MANAGEMENT OF CIVIL RIGHTS AT THE USDA

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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MANAGEMENT OF CIVIL RIGHTS AT THE USDA

WEDNESDAY, MAY 14, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:09 p.m., in room 2154, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the subcommittee) presiding.

Present: Representatives Towns and Bilbray.

Also present: Representatives Bishop and Butterfield.

Staff present: Michael McCarthy, staff director; William Jusino, professional staff member; Velvet Johnson, counsel; Kwane Drabo, clerk; Jim Moore, minority counsel; and Benjamin Chance and Chris Espinoza, minority professional staff members.

Mr. TOWNS. Let me begin by first apologizing for the lateness, because we had a little conflict in that the other hearing ran a little longer than they had expected, and so it delayed our hearing, as well.

Also, I understand that we have some votes coming up, so we wanted to get started at least and get as far as possible before the votes, and then return back after the votes.

We have other Members that will be joining us shortly.

Let me begin by first thanking the witnesses for coming today.

The hearing will come to order.

We are here to consider an issue that is a cause for great alarm: the all-too-familiar issues of discrimination within the U.S. Department of Agriculture. Discrimination in the delivery of services to minorities and women farmers and treatment of minority employees at USDA has been a longstanding problem, confirmed by official investigations and class action settlements. What was once envisioned by President Lincoln as the people's department, many now call the last plantation, and statistics seem to support this, and that is very troubling.

For too long we have heard from minority farmers and workers at USDA that they have been shut out of Government loans and job promotions for decades because of the color of their skin. In fact, these problems have persisted for so long that Congress took action to reorganize USDA to emphasize the importance of Civil Rights.

The 2002 farm bill established a position of Assistant Secretary of Civil Rights to provide overall leadership and coordination of all

Civil Rights programs across the Department of Agriculture. Today, 5 years later, we examine whether that reform has been effective at eliminating discrimination at USDA. Unfortunately, the answer to that question appears to be no.

Although Congress gave the Office of Civil Rights the resources, the autonomy, and authority to adequately help under-served farmers and minority employees, it remains unclear whether there has been any improvement in management of USDA Civil Rights programs. Serious questions have been raised in the past year regarding how USDA tracks, processes, and remedies complaints brought by farmers and its own employees.

Today we will hear from members of the farming community as they tell us the difficulties that they personally experience at USDA. We will also hear from representatives of USDA employees. These personal stories are supported by Government audit findings. Last year the USDA Inspector General reported that employment complaints were not timely processed, there were no internal controls to ensure the accuracy and reliability of complaint data, and that complaint data in the Department's computer files did not match up with the physical cases. GAO also reports that lengthy backlogs persist and that the USDA's statistics are not reliable.

Furthermore, there have been a series of incidents in the past few months that cause me to question the Department's commitment to safeguarding Civil Rights.

In September 2007, an e-mail circulated among employees of the Farm Service Agency criticizing congressional action to reopen a landmark Civil Rights case against USDA for discrimination and providing farm loans to Black farmers. More recently GAO ran into several roadblocks in gaining access to documents, and at one point, were even kicked out of the building as they tried to interview employees.

I want to send a very, very clear message that stonewalling a congressional investigation is unacceptable and will not be tolerated. Let me repeat: stonewalling a congressional investigation is unacceptable and will not be tolerated.

Very little has changed in the last 5 years, despite a growing bureaucracy whose top priority is to address these issues. It is quite disturbing that we still regularly hear about discriminatory treatment or delay in resolving complaints. It seems to be that the missing link here seems to be one of accountability, from the highest level of management to the county supervisor in the field who fails to adequately service an African American farmer's loan.

We have been talking about these issues for long, long enough. It is time to do something about them. It is my hope that we can work together to come up with a better strategy to ensuring that every client and every employee at USDA is treated fairly. This is why we have come together today, to put an end to this ugly, unfair practice.

[The prepared statement of Hon. Edolphus Towns follows:]

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Subcommittee on Government Management, Organization and Procurement

Management of Civil Rights at the U.S. Department of Agriculture

May 14, 2008
2:00 p.m. 2154 Rayburn

OPENING STATEMENT

We are here to consider an issue that is a cause for great alarm– the all-too-familiar issue of discrimination within the U.S. Department of Agriculture. Discrimination in the delivery of services to minority and women farmers and the treatment of minority employees at USDA has been a longstanding problem – confirmed by official investigations and class-action settlements. What was once envisioned by President Lincoln as "the people's department," many now call "the last plantation." For too long, we have heard from minority farmers and workers at USDA that they have been shut out of government loans and job promotions for decades because of the color of their skin.

In fact, these problems have persisted for so long that Congress took action to reorganize USDA to emphasize the importance of civil rights. The 2002 Farm Bill established the position of Assistant Secretary for Civil Rights to provide overall leadership and coordination of all civil rights programs across the Department of Agriculture. Today, five years later, we examine whether that reform has been effective at eliminating discrimination at USDA. Unfortunately, the answer to that question appears to be "no."

Although Congress gave the Office of Civil Rights the resources, autonomy, and authority to adequately help underserved farmers and minority employees, it remains unclear whether there has been any improvement in the management of USDA's civil rights programs. Serious questions have been raised in the past year regarding how USDA tracks, processes, and remedies complaints brought by farmers and its own employees.

Today we will hear from members of the farming community as they tell us the difficulties that they personally experienced at USDA. We will also hear from representatives of USDA employees. These personal stories are supported by government audit findings. Last year, the USDA Inspector General reported that employment complaints were not timely processed, there were no internal controls to ensure the accuracy and reliability of complaint data, and that complaint data in the Department's computer files did not match up with the physical case files. GAO also reports that lengthy backlogs persist and that USDA's statistics are not reliable.

Furthermore, there have been a series of incidents in the past few months that cause me to question the Department's commitment to safeguarding civil rights. In September 2007, an e-mail circulated among employees of the Farm Service Agency criticizing Congressional action to reopen a landmark civil rights case against USDA for discrimination in providing farm loans to black farmers. More recently, GAO ran into several roadblocks in gaining access to documents, and at one point were even kicked out of the building as they tried to interview employees. I want to send a very clear message that stonewalling a Congressional investigation is unacceptable and will not be tolerated.

From my view, very little has changed in the last five years, despite a growing bureaucracy whose top priority is to address these issues. It is quite disturbing that we still regularly hear about discriminatory treatment or delay in resolving complaints. It seems to be that the missing link here seems to be one of accountability – from the highest level of management to the county supervisor in the field who fails to adequately service an African-American farmer's loan.

We've been talking about these issues for long enough. It's time to do something about them. It is my hope that we can work together to come up with a better strategy to ensuring that every client and employee at USDA is treated fairly.

Mr. TOWNS. I now stop and I recognize the ranking member of the committee, Mr. Bilbray from the great State of California.

Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman. I want to thank you for having this hearing. I want to thank the panel for coming forward.

Mr. Chairman, I think your opening statement speaks for both of us, and I will leave it at that. Thank you very much.

Mr. TOWNS. Thank you very much.

We are delighted this afternoon that we have with us a gentleman who has a District that has a tremendous amount of agriculture in it, and, of course, we would like to ask unanimous consent that he be allowed to sit with the committee today and to be able to give testimony and to be able to ask questions, Mr. Bishop from the State of Georgia.

Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

First I would like to take this opportunity to salute Chairman Towns for his leadership on the issue of Civil Rights within USDA and to commend his continued efforts to seek equity and justice, not just for African American farmers, but for minority farmers everywhere.

Chairman Towns' continued diligence and leadership on this issue dates back to 1983, when he arrived first in Washington as a young Congressman from Brooklyn. And, it serves as a tribute to his character and to his unfailing commitment to life and to protect those in our society who, by no fault of their own, continue to be subjected to the twin evils of bigotry and racism.

This hearing comes at a crucial point on the legislative calendar, given the recent completion and the imminent approval of a new farm bill by the House of Representatives and the reopening of the *Pigford* case and the other initiatives that are aimed at preserving and expanding the number of small farms owned by minorities.

Many of us in attendance here today are disappointed that, in 2008 we again find ourselves in another congressional oversight hearing on the shortcomings of the Department of Agriculture. Our USDA has yet to fully execute the Federal statutes and regulations governing the administration of our Nation's agriculture programs in a fair, equitable, and nondiscriminatory manner. Most disturbing appears to be the institutionalization of discriminatory practices, which at this point seem firmly rooted throughout the Department in both its external and internal operations and program management.

Ironically, Abraham Lincoln, who is probably best remembered as the President who saved the Union and freed slaves, was also, the very same individual who had the vision, the insight, and the wisdom to found the Department of Agriculture. In 1862, when President Lincoln founded the U.S. Department of Agriculture, he referred to his new creation as the People's Department. In Lincoln's day, 90 percent of Americans were farmers, and all needed good seed and good information to grow their crops. These farmers included the newly freed slaves.

African American farmers reached their peak in terms of land ownership in 1910 when 218,000 African American farmers owned around 15 million of the 873 million acres that were being farmed

nationwide. Since 1910, while the total number of individual farms nationwide has decreased, the number of acres being farmed in the United States actually has grown slightly by about 6 percent. Despite this growth in farmed acreage nationwide, African American owned or controlled landholdings have decreased significantly over time. By 1978, African American owned or controlled landholdings fell to 2.4 million acres, and in 1999 2.3 million acres of land. Today that number stands at less than 2 million acres of the almost 931 million acres currently being farmed in the United States.

A 1982 report by the U.S. Commission on Civil Rights charged that systematic racism carried out by the U.S. Department of Agriculture was one of the major causes of land loss among African American farmers. The Commission found that USDA employees routinely denied African American farmers credit and information about USDA programs that were readily accessible to White farmers. The Commission found the situation so dire they projected that if nothing were done, African American owned farms would cease to exist by the year 2000.

In 1990 a report issued by the Congress' House Committee on Government Operations, Mr. Chairman, this very committee in a previous life, concluded that little had changed for the African American farmer since the 1982 report had been published. By systematically denying or delaying loans essential to financing their crops and withholding other Federal farm support on a widespread basis, USDA employees forced African American farmers to lose their land, their livelihoods, and their communities.

Central to this issue is the manner in which the Farm Service Agency executes and administers its programmatic responsibilities in conjunction with the local county advisory committees. This is where the rubber meets the road, and all too often it serves as the link to many of the front line issues that are facing African American farmers today.

Even as we sit here today, my staff is working with constituents facing potential discriminatory actions within a couple of FSA offices in my District. Critically important to resolving this issue means expanding and strengthening the administrative and management tools in place at the Department to provide the broadest and most effective level of management accountability possible.

So, here we are again today raising the same concerns, all in the name of asking, if not admonishing, the Department of Agriculture to do what is fair and what is right.

Mr. Chairman, I commend you and your subcommittee for again taking up this important issue today. It is my fervent hope that we may 1 day see a Department of Agriculture, which operates and administers its programs and activities as its founder, President Lincoln, would have hoped and expected as the People's Department, not just for some of the people, but for all of the people in these United States.

Thank you, Mr. Chairman, for allowing me to participate. I look forward to the testimony of the witnesses.

[The prepared statement of Hon. Sanford D. Bishop, Jr., follows:]

Statement
Representative Sanford D. Bishop, Jr.
Subcommittee on Government Management, Organization and Procurement
"Management of Civil Rights at the USDA"
May 14, 2008; 2:00pm; Room 2154

Thank you Mr. Chairman.

First, I would like to take this opportunity to salute Chairman Towns for his leadership on the issue of civil rights within the USDA, and to commend his continued efforts to seek equity and justice for not just African American farmers, but for minority farmers everywhere.

Chairman Towns' continued diligence and leadership on this issue dates to 1983, when he arrived in Washington as a young Congressman from Brooklyn, and serves as a tribute to his character and unfailing commitment to lift up and protect those in our society who, by no fault of their own, continue to be subjected to the twin evils of bigotry and racism.

This hearing comes at a crucial point on the legislative calendar, given the recent completion and imminent approval of a new Farm bill by the U.S. House of Representatives, the reopening of the Pigford case, and the other initiatives aimed at preserving and expanding the number of small farms owned by minorities.

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In 1862, when President Abraham Lincoln founded the U.S. Department of Agriculture, he referred to his new creation as the "People's Department."

In Lincoln's day, 90 percent of the Americans were farmers, and all needed good seed and good information to grow their crops. These farmers included the newly freed slaves, as well.

African American farmers reached their peak in terms of land ownership in 1910, when over 218,000 African American farmers owned around 15 million of the 873 million acres being farmed nationwide.

Since 1910, while the total number of individual farms nationwide has decreased, the number of acres being farmed in the United States actually has grown slightly, by 6 percent[1].

Despite this growth in farmed acreage nationwide, African American-owned or controlled landholdings have decreased significantly over time.

By 1978, African American - owned or controlled landholdings fell to 4.2 million acres. And in 1999, African American farmers owned just 2.3 million acres of land.

Sadly, today, that number stands at less than 2 million acres of the almost 931 million acres currently being farmed in the U.S[2].

In 1982, a report by the U.S. Commission on Civil Rights charged that systematic racism carried out by the U.S. Department of Agriculture USDA) was one of the major causes of land loss among African American farmers. The Commission found that USDA employees routinely denied African American farmers credit and information about USDA programs readily accessible to white farmers.

The Commission found the situation so dire, they projected that if nothing were done, African American-owned farms would cease to exist by the year 2000.

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By systematically denying or delaying loans essential to financing their crops, and withholding other federal farm support on a widespread basis, USDA employees forced African American farmers to lose their land, their livelihoods, and their communities.

Central to this issue is the manner in which the Farm Service Agency executes and administers its programmatic responsibilities, in conjunction with the local County Advisory Committees.

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[1] US Census numbers.

[2] US Census numbers.

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So, here we are again today, raising the same concerns – all in name of asking, if not admonishing, the Department of Agriculture into doing what's fair and right.

Mr. Chairman, I commend you and your Subcommittee for again taking up this important issue today.

It is my fervent hope that we may one day see a Department of Agriculture which operates and administers its programs and activities as its founder, President Lincoln, would have hoped and expected – as the "people's department." Not just for some of the people, but for all the people in these United States.

Thank you, Mr. Chairman.

-30-

Mr. TOWNS. Thank you very much.

Let me say to the witnesses we swear in all of our witnesses here. It is a longstanding policy. So if you would, stand and raise your right hands.

[Witnesses sworn.]

Mr. TOWNS. Let the record reflect that all of them answered in the affirmative.

Let me introduce the panel.

Mr. John Boyd is president of the National Black Farmers Association. Mr. Boyd is a staunch advocate for African American farmers throughout the country and has worked tirelessly to help eradicate discrimination within the USDA system.

Welcome.

Mr. Garcia is a third generation farmer and the lead plaintiff in a class action brought on behalf of Hispanic farmers and ranchers against USDA. He is also president of the Hispanic Farmers and Ranchers of America.

Welcome, Mr. Lupe Garcia.

Also I would like to introduce Mr. Phil Givens. Mr. Givens is a Native American and African American farmer from Oklahoma. Mr. Givens has farmed for over 26 years and represents farmers from 8 different Indian tribes located throughout the midwest.

Welcome, Mr. Givens.

Mr. Lucas, Lawrence Lucas, is president of the USDA Coalition of Minority Employees, with over 35 chapters throughout the country. The Coalition works to remedy representation in the USDA work force by advocating equal employment and promotion opportunities for all employees.

Welcome, Mr. Lucas.

Also we have Lesa Donnelly, who is the advisor for Women's Issues for the USDA Coalition of Minority Employees. She represents employees in administrative proceedings with the Department.

Welcome, Ms. Donnelly.

Let me begin with you, Mr. Boyd, and we will come right down the line.

Let me just say this: we have a light, which means that you are allowed 5 minutes to make a statement. Then, the yellow light will come on and that will be like caution you to let you know that you should sum up, and then immediately after the yellow light means a red light that means you should shut up. [Laughter.]

Let's move right down the line.

STATEMENTS OF JOHN BOYD, PRESIDENT, NATIONAL BLACK FARMERS ASSOCIATION; LUPE GARCIA, PRESIDENT, HISPANIC FARMERS AND RANCHERS OF AMERICA, INC.; PHIL GIVENS, PRESIDENT, PHIL GIVENS CO., REPRESENTATIVE OF NATIVE AMERICAN FARMERS; LAWRENCE LUCAS, PRESIDENT, USDA COALITION OF MINORITY EMPLOYEES; AND LESA DONNELLY, ADVISOR FOR WOMEN'S ISSUES, USDA COALITION OF MINORITY EMPLOYEES

STATEMENT OF JOHN BOYD

Mr. BOYD. Thank you very much. Mr. Chairman, we appreciate the opportunity today to testify before this distinguished committee. To the ranking member and Congressman Bishop, we are old friends here.

This has been such a long, long plight, and we also would like to recognize some of the other congressional Members that have been supporting the Black farmers and minority farmers around the country: Congressman Scott; Senator Obama, who sponsored legislation in the Senate for us, and other distinguished Members that have been working on this issue for such a long, long time.

Mr. Chairman, you stole my testimony. So many of the things that I wanted to say, I won't read from my testimony. I would like to speak from the heart for just a few minutes about the plight of the Black farmers.

We have been losing land at an enormous rate, three times greater rate than any other race of people in this country. In my own personal opinion, I feel that Black farmers have been shut out of our USDA lending programs, i.e., the U.S. farm subsidy program, where the top 10 percent of recipients in the U.S. farm subsidy program receive over $1 million, and Black farmers on average in this country receive less than $200. This is something that we fought diligently to correct in the past three farm bills.

You asked a question earlier during your testimony: is the Office of Civil Rights working? Well, I came today to testify, to tell you, that it is absolutely not working. The Office of Civil Rights is, in my own opinion, in total disarray and totally dysfunctional to serve not just Black farmers, but small farmers around the country.

We hear that there are complaint inquiries that may be shredded or may not be processed, so on and so forth. Mr. Chairman, these are farmers' lives. I think that is where we lose the connection with the U.S. Department of Agriculture when we make inquiries about these complaints. These are just not complaints; these are individuals' lives that they are refusing to process, that have been sitting there with dust on them. There have been complaints after complaints, report after report, the Blue Ribbon Task Force Report, the Civil Rights Action Team Report under Secretary Glickman, the Office of Civil Rights, where myself and Lucas and some of these other advocates lobbied for to get the Assistant Secretary of Administration.

We were so excited about that, and we thought we were heading in the right direction, but it appears, Mr. Chairman, that we do not have the right person with the right amount of gumption to take on the old system there at the U.S. Department of Agriculture. What I mean by that is, after they get called in to meetings, they

may come to the Department with the right intentions, but they leave there with a zero, because nothing seems to happen with the complaints and the settlement.

You spoke earlier about the incident with the 30-year FSA employee. How can you have a 30-year veteran? Mr. Chairman, I spent 8 years, 8 long years, lobbying to get that one piece of legislation into the farm bill. When I heard about this particular e-mail that was sent to me by an anonymous person within Farm Service Agency saying that there were others out there, not political appointees, but career bureaucrats spending the taxpayers' money to lobby against bringing relief to Black farmers around the country, many who can't read and write and express themselves the way I am able to express myself to this committee—how dare those kinds of employees, Mr. Chairman, that are supposed to be giving a hand up to Black farmers, that are the very employees working to make sure that we become extinct. That is a disgrace to this Congress; it is a disgrace to this country.

We appreciate your letter of inquiry to the Secretary questioning that issue.

Then we had the GAO, who was not even allowed to question those who found fault in the system. Here, again, we have the USDA, with such arrogance, with the guidance of Office of General Counsel. Myself and Lucas and Ms. Gray and others have fought for such a long time to get the Office of General Counsel to stop dictating policy to the Secretary. The Secretary should be held accountable for these instances at the U.S. Department of Agriculture.

As I close in my testimony, Black farmers need justice. We are getting these calls every day. We appreciate you, Mr. Chairman, and Congressman Bishop for helping make sure that the Black farmers will stay a part of the farm bill, but we need you to go one step further and hold those individuals accountable so that Black farmers will be able to walk into a USDA office in their local counties and be treated with dignity and respect and be treated like a man. Because, I am going to tell you first-hand, the Department of Agriculture almost made me less than a man.

My great-great grandfather was a slave breeder. My grandfather was a farmer. My daddy was a farmer. They were able to hold on to the same farm that they passed on to me four generations later, and the Government was ready to foreclose on me. I felt less than a man that the person from the brink of slavery was able to farm and feed 12 children, and I only had 1 child, and the Government was ready to foreclose on me.

Thank God that we had good Members like yourself and Congressman Bishop and Secretary Glickman who put a moratorium on farm foreclosures, and that moratorium came 2 days before the sale date of my farm. I was able to hold on.

I was one that beat the statistics, but what happened to all of the other Black farmers out in Alabama and Mississippi and Georgia? They face retaliation today, because the same person that discriminated against them in the first place is the same person that we have to go back to to ask to participate in the U.S. farm subsidy program, to participate in the farm lending programs.

So, we are here today to ask this committee to take this testimony that you are going to hear from myself and other advocates today and go one step further. Hold those accountable who think they are not—or they think they are above this committee and above law.

Thank you very much. I appreciate the opportunity and I look forward to your questions, Mr. Chairman.

[The prepared statement of Mr. Boyd follows:]

JOHN BOYD, PRESIDENT
NATIONAL BLACK FARMERS ASSOCIATION
TESTIMONY BEFORE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTAVIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING

THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
ORGANIZATION AND PROCUREMENT OF THE COMMITTEE
ON OVERSIGHT AND GOVERNMENT REFORM

WEDNESDAY, MAY 14TH 2008

Honorable Chairman Waxman, Subcommittee Chairman Edolphus Towns, the rest of the committee and others who have worked with the National Black Farmers Association (NBFA) on this very important issue over the years.

My name is Dr. John Boyd and I am the Founder and President of the National Black Farmers Association. I founded the organization in 1995 to help eradicate the discrimination that black farmers faced when interacting with the United States Department of Agriculture (USDA). I also founded this organization to develop a national outreach program and create international trade opportunities for minority and other small farmers.

While it is true to say that I am a fourth generation farmer. It is also true to say that I am a fourth generation black farmer from Baskerville, Virginia that has been denied information and assistance from the USDA that many of the non-black farmers have received. And yet, I still stand tall. But I'm not standing tall because of something I've done. I'm standing tall because I'm standing on the shoulders of the tens of thousands of black farmers that put their faith in me to carry their message forward. And that message is none other than the most fundamental principle that this country is built on; "justice for all".

It is indeed an honor and a privilege to have the opportunity to testify before your committee today.

During the past sixteen years I have testified before Congress more times than I can keep track of. I am hopeful that today's testimony will make a difference for the thousands of black farmers with pending civil rights cases.

The NBFA has lobbied Congress to lift the statue of limitations for black farmers who have faced and continue to face discrimination from USDA. Under the Reagan administration, the Office of Civil Rights was reduced to just two workers. Let me repeat that, two workers were responsible for all civil rights issues in the USDA. To me, that is

an insult. It wasn't until years later, after the NBFA lobbied aggressively, that the USDA established the Office of the Assistant Secretary for Civil Rights.

We have engaged in rallies and protests around the country to help bring much needed attention to the plight of the black farmer. The NBFA has petitioned the United Nations for relief and to raise awareness of the loss of land for black farmers. And yes, I rode my mules "Struggle and Forty Acres" 280 miles from my farm to arrive here in the Nations Capital of Washington, DC to protest the lack of payments to black farmers that should have been a reality following the consent decree.

For far too long the USDA has treaded carefully to skirt around giving black farmers their justice. Time and time again empty promises only lead to empty fields being swept away by discrimination at the hand of the USDA. The very agency whose mission it is to provide help to farmers is the same agency that nearly eradicated black farmers as tillers of the soil.

The remarkable fact is that just about every black person in this country is two to three generations away from some family farm as share croppers and slaves. At the turn of the century there were nearly one million black farm families. Today there are fewer than 29,000 per the U. S. Census.

