

118TH CONGRESS
1ST SESSION

S. 2668

To amend the Consolidated Farm and Rural Development Act to reform farm loans, to amend the Department of Agriculture Reorganization Act of 1994 to reform the National Appeals Division process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

Mrs. GILLIBRAND (for herself and Mr. FETTERMAN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Consolidated Farm and Rural Development Act to reform farm loans, to amend the Department of Agriculture Reorganization Act of 1994 to reform the National Appeals Division process, 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 “Fair Credit for Farm-
5 ers Act of 2023”.

1 **SEC. 2. DEFERMENT OF PAYMENTS FOR BORROWERS OF**
2 **FARM LOANS.**

3 (a) DEFINITIONS.—In this section:

4 (1) ECONOMICALLY DISTRESSED FARMER OR
5 RANCHER.—The term “economically distressed
6 farmer or rancher” means a farmer or rancher that
7 is—

8 (A) delinquent, as described in the defini-
9 tion of the term “delinquent borrower” in sec-
10 tion 761.2(b) of title 7, Code of Federal Regu-
11 lations (or successor regulations);

12 (B) financially distressed, as described in
13 the definition of the term “financially distressed
14 borrower” in section 761.2(b) of title 7, Code of
15 Federal Regulations (or successor regulations);
16 or

17 (C) a borrower of a direct farm loan who
18 is unable to develop a feasible plan (as defined
19 in section 761.2(b) of title 7, Code of Federal
20 Regulations (or successor regulations)) for the
21 current or next production cycle with current
22 available rates and terms.

23 (2) ELIGIBLE BORROWER.—The term “eligible
24 borrower” means a borrower that—

25 (A) is an economically distressed farmer or
26 rancher; and

1 (B) did not receive assistance under sec-
 2 tion 22006 of Public Law 117–169 (commonly
 3 known as the “Inflation Reduction Act”).

4 (3) FARM LOAN.—

5 (A) IN GENERAL.—The term “farm loan”
 6 means a direct or guaranteed—

7 (i) farm ownership loan under subtitle
 8 A of the Consolidated Farm and Rural De-
 9 velopment Act (7 U.S.C. 1922 et seq.);

10 (ii) operating loan under subtitle B of
 11 that Act (7 U.S.C. 1941 et seq.); or

12 (iii) emergency loan under subtitle C
 13 of that Act (7 U.S.C. 1961 et seq.).

14 (B) INCLUSION.—The term “farm loan”
 15 includes direct microloans of any type of loan
 16 described in clauses (i) through (iii) of subpara-
 17 graph (A).

18 (4) HISTORICALLY UNDERSERVED FARMER OR
 19 RANCHER.—The term “historically underserved
 20 farmer or rancher” means—

21 (A) a limited resource farmer or rancher,
 22 as determined by the Secretary;

23 (B) a socially disadvantaged farmer or
 24 rancher (as defined in section 2501(a) of the

1 Food, Agriculture, Conservation, and Trade Act
2 of 1990 (7 U.S.C. 2279(a));

3 (C) a beginning farmer or rancher (as de-
4 fined in that section); and

5 (D) a veteran farmer or rancher (as de-
6 fined in that section).

7 (5) SECRETARY.—The term “Secretary” means
8 the Secretary of Agriculture.

9 (b) DEFERMENT OF PAYMENTS ON DIRECT FARM
10 LOANS.—The Secretary shall—

11 (1) defer payments of principal and interest due
12 on direct farm loans by eligible borrowers during the
13 2-year period beginning on the date of enactment of
14 this Act; and

15 (2) extend the date required for repayment of
16 direct farm loans by eligible borrowers subject to
17 deferment under paragraph (1) by not less than 2
18 years after the end of the period described in that
19 paragraph.

20 (c) ZERO PERCENT INTEREST.—The Secretary shall
21 modify each direct farm loan of an eligible borrower that
22 is outstanding as of the date of enactment of this Act such
23 that the interest rate on the farm loan is zero percent dur-
24 ing the 2-year period beginning on that date of enactment.

1 (d) WAIVER OF GUARANTEED FARM LOAN FEES FOR
 2 HISTORICALLY UNDERSERVED FARMERS AND RANCH-
 3 ERS.—The Secretary shall require lenders of guaranteed
 4 farm loans to historically underserved farmers or ranchers
 5 to waive borrower fees on those loans during the period—

6 (1) beginning on the date of enactment of this
 7 Act; and

8 (2) ending not earlier than 2 years after that
 9 date of enactment.

