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# JUSTICE FOR BLACK FARMERS ACT

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## **General Overview**

The Justice for Black Farmers Act<sup>1</sup> is landmark legislation aimed at addressing and redressing historic discrimination against Black farmers by the U.S. Department of Agriculture and reversing a century of federal policy responsible, in part, for the decline in millions of acres of Black-owned farmland across the country. The Act's express goals include "ending discrimination at USDA" against Black farmers, protecting those Black farms still remaining by providing funding to resolve clouded title and heirs' property issues, rebuilding America's Black land base by providing land grants and educational programs to encourage careers in agriculture, and creating a Farm Conservation Corps modelled after the New Dealera Civilian Conservation Corps.

Specific highlights include:

### **Civil Rights Reforms**

- Independent Civil Rights Oversight Board to investigate reports of discrimination;
- Equity Commission to investigate legacy of discrimination against Black farmers;
- Office of the Assistant Secretary of Civil Rights, including ombudsman, to field discrimination complaints, track data and make publicly available reports to Attorney General on the status and treatment of socially disadvantaged farmers and corporate ownership of farmland.

### **Mitigating Land Loss**

- Increases funding authorization for the USDA relending program created in the 2018 Farm Bill to resolve heirs property issues;
- Allows alternative forms of eligibility for heirs' property owners to secure loans without proof of title;
- Provides funding for pro bono legal assistance, succession planning and support for development of farmer cooperatives;

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<sup>1</sup> S. 300 — 117th Congress: Justice for Black Farmers Act of 2021, March 26, 2021, available at <https://www.govtrack.us/congress/bills/117/s300>.

- Creates a new bank to provide financing and grants to Black farmer and rancher cooperative financial institutions;
- Credit assistance and debt forgiveness.

### **Promoting Black Farm Ownership**

- Land grants to “hundreds of thousands of new and existing Black farmers;
- Funding for HBCUs to encourage Black careers in agriculture;
- Funding for non-profit groups that serve and advocate for Black farmers;
- Conservation Corps to recruit young adults, paid by USDA, to will serve as on-farm apprentices at no cost to socially disadvantaged, beginning, or organic farmers and ranchers;
- Increases funding for existing USDA technical assistance and conservation programs.

The Act was presented in its current form on February 8, 2021 by Senator Corey Booker.<sup>2</sup> Skopos Labs’ predictive analytics score the Act as having 32% probability of enactment.

## **Section Summaries**

### **Title I—Department of Agriculture Civil Rights Reforms**

#### **Sec.102. Independent Civil Rights Oversight Board.**

- Establishes an independent board to oversee civil rights within USDA, including the Office of the Assistant Secretary of Civil Rights (OASCR), and to protect the rights of farmers and ranchers;
- Requires the Board to review appeals of decisions made by OASCR and to conduct regular reviews to assess OASCR’s compliance with applicable civil rights laws;
- Requires the Board to investigate reports of discrimination within USDA and recommend to the Secretary improvements to USDA policies and procedures to prevent future discrimination;
- Empowers the Board to oversee Farm Service Agency county committees;<sup>3</sup>
- Requires the Board to assess the progress made by the new JFBA-created programs and submit recommendations for improvements;
- Authorizes the preparation of an annual report on the status and treatment of socially disadvantaged farmers by USDA, to be made publicly available and submitted to the Attorney General.

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<sup>2</sup> Recently added co-sponsors include Elizabeth Warren, Kirsten Gilibrand, and Bernie Sanders.

<sup>3</sup> This, as you know, is extremely important because lending decisions are made at the local agriculture committee level, largely staffed by white farmers, who engaged in a pattern of denying USDA loans to Black farmers and imposing onerous financing terms. See, e.g., Loyd Wright, *Discrimination has become a fact of life for Black farmers—that must end*, Fortune, October 9, 2020, 7:00 a.m., <https://fortune.com/2020/10/09/black-farmers-usda-racism-pigford/>.

#### Sec.103. Equity Commission.<sup>4</sup>

- Establishes an Equity Commission to study the legacy of discrimination against Black farmers, including by investigating discrimination in Farm Service Agency county committees and claimants who did not receive payments under *Pigford v. Glickman*;<sup>5</sup>
- Empowers the Commission to recommend solutions to improve the status of Black agricultural producers, including by ending their systematic mistreatment by USDA, improving or replacing FSA county committees, and addressing mishandling of *Pigford* payments.