Why is it that Congress can pass laws to protect animals such as the brown bear, the bald eagle, the rock fish, and yet the black farmers who are human beings must return to Congress year after year to plead for relief for the egregious acts of discrimination we continue to face.

Years ago, the USDA under Secretary Glickman's leadership acknowledged the discrimination and agreed to settle the largest civil rights lawsuit in American history. Yet today I report to you that as time goes by, more black farm families lose their farms and their livelihoods because Administration after Administration hesitates to act.

Time is not on our side. We are now less than 1% of the nation's farmers. When reporters make inquires at the USDA, the response from senior officials is always the same, "no comment".

Today I ask congress to take action for the slow processing time of program complaints. I am disappointed that the hard work I have engaged in alongside other advocates has not yielded the justifiable results. The Office of the Secretary for Civil Rights at the USDA in my opinion is merely a shell so that some accountability survey can check a box that one exists. It has only delayed black farmers due while loss of life and loss of our rich heritage continues to plague black farmers.

Many of you today know me and my work on first name basis. I have worked the black farmers late claim legislation for nearly eight long brutal years. When I received an anonymous email regarding Carolyn Cooksie's lobbying effort to Congress to oppose relief to black farmers, I said enough is enough. We cannot allow a civil service

employee with more than 30 years in government actively campaign to ruin the lives of over 74,000 black farm families. Mrs. Cooksie called the legislation regarding the Pigford lawsuit "awful" and complained that her office would have to do too much work. She instructed other government employees to contact Congress to oppose this legislation and warned them not to use government equipment. This is the behavior that we have had to deal with.

USDA Boots Auditors

On Thursday Feb 28th The United States Department of Agriculture abruptly ordered congressional auditors to leave its Washington DC headquarters and told its employees not to cooperate with them. This kind of arrogance is appalling. And show USDA has no respect for congress or those willing to bring forth the truth. Today black farmers have little faith that there will be action or those who continue to obstruct justice will be held accountable.

Lack of farm subsidies

The survival of the black farmers lie heavily in the us farm subsidy program. A program in which I believe has over looked and left out black farmers. A recent study below shows the finding by the NBFA and the Environmental Working Group (EWG)

A Widening Farm Subsidy Gap Is Leaving Black Farmers Further Behind

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Black farmers receive between one-third to one-sixth of the benefits under major federal crop subsidy programs that other farmers receive, and the "subsidy gap" has widened over the past decade. The gap will become more inequitable if a bill reported by the House Agriculture Committee passes the House later this week, researchers said.

The farm subsidy gap is emerged from an analysis of computerized USDA subsidy payment records for individual farm subsidy recipients and farm businesses that previously have not been available to outside researchers. The study was prepared by the National Black Farmers Association (NBFA) and the Environmental Working Group. The two organizations collaborated on a 2003 analysis, *Obstruction of Justice*, that reignited the debate over the injustices tens of thousands of black farmers have experienced in the settlement of the Pigford vs. USDA case involving discrimination in government farm lending.

Concern about discrimination against black farmers at USDA has focused primarily on the department's programs to provide farm acquisition (i.e. "ownership") and operating loans to farmers whose financial circumstances make it difficult form them

to get credit elsewhere. The loans are processed at local USDA offices by the department's "lender of last resort," the Farm Services Agency (formerly the Farmers Home Administration).

Only five per cent of the farmers participating in the Pigford racial discrimination lawsuit against USDA made claims based on subsidy programs, which were limited to a total of $3,500 for the "fast-track" settlement process that was supposed to provide essentially automatic restitution. The majority of these claims involved disaster relief programs. The examples of discrimination were poignant, "[i]n 1994, the entire county of Greene County, Alabama where Mr. George Hall farmed was declared eligible for disaster payments on 1994 crop losses. Every single application for disaster payments was approved by the Greene County Committee except Mr. Hall's application for four of his crops." Pigford v. Glickman, 185 F.R.D. 82, 87 (D.D.C. 1999). In the Complaint, Mr. Hall further stated that his payment yields were reduced in retaliation after he filed a discrimination complaint challenging the denial. See Seventh Amended Class Action Complaint, Pigford v. Glickman, 97-1978 (PLF). at ¶5(c).

Less attention has been given to disparities between black farmers and others under USDA's commodity subsidy programs. A pioneering July, 2007 report issued by Oxfam America argued that minority farmers, including black farmers, have been "shut out" of USDA farm programs (*Shut Out: How U.S. farm programs fail minority farmers*). It is often argued that black farmers receive less farm assistance because they operate smaller farms and tend to produce non-subsidized crops and livestock. As the USDA's 1997 Civil Rights Action Team Report observed, however, discrimination by USDA officials may itself have influenced the make-up of black-operated farms over time. "[T]he disparity in participation and treatment of nonminority and minority farmers may be partially accounted for by the smaller average size of minority- and female-operated farms, their lower average crop yields, and their greater likelihood not to plant program crops, as well as less sophisticated technology, insufficient collateral, poor cash flow, and poor credit ratings. However, representatives of minority and female farm groups point out that previous discrimination in USDA programs has helped to produce these very conditions now used to explain disparate treatment." See CRAT at 21-22.

Review of agriculture census data indicates that disparities in subsidy assistance between black and white farm operators cannot be fully explained by the fact that blacks operate smaller farms or tend to grow 'non-program' crops. More important is the question of the degree to which discrimination against black farmers by local USDA offices has been a long-term factor in that has limited the ability of black farmers to

expand their operations—and thus have 'average-size farms'--or discouraged them from growing subsidized program crops.

A Subsidy Gap Widens: Crop Subsidy Payments, 1995-2005

Analysis of payments to individual farmers and farm businesses shows that a subsidy gap between black farmers and all others has expanded dramatically in the past decade, from $2,225 per recipient in 1995 to nearly $10,000 per recipient in 2005. [Chart 1, Table 1].

The analysis compared black recipients with all other recipients, including individual subsidy recipients who are predominantly white, and farm businesses, which are predominantly white-owned. Analysis of subsidy payments over this period showed that virtually all black farmers received their benefits as individuals, with very few organized for USDA purposes to collect payments as businesses (corporations, partnerships, joint ventures).

Detailed Beneficiary-Level Data, 2003-2005

Release of data collected by USDA under Section 1614 of the 2002 farm bill allows analysis comparing individual beneficiaries by race. These more detailed show that fewer than 8,000 blacks collected crop subsidies each year over that period. The total amount was just over $23 million per year—out of an average of $12 billion paid per year under these programs over that period.

As I close It is my sincere hope that this committee and this congress fulfills a promise that's others have forgotten. Justcie for the black farmer.

Mr. TOWNS. Thank you very much, Mr. Boyd, for your testimony. Mr. Garcia.

STATEMENT OF LUPE GARCIA

Mr. GARCIA. Thank you, Chairman Towns and Ranking Member Bilbray and members of the distinguished subcommittee. I am Lupe Garcia, and everybody knows me by Lupe. I come from Dona Ana County. I am a third generation farmer. I represent the Hispanic Farmers and Ranchers of America. I am the lead plaintiff in a class action brought about for the Hispanic Farmers and Ranchers against the U.S. Department of Agriculture.

My family and myself own two farms, total of 626 acres. I served the United States as a visiting professor with Oregon State University and with U.S. Mission in Central and South America. I came back to farm with my brother and father, and this is where the discrimination occurred to my family in the 1980's. Our case seeks remedy of massive and admitted discrimination against Hispanic farmers who are denied equal access to USDA farm credit and noncredit farm benefit programs. When they complain to USDA about such denials; USDA refuses to process and investigate their complaints in violation of the ECOA and Administrative Procedure Act.

Since 1983, USDA denied every loan application we submitted. We encountered difficulties that normally affect farming. USDA denied us further credit, denied us disaster relief, denied us debt servicing. As a result, we slowly and systemically drained our operating capital. We were operating out of, as you say, out of cuff.

In 1984 a flood destroyed 60 acres of our chiles and our entire cotton crop. The USDA denied our application for disaster relief, because we were bad farmers, according to some of the committee men.

In 1986, USDA loan specialists recommended to both USDA county loan officer and USDA Chief of Agriculture Loans of the State of New Mexico that our land be divided among me and my father and brother to increase the amount that we would be able to borrow. Not only did USDA reject our loan application, but it never informed us of this option to divide our farm land.

In 1988 USDA denied our application for disaster relief after another flood destroyed 550 acres of crops. When we appealed to the county office, USDA literally laughed in our faces, denied our appeal for relief.

In 1988 we applied for primary loan servicing. USDA sat on the application for 2 years before denying it.

And, in the 1990's our farming operation continued to be slowly starved of the operating capital. In 1994, USDA, again, refused to work with us on loan restructuring. Later that year, we appealed to the USDA's Adverse Decision NAD, and on an appeal the hearing officer ruled in our favor.

In spite of our victory, USDA refused to follow the NAD decision. We never received any loan servicing. Later, we attended a mediation session where the senior USDA official concluded that he would not approve anything that involved the Garcias.

In 1998, we sought after farm buyers who were willing to purchase some of our land, which would enable us to service some of

the delinquent debts and refinance the remaining debt. Again, USDA denied this opportunity.

In the end we lost our farms. I will sum it up, cut it short. I will talk from the heart.

This kind of thing is still going on. I do outreach for USDA through the Hispanic Farmers and Ranchers. We need servicing for Hispanic farmers, minority farmers in New Mexico and El Paso County, TX. We are not getting it. We have been promised low-doc loans and all types of loans, and the percentage of Hispanic farmers that get the loans are less than 2 percent, even though we are helping the people with documentation of the loan applications. So there is a definite discrimination.

We have heard of documents being destroyed in our Las Cruces office. This occurred this past year and just finished about 2 months ago. This was going on. They were destroying documents in that office. This needs to be investigated by the GAO.

Mr. TOWNS. Right. Thank you very much.

Mr. GARCIA. We need help, and I hope that Congress hears our plight and does something about it.

[The prepared statement of Mr. Garcia follows:]

STATEMENT OF GUADALUPE L. GARCIA JR., Farmer
Las Cruces, NM

Subcommittee on Government Management, Organizations and Procurement of
the House Oversight & Government Reform Committee
U.S. House of Representatives

Washington, DC
May 14, 2008
2157 Rayburn House Office Building
2:00

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TESTIMONY
OF
GUADALUPE L. GARCIA JR.

Chairman Towns, Ranking Member Bilbray and members of this distinguished subcommittee, good afternoon. My name is Guadalupe L. Garcia Jr. I am from Dona Ana County, New Mexico. My family came to this area long before the United States existed. I am a third generation, life-long farmer and the lead plaintiff in a class action brought on behalf of Hispanic farmers and ranchers against the United States Department of Agriculture ("USDA") called Garcia v. Schafer. I am also president of the Hispanic Farmers and Ranchers of America Inc. I welcome and deeply appreciate this opportunity to testify before this subcommittee. I am testifying on behalf of myself and G.A. Garcia & Sons Farm ("Garcia & Sons").

By way of background, I am 64 years old. I hold a Bachelor of Science degree in Agronomy and a Master of Science degree in Agronomy, specializing in biochemistry and physiology of pesticide from New Mexico State University. From 1969-1973, I served as a visiting professor for Oregon State University teaching agronomy in Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Columbia and Ecuador under a contract between the University and the United States Agency for International Development. Upon returning from Central America, I resumed farming in partnership with my father and brother as Garcia & Sons. Garcia & Sons owned two farms totaling approximately 626 acres of land until they were foreclosed upon and sold in 1999. I continue to farm on rented land producing chili, onions, cotton, pecans and alfalfa.

In 1999, the appraised value of the land comprising the two farms was $2.4 million and it was sold for $1.075 million, less than half of its appraised value. Ultimately, Garcia & Sons was the victim of both intentional discrimination directed at us because we are Hispanic and a system

that placed largely unfettered discretion in USDA local employees whose control over credit, debt servicing and disaster relief determines whether a farming operation such as ours survives or fails.

In the early 1980s the USDA's secretly dismantled the investigative and enforcement apparatus of its Office of Civil Rights. Upon learning this nearly two decades later, Congress took the unusual step of tolling the two-year statute of limitations applicable to the Equal Credit Opportunity Act ("EOCA"), 15 U.S.C. §1691 et seq., thereby allowing farmers to seek damages for injuries arising from discrimination that occurred between January 1, 1981 and December 31, 1996. The complaint in our case was f led on October 13, 2000.

Our case seeks to remedy years of massive and admitted discrimination against Hispanic farmers who are denied equal access to USDA farm credit and non-credit farm benefit programs, and when they complain to USDA about such denials USDA refuses to process and investigate their complaints in violation of ECOA and the Administrative Procedure Act ("APA"), 5 U.S.C. §551 et seq. Our complaint covers past and present violations of ECOA and the APA dating back to January 1, 1981.

During that period we repeatedly applied for operating loans from USDA[1]. After initially receiving operating loans in 1981, 1982 and 1983, we were never able to receive another loan from USDA despite the fact that the value of our farms exceeded the debt owed USDA and the local bank, and despite the fact that our farm plans setting forth our operating projections consistently reflected positive cash flows. Of the three years in which USDA provided us with

[1] Hereinafter the term "USDA office" refers specifically to either the Farm Service Agency ("FSA") or its predecessor, the Farmers Home Administration ("FmHA") of the United States Department of Agriculture. Today there are 2,346 local FSA offices in the Continental US whose purpose is to administer and manage USDA commodity, credit, conservation, disaster and loan programs on a local level.

operating loans, in at least one of these years, 1983, USDA did not fund the loan until after the planting season and we were thus unable to maximize production. In addition, in order to obtain the loans. USDA required us to secure those loans with collateral worth substantially more than the loans.

When we subsequently encountered difficulties that normally attend farming, USDA denied us further credit, denied us disaster relief and denied us debt servicing. As a result, we were slowly and systematically drained of operating capital until we lost our farms. For example, in 1984, in addition to the two farms we owned, we rented another farm where we planted approximately 60 acres of chilies. A dam broke flooding that farm and destroying that entire crop. That same year we applied for disaster relief and were advised by a Mr. Grey of the Agriculture Stabilization Committee that we were eligible for the relief. However, Mr. James Frenzy denied our application for disaster relief because allegedly "we were bad farmers."

In 1986, we worked with USDA Loan Specialist Joe Gurule to develop a farm and home plan application for guaranteed loans. During the application process, Mr. Gurule recommended to both the County Loan Officer and the Chief of Agriculture Loans for the State of New Mexico that our farm land could be divided among my father, brother and me thereby increasing the amount that we would be eligible to borrow. Not only did the USDA reject our loan application, but it never informed us of the option of dividing the farm land to increase our credit eligibility. Indeed, we did not learn of that option until eight years later when we requested a copy of our file from USDA.

In 1988, another flood destroyed the crops on our 550-acre farm. Again that same year, we applied to USDA for disaster relief. Again, our application was denied. When we appealed to the county office, USDA literally laughed in our faces and denied our appeal for relief.

In 1988, we also applied for primary loan servicing. The USDA sat on the application for two years before finally denying it. In the 1990s, our farming operation continued to be slowly starved of operating capital. By about 1990, one of our white neighbors felt sufficiently emboldened to tell us that it was only a matter of time before he would own our land.

In 1994, USDA again refused to work with us on a loan-restructuring plan. Later that year, we appealed USDA's adverse decision to the National Appeals Division ("NAD"). On appeal, the hearing officer ruled in our favor, holding that we were entitled to loan servicing and long term debt restructuring. Despite our victory, USDA refused to follow the NAD decision and we never received any loan servicing assistance.

During approximately the 1994-1995 time frame, we attended a mediation session with USDA officials, the U.S. Attorney, our lenders' attorneys and our legal counsel. At that session, Mr. Riley, the Chief of Agriculture Loans for the State of New Mexico, stated to everyone present that he "would not approve anything that involved the Garcias" and that he would not refinance our loans even if we had a million-dollar cash flow.

In 1998, we sought to sell some of our land to service delinquent debts. Our lenders informed us that the land had to be sold by February 1, to avoid foreclosure. We found a buyer whose offer would have allowed us to pay off the bank debt and, with USDA's assistance, we could have refinanced the remaining debt. We applied for the refinancing loan with USDA in early January and informed USDA that we had found a buyer and would submit a letter of intent once the parties completed negotiations. We subsequently faxed the letter of intent to USDA on January 25, for its approval. USDA denied the application two months later, well past the February 1 deadline.

In the end, we lost our farms. To add insult to injury, USDA assisted the Anglo farmers in purchasing our farms at a special master's sale. In fact, one of the purchasers was the neighbor who years earlier had stated that it would only be a matter of time before he would own our farm. And while we were forced to put up collateral far in excess of our loans we received, I am aware of instances in which Anglo farmers in my community were given loans without any collateral and given loans even though they were delinquent on their USDA loans. In at least one instance of which I am aware, a white farmer who was delinquent on a million dollars in loans was given a $500,000 loan that saved his farm operation.

The USDA harmed my family and me, took away my livelihood and slandered my family name in the community. I personally developed health problems due to the stress from fighting with the USDA and the bank for over 13 years. My children's education was hindered, as they could not obtain student loans because of the bankruptcies we were forced to file in order to try to keep our farms. Despite the fact that our farmland was worth substantially more than our total debt, USDA's refusal to service the debt or to release a portion of the collateral to facilitate a restructuring of the debt prevented us from preserving any of our farm land. Our experience with USDA is by no means unique. Many additional declarations are available on our website www.garciaclassaction.org.

One might well ask how is such discrimination by a taxpayer-funded federal department possible in the twenty-first century. A substantial part of the problem, I believe, lies in the fact that (1) there remains a great deal of discretion on the part of local USDA officials in implementing both credit and non-credit programs, (2) there is little, if any, accountability on the part of such officials in particular and USDA in general, and (3) there is no transparency with respect to USDA's lending practices. In our own case, the ability of the USDA to ignore the

findings of the NAD concerning our right to debt servicing and the refusal to provide loan servicing are but two examples of the discretion that exists at the local level that can literally mean the difference between success and failure of a farming operation. Indeed as we learned in our case, once a USDA official had an unfavorable view of a distressed farmer, he could and would put that farmer out of business.

Over the years, we repeatedly complained of discrimination to USDA. Finally in 2000, an investigator from the USDA headquarters in Washington, D.C., a Mr. Antonio Califas, came to Las Cruces to investigate the complaints. As president of the Hispanic Farmers and Ranchers, I personally met with Mr. Califas and arranged meetings for him with Hispanic farmers and ranchers. Over a period of months, Mr. Califas made three trips to the Las Cruces area. During one of his visits, Mr. Califas told me that he had discovered evidence of discrimination against Hispanic farmers and ranchers that was worst than the discrimination that he had seen with respect to black farmers in local USDA offices in the deep South. During his third visit to Las Cruces, Mr. Califas told me that he had been ordered not to conduct any further interviews of Hispanic farmers and ranchers. For approximately five days, Mr. Califas sat in his room at the Las Cruces Hilton awaiting further orders, while the many Hispanic farmers I had scheduled to meet with him had to be told to go home. Ultimately, he returned to Washington without conducting any further interviews.

Since that time the USDA has refused to release Mr. Califas's report despite repeated requests by Congressman Reyes. Significantly, I have been advised by farmers who had an opportunity to witness it that since Mr Califas's investigation, there has been substantial and ongoing destruction of documents by personnel in the Las Cruces USDA office. I am further advised that such conduct was in marked contrast to the practice which existed prior to Mr.

Califas's investigation, when stacks of records were visible cluttering the office. Such destruction of documents during the pendency of litigation is not only very disturbing, but potentially illegal and clearly a violation of USDA's own regulations. (See attached Supplemental Declaration of Guadalupe L. Garcia Jr.)

To date the USDA has not investigated any of my numerous discrimination complaints, including a complaint I filed as recently as 2006, and it continues to take adverse action and discriminate against me. For example, in 2005 the USDA falsified documents in its effort to foreclose on my home. Upon receiving a notification that USDA intended to accelerate my loan, I promptly filed a NAD appeal. In preparations for the NAD hearing, I requested copies of certain forms, which are each required by to be completed prior to notifying a producer that the loan will be accelerated to determine "if the account qualifies for acceleration," in order to ensure that USDA does not elect to accelerate loans in an arbitrary or capricious manner. The Farm Loan Manager never completed the required form.

The copy of another form FSA provide me was also purportedly signed and dated by the Farm Loan Manager on September 22, 2005. However, this document's content references both a meeting that was not held until October 20, 2005 and an appeal that was not filed until October 25, 2005. It is apparent that the form was either altered or falsified. (See attached Second Supplemental Declaration of Guadalupe L. Garcia Jr.)

The USDA has taken the position that, for purposes of establishing common issues of law or fact for class certification, our attorneys are entitled to review only USDA's centralized computerized databases. We are advised by our attorneys that such databases are absolutely useless as tools for auditing USDA's lending practices, and that the Justice Department lawyers handling the case readily concede that fact. For example, the regulations set forth a number of

eligibility criteria for participation in USDA farm credit programs, and USDA is required to advise a borrower of the reason why the borrower's loan application is denied. Yet, when USDA rejects a loan application, it does not retain in its centralized databases even the ostensible reason why the loan is denied. For a department that collects and maintains as much data as USDA does, there is simply no excuse in an age of high-powered computers and software applications for USDA not to maintain in a user-friendly, readily accessible database information sufficient to conduct meaningful and relatively inexpensive audits of its lending functions. It appears that USDA deliberately chose to maintain and expand its archaic network in the 1990s rather than secure up-to-date technology. It seems that USDA does not want to know what is happening in its local offices. Until steps are taken to insure transparency with respect to the actual operation of USDA farm credit and non-credit benefit programs, no amount of regulatory reform insure that the well-documented discrimination that has plagued USDA for decades is finally rooted out once and for all. A critically important step in rooting out that discrimination is to finally achieve the accountability which modern technology easily permits.

Finally, let me offer a few closing comments. While we seek to be compensated for past injuries inflicted upon us by USDA, a much more important purpose of our litigation is to fix once and for all the system for determining eligibility to participate in farm credit and non-credit benefit programs and process by which the administrative complaints of discrimination processed and investigated by USDA's Office of Civil Rights. I speak on behalf of many thousands of Hispanic farmers throughout the country, when I say that we love farming and want to make certain that our children and our children's children who wish to follow in our footsteps as farmers and ranchers have the opportunity to do so. In fact the number of Hispanics interested in beginning farming is growing. However, unless the system is fixed and USDA's well-

documented discrimination eradicated once and for all, that opportunity either may well not exist or else a few years from now we will be back in court once again seeking to remedy ongoing discrimination.

I sincerely believe the eradication of discrimination within the USDA is possible and that Congress has a definite role to play in doing so. For example, Congress can be instrumental in (1) mandating greater accountability with respect to the operation of USDA credit and non-credit benefit programs, (2) developing objective scoring criteria for credit and benefit eligibility, (3) reducing discretion and the potential for conflicts of interest on this part of local officials, (4) mandating greater accountability and transparency in connection with the recordkeeping associated with farm credit and non-credit benefit programs, and (5) insuring that USDA's Office of Civil Rights process and investigate the discrimination complaints of all producers in a thorough and timely fashion. At the core of this effort must be a commitment revamping data collection and processing within USDA to permit efficient and cost effective auditing of the administration of its farm credit and non-credit farm benefit programs. Nearly 18 years ago in 1990 this committee complained that USDA's record keeping prevented it from properly exercising its oversight function. Unless Congress mandates that changes be made in this process, I am afraid that more years will pass and Congress will still not be able to exercise properly its lawful oversight function and USDA discrimination will continue unabated. In sum, insuring accountability and transparency in the administration of USDA's farm credit and non-credit farm benefit programs and a properly function Office of Civil Rights will benefit all farmers who seek fair and equal access to farm credit and non-credit benefit programs.

Chairman Towns and Ranking Member Bilbray, this concludes my prepared testimony. Thank you very much for the opportunity to testify before this subcommittee.

Supplemental Declaration of Guadalupe L. Garcia Jr.