10 **SEC. 3. FARM LOAN REFORM.**

11 (a) IN GENERAL.—Subtitle D of the Consolidated
 12 Farm and Rural Development Act is amended by inserting
 13 after section 374 (7 U.S.C. 2008i) the following:

14 **“SEC. 375. FARM LOAN REFORM.**

15 **“(a) DEFINITIONS.—**In this section:

16 **“(1) ADVERSE DECISION.—**The term ‘adverse
 17 decision’ has the meaning given the term in section
 18 271 of the Department of Agriculture Reorganiza-
 19 tion Act of 1994 (7 U.S.C. 6991).

20 **“(2) FARM LOAN.—**The term ‘farm loan’ means
 21 a loan administered by the Farm Service Agency
 22 under subtitle A or B.

23 **“(3) PRINCIPAL RESIDENCE.—**The term ‘prin-
 24 cipal residence’ means the principal residence of a

1 borrower of a farm loan, including adjoining land of
2 not more than 10 acres.

3 “(b) DETERMINATION LETTERS AND ADVERSE DE-
4 CISIONS.—

5 “(1) IN GENERAL.—In the case of any adverse
6 decision relating to a farm loan, a Farm Service
7 Agency program benefit, or the noninsured crop dis-
8 aster assistance program established by section 196
9 of the Federal Agriculture Improvement and Reform
10 Act of 1996 (7 U.S.C. 7333), the Secretary shall in-
11 clude in a determination letter provided to the appli-
12 cant, to the maximum extent practicable—

13 “(A) a description of each reason known,
14 or that reasonably should have been known, to
15 the Secretary for that adverse decision;

16 “(B) a reference to each regulation, and
17 Farm Loan Program handbook instruction,
18 with the maximum practicable specificity, that
19 forms the basis for each reason described in
20 subparagraph (A); and

21 “(C) instructions for accessing the Elec-
22 tronic Code of Federal Regulations and Farm
23 Loan Program handbook instructions online.

24 “(2) EFFECT OF FAILURE TO STATE REA-
25 SONS.—If the Secretary issues any adverse decision

1 relating to an application for a farm loan, a Farm
2 Service Agency program benefit, or the noninsured
3 crop disaster assistance program established by sec-
4 tion 196 of the Federal Agriculture Improvement
5 and Reform Act of 1996 (7 U.S.C. 7333) and does
6 not include in a determination letter provided to the
7 applicant a reason known to the Secretary for that
8 adverse decision, the Secretary may not subsequently
9 issue an adverse decision to that applicant on the
10 basis of the same reason, unless the circumstances
11 of the applicant have substantially changed since the
12 issuance of the prior adverse decision.

13 “(c) COLLATERALIZATION.—

14 “(1) ORIGINATION.—The Secretary may only
15 secure a direct farm loan with a principal residence
16 if the total value of other assets available to secure
17 the farm loan does not provide adequate security (as
18 defined in section 761.2(b) of title 7, Code of Fed-
19 eral Regulations (or successor regulations)) for the
20 loan.

21 “(2) PARTIAL RELEASE OF PRINCIPAL RESI-
22 DENCE SECURITY.—In the case of a farm loan se-
23 cured in part by a principal residence, the Secretary
24 shall initiate a partial release of the principal resi-
25 dence as security in accordance with subpart H of

1 part 765 of title 7, Code of Federal Regulations (or
2 successor regulations), without any action required
3 by the borrower, when the total value of other assets
4 securing the farm loan is equal to 100 percent of the
5 remaining loan amount.

6 “(3) LOAN SERVICING.—

7 “(A) IN GENERAL.—In the case of a farm
8 loan borrower who is delinquent prior to re-
9 structuring the farm loan, the borrower shall
10 execute and provide to the Secretary a lien on
11 assets necessary to achieve not more than 100
12 percent collateralization of the loan value.

13 “(B) BEST LIEN.—Except as provided in
14 section 764.106 of title 7, Code of Federal Reg-
15 ulations (or successor regulations), the Sec-
16 retary shall take the best lien obtainable on as-
17 sets described in subparagraph (A), subject to
18 the condition that a primary residence shall be
19 the last option available to the Secretary to
20 achieve 100 percent collateralization of the loan
21 value.