#### Sec.104. Office of the Assistant Secretary for Civil Rights reforms.

- Establishes a Civil Rights Ombudsman within OASCR to assist individuals navigating the complaint process;
- Prohibits foreclosure actions by USDA against any farmer who files a civil rights complaint during time period when the complaint is pending;
- Requires OASCR to provide grants to community-based organizations that provide technical assistance to farmers and ranchers seeking to file a civil rights complaint;
- Amends reporting structure so that the Assistant Secretary for Civil Rights will now report directly to the Secretary of Agriculture;
- Requires OASCR to publish reports on the complaints it receives, broken down by race, gender, and age;
- Prohibits the Office of General Counsel from interfering in civil rights complaints brought against the Secretary

#### Sec.105. Data collection and reporting.

- Requires the Secretary to make publicly available annual reports on recipients of USDA assistance, including subsidies, broken down by race, ethnicity, and gender;
- Requires the Economic Research Service to conduct research on the demographics agricultural producers, including their share of land and assistance, and farmworkers;
- Requires the Secretary to investigate historical misreporting of Black agricultural producers in the census and develop procedures to accurately capture the status of disadvantaged farmers;
- Requires the Secretary to conduct research and produce publicly available reports on corporate ownership of farmland.

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<sup>4</sup> This portion of the bill may be mooted by the Emergency Relief for Farmers of Color Act, which was passed as part of the omnibus American Rescue Plan Act (the 2021 pandemic relief package) and establishes an equity commission to investigate historic discrimination by USDA. Importantly, the bill does not provide specifically for Black farmers, but for “historically disadvantaged” farmers. See S. 278 — 117th Congress: Emergency Relief for Farmers of Color Act of 2021, March 26, 2021 available at <https://www.govtrack.us/congress/bills/117/s278>.

<sup>5</sup> *Pigford v. Glickman*, 185 F.R.D. 82, 112 (D.D.C. 1999) (upholding consent decree against USDA for widespread racial discrimination against Black farmers in violation of the Equal Credit Opportunity Act).

## Title II— Land Grants for Black Farmers

### Sec.201. Definitions.

- “eligible Black individual” is defined as a person who—
  - (A) was born in the United States;
  - (B) is at least 21 years of age;
  - (C) has previously identified as Black or African American; and (D) has at least 1 parent of African ancestry.
- “qualified entity” is defined as:
  - (A) a 501(c)(3) nonprofit organization—
    - (i) that has not less than 3 years of experience providing meaningful agricultural, business assistance, legal assistance, or advocacy services to Black farmers or ranchers; and (ii) at least 50 percent of the members of the board of directors of which are Black; and
  - (B) an 1890 Institution (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601)), including the University of the District of Columbia.

### Sec.202. Establishment of Equitable Land Access Service.

- Creates a new agency within USDA, the Equitable Land Access Service, to administer the grants program created by Title II.

### Sec.203. Provision of Land Grants.

- The USDA Secretary shall purchase from willing sellers at fair market value available agricultural land in the United States and convey grants of that land of up to 160 acres to eligible Black individuals at no cost.
- If a sufficient number of applications are filed, the Secretary shall convey not less than 20,000 land grants to eligible Black individuals each year from 2021 through 2030.
- No amount shall be includible in gross income by a land grant recipient due to receipt of a land grant.

### Sec.204. Identification of Land.

- The Secretary shall refer an eligible Black individual seeking a land grant under section 203 to a qualified entity (a nonprofit organization with experience providing assistance to Black farmers And ranchers, or an 1890 Institution) that receives a grant under section 208 to assist the eligible Black individual in identifying available agricultural land that is suitable for purchase by the Secretary and conveyance to the eligible Black individual.
- A qualified entity may assist eligible Black individuals in identifying land that is suitable to be subdivided and conveyed separately to multiple eligible Black individuals.

#### Sec.205. Restrictions on Conveyed Land.

- Before conveying a land grant, the Secretary shall attach to the land an easement requiring that the land be—
  - (1) restricted in perpetuity for agricultural use, but with an allowance for constructing or improving and maintaining 1 primary residence on the land; and
  - (2) subject to certain conservation requirements.
- Right of Reentry.—A deed conveying a land grant shall include a right of reentry for the Secretary if the Secretary determines, after giving notice and a reasonable opportunity for a hearing, that an easement requirement attached to that land has been violated and that violation has not been remedied. This right of reentry shall expire 5 years after the date of conveyance.
- Right of First Refusal.—Beginning 5 years after the date of conveyance, the recipient of the land grant may sell the land; but the Secretary shall have a right of first refusal to purchase the land at the appraised value of the land. If the Secretary exercises this right of first refusal, the Secretary shall convey the land to another eligible Black individual.