I, Guadalupe L. Garcia Jr., hereby state and declare the following:

1. My date of birth is October 23, 1943, and I am over the age of 18, Hispanic, and a United States citizen. My mailing address is 9303 N. Dona Ana Rd., Las Cruces, N.M. 88007

2. I am a third generation lifetime farmer and have been farming since I was eight years old. I also have a Bachelors of Science Degree in Agronomy and a Masters of Science Degrees in Agronomy and Plant Physiology from New Mexico State University.

3. My father, brother, and I farmed together as G.A. Garcia and Sons Farm. We produced chili, onions, lettuce, cotton, pecans, alfalfa, and hay. We owned two farms in Dona Ana County, NM, one with 550 acres and the other with 78 acres of land. We also leased land occasionally for our farm operation.

4. Throughout the 1980s and 1990s, we applied repeatedly for various types of programs with the Dona Ana County Farmers Home Administration ("FmHA") and its successor Farm Service Agency ("FSA"). In response to the blatant discrimination that we experienced each time we applied for a loan, I filed discrimination complaints with the Office of Civil Rights ("OCR") on several different occasions. The OCR never investigated or even responded to any of these complaints.

5. During this same time period many other local Hispanic farmers and ranchers experienced similar blatant discrimination perpetrated by FmHA the FSA and also filed separate discrimination complaints. To my knowledge, the OCR failed to respond to any of these complaints.

6. In approximately August of 2000 the USDA headquarters in Washington, D.C., sent Mr. Antonio Califas along with a five-person team to Las Cruces ostensibly to perform a civil rights investigation. Mr. Califas and his team spent a week reviewing loan files in the Dona Ana County FSA office.

7. Over the following several months, Mr. Califas made three trips to the Las Cruces area to continue his investigation. As president of the Hispanic Farmers and Ranchers Association, Inc., I personally met with Mr. Califas and at his request I arranged meetings for him to interview local Hispanic farmers and ranchers.

8. During one of his visits, Mr. Califas told me that he had discovered evidence of discrimination against Hispanic farmers and ranchers that was worse than the discrimination that he had seen with respect to black farmers in local county offices in the deep South.

9. During his last visit to Las Cruces, Mr. Califas told me that he had been ordered not to conduct any further interviews of Hispanic farmers and ranchers. For approximately five

days, Mr. Califas sat in his room at the Las Cruces Hilton awaiting further orders, while the many Hispanic farmers I had scheduled to meet with him had to be told to go home. Ultimately, he returned to Washington without conducting any further interviews.

10. Since this abrupt termination of Mr. Califas' investigation, we have not received any further information regarding the status of our discrimination complaints, or whether the investigation will ever be continued. These discrimination complaints remain outstanding to this day. I understand that since that time the USDA has refused to release Mr. Califas's aborted investigation despite repeated requests by Congressman Reyes.

11. After ignoring the discrimination complaints I filed over a span of twenty years, I remain sorely disappointed that the first time the OCR decided to commence any type of civil rights inquiry in Dona Ana County USDA ordered the investigators not to complete the investigation.

12. On February 1, 2006, I filed a discrimination complaint after the FSA intentionally falsified documents to accelerate my loan. Approximately six months later, after counsel had made over a dozen phone calls to the OCR inquiring of the status of my complaint, OCR finally sent a letter stating that my complaint was "being reviewed to determine whether it should be accepted in [OCR's] administrative complaint process."

13. USDA continues to invite Hispanic farmers and ranchers who feel they have been discriminated against to file complaints with the OCR. While I personally know of many farmers who have filed and who continue to file timely discrimination complaints with meritorious claims, I am not aware of a single case where the OCR has fully investigated the complaint and offered the farmer any remedial relief.

14. While the OCR no longer remains literally dismantled as it was in the early 1980s and 1990s, it continues to ignore its regulations that require it to investigate discrimination complaints.

15. Thus far the OCR has both failed to show any signs of successfully terminating discriminatory practices within FSA or of investigating discrimination complaints.

I declare under penalty of perjury that the above fifteen paragraphs are true and accurate to the best of my personal knowledge.

8-22-06
Date

Guadalupe L. Garcia
Guadalupe L. Garcia Jr.

Second Supplemental Declaration of Guadalupe L. Garcia Jr.

I, Guadalupe L. Garcia Jr., hereby state and declare the following:

1. My date of birth is October 23, 1943, and I am over the age of 18, Hispanic, and a United States citizen. My mailing address is 9303 N. Dona Ana Road, Las Cruces, New Mexico 88007.

2. I am a third generation lifetime farmer and have been farming since I was eight years old. I have a Bachelors of Science Degree in Agronomy and a Masters of Science Degrees in Agronomy and Plant Physiology from New Mexico State University.

3. I continue to farm fulltime today. I grow chili, onions, lettuce, broccoli, cabbage, sweet corn, cantaloupe, watermelon, pima cotton, pecans, alfalfa, and Sudan grass. While I currently lease 60 acres, I am in the process of making the necessary arrangements to lease 20 more acres.

4. While the United States Department of Agriculture ("USDA") has not investigated any of my numerous discrimination complaints, including the complaint filed this year, it continues to take adverse action and to discriminate against me. Most recently, the USDA has falsified documents in its efforts to foreclose on my home.

5. On September 22, 2005 Mr. Gary L. Miller, a Roswell, New Mexico, Farm Service Agency ("FSA") Farm Loan Manager, sent me a "Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights" letter. On October 25, 2005 I filed a request for a National Appeals Division ("NAD") appeal. In preparation for the NAD hearing, on November 2, 2005 I requested a copy of Form FSA-580, "Primary and Preservation Loan Servicing Checklist" and FSA-581.

6. Mr. Miller's November 3, 2005 reply included a copy of FSA-580 but no copy of FSA-581, because apparently FSA-581 had not yet been completed. Notice FLP-372 clearly requires that both FSA-580 and FSA-581 be completed prior to notifying the producer that the loan will be accelerated to determine "if the account qualifies for acceleration". The primary purpose of FLP-372 is to ensure that FSA does not elect to accelerate loans in an arbitrary or capricious manner. Mr. Miller began the acceleration process without completing the requisite form FSA-581.

7. The copy of form FSA-580 that FSA provided me was also purportedly signed and dated by Mr. Miller on September 22, 2005. However, this document's content references both a meeting that was not held until October 20, 2005 and an appeal that was not filed until October 25, 2005. It is apparent that these forms were either altered or falsified.

I declare under penalty of perjury that the above seven (7) paragraphs are true and accurate to the best of my personal knowledge.

Guadalupe L. Garcia Jr.

Guadalupe L. Garcia Jr.

Oct 2, 2016

Date

Mr. TOWNS. Thank you, Mr. Garcia.
Mr. Givens.

STATEMENT OF PHIL GIVENS

Mr. GIVENS. First of all I feel honored being here. I am from Oklahoma. I am a bilingual Native American/African American farmer. I have had the misfortune in my lifetime having to deal with two Federal agencies based on where I live and my race and ethnicity. From 1899 to 1906, the Department of Interior Bureau of Indian Affairs told my grandfather and grandmother they could have this land in Oklahoma. To this day yet, FSA officials do not know how to perfect liens on restricted tribal trusts, simple fee allotted lands.

In 1988 USDA and the Department of Interior entered an interagency agreement. For 10 years, I have showed OGC attorneys—some of them are here today present in this room—and I asked them to tell me what the five types of Indian land we had in Oklahoma, and in that initial meeting they couldn't. Since then, they have learned the five types, but what has killed us in Oklahoma among Native American farmers is that we have USDA employees that can't read. Why, I don't know. I told an employee that and he said I was a racist, hostile farmer. I said, what part of 7 CFR 1901.651 do you not understand? It says Indian outreach. It didn't say Black, Hispanic, it says Indian outreach.

I seem shocked. In 1996, I was right here in front of you all telling you all the same thing, and here we are today. I can't go down and mortgage my land to the bank, because I have to get approval from the BIA. In 2000, USDA—Senator Glickman, Oklahoma is on an action plan right now. We can't even vote in the county committee elections, because our land hasn't been reconstituted, tracked, and put in the system, so we can get a ballot to vote. Hell, if I could vote I would have a pow-wow, a hog-calling contest. I would be sitting on the county committee.

We have no Native American representation on the county committee. The one that we had on the county committee this Federal Government sent to Baghdad, and because he missed two county committee meetings over in Baghdad and got shot—they threw him off the county committee because he missed two meetings.

I mean, I am not getting emotional, but I am upset. Retaliation and reprisal—I had a State director bar me from USDA offices. OGC attorneys went to Oklahoma. One of them is sitting here behind me right now, Marlin Barts, the regional conservationist. The only reason why they said they barred me from the office is that I had access to all the top USDA employees in Washington, DC, and I knew more than they did. I am probably the only farmer that USDA has sent to school to do ethics training, Civil Rights training, 1951(s) training. Primary loan servicing that Mr. Garcia didn't get, they taught me how to do it. Yet, we still can't get a substantial number of Native Americans loans.

One of the things that really upsets me, we have killed our kids. We have had to fly up here and ask about scholarships, internships. How do we meet the White House diversity? Make USDA look like this country. We have all the tribes in Oklahoma. Forty-seven Indian tribes are located in Oklahoma, yet we don't have a

1994 Indian college, so we are missing some of those congressional dollars.

There was retaliation and reprisal that came close to me. I mean, it is rampant. If you go in the office and ask questions, you are labeled a troublemaker.

One of the things I would like to see is OGC attorneys removed from any part of the Civil Rights. Our past Civil Rights Directors had to butt heads with them. Vernon Parker was Assistant Secretary for Civil Rights. We have had OGC lawyers tell them what to do, and there needs to be a process, a mechanism, that would streamline these complaint processes.

Complaints are trashed and thrown away. We have had GAO people ask me how you came up with all these complaints. We were smart enough to keep copies of them. When we file a complaint, we fly up here and go to the Reporters Building. I get a letter the next week saying they have thrown out the complaint, because they never received it, yet they signed for it. There were 176 Civil Rights complaints that were thrown out this year that I personally flew up here and hand-carried, based on the 2000 compliance review, the 1996 compliance review, and the 2003 action plan Oklahoma was put on.

I just don't see how it can end unless Congress jumps in here, interviews farmers, brings the good USDA employees to the table, and keeps their bosses from firing them when they step up to the plate to try to help minority farmers like me.

Thank you.

[The prepared statement of Mr. Givens follows:]

HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Testimony of Phil Givens

May 14, 2008

INTRODUCTION

I am a bilingual, African-Native American farmer from Tahlequah, Oklahoma. I have farmed for 26 years and operate on 1500 acres of land in four counties. Oklahoma has the second largest Indian population in the country and the four county area where I farm -Adair, Cherokee, Delaware and Muskogee - the highest concentration of Native Americans in Oklahoma. For the last 26 years I have traveled from Oklahoma to Washington, DC to represent myself and more than 1,760 farmers from eight different tribes in Indian country. I have represented farmers from Oklahoma, Kansas, Missouri and New Mexico. During those years I have participated in USDA training on farm loans, rural business, conservation, ethics and civil rights. In 2000, I received the Outstanding Small Farm Operator of the Year Award from USDA and in other years I have received awards from GIPSA, AMS, and Food Inspection Services. I also represent two Indian schools: Cave Springs and Oaks Schools.

BACKGROUND

It is important to understand that Farm Services Agency Offices will not serve most Native Americans who visit or schedule appointments for services. Farm Services Agency in Oklahoma will not register most Native American farmers in their database.

In 2000, the USDA Civil Rights Office found that FSA did not provide county committee election ballots to Indian landowners; did not provide training to staff to process civil rights complaints; had not implemented the Indian Outreach Program required by 7 CFR Part 1901 Subpart N and 7 CFR 1901.651; had not collected and maintained eligibility and participation data and that county office employees required extensive training. All of these conditions and violations continue to exist and I will address these issues in my testimony. Similar violations were reported for Native Americans in South Dakota.

FAILURE TO ENROLL INDIAN LAND IN THE FSA DATABASE

The implications of this failure to enroll native land in the FSA are disastrous and cyclical for Native Americans. NCRS is involved in this process when they as they have many times in Oklahoma refused to provide a conservation study or plan to enroll native land as required by the 1985 Farm, Food Security Act. If your land isn't enrolled in the FSA database, you receive no notices from FSA about programs or loan opportunities. Equally important, you are not allowed to participate in county elections.

Since FSA will not enroll native land, they also will not provide services to Native Americans. Ironically when natives rent their land to white farmers, white farmers are allowed to enter the land in the database and participate in USDA programs.
FSA will not provide members of the fourteen counties that comprise the Cherokee Nation service when they go to their offices. A few services are provided at the tribal headquarters but in the past if you farmed non-tribal land no services were provided to

Native Americans in the county offices. Members of the nation are usually not allowed to participate in County elections because tribal land is not in the FSA database.

COUNTY ELECTIONS

From 1999 to 2000, Native Americans in northeastern Oklahoma filed at least 76 complaints against the FSA County Election Process. To this date none of those complaints have been resolved. In 2004, Native Americans never received election ballots. Complaints were filed and USDA placed Rick Fowler, a member of the military on the Cherokee County Committee. However, the County Committee dismissed Rick Fowler because he missed several meetings when he had to fulfill his military duty.

Native American land is still not entered in the database. Natives are still not informed about USDA programs in Indian country and they cannot fairly participate in County elections in counties where they comprise almost fifty percent of the farming population. In 2005, I met with the FSA administrator about county elections because the few native farmers who were allowed to participate were required to submit ID cards showing that they were tribal members. No identification requirement exists for white farmers. Wyman Thompson, the Superintendent of Oaks Indian School, filed a written complaint about the practice; there has been no response to his complaint to this day.

COMPLAINT PROCESS

In 2004, I received a favorable decision to a complaint of discrimination against the Indian Livestock Program. Rather than implement the decision, Assistant Secretary

Vernon Parker decided to have an outside contractor review the findings of his own office. He contracted a Northern Virginia firm, Compucon Inc. of Alexandria, Va. to reinvestigate the case. After spending several months in Oklahoma and billing the government $100,000.00, Compucon found again that USDA discriminated against me. Now three years later, USDA has not responded to my requests for settlement. Native American farmers are not allowed full participation in the Indian Livestock Program. Native American farmers are financially disadvantaged. USDA knows we do not have the resources to run to federal court every time they discriminate and exclude us from participating in federal programs.

Native Americans in Oklahoma, Kansas and Missouri have filed 15 complaints about the failure of USDA to provide outreach since the 2000 Compliance review reported that there was inadequate outreach to Native Americans. There has been no further review and little outreach beyond what I have been able to arrange at Oaks School. There has been no finding on those complaints. Yet in 2004, USDA threw all fifteen complaints out because the employees in the Office of Adjudication do not understand civil rights law or anything about the USDA farm programs and how they are intended to operate. The bare truth is that USDA outreach and farm service to Native Americans in Oklahoma is dysfunctional. Most Native Americans are refused service. They are lied to and told that there are no loans if the farmer does not articulate the exact name for the specific loan program. When I am able to return to the office with most of these farmers they are provided service. During this present spring, I have assisted about 200 farmers to obtain loans after FSA had denied them an application.

RETALIATION

Representing Native American farmers in Oklahoma has created personal problems when USDA has retaliated against me. In 2003, 2004, and 2005 I filed complaints based on a 2000 compliance review that found that NRCS had provided inadequate outreach to Native American farmers about EQIP, Fletcher farms and other programs. I had gone in to discuss the specific programs that we were eligible for because NRCS had sent me to training and I had received a certificate for successful completion of this program. NRCS responded by barring me from their offices in Oklahoma, Kansas, and Missouri. This exclusion was devastating because in these states, most NRCS, FSA and RD offices are housed in the same centers.

When NRCS barred me from their offices they barred me from visiting FSA and RD offices as well. I had to retain counsel to regain access to these offices. When we met with mediators in Tulsa, the only reason that they gave for excluding me from the offices was that I knew more about the programs than they did and I made them feel inadequate. There were no reports of threatening or disruptive behavior, racial slurs or profane language. For no reason, USDA had excluded me from participating in federally financed programs. Federal employees in the field offices had to call headquarters to state that I had engaged in no disruptive behavior in their offices and the restrictions were not justified. The USDA Assistant General Counsel Tami Trost managed as well as defended this discriminatory and unconstitutional treatment by NRCS.

RECOMMENDATIONS

- **Provide effective outreach and technical assistance to Native American farmers and fully implement the 1988 Interagency Agreement between USDA and the Department of Interior and fully implement 7 CFR 1901.651.**

- **Increase scholarships and career days for Native Americans.**

- **Train USDA employees on how to do business in Indian country. Many eligible Native Americans are unable to obtain loans from Rural Development because USDA personnel does not know how to perfect a lien in Indian country.**

- **Attorneys in the USDA Civil Rights Office should receive civil rights training. The Office of General Counsel hinders and impedes the department's ability to process civil rights complaints and should not be able to deny complainants their rights because they are ignorant of civil rights provisions.**

- **Restore to the Office of the Assistant Secretary for Civil Rights the authority to settle civil rights complaints. A recent delegation of authority makes the process more cumbersome than ever to have a complaint resolved when there is a finding of discrimination.**

- **Restore basic due process and require the Office of Adjudication to state the reason a case is dismissed so that the farmer may proceed to federal court if he is able to. OCR should not be able to send a letter three years after a case was filed and state that the case is dismissed because they have not investigated it.**

- **Since they are dysfunctional and thousands of cases are pending require USDA to establish a special process to resolve these cases and provide farmers the right to representation and attorney fees.**

- **Protect USDA employees who are willing to provide service to small farmers from retaliation from the Office of General Counsel and others at USDA who do not support small farms.**

Mr. TOWNS. Thank you very much.

Let me just say to the Members that we have three votes, and I would like to adjourn until 4:15. I hate to do this, but we have to vote around here. If we don't, they make a big issue out of it back in your District. So I want to pause until 4:15. So, we will adjourn until 4:15 and come back and start. We will start with you, Mr. Lucas.

The committee stands adjourned until 4:15.

[Recess.]

Mr. TOWNS. The committee will come to order.

Mr. LUCAS. Mr. Chairman, I would like to enter a small package into the record.

Mr. TOWNS. Without objection.

Mr. LUCAS. Thank you very much.

[The information referred to follows:]

MEMORANDUM

TO: **LAWRENCE LUCAS**
COALITION FOR MINORITY EMPLOYEES

FROM: **CONCERNED USDA EMPLOYEES**

SUBJECT: **ISSUES FOR THE COALITION TO ADDRESS WITH THE HONORABLE MARGO MCKAY**

DATE: **NOVEMBER 15, 2006**

It is our collective belief that the USDA Office of Civil Rights (CR) could and should be the federal "flagship" program in the metropolitan area for civil rights, and the model for other federal agencies to emulate. This is especially true in light of the fact that the USDA Graduate School is highly recognized and respected for its excellence in education. However, due to a long history of mismanagement, this is not the case.

As civil rights professionals, we take pride in the mission of CR, even though we are suffering as a result of CR management's bullying and abuse. We are painfully aware of the negative reputation that CR has acquired during the last few decades. We would sincerely like to change this perception and have concluded that the overriding problem with CR has been in its management and vicariously it's enforcement. In the last few years interested parties have issued report after report that have identified glaring deficiencies within CR. CR has a widely recognized and well-established pattern and practice of mismanagement, as demonstrated by the numerous substantiated reports of gross mismanagement. (attachment 1)

Based upon the continuous feedback concerning CR performance that CR management have been given throughout the years by interested parties, one would think that responsible officials would have taken all the necessary actions to "fix the problems." The problems identified in these reports pointed critically to CR management as being the largest part of the problem. It appears that CR management has instead, projected their own failures onto the CR employees and treats the employees as if they are the problem instead of looking inward. CR management is apparently unwilling or incapable of recognizing that as the leaders of this organization, they must bear the brunt of the responsibility for how CR is managed.

Based upon the foregoing, we have concluded that forming a Union, talking to the leadership of the Coalition for Minority Employees, and lastly going to Nancy Pelosi is our last refuge for obtaining fairness and equal opportunity in CR. It is our purpose and hope that through these actions, CR will someday become the organization that we collectively believe that it can be -- a shining example of fairness, equality and opportunity that is respected as a model program for all to follow.

The following issues underscore our previous assertions. While there are a number of other issues that need to be addressed within CR, the issues that we presently raise in this document deserve immediate attention and redress.[1/]

As an aside, on June 6-7, 2006, the Complaints Adjudication Division (CAD) and Program Complaint Division (PCD) held a joint retreat. On the last day of the retreat, management requested a list of concerns from the staff that they would address. This list of concerns was presented to management as requested, however despite management's representations, these concerns have never been addressed. (attachment 2)

PERSONNEL ISSUES
CONNIE BAILS

Clyde Thompson hired Connie Bails as the Deputy Director for CR after he determined that Sadhna True was not as firm with the employees as he had hoped. Connie Bails was hired to "get the employees in line" because Clyde felt that the employees were "out of control." Clyde felt that Connie's "iron fist" management style was crucial to the accomplishment of this mission.

Shortly after Connie Bails arrived she had several discrimination complaints filed against her. Connie Bails quickly came to be known for her racist comments such as calling people "niggers," asking light-skinned employees if they think that they are better than other blacks because of the color of their skin, making public declarations that wheel-chair bound employees know they can walk, why don't they stop trying to fool people, and she has also told employees to watch out for that white man he will do you in, when referring to Caucasian male employees. She has openly complained to employees about other employees who in her opinion are too fat, too dumb, too sneaky, or think that they are smarter than everyone else. She has commented several times about employees who smoke too much, thereby requiring frequent breaks, and has referred to women in the office who wear skirts that she deems to be too short as "hoochi-mammas." Several employees who Connie Bails made these discriminatory remarks and comments to have provided statement and affidavits regarding these remarks. However, because these employees fear extreme retaliation these statements and affidavits were not included in this report. These discriminatory statements taken in conjunction with the actions taken against the persons who these statements were made clearly violate Title VII, which is ironically one of the very laws that the Office of Civil Rights is charged with enforcing.

The Connie Bails Clyde Thompson approved campaign of hostility, reaches all levels. She has openly attacked Administrative Support staff, Equal Opportunity Assistants, Equal Opportunity Specialists, Human Resource Specialists, Management Analysts, and even management. Connie Bails is known for pitting employees against one another,

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[1/] All of the planned management actions stated herein have been conducted at the direction and consent of Clyde Thompson, Associate Assistant Secretary for Civil Rights, and Sadhna G. True, Director, Office of Civil Rights, and presumed to have been conducted with the full knowledge and approval of Annabelle Romero, Deputy Assistant Secretary for Civil Rights.

pitting managers against other managers, pitting managers against employees and employees against managers. Connie Bails constantly reminds CR employees that she has a psychology degree, and her specialization is group dynamics, which results in her being well versed on how to manipulate groups.[2/]

The harassment and hostility against employees by Connie Bails has been exercised through individual meetings, group meetings, and hallway confrontations. Connie Bails has intentionally held up the work of the Administrative Support staff resulting in problems for the supervisors of the Administrative Support staff. Connie Bails has also on more than one occasion refused to sign or withheld the time and attendance reports (T & As), for the divisions where she has been an acting chief for no apparent reason. As a result, Betty Stiehm of Human Resources has often called and inquired as to the whereabouts of T & As.

Connie Bails takes and/or fails to take personnel actions in violation of the merit system principles found at 5 U.S.C. § 2301. These prohibited personnel practices consist of: discriminating against employees based on race, color, religion, sex, national origin, disability and marital status. Connie Bails gives unauthorized preferences and advantages to favored employees so as to improve the prospects of her favorite employees, and injure the prospects of other employees. (attachment 3)

Connie Bails has strict requirements regarding time and attendance and employees leaving the building for breakfast and lunch that she does not apply equally across the board. Connie Bails looks the other way when her favorite employees are late or leave the building in the mornings for breakfast, or take long lunches. These favorite employees are also not required to fill out leave slips when arriving to work late or when leaving the building at 9:45 to go shopping.

We, the CR employees strongly feel that Connie Bails has been extremely bad for this organization. Her open discriminatory comments with respect to the race, color, national origin, economic status, familial status, weight, background and even personal criticisms against a number of CR employees is staggering and inappropriate for any office. However, it is even more unprofessional and inappropriate for CR.