22 “(4) PROHIBITION ON ADDITIONAL SECUR-
23 RITY.—The Secretary may not secure a direct farm
24 loan with any property that provides security in ex-

1 cess of the amount of security value equal to the
2 loan amount.

3 “(d) ELIGIBILITY REQUIREMENTS.—The Secretary
4 shall not impose any limitation relating to the number of
5 years in which a farm loan may be closed by a borrower.”.

6 (b) REFINANCING OF DEBT WITH FARM LOANS.—

7 (1) PURPOSES OF FARM OWNERSHIP LOANS.—

8 Section 303(a)(1) of the Consolidated Farm and
9 Rural Development Act (7 U.S.C. 1923(a)(1)) is
10 amended by striking subparagraph (E) and inserting
11 the following:

12 “(E) refinancing indebtedness.”.

13 (2) PURPOSES OF OPERATING LOANS.—Section

14 312(a) of the Consolidated Farm and Rural Devel-
15 opment Act (7 U.S.C. 1942(a)) is amended by strik-
16 ing paragraph (9) and inserting the following:

17 “(9) refinancing the indebtedness of a borrower;
18 or”.

19 (c) REMOVAL OF ELIGIBILITY RESTRICTION BASED

20 ON PREVIOUS DEBT WRITE-DOWN OR OTHER LOSS.—

21 Section 373 of the Consolidated Farm and Rural Develop-
22 ment Act (7 U.S.C. 2008h) is amended—

23 (1) in subsection (b)(2)(A)—

24 (A) by striking clause (i);

1 (B) in clause (ii), by striking “chapters 11,
 2 12, or 13 of Title 11 of the” and inserting
 3 “chapter 11, 12, or 13 of title 11,”; and

4 (C) by redesignating clauses (ii) and (iii)
 5 as clauses (i) and (ii), respectively; and

6 (2) by striking subsection (c) and inserting the
 7 following:

8 “(c) PROHIBITION ON ELIGIBILITY RESTRICTION
 9 BASED ON DEBT WRITE-DOWN OR OTHER LOSS.—The
 10 Secretary shall not restrict the eligibility of a borrower for
 11 a farm ownership or operating loan under subtitle A or
 12 B based on a previous debt write-down or other loss to
 13 the Secretary.”.

14 (d) EQUITABLE RELIEF.—Section 366 of the Con-
 15 solidated Farm and Rural Development Act (7 U.S.C.
 16 2008a) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (1), by striking “(1) re-
 19 ceived” and inserting “(1)(A) received”;

20 (B) in paragraph (2)—

21 (i) by striking the period at the end
 22 and inserting “; or”; and

23 (ii) by striking “(2) the Secretary”
 24 and inserting “(B) the Secretary”; and

25 (C) by adding at the end the following:

1 “(2)(A) received a benefit under any other pro-
2 gram administered by an agency (as defined in sec-
3 tion 271 of the Department of Agriculture Reorga-
4 nization Act of 1994 (7 U.S.C. 6991)); and

5 “(B) the Secretary determines is not in compli-
6 ance with the requirements of the provisions of law
7 that authorize that program.”;

8 (2) in subsection (b)(2), by inserting “, includ-
9 ing having made management or financial decisions
10 for the farming or ranching operation of the farmer
11 or rancher that were detrimental due to the erro-
12 neous nature of an official communication from the
13 Department of Agriculture, regardless of whether a
14 financial benefit was received or only promised” be-
15 fore the period at the end;

16 (3) in subsection (c)(1), by striking “(a)(2)”
17 and inserting “(a)(1)(B)”;

18 (4) in subsection (e), by striking “section” in
19 the matter preceding paragraph (1) and all that fol-
20 lows through “shall not be” in paragraph (2) and in-
21 serting “section shall be”; and

22 (5) by adding at the end the following:

23 “(f) AUTHORITY OF NATIONAL APPEALS DIVISION
24 ADMINISTRATIVE JUDGES.—

1 “(1) IN GENERAL.—An Administrative Judge
2 of the National Appeals Division may provide equi-
3 table relief under this section.

4 “(2) REVIEW.—The Secretary may review a de-
5 cision of an Administrative Judge to grant equitable
6 relief pursuant to paragraph (1).

7 “(g) CASES IN WHICH AN APPLICANT IS ELIGI-
8 BLE.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) ADVERSE DECISION.—The term ‘ad-
11 verse decision’ has the meaning given the term
12 in section 271 of the Department of Agriculture
13 Reorganization Act of 1994 (7 U.S.C. 6991).

