

Legislative Bulletin.....November 30, 2010

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Senate Amendments to H.R. 4783—Claims Resolution Act of 2010

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(Rahall, D-WV)

Key Conservative Concerns

Key Take Away Points

- **Potential for Fraudulent Claims:** Some conservatives believe that justice should be served to those who experienced discrimination, but valuable taxpayer dollars should not be wasted during the process of correcting a wrong. At minimum, the questionable claims process should be investigated before spending \$1.2 billion on a program where Department of Agriculture employees and the FBI estimate between 50 percent and 95 percent of the claims submitted could be fraudulent.
- **Another Windfall for Trial Lawyers:** The bill does not contain adequate caps on legal fees, which could result in over \$100 million being doled out for trail lawyers – all of which would be paid for by the Native Americans who were actually harmed.
- **Process & Transparency:** Once again House Democrats are quickly considering legislation that has not been fully vetted and contains numerous problems. The settlement including a settlement creates a payment formula structure that treats claims unequally.
- **Dubious Spending:** Many of the water projects enacted under H.R. 4783 have not been fully vetted by the Department of Interior. Some conservative have stated that without transparent and consistent answers from the Administration, they cannot support H.R. 4783 – especially with the large amount of taxpayer funding necessary to reach a settlement. Congress should not spend over a billion dollars until we know for sure the projects will benefit taxpayers.

Order of Business: The motion is scheduled to be considered on Tuesday, November 30, 2010, under a closed rule ([H.Res.1736](#)).

Summary: Containing approximately \$5.4 billion of new entitlement spending and \$7.6 billion reductions to direct spending over ten years, H.R. 4783 seeks to settle legal claims brought by American Indians and black farmers against the federal government. The settlements include \$1.15 billion for black farmers (Pigford II) who reached a settlement with the Department of

Justice after winning a lawsuit where they claimed to have suffered discrimination by loan administrators within the U.S Department of Agriculture. An additional \$3.4 billion allocated under H.R. 4783 would be directed to cover a settlement (Cobell v Salazar) reached with Native American landowners who claimed they did not receive royalties from the Department of Interior for oil, grass, grazing and timber and other rights. Of the \$3.4 billion, \$1.5 billion will be directed for payments to individuals to compensate for the class action settlement. The remaining \$1.9 billion will be directed to allow the Department of Interior to purchase subdivided plots of land to be turned over to the respective tribes.

According the House Resources Committee, H.R. 4783 contains \$1.23 billion to cover the cost of settling tribal water rights claims by four tribes in Arizona, Montana, and New Mexico requiring the federal government to fund the construction and maintenance of local water systems. Three of these projects passed the House earlier this year. [H.R. 1065](#), [H.R. 3342](#), & [H.R. 3254](#), all passed the House on January of 2010.

Additionally, the Claims Act includes a one-year extension of the Temporary Assistance for Needy Families (TANF) program through September 30, 2011. TANF is a block grant program that funds a variety of benefits and services for low-income families with children. TANF is currently funded in the government-wide continuing resolution December 3, 2010.

The black farmer's settlement has been considered twice in the 111th Congress in pieces of larger legislation, but has not been passed by the Senate because of pay-for concerns. The Senate Amendment contains a number of offsets to cover the cost of the entire bill. This includes the Pigford II settlement. The Senate Amendment includes and pays for the Salazar settlement, four Native American water projects, and a year long extension of TANF benefits. The Senate Amendment strikes the House-passed legislation dealing with accelerating income tax benefits for charitable cash contributions for the relief of victims of the earthquake in Chile and extending contributions for the relief of victims of the earthquake in Haiti.

One of the offsets contains approximately \$562 million in unused stimulus funding originally designated towards a nutrition program for women, infants, and children (WIC). Other offsets include changing the formula for overpayments of federal unemployment insurance benefits by offsetting errors with tax refunds and extending customs "user fees" through 2019. Some of the highlights of H.R. 4783 are as follows:

Indian Account Settlement: H.R. 4783 requires the Secretary of the Treasury to deposit \$1.9 billion into the Trust Land Consolidation Fund to comply with the settlement. The bill allows up to 60 million to be transferred from Trust Land Consolidation Fund to the Indian Education Scholarship Holding Fund for the purpose of providing scholarships for Native Americans.