The Office of the Assistant Secretary for CR began the implementation of 13 significant civil rights related initiatives in October 2003. The purpose of these initiatives among other things was to reduce complaints and to change the culture within CR. Initiative 12 is one of the 13 Initiatives slated for implementation by all of ASCR. Initiative 12 requires that CR and the Office of Human Resources Management revise and implement an Accountability Policy to ensure that personnel actions include specific corrective and

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[2/] It should be noted that since the Union has filed grievances against Connie Bails, and several employees have filed complaints against her, she now conducts her prohibited personnel practices under a veil of secrecy. Several employees have expressed that they are experiencing ongoing harassment by Connie Bails via Carol Sanders GS-14, Carmen Velasquez GS-14, Michelle Eiland GS-14, Maurice Thompson, Ted Gutman, and other CR managers.

disciplinary measures for any USDA employee who violates antidiscrimination laws. We are therefore asking for the removal of Connie Bails from CR. It should be noted Sadhna True has direct knowledge of these events and has done nothing to address the matter. (attachment 4)

CAROL SANDERS[3/]

Carol Sanders is a bona fide beneficiary of the prohibited personnel practices of Connie Bails. Connie Bails arranged for Carol Sanders to be the Acting Team Leader for PCD from July 2005 to March of 2006. Connie Bails continued this arrangement despite the requests of several senior investigators that the Acting Team Leader position be rotated to allow each of the investigators to receive the same developmental opportunity as Ms. Sanders. Connie Bails adamantly refused this request, stating that she wanted Carol Sanders to continue as the Acting Team Leader, because she did not like rotations.

Here, in violation of 5 U.S.C. § 2301, Connie Bails gave Carol Sanders, her most favored employee, an unauthorized preference and advantage, which improved the employment prospects of Carol Sanders, and injured the prospects of other employees. In addition, Connie Bails gave Carol Sanders an advantage in this employment recommendation based on factors other than personal knowledge or records of job related abilities or characteristics.

Connie Bails was not the selecting official for the Team Leader position, however she was deeply involved with the selection process, along with Kenneth Baisden (the at that time new Chief of Investigations) and Sadhna True. When the Team Leader position was announced and a selection made, it was no surprise to anyone that Carol Sanders was selected for the position since Connie Bails gave Carol Sanders an unfair advantage over other qualified applicants by allowing Carol to act in the position of Acting Team Leader for over a year. Under Sadhna G. True, Carol Sanders also served as Acting Team Leader for over one year. As a result of management's actions Carol Sanders' prospects for being selected for the position improved. Carol Sanders was given an unfair advantage over the other employees/applicants because she possessed more supervisory experience than the other qualified employees/applicants who had been denied the developmental opportunity of Acting Team Leader for the past two years. This is a prohibited personnel practice under 5 U.S.C. § 2301.

Because her true qualifications for the job were never adequately assessed, Carol Sanders via Connie Bails now employs Kathlynne Ramirez GS-9 and Donna Gaskins GS-12, to review the reports of investigation of the other investigators. Carol also uses Sidney

[3/] It should also be noted that CR management has for many years circumvented USDA's Merit Promotion policies to the extent that merit principles and policies are non-existent within CR. Instead, CR management has created a hostile environment that is wholly dependent upon a system of "favoritism," i.e., in order to obtain training, promotions, etc., employees must literally conform to the whims and nuances of managers, without question, even if they are asked to perform or witness unethical or illegal tasks. These individuals are usually the least talented CR employees and because of this system of promotion they are continually promoted to the chagrin of the truly talented employees, and subject matter experts.

Wiggins GS-13 to assign and review the reports of investigation. Carol Sanders employs Lolita Ellis to edit the work of the specialists. These are the duties and responsibilities of Carol Sanders as a GS-14. By utilizing other employees to do her work, Carol Sanders has circumvented her duties and responsibilities and has ample time to carry out the extracurricular harassment activities as designated by Connie Bails.

Per Connie Bails, Lolita Ellis[4/] is currently absorbing the duties of other employees and thereby diluting the duties of valuable employees. It is widely recognized that when an employee's duties are diluted that it has somehow been orchestrated behind the scenes by Connie Bails.

EMPLOYEES ARE PLACED IN POSITIONS WITHOUT THE POSITION DESCRIPTION AND/OR POSITION BEING PROCESSED AND CLASSIFIED THROUGH HUMAN RESOURCES

Because employees are placed in positions without the vacancy announcements or required paperwork to detail or announce positions, opportunities are not openly available for all equally qualified applicants to compete and/or request details. The following employees are currently in positions where a vacancy announcement was not posted: Kirk Baylor, Susan Notar, Rhondi Hammond Barbara Lincoln-Smith and Maurice Thompson. Because these positions were not advertised other qualified employees were not given an opportunity to compete for these positions. It should be noted that Sadhna True placed these employees in these positions. We want these prohibited personnel practices to cease and desist.

NON-SUPERVISORY GS-14s ARE CURRENTLY MANAGING AND SUPERVISING FOUR DIVISIONS

There are four non-supervisory GS-14s who are currently supervising employees: Maurice Thompson, Data Management and Customer Service Division; Calvin Gibson, Accountability and Resource Management Division; Kirk Baylor, Civil Rights Service Division, and Jean Parker and Anna Stroman, Equal Opportunity/Compliance Division (EOCD). These non-supervisory GS-14s are daily performing management functions such as: signing T & A's and leave slips, denying leave, assigning work, rating employees, providing performance evaluations and disciplining employees. For the record Sadhna True placed these employees in these positions. (attachment 5)

[4/] This is especially disturbing in light of the fact that Connie Bails allowed Carol Sanders to be the Acting Team Leader in PCD from July 2005 to March of 2006.

GS-9 EMPLOYEES ARE ASSIGNED AS TEAM LEADERS OVER GS-13 EMPLOYEES ON SPECIAL PROJECTS

Jeffery Carr who is a GS-9 is continuously placed in lead positions over employees who he has less seniority. Jeffery Carr is currently the Team Leader on the iComplaints Special Project within PCD over Deborah Davis GS-13 and Rhondi Hammond GS-12.

Kathlynne Ramirez GS-9 was assigned as Team Leader for the "Parts" team that was designed to overhaul the intake process. Working under Kathlynne are Darrell Brown GS-13 and Shawntey Fox GS-13. These assignments were made with the full knowledge and approval of Sadhna True.

TRANSFERS

Certain CR employees have been allowed to transfer if they were experiencing difficulty within their division, their work and/or with their supervisor. These transfers were allowed for various reasons. However, the transfer requests of other employees are routinely denied. (attachment 6)

The only employees who are allowed transfers are those employees who are management favorites. The following employees have been allowed transfers:

Barbara Lincoln-Smith was unofficially allowed by Sadhna True to be transferred from the Employment Complaints Division to the Data Management and Customer Service Division. Barbara Lincoln-Smith is currently permanently in the position and has been attending management training presumably for the GS-14 position that will soon be announced. This vacancy was not announced.

Rhondi Hammond was unofficially allowed to transfer from the Civil Rights Services Division to the Program Complaints Division because she did not get along with her supervisor Larry Newell.

Sversha Kumar was allowed to transfer from the Equal Opportunity and Compliance Division to Outreach because she did not like the way that her supervisor Skip Day talked to her.

The following employees were denied transfers without explanation:

Gayle Petersen

Molly Cortez

Rosetta Davis

CAD SPECIALISTS WORK ON A PRODUCTION BASIS BUT ARE NOT GIVEN CREDIT FOR 50% OF THE WORK THEY COMPLETE WHICH PROHIBITS THEM FROM SATISFYING THE QUOTAS SET FORTH IN THEIR PERFORMANCE STANDARDS

Ted Gutman announced in a January 2006 staff meeting that CAD Specialists would no longer receive credit for 50% of the work that they are required to perform. Thus, CR management is allowing Ted Gutman to set up a system presumably designed for CAD Specialists to fail. By disallowing credit for 50% of the work CAD Specialists are required to perform the likelihood increases that employees will receive low performance evaluations.

CAD Specialists are NOT given credit for:

HUD Closures
Withdrawals
Settlement Agreements
Civil Actions
AJ Decisions
Compliance Final Agency Decisions

CAD Specialists are ONLY given credit for:

Program Final Agency Decisions
Employment Final Agency Decisions

When queried about the new performance evaluation method, Ted Gutman emphatically announced that he felt that the work involved in reviewing and writing Non-compliance Final Agency Decisions, AJ Decisions, Civil Actions, Settlement Agreements, HUD Closures and Withdrawals was straightforward and uncomplicated. As such, he stated that it was his decision that this work did not merit being counted. This is an unfair labor practice, which CAD employees would like to see discontinued. Sadhna True is aware of this and supports this action because it will allow Ted Gutman to rate employees low and that is a goal of Sadhna True.

The CAD Specialists strongly object to this practice and would like to see a return to a fair and balanced method of calculating the production level. In the past, CAD Specialists were given credit for EVERYTHING they completed. If, under this system credit for one Final Agency Decision were given for every five AJs completed, it would be a vast improvement over the current system. CAD specialists would like to be given credit for ALL the work that they perform. (attachment 7)

It should be noted that Ted Gutman is known as a chronic complainer who spends the balance of his time harassing employees by sending derogatory e-mails regarding the incompetence of CR staff, managers, temporary personnel and it never ceases. Ted Gutman does not have a background in Title VI or Title VII, and attempts to discredit the work and ability of others so as not to draw attention to his own deficiencies, incompetence and lack of managerial skills.

Based on this behavior Ted Gutman has had several hostile work environment complaints filed against him by women and minorities. These complaints were filed against him at his previous agency Animal Plant Health Inspection Service, and in his current position in CR.

MAXI-FLEX POLICY OF TED GUTMAN

On June 19, 2006, Ted Gutman, Chief of CAD announced to his staff that they would now be able to use Maxi-Flex. Ted Gutman's announcement was based on a March 21, 2005, memorandum from Clyde Thompson. In Mr. Thompson's memorandum he informed ASCR employees that they would now be able to use Maxi-Flex, and that the morning core hours for ASCR begin at 6:30 a.m.

Ted Gutman has overridden Mr. Thompson's policy (with the full knowledge of Sadhna True) and has denied the request of some employees to begin their tour of duty at 6:30 a.m., (even though these employees are in the office everyday at 6:30 a.m.). Ted Gutman is treating his staff differently from other employees within CR. Other employees and managers are currently allowed to arrive at 6:30 a.m. In addition, two employees were previously approved and had been working the 6:30 a.m. to 3:00 p.m. schedule prior to Mr. Gutman coming on-board. We would like to be allowed to follow Mr. Thompson's policy regarding core hours. (attachment 8)

TELE-WORK POLICY

Under the former Director of CR David Winningham, employees whose jobs were deemed portable were allowed to work from home one to two days per week. Under Clyde Thompson, USDA's Tele-Work Champion, (according to USDA News), Tele-Work was discontinued so that "employees could devote their time and efforts to the Inventory/Backlog Reduction Initiative." CR employees have not been allowed to Tele-Work in the three years that Mr. Thompson has been the Associate Assistant Secretary for CR. Since CR "no longer has a backlog" CR employees are requesting the return of Tele-Work. (attachment 9)

TRAINING

There is a pattern and practice of management disapproving training requests from CR employees. For the last three years management has requested the staff to fill out Individual Development Plans (IDP) and to also request any desired training. The overwhelming majority of training requests are denied. As a result a large number of CR employees have elected not to fill out IDPs or to request training. It should be noted that some managers are allowed to take up to two or three expensive training courses, often not in their field

Employees who have been working in the Intake Division of PCD are now required to perform assignments in the Investigations Division of PCD. These new assignments entail conducting investigations, which includes interviewing witnesses, taking sworn statements and preparing reports of investigation. All of these duties are required to be completed without formal training. The CR employees are requesting management to honor reasonable requests for formal training for every qualified employee.

In addition, the Administrative Support staff would like to request formal training in subject matters that would broaden their horizons and allow them to excel in their careers. Specifically the Administrative Support staff would like to request training on the RUMBA Travel Database System (not informal training). Connie Bails has instructed Diane Davis-Wright, the one Administrative Support staff employee who is familiar with RUMBA not to train or assist the other Administrative Support staff level employees who are requesting her guidance. Sadhna True approved this action.

TUITION REIMBURSEMENT

The Administrative Support staff that are the most in need of training have routinely been denied requests for college courses. On the other hand, the similar requests for tuition reimbursement and regular training courses of management and employees favored by management have consistently been approved. Sadhna True has approved this action. The CR employees are requesting management to honor reasonable requests for tuition reimbursement for every qualified employee.

LACK OF NECESSARY EQUIPMENT

The employees in the Employment Complaint Division (ECD) do not have the necessary equipment to perform their jobs. The ECD employees are forced to work with outdated software, dilapidated monitors, printers, copiers, fax machines and telephone equipment. There is also a lack of adequate conference room space and furnishing.

CAD does not have a working Xerox machine.

The employees in the Data Management and Customer Services Division do not have a functioning fax machine, copier or shredder.

In addition, CR employees are subject to verbal abuse and scrutiny by management when requesting the necessary supplies and tools to adequately perform their duties. This is contrary to the conditions of the other Divisions per Sadhna True.

EMPLOYEES ARE STILL REQUIRED TO E-MAIL UPON ARRIVAL

The employees are constantly attacked regarding their T & As as approved by Sadhna True. Although management denies this fact, some employees in EOCD and EEOD are still required to e-mail the Team Leader Anna Stroman and/or Connie Bails upon their arrival. We would like to see and end to this practice. (attachment 10)

In closing, the employees would like to say that this was a nice place to work prior to the current group of managers. Because of their incompetence and corruption the environment has changed. This is a rogue group of managers who have no respect for laws, rules, regulations, attorneys or unions.

As stated earlier, Clyde Thompson is the author of this current confusion and he should be removed. Clyde Thompson's adventures and misconduct in his previous position at the Forest Service and his misconduct in his current position are well documented. The reason for his extreme disdain for CR employees is unknown. However, what we do know is that this very powerful man has done a lot of damage to a good organization, and if he is kept around any longer recovery may not be possible.

STATEMENT OF LAWRENCE LUCAS

Mr. LUCAS. First I would like to thank you and the committee for taking on this very daunting task of getting to the truth about really what goes on at USDA.

I would like to thank you for allowing me, president of the USDA Coalition of Minority Employees, to come and speak about the abuses, the intimidation, the racism and sexism that has been going on at USDA much longer than we expected.

I wasn't invited to the fairness hearing, and I said before Judge Freeman, this *Pigford* settlement is absent of accountability. There is nothing in this settlement that will promise farmers that they will not be discriminated in the future. I was right then, and I am right now.

Other Senators have taken on this task, such as Senator Grassley, Senator Luger, and Senator Harkin.

This long struggle with USDA is a culture of racism, sexism, intimidation, and other abuses of an out-of-control agency in which their Civil Rights office is dysfunctional in processing and administration of individual complaints of employees as well as farmers.

I come to you today after experiencing and being part of a tribunal with Congresswoman Jackson Lee. During the 2-days, we heard riveting testimony from farmers, from employees about the abuse that they have suffered at the hands of USDA.

I am sorry to say that John Boyd and many of us sitting at this table were elated that we found out that we finally got an Assistant Secretary for Civil Rights. I must say today to you that Civil Rights at USDA is worse now than it was when we first thought in 2003 that we had an Assistant Secretary that was going to do something about this problem.

The CRAT and CRIT reports, one of the most scathing reports about an agency—and, by the way, they investigated themselves under the Glickman administration. The Democrats did a fair job of getting to that, but if you take a look around, the first thing that this administration did with the new Assistant Secretary, their leadership—and I am talking about leadership that is still there in the Department of Agriculture to this day—they made sure that the CRAT and CRIT reports were taken down from their Web site. You cannot find one CRAT or CRIT report in the office, because we tried to get it and we tried to also get them to adhere to the recommendations of that report.

I am sorry to say, Mr. Chairman, this Department is out of control. They express their zeal and their gall and their arrogance when they decided to boot out the Office of General Counsel, who came to investigate and audit some of the problems that we have been saying, John Boyd and many of us at this table and other advocates and lawyers for farmers and employees for so many years how dysfunctional that office is.

I think what happened was, they found out through their own channel—the way I find out information—that they realize that the employees were equally as fed up as the advocates. We, as well, have been telling the Congress and many others. So, they decided that they were going to shut down, and the Office of General Counsel at USDA, who will tell you years ago under J. Michael Kelly—who is still there today—he will tell you for years after we settled

the *Pigford* case, there has been no discrimination against the Black farmers. And, we have settled these cases at a tune of almost $1 billion, but this is the kind of leadership and interference by the Office of General Counsel that has an iron hold when it comes to processing.

I have been sitting trying to resolve an individual complaint in the ADR stage. They take their OGC attorneys to fight little people, so I know what they are doing when they are trying to fight farmers.

The Assistant Secretary for Civil Rights today and yesterday have done a poor job and has been very disappointing. I think there are some things that you need to know.

The Office of Civil Rights said that they were tracking the complaint systems, the complaints of employees and farmers. I have been telling USDA and the Office of Civil Rights, but they stopped talking to us, because we weren't telling them what they wanted to know. But, we have been telling the Office of the Secretary that in the complaint system that they tell you is working all right, the numbers don't jive.

Mr. TOWNS. Mr. Lucas, could you sum up?

Mr. LUCAS. OK. In summary, what I would like to see from this committee is to hopefully put together an advisory committee and put the USDA Office of Civil Rights in receivership and appointment a board of five people, one from the Agriculture Committee, one from the House Agriculture Committee, one from the Agriculture, one representing farmers, and one representing employees, because USDA cannot police itself.

Thank you very much.

[The prepared statement of Mr. Lucas follows:]

Testimony of
Lawrence C. Lucas, President
USDA Coalition of Minority
Employees
Before
The Subcommittee on Government Management, Organization and Procurement The Committee on
Oversight and Government Reform
Wednesday, May14, 2008

Good Afternoon,

My name is Lawrence Lucas; I am President of the USDA Coalition of Minority Employees. Please allow me to enter into the Congressional Record these documents in support of my testimony I give before you today.

Mr. Chairman and Committee members, I am not bringing good news to you today, regarding the administration and processing of United States Department of Agriculture (USDA) civil rights complaints filed by USDA employees and minority farmers of this Nation. Employees and the Nation's farmers deserve better treatment from USDA and others in government.

First, let me start by telling you how USDA recently exposed its arrogance when they had the audacity to boot out auditors sent by the Government Accountability Office from USDA facilities and offices, upon learning that the General Accountability Office was continuing its investigation as requested by the Congress of the United States. We can only assume that after months of listening to many USDA employees and others that these auditors may have uncovered more of the truth than USDA officials wished.

The audit was requested by many USDA employees and congressional representatives, and a diverse group of farmers: Hispanics, Native Americans, Black Farmers, and farmer advocates. Is it possible that persons being interviewed were telling the truth and that USDA officials had to prevent the auditors from obtaining additional evidence? Only the General Accountability Office can confirm that the information gathered indicated that USDA's Office of Civil Rights - currently renamed by Assister Secretary for Civil Rights, Margo McKay as the Office of Adjudication and Compliance -- has serious problems that were not being shared with the Congress. In fact, it may be found that the Office of Adjudication and Compliance under the present and past leadership has become one of the worst abusers of civil and human rights in USDA.

While all of these abuses continued inside USDA Civil Rights, the managers of the Office of Civil Rights gave themselves awards and huge bonuses for accomplishments never achieved. These awards include the Presidential Rank Award and the Secretary's Honor Award. Both of these awards were given for the so called successes of the Civil Rights Enterprise System, which was designed to track the huge number of employment and program complaints and generate accurate reports. USDA management wasted millions of dollars on tracking systems that are dysfunctional. USDA management

Officials filled their pockets with tax payer dollars, while they continued to abuse USDA's civil rights process and sabotaged the cases filed by employees and customers.

To date, USDA management has reduced the civil rights processing staff from approximately 120 employees to less than 60[1] employees. The office has been budgeted for 120 employees and given the funds to staff those positions. The question is ... where did millions of American tax dollars earmarked for those positions go? An unhampered General Accountability Office audit investigation would be able to answer that question. USDA officials can not be trusted to tell the truth. This Office was given additional staff, as a result of the Civil Rights Action Team and the Civil Rights Implementation Team reports and the Pigford Class Action law suit victory by the Black Farmers.

I must also admit that the systemic discrimination by the County Committee system contributed immensely to the failed civil rights process for thousands of minority farmers. That process as well, continues to be discriminatory in nature towards minority fanners and others.

I also must admit that we all thought that establishing the position of the Assistant Secretary for Civil Rights would provide an avenue and an opportunity for the right person to clean up the civil rights mess at USDA. We expected Vernon Parker and his leadership team to bring a swift end to the racism, sexism, reprisal, intimidation and wide spread abuse of USDA employees and minority farmers nationwide, especially Black fanners. I am sorry to report that we were wrong. In fact, civil rights is in worse condition today than it was prior to Vernon Parker's confirmation in April 2003. I suspect that some Members of this Committee are just as disappointed.

Much of what I have said did not randomly occur, it happened, I believe because all of us assumed that USDA had seen the light, and understood the desires of Congress to eliminate its past wrong doings. A continuous strong oversight process may have prevented these transgressions. Another contributory factor is that the federal agencies responsible for overseeing USDA civil rights i.e., the Equal Employment Opportunity Commission, the Merit System Protection Board, the Office of the General Counsel, the Office of the Special Counsel, USDA's Office of Inspector General, and even USDA's Office of Human Resources have all been a major and very disturbing part of the problem. These entities have covered-up the wrong doings of USDA Office of Civil Rights management officials, who violated the rights of employees that filed complaints or spoke out about the poor administration of the Office.

What is going on in and around USDA should be considered an obstruction of justice and wrongdoers should be held accountable. USDA officials frequently do not tell the Congress, General Accountability office auditors or the Secretary of Agriculture the truth and sometimes cover- up the truth. I have had this confirmed by reports I have received from employees and customers, who fear reprisal and intimidation by civil rights management. Please tell those of us on this panel when USDA Office of Civil Rights and

[1] 72 employees, consisting of 7 managers and 6 employees on detail elsewhere.

officials from the Assistant Secretary for Civil Rights will be held accountable for their wrong doings.

I am talking about government accountability and how the accountability process failed miserably at USDA. Further evidence of transgressions is the FBI raid on the Office of the Special Counsel for failing to investigate and properly process whistleblower complaints. Many of these complaints had been filed by USDA employees. The USDA Office of Inspector General that hears claims of fraud, waste and abuse violated the trust of many USDA employees that came to them for help during this administration. This is how bad it is at USDA, Mr. Chairman. And when we inform officials about these continued widespread abuses of top leadership, they deny any wrongdoing and call us liars.

The Office of Civil Rights had an enormous staff ... approximately 120 employees, and the money to solve the problems at USDA - and they failed us miserably. Those that suffered were employees and minority farmers who came seeking justice and timely processing of their complaints. The present Assistant Secretary for Civil Rights spends her time and money on diversity and outreach, instead of trying to improve USDA's civil rights practices and case processing.

The Office of Outreach has done little to nothing to reduce farmer complaints and spends most of its time conducting dog and pony shows at the tax payer's expense, while USDA employees and minority farmers suffer from the effects of a failed civil rights process. These effects are manifested as despair, fatigue, frustration, depression, hopelessness and anger. The Office of Outreach has failed to achieve its mission to provide tangible assistance to minority farmers. Even the Marriott Assistance Program which was an outreach initiative designed to help Black farmers sell their product to Marriott Hotels and others withdrew its participation in the program because of the failure of the Office of Outreach. There was so much that could have been gained for Black farmers and other minority farmers, which was lost because of USDA's refusal to do the right thing.

USDA has a legacy of this kind of neglect of civil rights for employees and minority farmers. Our reports and meetings with top USDA officials have contributed little to turning the ship of racist discriminatory behavior around. However, I see this hearing and this Committee as the 800 pound gorilla in the room - that can and must bring some sanity and justice to the failed USDA Office of Civil Rights, and the civil rights process. There have been enough wasted tax dollars sent down the sink hole of failures - enough is enough!