#### Sec.206. Eligibility for assistance.

- Beginning on the date of conveyance of a land grant, an eligible Black individual that receives a land grant shall be eligible for 1) a USDA operating loan with an interest rate of 0% for the first 7 years and with no payments for the first 24 months; and 2) a USDA single family home mortgage.

#### Sec.207. Farmer training program.

- As a condition on the receipt of a land grant, an eligible Black individual without prior experience in agriculture shall be required to complete, at no cost, a farmer training program provided by a qualified entity.
- Farmer training shall also be available, at no cost, to any eligible Black individual with prior experience in agriculture and to any other socially disadvantaged farmer or rancher.

#### Sec.208. Grants for qualified entities.

- The Secretary shall establish a program to provide grants to qualified entities to use as operating amounts—
  - (1) to support eligible Black individuals in identifying land, including developing proposals for how land may be subdivided;
  - (2) to support eligible Black individuals in acquiring that land through a land grant, including by submitting applications on behalf of eligible Black individuals;
  - (3) to support eligible Black individuals in starting up farm operations on that land;
  - (4) to provide eligible Black individuals and socially disadvantaged farmers and ranchers with farmer training; and
  - (5) to provide other assistance, including legal advocacy, succession planning and support for development of farmer cooperatives, to eligible Black individuals and other Black farmers and ranchers.



Sec.209. Farm Conservation Corps.

- The Secretary shall establish a civilian conservation corps, to be known as the “Farm Conservation Corps” to provide young adults ages 18 to 29 from socially disadvantaged groups with the academic, vocational, and social skills necessary to pursue long-term, productive careers in farming and ranching.
- The Secretary shall provide to each member of the Farm Conservation Corps, for up to two years, housing, subsistence, clothing, medical attention, transportation and payment for work performed.
- Members of the Farm Conservation Corps shall serve as on-farm apprentices, at no cost, to socially disadvantaged farmers and ranchers, beginning farmers and ranchers, and certified organic farmers and ranchers with annual gross farm income up to \$250,000.00.
- To the maximum extent practicable, the Secretary shall enroll not fewer than 20,000 young adults in the Farm Conservation Corps each year from 2021 through 2030.

Sec.210. Annual report to Congress.

- The Secretary shall submit to Congress and make publicly available annual reports describing data on land grants provided under this Act. **Title III—Funding for Historically Black Colleges and Universities**

Sec.301. Funding for historically Black colleges and universities.

- This section provides \$500M per year for 10 years to HBCUs—
  - to commence new courses of study and expand existing courses of study focused on careers in agriculture; and
  - to recruit students for those courses of study;
  - and ◦ to commence research to further the study of—
    - regenerative agricultural practices; and
    - market opportunities for socially disadvantaged farmers and ranchers.

Sec.302. USDA/1890 National Scholars Program.

- This section codifies the USDA 1890 National Scholars Program, which provides scholarships for students to attend 1890 Historically Black Land-Grant Universities and employment with USDA during summers and after graduation; and • Authorizes \$20 million annually to fund this program.

**Title IV—Land Retention and Credit Assistance<sup>6</sup>**

Sec.401. Protections for land ownership.

- Increases funding for the Relending Program to Resolve Ownership and Succession on Farmland from \$5 million to \$50 million annually;

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<sup>6</sup> It is unclear whether and to what extent provisions under this title are mooted by passage of S.278. See *supra* n. 4.

- Extends funding for the Reports on Land Access and Farmland Ownership Data Collection program to \$10 million annually; and
- Lowers the on-farm income requirement from 50% to 30% for family farmers to file for Chapter 12 bankruptcy.

Sec.402. Access to credit for disadvantaged farmers and ranchers.

- Authorizes and funds creation of a new Socially Disadvantaged Farmer and Rancher Bank to provide financing and grants to Black and other socially disadvantaged farmer and rancher owned financial institutions; and
- Authorizes the CFPB to investigate claims of discrimination by FCS institutions.

Sec.403. Additional credit assistance.

- Permanently waives the prohibition on refinancing of other debt with FSA Direct Loans and FSA Farm Ownership Loans;
- Removes the eligibility restriction for new FSA loans based on past debt write-down or other loss to the agency;
- Increases the FSA Farm Ownership Loan budget authority to \$10 billion;
- Increases the FSA Farm Operating Loan budget authority to \$10 billion;
- Provides USDA loan forgiveness to farmers who filed claims under the *Pigford* consent decree;
- Provides Farm Service Agency loan eligibility for farmers on heirs' property if they provide USDA with a tenant in common agreement containing certain information.