The bill, ***does not provide a cap on attorney fees***, and allows the court in the litigation to determine the amount a plaintiff may be entitled for incentive awards and for attorneys' fees, expenses, and costs. The bill establishes a payment formula to determine awards to affected Native Americans. Some conservatives have expressed concern that the formula is flawed and could result in the unequal distribution of litigated claims. Additionally, the Senate Amendment transfers \$100 million to an Adjustment Fund to increase payments for damages to the claimants. This change affects the final settlement agreement and could allow the potential for a judge to nullify or change the negotiated settlement even after H.R. 4783 is signed into law.

Black Farmers Settlement: The bill appropriates \$1.15 billion to the Secretary of Agriculture to carry out the terms of the settlement agreement reached in February of 2010. The bill allows the

court determine the amount of attorneys' fees and expenses. The provision requires an attorney filing a claim on behalf of a claimant to swear, under penalty of perjury, that the claim is supported by existing law and factual. The bill also requires the Comptroller General to report on the internal controls (including internal controls concerning fraud and abuse) created to carry out the terms of the Settlement Agreement, and report to the Congress at least 2 times throughout the duration of the claims adjudication process on the results of this evaluation. Some conservatives have expressed concern that it would be more responsible to fully investigate these claims before passing H.R. 4783 and proceeding to pay the settlement.

Tribal Water Projects: The next four sections of H.R. 4783 authorize four water projects, three of which have been considered in the 111th Congress. The bill contains the text of ([H.R. 1065](#)) White Mountain Apache Tribe Water Rights Quantification Act, ([H.R. 3342](#)) Aamodt Litigation Settlement Act, and the ([H.R. 3254](#)) Taos Pueblo Indian Water Rights Settlement Act. The fourth provision would cost approximately \$460 million, to approve a compact between the Crow Tribe and the state of Montana to settle tribal claims to water rights in the state by authorizing the construction and rehabilitation of water systems that deliver water to tribal lands and establishes a trust fund for the tribe to operate and maintain those systems.

Mandatory Appropriation: The bill requires a mandatory appropriation of \$180 million over three years for the Reclamation Water Settlements Fund established in the Omnibus public lands enacted in the 111th Congress.

TANF Extension: The bill includes a one-year extension of the Temporary Assistance for Needy Families (TANF) program through September 30, 2011. Some conservative might be interested to know that this authorization includes \$150 million in funding for a competitive-based grant program to provide Relationship and Marriage Education (RME) under the Healthy Marriage Demonstration Grant (HMDG) and Promoting Responsible Fatherhood (PRF) program. Currently, \$100 million per year goes toward HMDG and \$50 million towards PRF. Due to a compromise achieved in the Senate, this bill would reallocate funding so that \$75 million would go toward HMDG and \$75 million toward PRF.

Pay For: The bill pays for the cost of the settlement through a several spending offsets. One of the offsets contains approximately \$562 million in unused stimulus funding originally designated towards a nutrition program for women, infants, and children (WIC). House Republicans, by contrast, have proposed to rescind “stimulus” funding and use the savings to reduce the deficit. Other offsets include changing the formula for overpayments of federal unemployment insurance benefits by offsetting errors with tax refunds and extending customs “user fees” through 2019. Total revenue estimates outlays are approximately \$7.6 billion.

Additional Background:

Pigford v. Glickman: This case was settled after the Department of Agriculture determined that, on average, black farmers had to wait three times longer for loans and subsidies. A federal judge determined that certain qualifying farmers were eligible to each receive \$50,000 from the settlement. This case was settled in 1999, and resolved discrimination claims that were filed between 1983 and 1997. The Pigford Case originated with Timothy Pigford, a black farmer in North Carolina who was the original plaintiff in the lawsuit. This suit resulted in more than \$1 billion being paid to 16,000 farmers, around \$50,000 each.

The original submission deadline for this case was in 2000 with approximately \$1 billion having been paid in settlements. In the 2008 farm bill, Congress authorized \$100 million for new

payments. In 2010, Congress authorized more than \$1.2 billion for new payments after Attorney General Eric Holder and Agriculture Secretary Vilsak announced a new settlement with black farmers in February. For more information please [click here](#) to see this CRS report.