What I have said to you is in no way the totality of the problems and abuses going on in and around the USDA Office of Civil Rights administration and processing of complaints. I will say that the USDA Coalition of Minority Employees never acquiesced to threats, insults, and implications that we may be a terrorist organization because we were continuing to uncover their civil and human rights abuses and more. I also know that this Committee is not intimidated by top USDA officials armed with misinformation. When they tell you there is little to no discrimination, racism, sexism, assaults on women,

and abuse of employee and farmer rights. They will tell you, as they told their senior managers and executives that the majority of persons filing EEO complaints are nothing more than poor performers.

They will tell you that the farmers are nothing more than abusers of the civil rights process. While the American taxpayers, you and I, pay the billions of dollars needed to settle these cases. Pigford v. Glickman is only one example of USDA's publicly known legacy of abuse and neglect.

Mr. Chairman and members of this Committee, I offer you a solution to this legacy of abuse at USDA that continues to cycle around the USDA Office of Civil Rights. Put the USDA Office of Civil Rights in "Receivership," and allow it to be managed by a serious, highly talented, experienced and dedicated group, committed to carrying out the spirit and letter of the civil rights laws for which it has been entrusted. The findings of the General Accountability Office Report, Hearings held by the No Fear Tribunal being held today and in the past, the host of complaints heard and received by Congressionals, the concerns addressed by USDA employees with the Equal Employment Opportunity Commission, Merit System Protection Board, Office of Special Counsel, Office of Inspector General, Office of General Counsel and USDA Office of Human Resources confirm this. The concerns addressed by farmers and their advocates and the thousands of cases against the agency show just how bad the conditions at the USDA Office of Civil Rights and is showing no signs of improvement.

One formula to bring some government accountability over the USDA civil rights process is to establish a USDA Civil Rights Oversight Board. The Board would report to the Secretary of Agriculture. The membership of the Board would consist of:

One person appointed by the USDA Office of the Secretary

One person appointed by the Senate Agriculture Committee

One person appointed by the House Agriculture Committee

One person appointed by the Farmer Community (Title VI)

One person appointed to represent the USDA employees (Title VII)

This formula would better assure that the oversight of USDA Civil Rights that has failed under USDA itself, the Equal Employment Opportunity Commission, Merit System Protection Board, Office of Special Counsel, Office of Inspector General, USDA Office of Human Resources, and the Congress will be greatly improved. I would gladly assist in bringing greater understanding of this "Receivership" concept at your request.

In closing I would like to say with regards to government accountability, USDA and others have failed USDA employees and the farmers of this country. However, this hearing should be a new beginning for all those concerned with USDA civil rights. I

want to thank. so many that made it possible. I also want to thank the General Accountability Office for their report and we hope that it will expose the real truth regarding the poor conditions of USDA civil rights. We believe this report will confirm most of what the USDA Coalition of Minority Employees and its delegation have been saying to the Congress and USDA for years. USDA listened, but did little. This Congress and this committee here, and your Congressionals have given new life and confidence that America does care about the USDA employees and minority farmers that are in this room today, and those that are awaiting the results of this important No Fear Hearing that is still going on in this building as we speak.

Mr. TOWNS. Thank you. Thank you for your testimony.

Lesa Donnelly.

STATEMENT OF LESA DONNELLY

Ms. DONNELLY. Mr. Chairman, thank you for allowing me to speak here today.

I would like to place on the record six declarations from Forest Service employees from across the Nation.

Mr. TOWNS. Without objection.

Ms. DONNELLY. Thank you.

I worked for the USDA Forest Service for almost 25 years, from 1978 to 2002. In 1995, I filed a class action lawsuit on behalf of 6,000 Forest Service women in California, known as the *Donnelly* v. *Glickman.* It resulted in a Consent Decree to deal with issues of sexual harassment, hostile work environment, and reprisal. Prior to that lawsuit, there was a lawsuit called Bernardi that went from approximately 1971 through 1994. Region Five California had been, through 2006, in Federal court monitored oversight on gender discrimination issues for 30 years through 2006. Still, women are sexually assaulted, threatened, and harassed to this day.

As a lay advocate, I currently represent employees of California across the Nation. They are victims of sexual assault, physical assault, sexual harassment, gender, racial, and disability discrimination, and a lot of reprisal.

For years and years, I have tried to work cooperatively with the Forest Service and USDA leadership, from the Secretary's office to the Chief's office to the regional offices, and it has been to no avail. They refuse to work with us. We could be a long way ahead in preventing and eliminating these abuses of employees if they would just come to the table and try to work with us, but they won't.

They not only refuse to communicate; they ignore acts against employees that are so egregious that you would think they would have no conscience at all or humanity.

As an example, I would like to bring forward the situation in 2005 in which I had a meeting with Under Secretary Mark Ray and tried to discuss the rape of a young female fire fighter in southern California, and Mr. Ray advised me that he and the USDA were not concerned about the incident, that it was merely a police matter. The woman had been complaining of sexual harassment for months prior to that and it ended in a rape.

In 2005 another female fire fighter was sexually assaulted in Sacramento. When we spoke to Assistant Secretary for Civil Rights, Vernon Parker, he callously replied that it was not rape, because there was no penis penetration. The woman had been penetrated by the man's hand. He said it in a very callous manner. When the Monitor tried to speak with him more about it, he just dismissed it. He would not discuss it at all.

The callous and insensitive ways that USDA and Forest Service management have dealt with these issues show a lack of concern, a total inhumanity toward these victimized employees. They highlight the agency's failure to address violations of law, policy, and procedure.

Today, we have here with us Christine Levitop, who flew out from California. She was sexually assaulted in 2004 and, as of this day in 2008, she is still being retaliated against for reporting that. The regional offices and Washington offices will not take any action to stop this ongoing harassment and reprisal. There are numerous cases that I could speak about, but we don't have time for that here, numerous cases.

Workplace violence is a very serious issue in USDA Forest Service and very problematic in Region Five California. They don't follow regulations and policies.

I would like to bring to your attention a recent situation where a White male supervisor threatened an African American female subordinate with a gun. Management did not follow procedures properly. The two women still fear for their lives, and there still could be dire consequences from the agency not dealing with it.

I would like to state that something has to be done. I think we need congressional oversight. I would like to emphasize that we need a panel, an independent advisory panel to deal with this, to deal with the reprisal which is rampant. And, I agree with Mr. Lucas, I would like to emphasize that USDA needs to be placed into receivership until something can be done for them to start dealing with issues of harassment, discrimination, workplace violence, and sexual assault have no place in the Government. Someone is going to be killed, sir, unless something is done about this.

Thank you.

[The prepared statement of Ms. Donnelly follows:]

Testimony for Congressional Hearing

My name is Lesa L. Donnelly. I worked for the USDA, Forest Service, Region 5, (California) in various administrative positions from 1978 through 2002. In 1995, I filed a class action lawsuit on behalf of six thousand women in California on the basis of sexual harassment, hostile work environment and reprisal. In 1997, the lawsuit was certified in District Court as *Donnelly v. Glickman* and resulted in a court ordered Consent Decree that lasted until 2006. I am vice president of the USDA Coalition of Minority Employees. As a Lay Advocate, I have represented federal employees in the Equal Employment Opportunity Commission (EEOC) and Merit System Protection Board (MSPB) administrative processes for fourteen years.

I currently represent USDA, Forest Service employees in Region 2 (Colorado), Region 3 (Arizona), Region 4 (Utah), Region 5 (California), Region 6 (Oregon), and Region 10 (Alaska).

The employees I represent are victims of sexual assault, physical assault, sexual harassment, gender discrimination, racial discrimination, disability discrimination and reprisal. For years I've tried to cooperatively work with Forest Service leadership at the Regional and Washington office levels to address these issues and work toward creating and maintaining an

effective program that would prevent and eliminate civil rights violations. The step we cannot get past is that USDA and Forest Service leadership will not acknowledge there is a problem. They not only refuse to communicate, they ignore acts against employees that are so egregious one would think the leadership has no conscience or humanity.

In 2005, I met with Under Secretary Mark Rey to discuss the rape of a female firefighter on a Southern California forest. Prior to the rape, the young woman had complained of sexual harassment from males on her fire crew. Forest Service management did not respond to her complaint. She was subsequently raped by a male crew member. Mr. Rey advised me that he, and the USDA, Forest Service were not concerned with the incident because it was solely a police matter.

In 2005, another female firefighter was sexually assaulted while on training in Sacramento, CA. When the Donnelly v. Glickman Settlement Monitor spoke to Assistant Secretary for Civil Rights, Vernon Parker about the incident, Mr. Parker's immediate response to her was, "It was not rape because there was no penis penetration." The employee had assaulted her with his hand. When the Monitor told Mr. Parker it was sexual assault and should have been addressed by management as such, he changed the subject and would not discuss it. These callous and insensitive attitudes are

representative of USDA top management's lack of concern and inhumanity toward victimized employees. These poorly handled situations highlight the agency's failure to address violations of law, regulations and policy.

There have been many other sexual harassment incidents, and sexual assaults in Region 5. For example, in 2005 and 2006, Kristine Levitoff, a Forest Service Emergency Control Center Manager with 17 years of service, and who is in charge of dispatching resources for large, complex fires, natural disasters, and other emergencies, was sexually assaulted, stalked, continually touched, and asked for sex by the Plumas National Forest Fire Management Manager. She reported it immediately to her supervisor, but the agency took no action. She filed a formal complaint and the Fire Management Officer was forced into retirement. Six months later, in 2007, the Plumas National Forest management tried to rehire the man. Ms. Levitoff filed a complaint on that action and in 2008 has been retaliated against in the form of supervisory assault, verbal abuse, public humiliation and a 30-day suspension. The Regional Office and Washington Office will not take action to stop the ongoing harassment and reprisal. Unfortunately, there are too numerous other cases of women being treated similarly and there is not enough time to discuss these situations. Please believe me, the problem is rampant in Region 5 and throughout the Forest Service.

Workplace violence is a serious problem in USDA. It is particularly problematic in Region 5 of the Forest Service. I have observed that Region 5 management often does not follow regulations and policies which require immediate investigation and employee safety measures. In February, 2008, a white male supervisor on the Plumas National Forest stated that he wanted to bring in his gun and shoot the employees he hates. He stated that he hated his African American female subordinate more than anyone. The woman who reported it, and the threatened African American woman were fearful for their lives. The District Ranger did not take the situation seriously and told the women that he was a decent man and that they had nothing to fear. For a period of time they the supervisor continued to enter the office. Proper safety precautions were never followed. The two women have been retaliated against for reporting the supervisor. There has been no conclusion to this incident. This is just one example of workplace violence against women that has been mishandled and could still bare dire consequences.

I have observed a pattern and practice by agency managers to retaliate against employees who raise claims of harassment, discrimination and workplace violence. The retaliation takes the form of shunning and isolation; threats and intimidation; false misconduct charges and investigations; disciplinary actions; negative performance; denial of training;

removal of job duties; and termination. There is no, I repeat NO avenue for employees to go to get the retaliation stopped.

The Secretary of Agriculture issued Alternative Dispute Resolution directives that require the agencies and mission areas to mediate, and in good faith, attempt to resolve employee complaints prior to hearing and litigation. If followed, these directives would save the tax payer millions of dollars yearly. A large number of complainants are denied mediation. A larger number of complaints that are mediated do not settle due to Resolving Official bias, ignorance of the process, incompetence, resentment toward complainants, retaliation, contract attorneys' desire to prolong litigation, and a widespread belief that complainants are troublemakers that should not be rewarded.

Agency managers' failures to address employee claims results in formal complaints. Employees are forced into unwieldy and dysfunctional EEO and MSPB systems that do not address or correct the underlying problems. The federal government spends billions of dollars fighting employees instead of resolving the issues. Agency attorneys prolong the EEO process causing unnecessary costs to employees and the government. Contract attorneys refuse to settle complaints and purposely prolong the EEO process for their own financial gain.

There is NO oversight of agency managers. They consistently fail to follow civil rights laws and waste billions of taxpayer dollars in the process.

Coalition of Minority Employees president Lawrence Lucas has provided the most reasonable and potentially successful recommendations to address the USDA civil rights problems. I will emphasize that an independent advisory board should be created. A panel for addressing claims of retaliation needs to be convened. The USDA should be placed into receivership until there is evidence that employees' civil rights will be recognized and the laws will be followed.

Lesa L. Donnelly
USDA Coalition of
Minority Employees

Mr. TOWNS. Let me thank all of you for your testimony, of course.

At this time, I would just like to raise a few questions. You mentioned this retaliation. I am concerned about that, because it means that workers can't come forward to share, because they are afraid that they might be retaliated against. That, to me, is very, very disturbing. I think that it doesn't strengthen the agency when you behave and operate in that fashion. If a person comes forward with information, or even a strong suggestion, it appears that something negative might happen to them.

Is this a recent thing, or has this been going on all along, Mr. Lucas?

Mr. LUCAS. What I have to offer is that the USDA Office of Civil Rights is not a leader in this regard. It has been going on throughout the Department for a long time. They have gotten to a point where if an employee speaks up and wants to improve the system or tell about the problems of the system, they are the people who are fired; they are the people who are put on discharge. We have had almost the loss of the life of an employee because of the oppression, and the Office of Civil Rights, itself, has over 30 or 40 complaints filed against its former Director of Civil Rights. So, this is a problem that is endemic, this reprisal and intimidation to control the kind of information that can come to this committee and to the American public. They are just as much a part of the problem, and they are not part of the solution in this regard.

Mr. TOWNS. Thank you, Mr. Lucas.

Let me ask you, Mr. Boyd, has the Department made any efforts to increase minority membership in county office committees? Have they made any attempt? It seems to me you need to have diversity there, as well.

Mr. BOYD. I would say no. I think Mr. Givens touched on it earlier in his testimony about the lack of minorities that participate on the county committee. That is such an important factor with farm ownership loans, farm operating loans, farm equipment loans, because if you don't have representation in your area, the good old boys continue to receive these farm ownership loans and operating loans every year. What happens is, the county supervisor or county director there in those particular counties say, "Mr. Boyd, we have already used our allotted moneys for this year, so you guys are welcome to come back next year." If you don't have a person on that county committee fighting for minority farmers in that area, you are not going to see an increase in farm loans throughout the Farm Service Agency.

Mr. TOWNS. Right.

Now, Mr. Givens, you mentioned the Bureau of Indian Affairs. I wasn't clear of the role the Bureau of Indian Affairs played in this.

Mr. GIVENS. Mr. Chairman, there is a uniqueness. We are the only race of people that your blood quantum dictates services. The blood quantum dictates services. Because I am more than one-quarter blood Cherokee Choctaw Indian, I still have to get permission from the BIA to do business with USDA. We still have USDA employees who don't understand CFRs as it relates to Native Americans.

A good example, I have children and relatives that would like to participate in the county committee election process, but until USDA employees do what we call reconstitution, put these tracts of Indian land in the FSA computer, we don't get to vote in all-White county committee elections. We filed complaints since 1994 to the present, yet the Office of Civil Rights has thrown out these complaints, even after compliance reviews were done. That is a serious problem.

I would love for some of our tribal members to sit on the county committee, but that is an issue that FSA doesn't want to address. They say, "Well, we can't identify Indian land." Well, sir, I brought a document here that says my grandfather was a full-blood Choctaw Indian in Oklahoma in 1904. Until this day, I still can't get all this Indian land in the FSA computer.

I have met with the Secretary, I have met with the Under Secretary Floyd Gaber February 7th, but yet, the Office of Civil Rights has dismissed all our complaints over county committee election processes.

Ms. Gray, who was the Civil Rights Director, traveled to Joplin, Missouri, Oklahoma. We have Cheree Henry who at the time was the Outreach Director. She tried to address these county committee issues. She was treated rudely, disrespectfully, and had some racial problems with the same office that I have to deal with every day.

So, for you all to hear that Native Americans don't have full participation in USDA, we have the documentation to show that. None of my kids have ever been able to participate in the county committee election. Everybody in the county office is hired by the all-White county committee—uncles, nieces, and nephews. The credit manager's brother is chairman of the county committee. That is not only unethical, that is criminal when they both sign off on each other's signature. We filed a complaint, but the Office of Civil Rights hasn't done anything.

We had a school superintendent that had to come up here last year and meet with Thomas Hoffler, file the program complaint, the Civil Rights complaint over county committee elections, and this is the first time we have ever had county committee polling places in Indian country. That is when gas was $2. Now it is $4. So we don't have access to the county committee election process. That is the local vocal point of input that we should have.

Mr. TOWNS. Right.

Mr. GIVENS. I wish you all would do something about that.

Mr. BOYD. Mr. Chairman, I would just like to add, as well, that the minority advisors really don't have any voting rights to these committees. In some areas of the country, they have what is called minority advisor to their committee, but they really don't have any voting rights. What they usually do is offer a loan to that person, and that person usually does not go back out into the community to try to help other Black farmers and other minority farmers. So, we need to look at some of the policies so that we can get more representation for those voting members and get more participation from Blacks and Hispanics.

The minority advisor is usually appointed, so it is not going to be a person like John Boyd or Phil Givens or someone very vocal in the community that is going to bring back and spread the word

to other minority farmers in the community. So, we need to look at our policy and make some recommendations on how we can get more minorities involved in the county committee.

Mr. TOWNS. Let me yield to a person that probably has more farm land in his District than anybody else in the U.S. Congress, from the State of North Carolina, Congressman Butterfield, 5 minutes.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman, and thank you for allowing me to participate in this proceeding today. I am not on this subcommittee. That is my misfortune, but I do not serve on this committee. I am on the Energy and Commerce Committee, and therefore we do not have direct jurisdiction over these matters. But when the chairman told me that we would be delving into this subject today, I wanted to be a part of it, and he graciously allowed me this opportunity. So, thank you very much, Mr. Towns.

It is true that I represent the First Congressional District of North Carolina. My District is in the northeastern part of the State of North Carolina. It used to be called years ago the Black Belt, and so, as you can imagine, we had many, many farms in my District that were owned by African American citizens many years ago. But, over the years we have suffered a tremendous loss in Black farmland in my Congressional District. My District has been particularly hard-hit in terms of the loss of Black farmland and Black farmers, and so I have an interest in this subject.

Twenty-five years ago, when I was president of the Black Lawyers Association in my State, we started the land loss prevention project. Rosslyn Gray and others will remember when we started that program. That program has been very instrumental in trying to address this issue.

But, the Black farmers represent an important community, That is the message that we have to convey every chance we get, Mr. Chairman. It is an important community. It is part of the economy.

At the turn of the 20th century there were nearly 1 million Black-owned farms in the United States. Today, that number is down to about 18,000. That is a tragedy. That is an indictment, and not only on the Congress but on our country as a whole, and we must do better. Black-owned farms once represented 14 percent of all farms. They now make up just 1 percent of all farms.

As the backbone of rural America, farmers play a critical role as champions of micro-enterprise, land ownership, family values, and rural culture. The plight of the small farmer, particularly the Black farmer, has gone largely unaddressed. The Congress shares in that responsibility. The USDA certainly shares in that responsibility. We are going to hear from them in just a few minutes.

Years of discrimination against Black farmers, as well as other socially disadvantaged farmers, by the USDA are directly responsible for the loss of land and the loss of a way of life for many Black farmers in America. Recognition of deficiencies in the equitable treatment of farmers have been slow coming, to say the least, at the USDA. The creation of the Office of Civil Rights in 1971 has done little to improve or correct the deeply rooted elements of discrimination in the Department.

Its frequent reorganizations and reincarnations have failed to address the central issues of Black farmers and other socially disadvantaged farmers. This much was documented in the 2003 report by the U.S. Commission on Civil Rights, which found that the changes in the Department had produced very little progress in their Civil Rights enforcement program. The appointment of the Civil Rights Action Team in 1996 shed some light on the problem, but lacked the authority to make any substantive changes. The creation of the Assistant Secretary of Civil Rights by Congress in 2002 was the most significant step to this date to rectify outstanding Civil Rights issues within the Department.

I am most interested in the testimony of Secretary ,McKay as to the latest action within the Department to deal with that issue. But of highest concern to me this day are two recent actions by individuals within the Department, which clearly illustrate clearly the kind of lingering discrimination that plagues the Department from Washington, DC, all the way down to the local offices throughout the country.

The first was the unauthorized use of Government e-mail last summer, among Farm Service Agency personnel to lobby against new *Pigford* legislation in this year's farm bill. I might say, Mr. Chairman, as you well know, we passed just moments ago the farm bill. That is why I came to the floor late—we just passed the farm bill. It has in it $100 million for *Pigford* claimants.

[Applause.]

Mr. BUTTERFIELD. It has been a long time coming, and I am not the only one who worked on that legislation, and credit goes to many. Congressman Benny Thompson, Congressman David Scott, Congressman Artur Davis, Congressman Bobby Scott—all of us had a hand in trying to make this happen. But it is in the legislation. We passed it a few moments ago. It has the concurrence of the Senate and should be headed to the President's desk, and hopefully he will sign it. If he does not, I think we have the votes to override. We do now have the votes to override that, so that is good news.

[Applause.]

Mr. BUTTERFIELD. I am personally proud of these historic steps that we have taken in this year's farm bill to help deserving Black farmers, many of whom live in my District, including Mr. Pigford, who calls me often. Many of whom you know, Pigford has led the way, he is a constituent of mine, along with Gary Grant and other Black farmers in the District who have suffered so much. So I am proud of the historic steps that we have taken in this year's farm bill to give these farmers a true opportunity for redress.

Let me get back to these e-mails, and then I will conclude, Mr. Chairman.

These e-mails, which were circulated on federally owned computers, illustrate a gross misunderstanding of the purpose of the *Pigford* decision, which was to award damages for the lost land and income of thousands of Black farmers whose livelihood was ripped from them, by the USDA's discriminatory practices. The pervasiveness of this incident draws startling conclusions, as the depths that long-term racial discrimination still exists within the Department, and we must recognize that and we must do something about it.

I am further concerned by a February incident, between the GAO auditors and the Office of Civil Rights within the Department, as well.

So I join Senator Obama and John Conyers and Benny Thompson and Bobby Scott in Artur Davis in a letter condemning the incident and the denial of the GAO auditors from carrying out their investigation of the Office of Civil Rights. The USDA did contact my office in response to our letter, and I certainly appreciate their prompt response; however, Mr. Chairman, I would appreciate more than that if they allow oversight wing of the Congress to have full access in their investigation of the Office of Civil Rights. Denying us our right to oversee the progress of this historically ineffective office only serves to deepen our doubt about the USDA's ability to improve its track record.

With that, Mr. Chairman, I think I have run out of time. I don't see your clock. My committee room has a very prominent clock.

Mr. TOWNS. It is there. It is on red.

Mr. BUTTERFIELD. I have been looking for it. I need to look down instead of looking up. But thank you very much, Mr. Chairman. I will include the remainder of my comments in the record.

I yield back.

[The prepared statement of Hon. G.K. Butterfield follows:]

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COMMERCE, TRADE AND CONSUMER
PROTECTION SUBCOMMITTEE

Opening Statement

Committee on Oversight and Government Reform

Subcommittee on Government Management, Organization, and

Procurement Hearing:

"Management of Civil Rights at the

United Stated Department of Agriculture"

Rep. G. K. Butterfield

May 14, 2008

Black farmers represent an important, yet shrinking community. At the turn of the 20th Century, there were nearly one million black-owned farms, though today that number has dropped to about 18,000. Further, black-owned farms once represented 14% of all farms. They now make up just one percent.

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As the backbone of rural America, farmers play a critical role as champions of micro-enterprise, land ownership, family values, and rural culture. However, the plight of the small farmer, particularly the African-American farmer, has gone largely unaddressed. Years of discrimination by the United States Department of Agriculture against black farmers, as well as other socially disadvantaged farmers, is directly responsible for the loss of land and further, the loss of a way of life for many black farmers in America.