Sec.404. Foreclosure moratorium.

- Prohibits USDA from instituting or completing any foreclosure action on a loan secured by a lien on real property that includes a residence and farmland until one year after the COVID19 emergency declaration is lifted.

**Title V—Department of Agriculture and Agricultural System Reforms**

***Subtitle A—Amendments to Packers and Stockyards***

**Act** Sec.501. Definitions.

Amends definitions in the Packers and Stockyards Act (PSA).

Sec.502. Unlawful practices.

- Prohibits meatpackers from procuring livestock for slaughter through the use of a forward contract unless the contract contains a firm base price and is bid in an open, public manner;
- Prohibits meatpacker ownership of livestock more than 7 days prior to slaughter;
- Eliminates "pro-competitive effects" or "legitimate business justifications" as defenses to claims arising from a meatpackers' violation of conduct prohibited under the PSA;
- Requires transparency in contract grower compensation;
- Prohibits the use of a tournament or ranking system for paying contract growers for their capital and services, or any payment mechanism that is based primarily on factors outside the control of the grower;

- Prohibits poultry companies, meatpackers, and swine contractors from retaliating against livestock and poultry farmers for talking to their Member of Congress or other federal officials regarding concerns about their contracts or marketing arrangements, for making lawful disclosures related to potential violations of the PSA, or for joining together in producer associations; and
- Makes clear that individual farmers do not always need to show competitive injury in order to pursue a complaint under the PSA.

Sec.503. Spot market purchases of livestock by packers.

- Requires that 50% of a covered packer's daily slaughtered livestock comes through spot market sales from nonaffiliated producers.

Sec.504. Investigation of live poultry dealers.

- Provides USDA with necessary administrative authority under the PSA to take enforcement action against unfair and deceptive company practices in their dealings with contract poultry growers.

Sec.505. Award of attorney fees.

- Provides for the award of attorney fees by companies in farmers' and ranchers' successful claims under the PSA.

Sec.506. Technical amendments.

**Subtitle B—Local Agriculture Market Program**

Sec.511. Local Agriculture Market Program.

- Increases funding for LAMP by a factor of ten to help small and mid-size farmers provide fresh nutritious food to more Americans, through farmers markets, local and regional food enterprises, value chain coordination, and regional food-shed planning.

**Subtitle C—Conservation and Renewable Energy**

**Programs** Sec.521. Conservation technical assistance.

- Triples funding for the Conservation Technical Assistance (CTA) program to help farmers and ranchers as they adopt practices to reduce emissions and respond to climate change.

Sec.522. Conservation Stewardship Program (CSP).

- Makes climate stewardship practices listed in Appendix 1 eligible for new supplemental funding under CSP; and
- Increases mandatory funding for CSP by \$2B per year, with new funding dedicated to fund CSP contracts comprised predominantly of conservation activities and bundles relating to the climate stewardship practices listed in Appendix 1.

Sec.523. Rural Energy for America Program (REAP).

- Increases funding from \$50M to \$500 million per year to provide grants and loan guarantees for farmers, ranchers and rural businesses to expand renewable energy production and make energy efficiency improvements.



Sec.524. Conservation and renewable energy programs priority.

- Gives priority to socially disadvantaged farmers and ranchers, including new Black farmers receiving a land grant, for conservation technical assistance, the Conservation Stewardship Program, and (REAP).

Summarized for The Texas Freedom Colonies Project™ by Erika McDonald, Legal Researcher.

For more information find helpful links below:

Text of the Senate bill: <https://www.congress.gov/bill/117th-congress/senate-bill/300/text?q=%7B%22search%22%3A%5B%22Justice+for+Black+farmers+act%22%5D%7D&r=1&s=1>

Text of the House Bill: <https://www.congress.gov/bill/117th-congress/house-bill/1393?q=%7B%22search%22%3A%5B%22Justice+for+Black+farmers+act%22%5D%7D&s=1&r=2>

Track the bill: <https://www.govtrack.us/congress/bills/>

Criticism of the bill: Chris Newman, *The Justice for Black Farmers Act: A Critical BIPOC Review*, Medium (Dec. 5, 2020), <https://sylvanaqua.medium.com/the-justice-for-black-farmers-act-a-critical-bipoc-review-459875f0158e>.