Cobell v. Salazar: This case involves the Department of the Interior's (DOI's) management of several accounts, or Individual Indian Monies (IIMs). These IIMs are different from tribal trust funds, as these are individual accounts that the federal government holds for individual Indians. The conflict in the case rises from the federal government's trust responsibility with respect to American Indians. As the trustee, the United States holds the title of a vast amount of Indian tribal land, as well as land allotted to individual Indians. Sales of timber, mineral royalties, and leases are paid to the federal government and then disbursed to the appropriate Indian property owner.

Several recipients of these funds have accused DOI of mismanagement and filed suit in order to obtain a proper accounting of these funds and to receive damages. Approximately 30,000 American Indians claimed they did not receive royalties from the Department of Interior for things such as oil, grass, grazing and timber. It was determined in January of 2008 by the United States District Court for the District of Columbia that the DOI would be unable to produce the required accounting. After 13 years of litigation, a \$ 3.4 billion settlement for Cobell v Salazar was settled on December 7, 2009. For more information on this issue see [this CRS report](#).

Additional Conservative Concerns: Some conservatives have expressed serious concern over reports of fraudulent claims in the Pigford II settlement. According to Department of Agriculture officials and the FBI, between 50 percent and 95 percent of the claims submitted could be fraudulent. The President of the National Black Farmers Association, stated to Congress there were 18,000 Black farmers due compensation. Census data shows the approximate number of farms operated by black farmers in the entire United States is 33,000. However, despite these estimates approximately 95,000 claims have been made during the settlement process.

Some conservatives have expressed concern the claims process should at the very least be investigated before appropriating \$1.15 billion to settle additional claims. The federal government has already paid out more than \$1 billion in taxpayer money to settle the first round of the Pigford settlement. Former Secretary of Agriculture Ed Schafer has also expressed concern potentially fraudulent claims were filed during his tenure as head of the USDA.

Additionally, some conservatives have expressed concern that this sort of program could lead to boondoggle for trial lawyers, using Pigford II to lay groundwork for creating questionable future claims on behalf of minority farmers in order to collect massive payouts in attorney's fees.

Some conservatives have also expressed concern over portions of the settlement of Native American claims. In addition to the potential for exorbitant legal fees and unfair distribution of claims, some conservatives believe that Congress lacks sufficient information to assess whether the spending level of this bill is appropriate. Some conservatives have argued that prematurely reaching a settlement on the claims will increase U.S. liability by more than compared to existing law. In fact, the Department of Interior (DOI) stated their opinion on several of these claims that: "settlement would be preferable to litigation of these claims, although we do continue to have certain concerns with each of the pending settlements." On one portion of H.R. 4783 the DOI testified that they were: "concerned about the large Federal contribution in the trust fund and believe there should be further discussion with the parties about the activities included in this part of the settlement," and could not support the bill at the time because of this and other concerns.

Some conservative have stated that without transparent and consistent answers from the Administration, they cannot support H.R. 4783 – especially with the large amount of taxpayer funding necessary to reach a settlement. Congress should not spend over a billion dollars until we know the projects will benefit taxpayers.

Committee Action: None.

Administration Position: A Statement of Administrative Policy is unavailable, but it has been reported in the media the settlement of the Pigford case is a priority for the Obama Administration and Attorney General’s Office.

Cost to Taxpayers: According to CBO, H.R. 4783 would increase new entitlement programs by \$5.37 billion in direct spending over ten years. The bill also contains \$7.6 billion in spending reductions over ten years. The bill decreases total estimated revenues by \$2.2 billion is estimated to reduce the deficit by \$1 million over ten years. A complete CBO score can be [viewed here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates two new programs to cover settlement claims in addition to requiring the federal government to participate in the construction of four different water projects with Indian tribes.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? A committee report regarding compliance for house rules on earmarks is not available.

Constitutional Authority: A committee report citing the constitutional authority to enact the Senate amendments to H.R. 4783 is unavailable.

RSC Staff Contact: Bruce F. Miller, bruce.miller@mail.house.gov, (202)-226-9720.