Recognition of deficiencies in their equitable treatment of farmers have been slow-coming at the USDA. The creation of the Office of Civil Rights in 1971 has done little to improve or correct the deeply-rooted elements of discrimination in the Department. Its frequent reorganizations and reincarnations have failed to address the central issues of black farmers and other socially disadvantaged farmers.

It was documented in the 2003 report by the U.S. Commission on Civil Rights, that the changes in the Department have produced very little progress in their Civil Rights enforcement program. The appointment of the Civil Rights Action Team in 1996 shed some light on the problem, but lacked the authority to make any substantive changes. The creation of the Assistant Secretary of Civil Rights by Congress in 2002 was the most significant step to date to rectify outstanding civil

rights issues within the Department. I am most interested in the testimony of Assistant Secretary McKay with respect to the latest action within the Department to deal with this issue.

But my greatest concern centers on two recent actions by individuals within the Department that clearly illustrate the kind of lingering discrimination which plagues the Department from Washington, DC all the way to the local FSA offices throughout the country.

First, was the unauthorized use of government email last summer among Farm Service Administration personnel to lobby against new *Pigford* legislation that was included in the Farm Bill. I am personally proud of the historic steps we've taken in this year's Farm Bill to give deserving Black Farmers a true opportunity for redress. These emails, which were circulated on federally owned computers, illustrate a gross misunderstanding of the purpose of the *Pigford* decision, which was to award damages for the lost land and income of thousands of black farmers whose livelihood was ripped from them by USDA's discriminatory practices. The pervasiveness of this incident draws startling conclusions as to the depths that long-term racial discrimination still exists within the Department.

I am further disturbed by a February incident between Government Accountability Office auditors and the Office of Civil Rights within the Department. I joined Senator Barack Obama, John Conyers, Bennie Thompson, Bobby Scott, and Artur Davis in a letter condemning the incident: the denial of GAO auditors from carrying out their investigation of the Office of Civil Rights. The USDA contacted my office in response to our letter, and I certainly appreciate their prompt response. However, I would better appreciate them allowing the oversight wing of Congress to have full access in their investigation of the Office of Civil Rights. Denying us our right to oversee the progress of this historically ineffective office only serves to deepen our doubt about the USDA's ability to improve its track record.

The obstructionist attitude adopted by USDA in both of these cases brings serious doubts as to the commitment to civil rights held by rank-and-file USDA employees. Despite numerous attempts to create a commitment to righting past wrongs, elements of the Department seem uncommitted to this goal as we sit here in 2008.

Mr. TOWNS. Thank you very much. I really appreciate your participation and also the work that you have done on this. You called some names that I have been dealing with for the last 20-some years. Of course, when you mentioned Pigford and, of course, Boyd and people like that who we have had the opportunity to work with for many, many years on these issues, it is sad to say that we still have problems after all these years. Of course, I want to assure you that this committee is going to continue to look at these matters, we are going to continue to work on them, and I do believe that some changes need to be made.

I notice you made some suggestions in terms of the advisory committee. You talked about even receivership. I hear you. I think that there is nepotism that was talked about, and some things there. So the point is that these are areas that we are concerned about, and we feel that in order to create a level playing field, that some of these things just have to be corrected.

Of course, we listen to you, Mr. Givens, in reference to not only the fact that USDA, but also the Bureau of Indian Affairs—you have a double whammy there, so we hear you and, of course, we will continue to look at these matters and to see what we might be able to do to give you some assistance.

We are not going to go away. We are going to continue, because we have heard the statistics in terms of land loss. I mean, at the rate we are going, within the next 15 to 20 years nobody Black will own anything, at the rate you are going. So I think that is wrong.

I listened to you, Ms. Donnelly, in terms of the treatment in terms of women. That to me is very, very disturbing. I think in this day and age for anybody to react to something in that negative kind of fashion, to me just does not make sense. I want you to know I appreciate your comments. We appreciate your sharing with us.

On this point what we would like to do is to thank you for your testimony. We are going to discharge you and we will take another 20-minute break, and then we are going to come back for the second panel. But let me thank all of you for your testimony. Thank you very much.

[Recess.]

Mr. TOWNS. It is a longstanding tradition that we always swear our witnesses in, so please stand and raise your right hands.

[Witnesses sworn.]

Mr. TOWNS. Let it be known that all of them answered in the affirmative.

We have with us today the Honorable Margo McKay, who serves as the Assistant Secretary for Civil Rights at the U.S. Department of Agriculture. Ms. McKay sets policy and ensures compliance with all Civil Rights laws by USDA's agencies. She is also responsible for diversity, outreach, and alternative dispute resolution programs of USDA.

Phyllis Fong has served as the Inspector General for the Department of Agriculture since December 2002. Under her leadership, the USDA's Office of Inspector General has issued numerous reports detailing weaknesses in Civil Rights management at USDA.

Welcome.

We also have with us Lisa Shames, the Director of Natural Resources and the Environment at the U.S. Government Accountability Office, where she had conducted several audits that have focused on USDA's Civil Rights efforts.

Let me just indicate that your entire statement will be placed in the record. If you just could summarize within 5 minutes, I would certainly appreciate it.

Why don't we start with you, Ms. McKay. Will you proceed?

STATEMENTS OF MARGO MCKAY, ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF AGRICULTURE; PHYLLIS FONG, INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE; AND LISA SHAMES, DIRECTOR, AGRICULTURE AND FOOD SAFETY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF MARGO MCKAY

Ms. MCKAY. Thank you, Mr. Chairman, and thank you for the opportunity to appear before this subcommittee today. I am happy to share whatever information that I can with you, because I believe we have a good story to tell. USDA has made significant progress in the area of Civil Rights since the creation of this position in the 2002 farm bill.

The mission of the Office of the Assistant Secretary for Civil Rights is to provide leadership and guidance, to ensure compliance with Civil Rights laws and policies, and to promote diversity, equal opportunity, equal access, and fair treatment for all USDA customers and employees.

It is my intent that the Office of the Assistant Secretary for Civil Rights will be proactive, supportive, accountable, efficient, and timely in order to help USDA become a model employer and provide equal access and opportunity to those who wish to participate in USDA programs and services.

I would like to point out a few of our accomplishments in recent years.

First, diversity in USDA: in the area of diversity, I began a concerted effort to incorporate workplace diversity and inclusion as a core value at USDA in order to positively impact the organizational culture. We established a new Office of Diversity and charged them with building a world-class diversity and inclusion program that includes initiatives such as cultural assessments, employee perspective surveys, mandatory diversity awareness training, a diversity and inclusion forum that will foster dialog between USDA employees and senior management, and work force planning.

In the area of outreach, the Office of the Assistant Secretary for Civil Rights continues to collaborate with USDA agencies and external organizations to expand and strengthen the Department's outreach efforts to focus on the under-served. Through the Office of Outreach we have initiated policies and are implementing programs to increase the Department's capacity to provide access and technical assistance to socially disadvantaged farmers and ranchers.

Just as one example, we have trained and worked with community-based organizations this past year to work with the socially

disadvantaged farmers, to help us increase their count in the 2007 Census of Agriculture.

With regard to diversity in county committees, first I want to point out that county committees play no role in the farm loan credit system and have not been involved in that process since 1999. Nonetheless, they do still have an important role in farm programs. Since the passage of the 2002 farm bill, USDA health as promulgated guidelines in January 2005, to ensure that the FSA county committees include fair representation of socially disadvantaged farmers and ranchers.

USDA uses agriculture census to target certain counties, and they have come up with 400 counties so far with over 10 percent minority population for special outreach efforts. And counties that don't have a voting socially disadvantaged members must appoint a non-voting socially disadvantaged member. There are about 1,500 such advisors who attend county committee meetings to lend their voice, and they are influential.

Candidates can self-nominate, and through effective outreach efforts nominations of SDA—socially disadvantaged—farmers, nominations have increased 60 percent over the last 3 years. However, our analysis shows that elections over the past 3 years have not yielded significantly more socially disadvantaged voting members. Currently my office is working with FSA to develop criteria for the Secretary to consider appointing voting socially disadvantaged members to some county committees in order to achieve fair representation.

I might add that county committee members are held to the same Civil Rights policies and standards as Federal employees. Even though they are not Federal employees, they are bound to our Civil Rights policies and they can be removed for violating these policies.

Our ultimate goal is to have an environment where discrimination does not occur, where every decision is based on merit, but we do need to have a process in place to handle situations when discrimination does occur. So my role is to make sure that we have that process in place. So with regard to complaints, the problems of backlog case inventory and case processing times at USDA Civil Rights have been many years in the making. I have inherited this situation, and I want to tell you what I am doing to address it.

The automated complaint system, a Civil Rights enterprise system which was fully implemented in mid-2007, has enabled us to start tackling these problems with better monitoring and reporting capability. We are still not able to conduct an accurate trends analysis, because the historical data that we migrated into the system has come from unreliable sources. The systems that we had in the past which were inaccurate.

But this system that we have now is a vast improvement, over anything that we have ever had in the past, and going forward with the input of current case data, we will be able to do trends analysis.

The system is beautiful. It works beautifully if the employees put the data in. We do have some challenges in that area. We have a lot of hands that have to touch the system, including at the agency level and the department level. We have had training for everyone

involved. We have monthly user meetings so that any bugs in the system or any glitches can be worked out. And we are continuing, of course, to work out those bugs and to work toward further enhancements of the system. But the system is new. We need to have an opportunity to give it a chance to work.

In addition, we are implementing several strategies to address internal and external factors affecting the management of Civil Rights complaints. These strategies include special efforts, to eliminate the backlog. I have hired contractors and engaged in contracting services to help us eliminate the backlog. We will be finished with the employment backlog by the end of this fiscal year in terms of issuing final decisions, and we have already eliminated the program backlog at the final agency decision stage.

I also have started something new, where I require weekly and monthly inventory and productivity reports that come to the leadership. So we need to know how things are going and how things are being accomplished, so that we can intervene if things are going awry.

We have also revised performance and productivity standards for employees. We have modified complaint processing procedures. As I mentioned, we are utilizing contractual services and inter-agency agreements to assist with case processing, and we are encouraging increased use of alternative dispute resolution in the informal and formal stages.

We are addressing timeliness and jurisdictional issues in a more timely way, and we are providing additional training for staff, filling critical vacancies and implementing quality of work life and professional development strategies for the Office of Assistant Secretary for Civil Rights employees.

I want to mention, while I am talking about complaints, that we do not condone retaliation. We have a policy against it. Anyone who feels as though they have been retaliated has the right to file another complaint, a new complaint, and have that heard. And we have mandatory annual training, annual Civil Rights training every year at USDA for all USDA employees, and the 2007 Civil Rights training was in the area of retaliation.

I want to speak a little bit. My last point is about accountability. Every USDA employee has a Civil Rights and diversity performance standard against which they are evaluated annually. Agency heads are evaluated annually based on their Civil Rights performance. And in the past, they have been able to get a good score by earning extra credit. So, for example, by conducting training above and beyond the mandatory Civil Rights training that all USDA employees must take, or putting on a conference. However, during my tenure I have changed the practice so that——

Mr. TOWNS. Could you sum up?

Ms. MCKAY. Yes. Going forward, certain factors will be absolute and cannot be made up, such as completing complaint investigations on time, so that will help us in our timeliness.

Also, USDA has a policy that requires that we refer a case to the appropriate H.R. office, for possible disciplinary action whenever there is a finding of discrimination. This is a policy that went into effect in 2006.

In summary, I respectfully disagree with those who say we are doing nothing to improve Civil Rights at USDA. Perhaps we haven't done enough to get the word out, but we have been very busy with all these initiatives, and I am very proud of our record and what we are attempting to do.

Thank you very much for your time.

[The prepared statement of Ms. McKay follows:]

ASSISTANT SECRETARY FOR CIVIL RIGHTS

Statement of Honorable Margo M. McKay
Assistant Secretary for Civil Rights
United States Department of Agriculture

Before the
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform
United States House of Representatives

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on the management of the United States Department of Agriculture's (USDA) civil rights programs.

In my observation, USDA has accomplished much in recent years, and is well on its way to addressing longstanding civil rights concerns. We still have barriers to overcome, but we are aware of them and working diligently to resolve them.

The 2002 Farm Bill authorized the position of the Assistant Secretary for Civil Rights (ASCR) which was created in March 2003. As a result, the Office of the Assistant Secretary for Civil Rights (OASCR) was established. The mission of OASCR is to provide leadership and guidance to promote equal opportunity, diversity, equal access, outreach and fair treatment for all USDA customers, employees, and applicants. OASCR provides policy guidance, leadership, and coordination for USDA on all matters related to civil rights, equal opportunity, and diversity, including: outreach, training, compliance, conflict management, and complaint prevention and processing. The office is comprised of three major program areas: the Office of Adjudication and Compliance (OAC), (formerly the Office of Civil Rights); the Office of Outreach and Diversity (OOD); and, the Conflict Prevention and Resolution Center (CPRC). [See attached organization chart.]

The first Assistant Secretary for Civil Rights developed a five year strategic plan focused on five immediate challenges facing the Department with regard to civil rights. These challenges were structure, systems, procedure, operations, and accountability. There were 13 initiatives associated with the five challenges: 1-consolidating functions with a civil rights focus, 2-realigning personnel and functions in civil rights, 3-developing and implementing a civil rights enterprise system, 4-improving intradepartmental relations, 5-improving customer service, 6-reducing complaint inventory (programs and employment), 7-increasing informal equal employment opportunity (EEO) complaint resolution rates, 8-establishing a public awareness campaign, 9-implementing a program complaint prevention strategy, 10-initiating an EEO complaint prevention strategy, 11-implementing the No FEAR Act requirements, 12-developing accountability policy for civil rights violations, and 13-convening an annual civil rights forum.

Much has been accomplished to date regarding the initiatives and some key successes include: 1-Public Awareness Campaigns that entailed over one hundred 2-3 day trips nationwide to listening sessions, conferences, briefings and meetings with farmers and ranchers and community based organizations. These travels provided an opportunity for farmers, ranchers and community representatives to express their concerns about participation in and knowledge of USDA programs and services. 2-Civil Rights Enterprise System – a Department-wide Web-based system designed to provide tracking, monitoring and reporting of equal employment opportunity (EEO) and program civil rights complaints and alternative dispute resolutions. This system has enabled OASCR to provide better case management, better customer service, more accurate reporting, and greater accountability, transparency, timeliness and consistency in the processing of complaints. The employment complaints module, iComplaints, went live May 2005; the program complaints management system went live May 2007; and the Alternative

Dispute Resolution module went live July 2007. 3-Complaint Inventory – systems were implemented, including an alternative dispute resolution program, with the purpose of reaching a manageable complaint inventory level and the ability to process future complaints in a timely manner. 4-Establishment of Partnerships (internal and external) – By expanding partnerships with community-based and other organizations, USDA has strengthened its capacity to meet the needs of those we serve. Internal partnerships were strengthened with USDA agencies to benefit USDA's underserved customer base. External and non-traditional partnerships were established with organizations outside of USDA. 5-Annual Partners Meeting – USDA conducts Annual Partners Meetings for community and faith-based organizations representing under-served farmers and ranchers and farmers and ranchers themselves for the purpose of engaging in dialogue with senior USDA officials about critical issues that affect the minority, small farm and rural communities. These meetings provide a forum to discuss concerns and suggest solutions. We also use this forum to provide training and technical assistance. Since the first meetings in April and August 2004, attendance has grown from approximately 40 to 500 participants. 6-USDA Civil Rights Training Conference – The first USDA Civil Rights Conference was held in May 2006. The second USDA Civil Rights and Diversity Conference was held in April 2008. Attendees included USDA executives and managers, and professionals in civil rights, human resources, and alternative dispute resolution. 7-Reporting Requirements – USDA is reporting requirements of the No FEAR Act in a timely manner. 8-Policy Development - USDA has issued two important regulations: 1) Accountability Regulation (January 2006), which ensures that appropriate actions are taken when discrimination, retaliation, civil rights violations or related misconduct occurs; and 2) Alternative Dispute Resolution (ADR) Regulation (April 2006), promotes the use of ADR to resolve complaints and conflicts.

As the second confirmed ASCR, I spent the first 90 days observing, meeting and listening to employees and internal and external stakeholders in order to get a sense of what leadership direction to pursue for the office. In January 2007, we established our vision and proposed plan of action for the OASCR. We set five priorities or areas of focus for enhancing civil rights at USDA through January of 2009 and beyond. These five priorities include: 1-diversity, 2-outreach, 3-conflict prevention and resolution, 4-improving the quality, efficiency and timeliness of complaint processing, and 5-communications and public awareness.

Diversity - One of the top priorities is to incorporate workplace diversity and inclusion as a core value in USDA's organizational culture. So far, OASCR has achieved the following key accomplishments: 1) issued a workplace diversity and inclusion statement to all USDA employees; 2) established a new Office of Diversity; hired a Departmental Diversity Program Manager; and transferred the Special Emphasis programs from the Office of Adjudication and Compliance to the new Office of Diversity; 3) conducted diversity briefings for the Secretary, Sub-cabinet, Management Council, Agency Civil Rights Directors, employee organizations, and employees; 4) conducted mandatory civil rights training for all USDA employees in FY 2007 on two topics: "Retaliation" and "Reasonable Accommodation of Disabilities;" 5) developed mandatory diversity awareness training for all USDA employees in FY 2008; 6) developed diversity questions to be included in the Department-wide cultural assessment (employee survey) sponsored by the Office of Human Capital Management; 7) worked with the Office of Human Capital Management to establish Civil Rights and Diversity Performance Standards for USDA employees at all levels; 8) conducted regular meetings with USDA-recognized employee organizations to discuss diversity-related issues; 9) held monthly diversity lunch series for USDA employees with internal and external speakers; 10) held the 2nd Civil Rights and Diversity

Training Conference; 11) presented the first USDA Diversity Award to an agency and an employee organization for demonstrated commitment in promoting diversity and inclusion; 12) co-sponsored a Disability Awareness Conference for Managers and Supervisors; and, continued Special Emphasis events and Cultural Heritage observances; 13) developed and submitted for clearance a draft long-term USDA Diversity Strategic Plan; and, 14) established the Diversity and Inclusion Forum, a regular meeting of senior USDA officials and employee representatives to communicate concerns and suggestions involving issues of diversity.

Outreach - OASCR's Office of Outreach and Diversity has a broad mandate to expand the Department's outreach efforts to ensure equal access and opportunity to participate in USDA programs and services, with special focus on the underserved. Key accomplishments so far are: 1) developed the USDA-wide Outreach Strategic Plan presently in Departmental clearance; 2) developed the Departmental Regulation on Outreach presently in Departmental clearance; 3) conducted the 4th Annual Partners Meeting in August 2007, with a record 450+ persons in attendance, where representatives from community-based organizations (CBOs) and USDA agencies discussed issues affecting small, minority and limited resource farmers and ranchers. Of note was the presentation of the first annual Partners Awards for excellence in outreach efforts to a community-based organization (CBO) and a USDA agency; 4) partnered with the National Agricultural Statistics Service and CBOs to reach, educate and obtain a more accurate count of socially disadvantaged farmers and ranchers in the 2007 Census of Agriculture; 5) revived the Center for Minority Farmers and provided technical assistance to socially disadvantaged farmers and ranchers, e.g., partnered with Rural Development and the Agricultural Marketing Service to train farmers and ranchers in how to obtain USDA certifications in Good Handling Practices and Good Agricultural Practices so that they can better compete in mainstream agribusiness; 6)

updated MOUs with the 1890 and 1994 Land Grant Institutions to provide scholarships, internships, training and offers of permanent employment to students of agriculture from diverse backgrounds in order to provide a pipeline to future USDA leaders; and, 7) continue to manage MOUs with the Thurgood Marshall Scholarship Fund, League of United Latin American Council, the Department of Health and Human Services (re: new immigrants) and other partners.

Conflict Prevention and Resolution - OASCR convened a USDA-wide ADR Training Conference in September 2007. The conference was attended by over 200 ADR practitioners, managers, and employees.

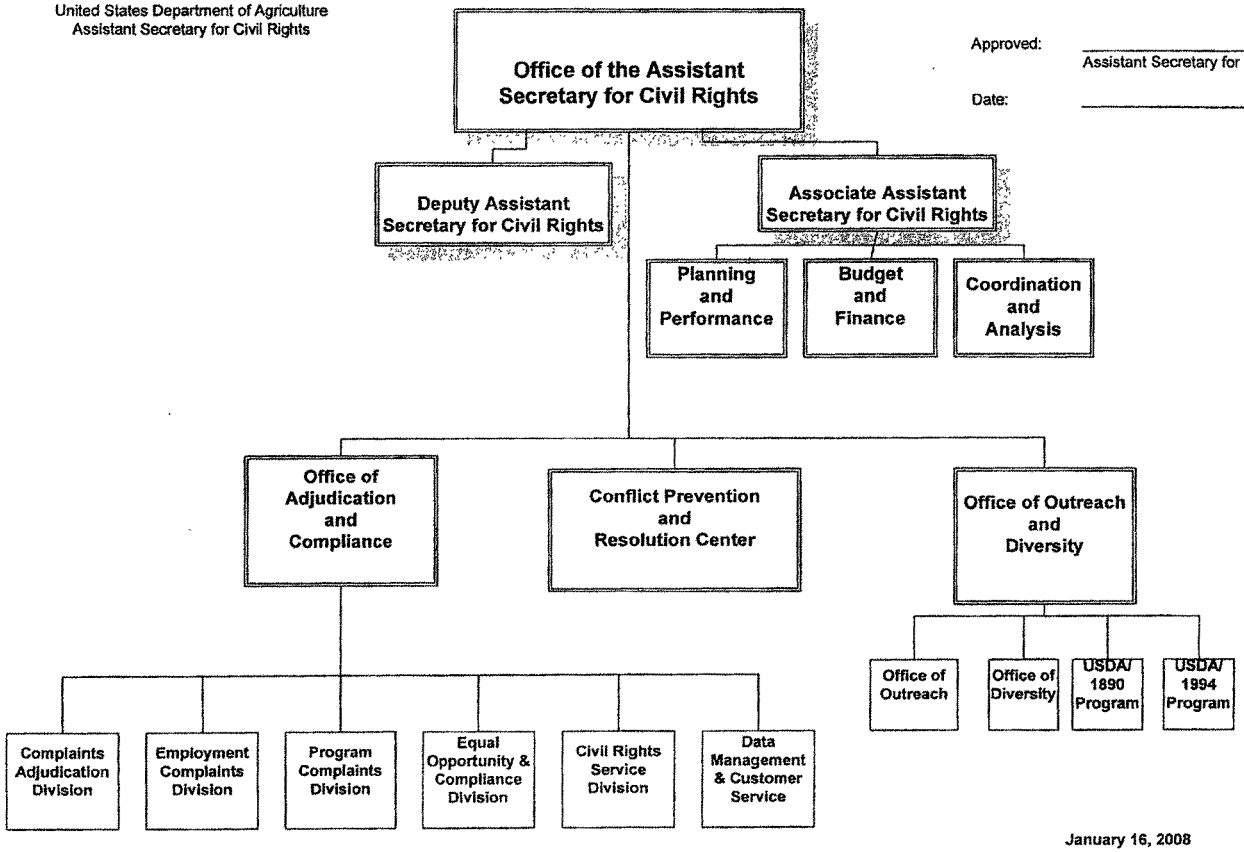
Case Processing - Another one of my top priorities is to achieve quality, efficient and timely complaint processing. In addition to completing all three modules (Employment and Program Complaints and ADR Resolutions) of the Civil Rights Enterprise System, our Web-based automated tracking and reporting tool, we are also taking steps to improve internal case processing standards and procedures. However, one of the barriers to achieving success is an extensive backlog in both program and employment complaints. To address this, we developed a backlog elimination plan: 1) We set a goal to eliminate the backlog of Final Agency Decisions (FADs) in program complaints by December 31, 2007, and we met the goal; 2) We also set a goal to eliminate the backlog of Final Agency Decisions in employment complaints. OASCR entered into an Inter-Agency Agreement with the United States Postal Service to assist in writing employment FADs. Our goal is to eliminate this backlog by the end of FY 2008; 3) I personally conduct weekly case reviews of FADs before they are issued in order to ensure quality decisions; 4) OAC is required to produce weekly and monthly complaint inventory and productivity reports; 5) OASCR plans to conduct an organizational assessment of OAC to look at internal processes, performance and productivity standards, workflow, workload, morale and staffing in

order to determine how we can work more efficiently and timely; 6) we have also made critical improvements in staffing critical positions and business re-engineering that positively affect our human capital and work flow; 7) We hold regular "all hands" meetings with OASCR employees to promote communication and transparency; 8) in order to address morale and promote productivity, we established a telework policy and program for eligible OASCR employees and established a Work/Life Coordinator position to facilitate this and other work/life programs; 9) We also convened a Professional Development Task Force to develop and coordinate professional development programs for OASCR employees. We are working with other agencies and the Office of Human Capital Management to expand this program across the Department; 10) we conducted training for all OASCR employees on communication, conflict management, and generational differences.