14 “(B) APPLICANT.—The term ‘applicant’
15 means a person who submitted to the Farm
16 Service Agency an application for—

17 “(i) a direct farm ownership, oper-
18 ating, or emergency loan under this title;

19 “(ii) a Farm Service Agency program
20 benefit; or

21 “(iii) the noninsured crop disaster as-
22 sistance program established by section
23 196 of the Federal Agriculture Improve-
24 ment and Reform Act of 1996 (7 U.S.C.
25 7333).

1 “(2) DENIAL BASED ON FEASIBILITY.—

2 “(A) IN GENERAL.—A loan applicant shall
3 be eligible for equitable relief under this section
4 if—

5 “(i) the National Appeals Division de-
6 termines that the Farm Service Agency
7 was in error in denying the loan, benefit,
8 or payment based on feasibility;

9 “(ii) the National Appeals Division
10 has confirmed the accuracy of the pro-
11 jected income and projected expenses de-
12 scribed in the original application sub-
13 mitted by the applicant; and

14 “(iii) the original application sub-
15 mitted by the applicant is no longer fea-
16 sible due to the delay caused by the erro-
17 neous denial by the Farm Service Agency
18 and the length of the appeals process.

19 “(B) AMOUNT.—The amount of equitable
20 relief under subparagraph (A) shall be the
21 amount equal to the difference between—

22 “(i) the projected income described in
23 the application; and

24 “(ii) the projected expenses described
25 in the application.

1 “(3) DENIAL BASED ON ELIGIBILITY.—A loan
2 applicant shall be eligible for equitable relief under
3 this section if—

4 “(A) feasibility was not listed as a reason
5 for an adverse decision in the determination let-
6 ter provided to the applicant;

7 “(B) eligibility was listed as a reason for
8 an adverse decision in the determination letter
9 provided to the applicant;

10 “(C) the National Appeals Division deter-
11 mines that the Farm Service Agency was in
12 error in denying the loan based on eligibility;
13 and

14 “(D) the original application submitted by
15 the applicant is no longer feasible due to the
16 delay caused by the erroneous denial by the
17 Farm Service Agency and the length of the ap-
18 peals process.

19 “(4) SUBSEQUENTLY WITHDRAWN ADVERSE
20 DECISION.—An applicant shall be eligible for equi-
21 table relief under this section if—

22 “(A) the Farm Service Agency issued an
23 adverse decision on an application that the
24 Farm Service Agency subsequently withdrew;
25 and

1 “(B) the original application submitted by
 2 the applicant is no longer feasible due to the
 3 delay caused by the adverse decision.

4 “(5) PROMISED PROGRAM BENEFITS NOT RE-
 5 CEIVED.—An applicant shall be eligible for equitable
 6 relief under this section if—

7 “(A) the Farm Service Agency indicated in
 8 an official communication made after the date
 9 of enactment of this subsection that the appli-
 10 cant could expect the loan, benefit, or payment,
 11 and then reversed its decision; and

12 “(B) the applicant acted in good faith.”.

13 **SEC. 4. NATIONAL APPEALS DIVISION REFORM.**

14 (a) BURDEN OF PROOF.—Section 277(c)(4) of the
 15 Department of Agriculture Reorganization Act of 1994 (7
 16 U.S.C. 6997(c)(4)) is amended—

17 (1) by striking “The appellant” and inserting
 18 the following:

19 “(A) IN GENERAL.—Except as provided in
 20 subparagraph (B), the appellant”; and

21 (2) by adding at the end the following:

22 “(B) APPELLANTS BELOW INCOME
 23 THRESHOLD.—

24 “(i) IN GENERAL.—In the case of an
 25 appellant described in clause (ii), the agen-

cy shall bear the burden of proving by substantial evidence that the adverse decision of the agency was not erroneous.

“(ii) APPELLANTS DESCRIBED.—An appellant referred to in clause (i) is an appellant—

“(I) the adjusted gross income of which for the previous year is not more than \$300,000; or

“(II) the average annual adjusted gross income of which for the previous 5-year period is not more than \$300,000.”.

(b) IMPLEMENTATION.—Section 280 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 7000) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

“(b) REQUIREMENT.—In implementing a final determination in accordance with subsection (a), the head of an agency shall use the information used by the Division to make the final determination, without requiring addi-

- 1 tional information, except as otherwise provided in the de-
- 2 cision letter relating to the final determination.”.

