shall approve an application for a farm loan,
20 farm loan servicing, or a disaster benefit submitted
21 by an eligible claimant in the 3-year period that be-
22 gins with the date of the enactment of this Act, un-
23 less the Secretary establishes, by clear and con-
24 vincing evidence, that the eligible claimaint does not
25 satisfy the published, objective eligibility criteria for

1 the farm loan, farm loan servicing, or disaster loan,
2 as the case may be.

3 (2) DEADLINE TO PROVIDE NOTICE OF REA-
4 SONS FOR DENIAL; EFFECT OF FAILURE COMPLY
5 WITH DEADLINE.—Within 30 days after the Sec-
6 retary denies an application submitted pursuant to
7 paragraph (1), the Secretary shall provide the appli-
8 cant with the documentation on the basis of which
9 the application was denied. If the Secretary fails to
10 comply with the preceding sentence, the application
11 is deemed approved.

12 (3) OPPORTUNITY OF APPLICANT TO SUBMIT
13 ADDITIONAL DOCUMENTATION.—Within 20 days
14 after the Secretary complies with the 1st sentence of
15 paragraph (2), the applicant may provide the Sec-
16 retary with additional information in support of the
17 application.

18 (4) RECONSIDERATION OF APPLICATION.—
19 Within 20 days after the earlier of the date the Sec-
20 retary receives the additional information, the Sec-
21 retary shall reconsider the application on the basis
22 of the additional information.

23 (5) ACTION ON RECONSIDERED APPLICATION.—
24 The Secretary shall approve an application sub-
25 mitted pursuant to paragraph (1) with respect to

1 which the applicant has provided additional informa-
2 tion, unless the Secretary concludes by clear and
3 convincing evidence that the applicant is ineligible
4 for the farm loan, farm servicing, or disaster loan
5 involved, based on the published, objective eligibility
6 criteria for the farm loan, farm servicing, or disaster
7 loan, as the case may be.

8 (6) NOTICE OF DENIAL OF RECONSIDERED AP-
9 PPLICATION.—Within 30 days after an application is
10 denied pursuant to paragraph (5), the Secretary
11 shall provide the applicant with written notice of the
12 denial, including the specific reason for the denial.

13 (c) OTHER REMEDIAL MEASURES.—The Secretary
14 shall—

15 (1) install and maintain recordkeeping systems
16 that document each contact between a farmer and
17 the Department;

18 (2) establish community-based outreach pro-
19 grams to assist socially disadvantaged farmers in ap-
20 plying for farm loan and farm loan servicing pro-
21 grams;

22 (3) implement an effective method to achieve
23 transparency in the administration of the loan and
24 loan servicing programs of the Department to facili-

1 tate evaluation of whether the fundamental reforms
2 are expeditiously and effectively implemented; and

3 (4) establish an efficient and effective system
4 for processing discrimination complaints of socially
5 disadvantaged farmers.

6 (d) **REPORT ON IMPLEMENTATION OF REMEDIAL**
7 **MEASURES.**—Within 6 months after the date of the enact-
8 ment of this Act, the Secretary shall submit to the Con-
9 gress a report on the status of implementation of the re-
10 medial measures described in subsections (b) and (c).

11 **SEC. 4. GAO AUDIT.**

12 (a) **IN GENERAL.**—The Comptroller General shall
13 conduct an audit of the administration of farm loan and
14 benefit programs by the Farm Service Agency, to—

15 (1) identify data that must be collected to de-
16 termine whether the Department is providing equal
17 access to all programs;

18 (2) determine whether the technology used by
19 the Department is adequate to collect and store the
20 data, and—

21 (A) if the technology is adequate for such
22 purpose, shall determine the reasons why the
23 technology is not being used properly; or

1 (B) if the technology is not adequate for
2 such purpose, shall identify the technology nec-
3 essary to adequately collect and store the data.

4 (b) REPORT TO THE CONGRESS.—Within 1 year after
5 the date of the enactment of this Act, the Comptroller
6 General shall submit to the Committees on Agriculture
7 and on Appropriations of the House of representatives and
8 the Committees on Agriculture, Nutrition, and Forestry,
9 and on Appropriations of the Senate a report on the find-
10 ings of the audit conducted under subsection (a).

11 **SEC. 5. ANNUAL REPORTS ON DENIAL OF REQUESTS FOR**
12 **APPLICATIONS FOR FARM LOANS, LOAN**
13 **SERVICING, OR DISASTER BENEFITS, OR OF**
14 **APPLICATIONS THEREFOR.**

15 (a) IN GENERAL.—Not later than March 1 of each
16 year, the Secretary shall submit to the Congress a report
17 which summarizes the following information on each per-
18 son whose request for an application for a farm loan, farm
19 loan servicing, or a disaster loan, or whose application for
20 a farm loan, farm loan servicing, or a disaster loan, was
21 denied in the 12-month period covered by the report:

- 22 (1) The gender of the person.
23 (2) The race of the person.
24 (3) The national origin of the person.

1 (4) Whether the person is an Indian or a mem-
2 ber of an Indian tribe.

3 (5) The amount of time that elapsed from the
4 date the request or application was made to the date
5 of the denial.

6 (6) The location of the office that denied the re-
7 quest or application.

8 (7) All information taken into account in the
9 denial.

10 (b) NO PERSONALLY IDENTIFIABLE INFORMA-
11 TION.—The report shall not contain any information that
12 identifies any person referred to in subsection (a).

13 (c) DEFINITIONS OF INDIAN AND MEMBER OF AN IN-
14 DIAN TRIBE.—In this section, the terms “Indian” and
15 “member of an Indian tribe” shall have the same mean-
16 ings given the terms, respectively, in paragraphs (1) and
17 (2) of section 2 of the Tribally Controlled College or Uni-
18 versity Assistance Act of 1978.

19 **SEC. 6. DEFINITIONS.**

20 In this Act:

21 (1) CLAIMS PERIOD.—The term “claims pe-
22 riod” means the period that began on January 1,
23 1981, and ended on the date of the enactment of
24 this Act.

1 (2) DEPARTMENT.—The term “Department”
2 means the Department of Agriculture.

3 (3) DISASTER LOAN.—The term “disaster loan”
4 means a loan under subtitle C of the Consolidated
5 Farm and Rural Development Act.

6 (4) ELIGIBLE CLAIMANT.—The term “eligible
7 claimant” means any person who claims that she
8 was discriminated against, on the basis of gender, in
9 the issuance or review of an application for a farm
10 loan, farm loan servicing, or a disaster loan, during
11 the claims period.

12 (5) FARM.—The term “farm” includes a ranch.

13 (6) FARM LOAN.—The term “farm loan” means
14 a loan under subtitle A or B of the Consolidated
15 Farm and Rural Development Act.

16 (7) SECRETARY.—The term “Secretary” means
17 the Secretary of Agriculture.

18 (8) SOCIALLY DISADVANTAGED FARMER.—The
19 term “socially disadvantaged farmer” has the mean-
20 ing given the term “socially disadvantaged farmer or
21 rancher” in section 355(e)(2) of the Consolidated
22 Farm and Rural Development Act.

○