I believe that, since the creation of the OASCR, and during my tenure, we have made significant progress towards ensuring that agencies adhere to civil rights laws and policies; hold managers accountable; provide better customer service to employees and customers; bring closure to overdue complaints; and process all complaints in accordance with established time standards. Our public image is slowly catching up to the reality of USDA's new civil rights record. That is why I am so appreciative of the Committee's invitation to speak today. Hearings such as this provide us with an invaluable forum to let the world know about all that we have done, and all that we continue to do to advance civil rights for USDA employees and program participants.

Again, thank you for the opportunity to share an overview of USDA's management of its civil rights programs.

United States Department of Agriculture
Assistant Secretary for Civil Rights



Approved: _____
Assistant Secretary for Civil Rights

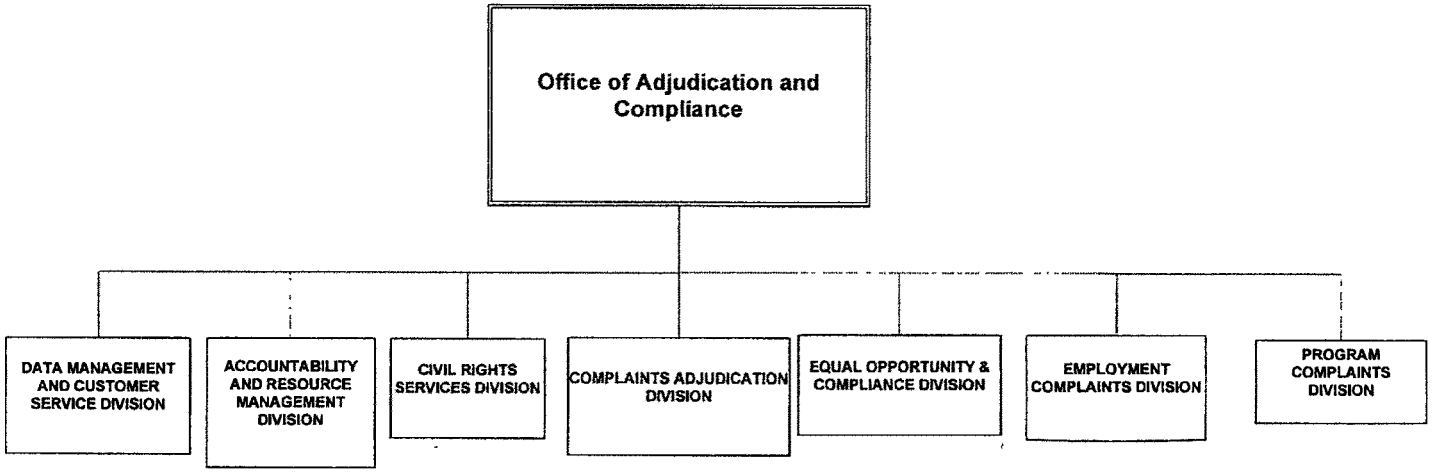
Date: _____

January 16, 2008

United States Department of Agriculture
Assistant Secretary for Civil Rights

Approved: _____
Assistant Secretary for Civil Rights

Date: _____



Mr. TOWNS. Thank you.
The Honorable Phyllis Fong.

STATEMENT OF PHYLLIS FONG

Ms. FONG. Thank you, Mr. Chairman, for inviting us to testify today. I appreciate the chance to talk about the work that our office has done in overseeing USDA's Civil Rights program.

The issue of Civil Rights and the processing of Civil Rights complaints has been a significant issue to us for a long time. We have issued 11 audits, on a variety of issues in the program over a 10-year period, and that work is summarized in my statement.

Today, I want to focus on some of the recurring themes that we have seen in our reports, and then discuss our most recent report.

We looked at our reports over this last period of time and we have found a number of themes that we believe are relevant to you today because we believe they identify fundamental issues in the program that need to be addressed if USDA is to move forward. These themes include the continuous internal reorganization within the Civil Rights Office that has occurred. There is, turnover at both management and staff levels that has occurred. There is, in our view, a lack of effective leadership and accountability to correct reported problems that have been identified. And there is a lack of adequate management controls to track progress in achieving results.

Many of these themes came out in our most recent report, which we issued about a year ago, on how USDA was addressing EEO complaints and employee accountability. We had several key findings that I want to highlight.

First, we found that Civil Rights had made improvements in the amount of time that it takes to process complaints, but we found that additional efforts are needed to close complaints in an acceptable timeframe. For comparison's sake, in 1997 it took the Department on average 3 years to process a complaint; by 2007 this had improved significantly to just under 1½ years, but this still falls short of the EEOC's timeframe. They would like Federal agencies to process cases within 270 days, so USDA has a ways to go on that.

In a second area, we found that Civil Rights had made progress in implementing CRES, the automated system that Assistant Secretary McKay referred to. This system is a good system, and when it is fully implemented we believe it will be helpful to the Department in tracking complaints and providing data for reports. We found, however, that further work is needed to ensure the accuracy of the data that is being entered into the system. For example, in 17 percent of the files that we looked at, the data recorded in CRES was not supported by the documents in the complaint files. So there needs to be a process to validate the accuracy of the information entered into the system.

Third, we found that, while Civil Rights had made progress in managing its physical case files, it still needed to establish adequate controls over its file room operations. We asked Civil Rights to review 64 complaint files as part of our review. Of the 64, the office could not locate readily 15 of the files. It took more than a month to locate 13 of them. The 14th one was never found and had

to be recreated. And the 15th one was provided to us 6 months after we had requested it.

As a result of our review, we made recommendations to address all of these issues, and the Office of Civil Rights has agreed to implement all of them.

Where we are, in conclusion, is that we believe that the processing of Civil Rights complaints continues to be a significant management challenge for USDA. It is very important to employees and participants to get timely action on their complaints, and we appreciate the interest that you have shown in these matters. We look forward to working with you and with the Assistant Secretary, and we also want to express our appreciation to the Assistant Secretary for her cooperation in our audit.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Fong follows:]

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG

INSPECTOR GENERAL

Before the

Subcommittee on Government Management, Organization, and Procurement

Committee on Oversight and Government Reform

U.S. House of Representatives

May 14, 2008

Thank you, Chairman Towns and Ranking Member Bilbray, for the opportunity to testify before the Government Management Subcommittee on the Department of Agriculture's (USDA) civil rights programs. I appreciate the opportunity to discuss the oversight work of the Office of Inspector General (OIG) regarding USDA's management actions on civil rights complaints and related concerns.

Ensuring fair treatment and due consideration for all USDA stakeholders and employees must be a matter of daily emphasis for USDA's agencies and offices. OIG has developed an extensive record of oversight work regarding civil rights issues at USDA in fulfilling our statutory responsibilities and mission.

I. *Prior OIG Oversight Regarding Civil Rights Management Issues*

Before describing OIG's most recent work, I would like to provide an overview for the Subcommittee of our earlier civil rights audits. This may provide helpful context for you in assessing USDA's progress in handling civil rights complaints and the challenges that remain today.

The processing of civil rights complaints within USDA and ensuring equitable treatment of the groups served through USDA programs have been areas of long-standing concern. Overall, OIG has issued 11 audits on civil rights issues and corresponding management challenges within a 10-year period. Many of the issues addressed in our most recent oversight work date back to our findings in the late 1990s, when widespread concerns arose about potential discrimination and/or serious administrative problems in USDA operations.

Office of Inspector General Reports Issued on Civil Rights 1997-2007		
Report No.	**Title**	**Issued**
50801-2-HQ	Evaluation Report for the Secretary on Civil Rights Issues	February 1997
50801-3-HQ	Minority Participation in Farm Service Agency's Farm Loan Programs	September 1997
50801-4-HQ	Nationwide Data on Minority Participation in Farm Service Agency's Farm Loan Programs	December 1997
50801-5-HQ	Implementation of OIG's Recommendations – Department's Civil Rights Complaint System and the Direct Farm Loan Program	March 1998
60801-1-HQ	Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints	September 1998
60801-2-HQ	Evaluation of the Office of Civil Rights' Efforts to Implement Civil Rights Settlements	March 1999
60801-3-HQ	Office of Civil Rights Management of Employment Complaints	March 2000
60801-4-HQ	Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints	March 2000
60016-1-Hy	Follow up on Prior Recommendations for Civil Rights Program and Employment Complaints	September 2005
03601-11-At	Minority Participation in Farm Service Agency's Programs	November 2005
60601-4-Hy	Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints	May 2007

At the request of the Secretary, Congress, and also on our own initiative, OIG began what became a broad, multi-phased series of audits on civil rights topics in 1997. Over the next 4 years, we conducted 8 audits that ultimately produced 119 recommendations to improve USDA's civil rights performance and/or processes. These OIG audits examined issues such as minority participation in the Farm Service Agency's (FSA) farm loan programs, and evaluated the Office of Civil Rights' (CR)[1] efforts to reduce the backlog of complaints and implement civil rights settlements. Our audits during this 4-year period found no systemic discriminatory practices in USDA farm programs. However, we did identify repeated

[1] In 2007, this office was renamed the Office of Adjudication and Compliance (OAC).

problems with respect to procedures, staffing, leadership, and corrective actions by USDA entities pertaining to civil rights complaints.

OIG's analysis of the more than 40 findings produced by these audits identified recurring themes underlying the problems USDA was experiencing. These themes are relevant to today's hearing because, in our view, they identify fundamental issues that need to be substantially addressed if USDA is to resolve long-standing concerns. The recurring themes are continuous internal reorganization within the Civil Rights office; turnover at both management and staff levels; lack of effective leadership, accountability, and follow-through to correct reported problems; and lack of adequate management controls and formal operational procedures to track and monitor progress in achieving results.

In our March 2000 report[2] that examined CR's handling of employment civil rights complaints, we found weaknesses in its operations for tracking and processing the complaints inventory. We also found that complaint files were not properly managed. At that time, CR took an average of 2 years to close a case.

Some of the more far-reaching OIG recommendations emanating from these multi-phased reviews are worth noting. OIG recommended that USDA improve its outreach and technical assistance to minorities; work to increase the number of minority employees in county offices; and establish a settlement review team to ensure compliance with relevant statutes and regulations. Because of the serious deficiencies in the management of USDA's civil rights program disclosed during our audits, in 1998 we also recommended that the Secretary establish the position of an Assistant Secretary for Civil Rights (ASCR) to resolve crosscutting issues between USDA agencies and CR. In 2003, Congress sought to address these issues by statutorily establishing the Office of the Assistant Secretary for Civil Rights in order to consolidate responsibility for USDA's civil rights programs and give them higher visibility.

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[2] *Office of Civil Rights Management of Employment Complaints,* Report No. 60801-03-Hq, March 2000.

II. *Recent OIG Evaluations of Agency Corrective Measures and Civil Rights Processes*

OIG issued two reports in the fall of 2005, after the creation of the ASCR position in the 2002 Farm Bill. The first was our review of CR's implementation of 43 OIG recommendations that focused on the agency's management of program and employment complaints.[3] OIG determined that approximately half of the recommendations had been implemented; we found, however, that the lack of a functioning audit liaison impaired CR's ability to monitor and substantiate corrective actions regarding management responsibilities. We recommended that an individual be designated who would systematically follow up on audit recommendations, implement a system of controls to monitor corrective actions, and formally report those actions to USDA's Office of the Chief Financial Officer (OCFO).[4]

Our second report assessed whether FSA had made progress towards repairing its relationship with minority farmers.[5] We found that CR and FSA had made significant improvements from 1997 to 2000 as shown by the following statistics: the number of program civil rights complaints was reduced by over 75 percent; processing times for minority loan applications were reduced by 29 percent; and the number of delinquent minority borrowers was reduced by over 90 percent. OIG also identified areas where further CR/FSA improvements were needed, such as CR not having performed recent compliance reviews of FSA programs to determine whether the agency's practices complied with civil rights statutes. Our report recommended that CR resume conducting compliance reviews and that FSA strengthen its performance in providing outreach to underserved producers.

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[3] *Followup on Prior Recommendations for Civil Rights,* Report No. 60016-1-Hy, September 2005.
[4] USDA agencies submit documentation to OCFO on corrective actions taken in response to OIG recommendations. OCFO evaluates the documentation to determine if the intent of the recommendation has been met and final action has occurred.
[5] *Minority Participation in Farm Service Agency's Farm Loan Programs,* Report No. 03601-11-At, November 2005.

Assessing USDA's Management Controls and Actions on Civil Rights Complaints

OIG's most recent audit[6] on civil rights issues at USDA was our May 2007 review to evaluate USDA's progress in addressing Equal Employment Opportunity (EEO) complaints and employee accountability for discrimination.[7] Specifically, we assessed the adequacy of CR's controls over the tracking and processing of EEO complaints and its processes to hold employees accountable for discriminatory actions towards USDA employees or in administering USDA programs. To conduct our audit, OIG interviewed managers and staff of both CR and the agencies and Departmental officials regarding the tracking of complaints and CR's employee accountability process. OIG also reviewed EEO complaint data from CR's new Civil Rights Enterprise System (CRES) for over 1,400 formal EEO complaint cases that were initiated over a 33-month period from October 2003 through June 2006.

In describing the key findings and recommendations of OIG's audit for the Subcommittee, I will focus on our evaluation of the three primary management issues that are relevant to today's hearing. They were OIG's assessment of (1) CR's controls for processing EEO complaints in a timely manner, (2) CR's controls over its complaint tracking system, and (3) CR's control over the physical case files for EEO complaints. I will address each of these issues in turn.

CR's Controls Over the Time Required to Process Complaints

OIG found that CR had made improvements in the amount of time needed to process complaints, but we also determined that additional efforts are needed to close them within an acceptable timeframe. We found that CR's processing time to complete an EEO complaint case averages just under 1.5 years; while this was a significant improvement over the 3-year average in 1997, it still exceeds the 270-day processing timeframe established by the Equal Employment Opportunity Commission (EEOC). It is important to note that processing EEO

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[6] This audit was initiated at the request of the Chairman, U.S. Senate Committee on Agriculture, Nutrition, and Forestry.

[7] *Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints*, Report No. 60601-04-Hy, May 2007.

complaints at USDA is a shared responsibility. Each individual USDA agency (not CR) is responsible for processing and entering data into CRES during a complaint's informal stage and for investigations and hearings during its formal stage. CR is responsible for processing and entering data in CRES for the acceptance or dismissal of complaints and final agency decisions during the formal stage. CR also has overall responsibility for ensuring that USDA is accurately reporting its EEO activities and timely processing its EEO complaints. OIG's audit determined that CR did not have an adequate monitoring framework to track the processing of complaints and to intervene when timeframes were not being met. The former CR Director advised that the EEOC 270-day threshold is unrealistic in certain cases and said additional factors (such as the substantial inventory of backlogged complaints, an influx of new cases, available staffing and resources, and individual USDA agencies not meeting their responsibilities) contribute to cases extending beyond that timeframe.

OIG made two recommendations to CR to improve its timeliness in processing complaints. First, we recommended that CR develop a detailed, formal plan to process EEO complaints more efficiently, including action items to address system weaknesses and measurable timelines for completing those actions. Second, CR should implement controls to monitor complaints processing and intervene when timeframes are not met. These controls should include reporting mechanisms to the CR Director about why specific cases are exceeding established timeframes. While CR agreed to both OIG recommendations, it has yet to submit an acceptable corrective action plan that establishes controls to monitor the processing of complaints and to intervene when timeframes were not being met.

CR's Controls for its Complaints Tracking System

In February 2005, CR began its implementation of CRES, a Web-based application that enabled USDA agencies and CR to use one automated system for processing and tracking EEO complaints at both the informal and formal stages. CR and USDA agencies enter complaint data into CRES, and CR utilizes this data to complete and file required reports. OIG's audit determined that CR had implemented CRES without sufficient business rules to

ensure the completeness of the complaint data being entered.[8] For example, required data about alternate dispute resolution were not entered for approximately 42 percent of the cases entered in CRES. OIG further selected a sample of 63 specific case files to reconcile information recorded in CRES with documentation recorded in the case file. Our review found that in 17 percent of these files, the data recorded in CRES were not supported by the physical documentation. At the time of our audit, CR had not implemented a process to validate the accuracy of information entered into CRES. CR also did not have an established data verification process to ensure the integrity of data contained in CRES. This reduced CRES' reliability as a source of accurate and complete information about EEO complaints at USDA.

To improve the sufficiency of the information contained in CRES, we recommended that CR identify all the business rules necessary for entering complaint data into the system. Thereafter, CR should implement a plan with action items and timeframes to develop and apply the necessary business rules. CR agreed to develop and implement a formal process to validate the accuracy of information entered into CRES. CR advised OIG that its corrective measures would include the use of an automated quality control tool and audits of data accuracy that would be conducted by agency staff who are not involved in the initial data entry.

Controls for Properly Maintaining Complaint Case Files

The management and handling of CR's physical case files was identified as a significant problem in OIG's March 2000 report. Our May 2007 audit included an examination of similar issues regarding CR's performance in properly filing, storing, and safeguarding the physical documents that comprise an EEO complaint case file. OIG determined that CR has made some progress towards organizing, maintaining, and properly storing case files. However, we also found that as of the time of our audit, CR had not established adequate controls over its file room operations and did not have effective procedures to ensure that the files contained all the relevant case documentation.

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[8] Business rules are protocols in the system intended to prevent omissions of data by end users for required stages in the EEO process.

During the audit, we requested 64 complaint files to review. CR could not readily locate 15 of the files and took more than a month to locate 13 of them. CR had to recreate another file for our review and did not provide us the last file until after field work was completed, or 6 months after our request to review it was made. We concluded CR lacked procedures to control and monitor the physical location of files. We also observed that the EEO case files were not physically stored in a systematic and well-organized manner, which leads to problems when files need to be located and updated.

According to data recorded in CRES, as of October 2006, CR was also storing over 5,700 closed case files that exceeded USDA's 4-year retention requirement. CR officials advised that some cases closed beyond the 4-year requirement are not necessarily ready for destruction, such as those pertaining to cases being litigated. CR had not performed a physical inventory to determine the location of such cases or the number of files that may be suitable for destruction. In one-third of the 63 physical case files OIG reviewed, we found that the files were missing required documentation such as counselors' reports, the report of investigation, settlement agreements, final agency and administrative judges' decisions, and withdrawal letters. As a result, CR did not have documentary assurance in these cases that its actions were supported. CR officials advised OIG that procedures were being developed to specify personnel responsibilities for filing and safeguarding EEO complaint documents and improving its file room operations. The CR Director stated that the office is moving towards a paperless environment and agreed that interim controls (such as contractor support) were needed to strengthen this element of CR's operations.

OIG made several recommendations to improve CR's control over its physical case files. We recommended that CR perform a physical inventory of complaints and case files to determine their proper disposition, implement a formal plan to identify and dispose of paper files that no longer need to be maintained, and develop procedures to better control the flow of the documents associated with EEO complaints. CR agreed to OIG's recommendations and stated that it was in the process of institutionalizing its records management procedures.

III. *Processing Civil Rights Complaints is a Management Challenge for USDA*

As you know, the Reports Consolidation Act of 2000 requires Federal OIGs to issue an annual report identifying the significant management challenges facing their parent departments or entities.[9] The processing of civil rights complaints was included in the first Management Challenges report issued by OIG under the new law in 2002. We considered this a significant challenge facing the Department because of the systemic problems our audits had identified with the controls and management of civil rights complaints by USDA. However, in 2005, OIG removed civil rights issues as one of the elements of our Management Challenges report. OIG did so after performing two civil rights-related audits. These audits found that the FSA civil rights complaint backlog had been resolved and the ASCR had developed 13 initiatives to address longstanding problems regarding the processing of complaints. We believed these actions would, if implemented, address our prior recommendations concerning complaint management and processing.

However, our 2007 audit found that CR did not follow through to implement these initiatives. We found continuing, lengthy, and/or ineffective processing of civil rights complaints. Therefore, we reinstated civil rights as a significant challenge facing USDA in our 2007 Management Challenge report. This action reflected our concern that the inadequate processing of complaints could reduce the public's confidence in USDA's ability to administer and address civil rights activities.

In closing, Mr. Chairman, I want to again thank you for offering me the opportunity to testify before the Subcommittee regarding our oversight work on civil rights issues. I also want to express my thanks to Assistant Secretary Margo McKay for the assistance and cooperation her office extended to OIG during our most recent audit and for her work to reach management decision with OIG on our recommendations.

This concludes my testimony. I would be pleased to address any questions you may have.

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[9] Public Law 106-531 (November 22, 2000).

Mr. TOWNS. Thank you so much for your testimony, Ms. Fong. Ms. Shames.

STATEMENT OF LISA SHAMES

Ms. SHAMES. Chairman Towns, I am pleased to be here today to discuss the Department of Agriculture's progress in addressing longstanding Civil Rights issues. As you know, for years USDA has been the focus of reviews into allegations of discrimination against minorities and women, both in its programs and in its work force. Many, including the Congress, the Civil Rights Commission, the EEOC, USDA's own Inspector General, as well as GAO have provided constructive analyses and made recommendations to improve its Civil Rights efforts. Unfortunately, based on GAO's work to date, we find that USDA's management of its Civil Rights efforts continues to be deficient.

Specifically, we found persistent problems in resolving discrimination complaints, unreliable reports on minority participation in USDA programs, and limited planning to ensure USDA's services and benefits are provided fairly and equitably.

First, regarding discrimination complaints, when the Office of the Assistant Secretary was established in 2003, one of its top priorities was to reduce the backlog and inventory of discrimination complaints that it had inherited. Four years later, the office's progress report, entitled, The First One Thousand Days, stated that the backlog had been reduced and the inventory was manageable; however, the disparities we found in the numbers USDA reported to the Congress and the public undermined the credibility of any claims. We found numerous disparities, and some of these disparities were in the hundreds.

For example, in this progress report released in July 2007 USDA reported the number of customer complaints was stated to be 404 in its inventory at the end of fiscal year 2005. However, 1 month earlier, USDA reported to this subcommittee that the number of complaints in its inventory was 1,275. USDA qualified this number and other numbers to this subcommittee as the best available and acknowledged that they were incomplete and unreliable.

USDA is aware of these issues; however, fundamentally there appears to be a lack of management attention to resolving the backlog of complaints. For example, we would have expected routine management reports to track these cases, but we were told none are generated, because they are not required by law.

We are pleased to hear that Ms. McKay is now going to be requiring the sorts of reports that are intended to bring consistent management attention.

Second, regarding minority participation in USDA programs, Congress required USDA to report annually on minority farmers' participation in USDA programs by race, ethnicity, and gender. USDA issued three reports for fiscal years 2003, 2004, and 2005; however, USDA disclosed that its demographic data in these reports are unreliable because they are largely based on visual observation. The drawback to visual observation is that some demographic traits may not be readily apparent to an observer.

Collecting demographic data directly from program participants requires approval from the Office of Management and Budget

[OMB]. USDA started to seek OMB's approval to collect these data in 2004, but did not follow through because we were told of insufficient resources. According to USDA officials, they are planning future actions to obtain the necessary authority.

In addition, we found the Web-based supplementary data for these reports to be of limited usefulness. They are published in over 1,300 separate tables and 146 maps. This format does not facilitate analysis such as comparing minority participation by program, location, and year.

Finally, regarding planning to ensure USDA's services and benefits are provided fairly and equitably, results oriented strategic planning provides a road map that clearly describes what an organization is attempting to achieve, and over time it can communicate to the Congress and the public about what has been accomplished. While the Office of the Assistant Secretary has defined its mission and strategic goal, looking forward stakeholders' interests should be more explicitly reflected in the planning.

For example, our interviews with stakeholders informed us that their interests include assuring the diversity of the USDA's county committee system and better addressing language differences, among other things.

Data collection to demonstrate progress toward achieving its mission and goal is an important next step for measuring performance. A discussion on how data collected by other USDA agencies, such as a National Agricultural Statistics Service or the Economic Research Service is especially important in an era of limited resources.

Last, using data to identify gaps can help USDA improve performance on its Civil Rights efforts. For example, in 2002 GAO recommended that USDA establish time requirements for all stages of the complaint process. With these standards, along with routine management reports to track cases along the lines of what we just heard, this office can begin to troubleshoot its most problematic areas.

In conclusion, USDA has been addressing allegations of discrimination for years. One lawsuit has cost taxpayers nearly $1 billion to date, and several other groups are seeking redress for similar alleged discrimination. Despite the numerous past efforts to provide USDA with constructive analyses and recommend actions for improvement, significant management deficiencies remain. Such resistance to improve its management calls into question USDA's commitment to more efficiently and effectively address discrimination complaints both within its agency and across its programs.

This concludes my prepared statement, and I would be pleased to answer any questions.

[The prepared statement of Ms. Shames follows:]

United States Government Accountability Office

GAO

Testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
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U.S. DEPARTMENT OF AGRICULTURE

Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention

Statement of Lisa Shames, Director
Natural Resources and Environment

GAO-08-755T

May 14, 2008

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-08-755T, a testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

U.S. DEPARTMENT OF AGRICULTURE

Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention

Why GAO Did This Study

For decades, there have been allegations of discrimination in the U.S. Department of Agriculture (USDA) programs and workforce. Reports and congressional testimony by the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, a former Secretary of Agriculture, USDA's Office of Inspector General, GAO, and others have described weaknesses in USDA's programs—in particular, in resolving complaints of discrimination and in providing minorities access to programs. The Farm Security and Rural Investment Act of 2002 authorized the creation of the position of Assistant Secretary for Civil Rights (ASCR), giving USDA an executive that could provide leadership for resolving these long-standing problems.

This testimony focuses on USDA's efforts to (1) resolve discrimination complaints, (2) report on minority participation in USDA programs, and (3) strategically plan its efforts. This testimony is based on new and prior work, including analysis of ASCR's strategic plan; discrimination complaint management; and about 120 interviews with officials of USDA and other federal agencies, as well as 20 USDA stakeholder groups.

USDA officials reviewed the facts upon which this statement is based, and we incorporated their additions and clarifications as appropriate. GAO plans a future report with recommendations.

To view the full product, including the scope and methodology, click on GAO-08-755T. For more information, contact Lisa Shames at (202) 512-2649 or shamesl@gao.gov.

What GAO Found

ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of complaints. At a basic level, the credibility of USDA's efforts has been and continues to be undermined by ASCR's faulty reporting of data on discrimination complaints and disparities in ASCR's data. Even such basic information as the number of complaints is subject to wide variation in ASCR's reports to the public and the Congress. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels, drew a questionable portrait of progress. By July 2007, ASCR officials were well aware they had not succeeded in preventing future backlogs—they had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, ASCR officials were in the midst of planning to hire additional attorneys to address that backlog of complaints including some ASCR was holding dating from the early 2000s that it had not resolved. In addition, some steps ASCR had taken may have actually been counter-productive and affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. Importantly, ASCR does not have a plan to correct these many problems.

USDA has published three annual reports—for fiscal years 2003, 2004, and 2005—on the participation of minority farmers and ranchers in USDA programs, as required by law. USDA's reports are intended to reveal the gains or losses that these farmers have experienced in their participation in USDA programs. However, USDA considers the data it has reported to be unreliable because they are based on USDA employees' visual observations about participant's race and ethnicity, which may or may not be correct, especially for ethnicity. USDA needs the approval of the Office of Management and Budget (OMB) to collect more reliable data. ASCR started to seek OMB's approval in 2004, but as of May 2008 had not followed through to obtain approval. ASCR staff will meet again on this matter in May 2008.

GAO found that ASCR's strategic planning is limited and does not address key steps needed to achieve the Office's mission of ensuring USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. For example, a key step in strategic planning is to discuss the perspectives of stakeholders. ASCR's strategic planning does not address the diversity of USDA's field staff even though ASCR's stakeholders told GAO that such diversity would facilitate interaction with minority and underserved farmers. Also, ASCR could better measure performance to gauge its progress in achieving its mission. For example, it counts the number of participants in training workshops as part of its outreach efforts rather than access to farm program benefits and services. Finally, ASCR's strategic planning does not link levels of funding with anticipated results or discuss the potential for using performance information for identifying USDA's performance gaps.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the U.S. Department of Agriculture's (USDA) progress in addressing long-standing civil rights issues. My comments today are based on prior work as well as new work nearing completion resulting from a request from Senator Harkin, Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry; Senators Grassley and Lugar; and Chairman Baca of the Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, House Committee on Agriculture; as well as you, Chairman Towns.

USDA is responsible for enforcing statutes, regulations, and policies that prohibit discrimination in its programs and workplace. USDA's responsibilities extend to the programs that it delivers directly to customers through local offices throughout the country, such as the farm loan programs, as well as to programs that USDA and the states administer jointly, such as the Food Stamp Program. USDA's workplace civil rights responsibilities cover about 100,000 employees at headquarters and at USDA offices around the country.

For decades, USDA has been the focus of federal inquiries into allegations of discrimination against minorities and women both in the programs it administers and in its workforce. Numerous reports and congressional testimony by officials of the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, USDA, GAO, and others have described extensive concerns about discriminatory behavior in USDA's delivery of services to program customers—in particular, minority farmers—and its treatment of minority employees. Many of these reports and testimonies described serious weaknesses in USDA's management of its civil rights programs—in particular, weaknesses in providing minorities access to USDA programs and in resolving discrimination complaints.

Notable among these many reports was the 1997 report of the Secretary of Agriculture's Civil Rights Action Team.[1] The Secretary's team—composed of senior USDA officials—held a dozen "listening sessions" with USDA customers and employees throughout the country before issuing a report. The team's report discussed USDA's customers' and employees' concerns

[1]*Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, U.S. Department of Agriculture (Washington, D.C.: February 1997).

about patterns of discrimination in USDA programs and operations, and minority farmers' concerns that USDA had played a part in the severe decline in minority farm ownership since the mid-1900s. Among other things, the report noted that USDA's civil rights program had been in a "persistent state of chaos" because of numerous changes since the 1980s and declared that USDA's process for resolving complaints about the delivery of program benefits and services was a "failure." The report made many recommendations in four major areas—organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices.

In addition to reports about USDA's civil rights shortcomings, individuals and groups claiming discriminatory behavior on the part of USDA have sought redress through the courts—USDA has been and continues to be involved in large class action civil rights lawsuits.[2] In 1997, three African-American farmers, on behalf of themselves and others similarly situated, filed a lawsuit—*Pigford v. Glickman*—that charged USDA with discrimination in the department's lending and other farm programs between 1983 and 1997, as well as with failure to properly investigate discrimination complaints.[3] The case went forward as a class action, and in January 1999 a settlement agreement was announced. In approving the consent decree settling the case, the court stated that for decades USDA had discriminated against African-American farmers by denying or delaying their applications for farm loan and other credit and benefit programs. The court also noted that USDA had disbanded its Office of Civil Rights in 1983 and stopped responding to claims of discrimination. The consent decree established a mechanism for members of the class to file claims to obtain relief. Over 97,000 people have filed claims—more than five times the number of claims anticipated. However, only about 23,000 people met the filing deadline of October 12, 1999, and about 74,000 people requested permission from the court to file a claim after the deadline. Except for a relatively few extraordinary cases, the court denied the claims received after the filing deadline as not timely. Overall, as of April 7, 2008, more than 15,400 claims had been approved for payments and benefits totaling about $972 million, and almost 7,000 claims had been

[2]A class action lawsuit is one in which a party sues on behalf of him or herself and a larger group similarly situated.

[3]*Pigford v. Schafer*, Civil Action No. 97-1978 (D.D.C. filed Oct. 23, 1997) (formerly *Pigford v. Glickman*).

denied.[4] In addition, USDA is currently defending itself against similar lawsuits brought by other customers—Native American, Hispanic, and women farmers—alleging discrimination in the delivery of farm programs and lending.[5]

A congressional hearing during 2002 focused on the need for USDA to ensure that, among other things, farm programs are accessible to minority and socially disadvantaged farmers and ranchers, complaints of discrimination against USDA by customers and employees are resolved fairly and timely, and civil rights activities are conducted transparently so that public scrutiny is possible. That year, as you know, the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) authorized the Secretary of Agriculture to create the new position of Assistant Secretary for Civil Rights, elevating responsibility within USDA for carrying out USDA's civil rights efforts. Under the 2002 Farm Bill, the Secretary could delegate responsibility for ensuring that USDA complies with all civil rights-related laws and considers civil rights matters in all USDA strategic planning initiatives to the Assistant Secretary for Civil Rights. In 2003, the Assistant Secretary position was created with these and other delegated responsibilities, and the Office of the Assistant Secretary for Civil Rights (ASCR) was established. In addition, the 2002 Farm Bill requires USDA to report annually on minority participation in USDA programs.[6]

In 2002, we reported that USDA's Office of Civil Rights continued to face significant problems in processing discrimination complaints in a timely manner.[7] We reported that the office had made only modest progress in processing complaints from customers and employees because (1) it had not established time frames for resolving complaints and (2) it had not addressed its severe human capital problems. For example, the office had long-standing problems in hiring and retaining staff with the right mix of skills, and severe morale problems were exacerbating problems with staff

[4]Legislation has been introduced in the Congress to allow further consideration of claims that were not filed timely.

[5]These cases include *Keepseagle v. Schafer*, Civil Action No. 99-03119 (D.D.C.); *Garcia v. Schafer*, Civil Action No. 00-02445 (D.D.C.); and *Love v. Schafer*, Civil Action No. 00-02502 (D.D.C.).

[6]Pub. L. No. 107-171, 116 Stat. 134 §10708, 522 (2002).

[7]GAO, *Department of Agriculture: Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers*, GAO-02-942 (Washington, D.C.: Sept. 20, 2002).

productivity and retention. At that time, we recommended that USDA establish time frames for all stages of the complaint process and develop an action plan to address its staff turnover and morale problems. In commenting on the report, USDA stated that it had a long-term improvement plan that would address the human capital problems and agreed to formalize time frames for all phases of the process.

My testimony today focuses on (1) ASCR's continuing problems in resolving discrimination complaints, (2) USDA's reporting on minority participation in USDA programs, and (3) ASCR's strategic planning for ensuring USDA's services and benefits are provided fairly and equitably.

In summary, I would like to make three observations. First, ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of discrimination complaints. At a basic level, the credibility of USDA's efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data. Even such basic information as the number of discrimination complaints is subject to wide variation in ASCR's reports to the public and the Congress. For example, fiscal year 2005 data that ASCR reported to the public and to this congressional subcommittee varied by hundreds of complaint cases, and data reported to GAO on its complaint cases varied from one report to another. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels drew a questionable portrait of progress. By July 2007, ASCR officials were well aware the plan to prevent future backlogs had not succeeded. ASCR had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, before ASCR made its report to the public in 2007, ASCR officials were in the midst of planning to hire additional attorneys to address the backlog of complaints, including some complaints that ASCR was holding dating from the early 2000s that it had not resolved. In addition, steps that ASCR had taken to speed up its investigations and decisions on complaints may actually have been counter-productive and affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. Importantly, ASCR does not have a plan to correct these many problems.

Second, the data that USDA reported to the Congress and the public on the participation of minority farmers in USDA programs are unreliable,

according to USDA. USDA has published three annual reports on the participation of socially disadvantaged farmers and ranchers in USDA programs for fiscal years 2003, 2004, and 2005. However, much of the data that USDA reports are unreliable, according to the statements in USDA's reports, because USDA's data on racial identity and gender are, for the most part, based on visual observation of program applicants. Data gathered in this manner are considered unreliable because individual traits such as race and ethnicity may not be readily apparent to an observer, especially ethnicity. To address this inherent shortcoming, according to USDA's report, the agency needs standardized data collection directly from program participants, which requires the approval of the Office of Management and Budget (OMB). ASCR began the process of seeking OMB's approval to collect these data in 2004, but did not follow through and has not obtained final approval. ASCR staff will meet again on this matter in May 2008. In addition, we found the data in ASCR's reports to be of limited usefulness because, for example, ASCR did not include basic reference data such as the numbers of farmers in each county. Moreover, the data do not facilitate analysis because they are published in about 1,370 separate tables and 146 maps that are not searchable files. If the data were searchable, it could be possible to more easily compare minority participation by program, location, and year.

Finally, ASCR's strategic planning is limited and does not address key steps needed to achieve its mission. While ASCR has articulated a compelling strategic goal—to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees—its implementation will require further development. For example, a key step in strategic planning is to discuss the perspectives of stakeholders. Yet, ASCR's plans vary from ASCR's stakeholders' interests which include such things as improving USDA's methods of delivering farm programs to facilitate access by under-served producers. Also, while ASCR's stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR's strategic planning does not address the diversity of USDA's field staff. In addition, ASCR could better measure performance to gauge its progress, and ASCR has not started to use performance information for identifying USDA performance gaps.

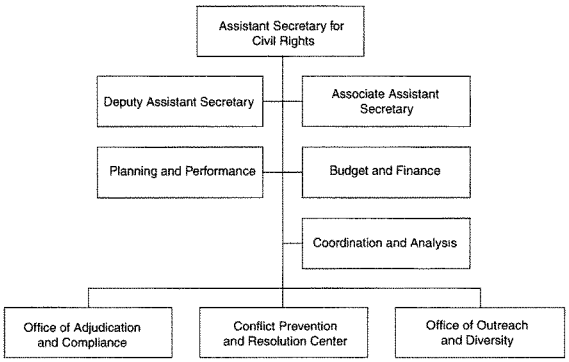
We provided USDA officials with an opportunity to comment on a statement of facts which was the basis for my statement today. We incorporated their additions and clarifications as appropriate. We plan to issue a final report later in 2008 that will include recommendations to address the matters that I discuss in my testimony today.

This testimony is based on new and previously issued work. To assess ASCR's efforts to resolve USDA's persistent problems in handling discrimination complaints, we conducted interviews with officials of ASCR, USDA's Office of Inspector General (OIG), USDA's agency-level civil rights offices, and the Equal Employment Opportunity Commission; examined USDA documents about efforts to resolve discrimination complaints, and analyzed data provided by ASCR. To evaluate USDA's reporting on minority participation in USDA's programs, we reviewed USDA reports and interviewed officials of USDA, community-based organizations, and minority groups. To analyze ASCR's strategic planning, we examined ASCR's strategic plan and other relevant planning documents, and interviewed USDA officials and representatives of community-based organizations and minority groups, among others. In addition, we considered GAO's guidance for results-oriented management. We conducted our work from December 2006 through May 2008, in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. While our efforts were impeded by delays in gaining access to documents, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additional details on our scope, methodology, and access to USDA records is included in appendix I.

Background

The Office of the Assistant Secretary for Civil Rights (ASCR) was created in 2003. For fiscal year 2007, ASCR had 129 staff and an annual budget of about $24 million. ASCR is composed of multiple offices, some of which were in existence within USDA prior to the creation of ASCR.

Figure 1: Organization of USDA's Office of the Assistant Secretary for Civil Rights



Source: USDA

ASCR's Office of Adjudication and Compliance (formerly the Office of Civil Rights) is to resolve customers' and employees' complaints of discrimination and to conduct civil rights compliance reviews of USDA's agencies. The Conflict Prevention and Resolution Center is to provide guidance to USDA agencies on using Alternative Dispute Resolution methods to resolve conflicts. The Office of Outreach and Diversity is to develop ASCR's diversity initiatives, and oversee the *1890* and *1994 Programs*. The *1890 Program* offers educational scholarships to people seeking degrees at one of the 18 historically black land-grant institutions and requires one year of USDA service for each year of financial support. Similarly, through the *1994 Program*, there is a comparable program operated with the 33 tribal colleges and universities designated as 1994 land-grant institutions. Within the Office of Outreach and Diversity, the Office of Outreach is to provide coordination for USDA agencies on outreach efforts and produce a required annual report on the rates at which minorities participate in USDA programs.

The first USDA Assistant Secretary for Civil Rights—Mr. Vernon Parker—was sworn in on April 1, 2003, and served about 3 years until resigning in January 2006. At the outset of Mr. Parker's tenure, over a 4 month period, a

few ASCR staff developed 13 initiatives to guide ASCR's actions through fiscal year 2004 and beyond. These initiatives were intended to address the most immediate problems occurring at the time and concentrated on eliminating backlogs of unresolved discrimination complaints and taking certain steps to reduce complaints in the future. Most notably, ASCR established annual "Partners Meetings" to create, for the first time, a substantive and ongoing dialogue between USDA and representatives of community-based organizations as a basis for improving the delivery of USDA benefits and services. A list of ASCR's initiatives for fiscal year 2004 is included in appendix II. The second and current Assistant Secretary for Civil Rights—Ms. Margo McKay—was sworn in on August 21, 2006. A list of Assistant Secretary McKay's priorities and initiatives are also included in appendix II.

Problems Resolving Discrimination Complaints Persist

The credibility of USDA's efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data.[8] For example, fiscal year 2005 data that ASCR reported to the public and to this congressional subcommittee varied by hundreds of complaint cases, and data reported to GAO on its complaint cases varied from one report to another. Moreover, ASCR's public claim in July 2007 that it successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels through fiscal year 2005 drew a questionable portrait of progress. By July 2007, ASCR officials were well aware that the plan to prevent future backlogs had not succeeded. ASCR had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, before ASCR made its report to the public in 2007, ASCR officials were in the midst of planning to hire attorneys to address the backlog of complaints, including some complaints that ASCR was holding dating from the early 2000s that it had not resolved. In addition, some steps that ASCR had taken to speed up its investigations and decisions on complaints appear to have affected the quality of its work. These on-going problems are a continuation of the inadequate conditions that we and USDA's OIG have reported for over a decade.

[8]ASCR's backlogs of discrimination complaints generally consist of numbers of complaints for which ASCR has insufficient capacity to adjudicate promptly.

ASCR reporting on backlogs of discrimination complaints has been faulty and contains disparities. When ASCR was created, there was an existing backlog of complaints. In recognition of this problem, USDA's Assistant Secretary for Civil Rights made discrimination complaint inventory reduction ASCR's highest priority initiative. This initiative called for ASCR's senior managers and employees to make a concerted 12-month, $1.5 million effort to reduce the backlog of complaints that they had inherited. Moreover, according to a briefing book ASCR prepared for the Senate Committee on Agriculture, Nutrition, and Forestry, this complaint inventory reduction initiative was to put lasting improvements in place to prevent future complaint backlogs. It also stated that USDA's Office of Civil Rights would focus substantial resources on fair, equitable, and legally supportable resolution of cases.

About 4 years later, in July 2007, ASCR released a report to the public stating that its fiscal year 2004 backlog reduction initiative was a success.[9] The report stated that the backlog of 573 complaints from employees and 120 complaints from customers had been resolved, and that ASCR had held the complaint inventory to manageable levels through fiscal year 2005. However, the data ASCR reported lack credibility because a month earlier the Office had reported different data to this congressional subcommittee (see Table 1). Specifically, according to the June report, the numbers of complaints at the beginning of fiscal year 2005 was 552; according to the July report, the number was 363. Moreover, the June report cited the number of complaints at the end of fiscal year 2005 as 1,275, and the July report said it was 404. The lower numbers reported to the public were not qualified and provided a more favorable impression than the data reported to this subcommittee. However, the Assistant Secretary's letter transmitting data to the subcommittee contained a footnote qualification stating that USDA's statistics on customers' complaints were the best available, although they were incomplete and unreliable. Before that letter was sent, ASCR's former Director, Office of Adjudication and Compliance[10] (former Office of Civil Rights), who had responsibility for the data, cautioned the Assistant Secretary about the poor data quality and stated that, if questioned, USDA would not be able to explain its data.

[9]USDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

[10]We conducted our interviews with the former Director, Office of Adjudication and Compliance, prior to her resignation at about the end of August 2007.

Table 1: Fiscal Year 2005 Customer Complaint Inventory as Reported by ASCR in June and July 2007

	Report to congressional subcommittee, June 2007[a]	USDA's 1,000 Days Report, July 2007[b]
Number of complaints		
At the beginning of FY 2005	552	363
At the end of FY 2005	1,275	404
Resolved during FY 2005	N/A[c]	120

[a]Letter of Margo M. McKay, Assistant Secretary for Civil Rights, USDA, to the Chairman, Subcommittee on Government Management, Organization, and Procurement, House Committee on Oversight and Government Reform, June 29, 2007.

[b]USDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

[c]As reported by USDA, without explanation.

Moreover, ASCR's July 2007 report claiming success in addressing the backlog of complaints is questionable because at least 2 months earlier, officials of ASCR and USDA's Office of General Counsel (USDA OGC) had started discussing a plan of "triage" to address a backlog of complaints by hiring additional attorneys to draft final decisions on those cases. Also, in July 2007, the Assistant Secretary for Civil Rights informed us that she was to brief the Secretary on her plan to reduce that backlog, but was not comfortable sharing the plan with GAO. We later learned that ASCR had identified a backlog of 885 customer and employee discrimination complaints, according to ASCR data. Furthermore, while claiming success, ASCR was holding old complaints from customers that it had not resolved. ASCR data show, for example, that it had 46 complaints dating from 2002 and before, which remained open at least until August 2007.[11]

Based on our interviews, we attribute the growth of the latest backlog to the lack of adequate management controls and vigilance. In December 2006, we asked ASCR's former Director, Office of Adjudication and Compliance, to provide us with management reports on the status of discrimination complaint cases. The former Director stated that she had no such management reports; that management reports on customer complaints were not required by law; and that since a backlog had been addressed in 2004, she was confident that the handling of complaints since

[11]In addition, during this time period ASCR held in abeyance complaints associated with pending and potential class action litigation.

then had been timely. However, according to a briefing document that ASCR used within USDA:

- The inventory of customer complaints had grown from 552 cases to 1,356 cases from the end of fiscal year 2004 to the end of fiscal year 2007. ASCR identified 395 customer complaints as backlogged.
- The inventory of employee complaints stood at 1,444 cases and 1,306 cases at the end of fiscal years 2004 and 2007, respectively. ASCR identified 490 employee complaints as backlogged.

To address the customers' complaints, in August 2007 USDA contracted for six attorneys to draft final agency decisions and expected that this effort would be completed by the end of 2007. To address the employees' complaints, USDA anticipated using these attorneys and to contract with the U.S. Postal Service as well, expecting that these cases would be completed by the end of fiscal year 2008.

ASCR's tardy case processing of certain customer complaints may prevent USDA from compensating a farmer even though USDA may find sufficient evidence of discrimination. This is because USDA believes it cannot settle certain claims filed with USDA once a 2-year period for filing in federal court has expired if the individual did not also file their claim in federal court, and regardless of whether the individual timely filed their claim with USDA.[12] We are aware of one such case in which USDA found discrimination in 2005, but the farmer has not received a compensatory damage payment from USDA because the 2-year period for filing in federal court had expired. In addition, even though USDA's final decision on the case stated that the farmer's 1997 farm loan debt would be forgiven, a USDA official informed us that has not yet occurred.

In addition, an ASCR document identified 92 cases that were being held in abeyance—that is, ASCR had set these cases aside from receiving a final decision on the merits because the complainant is, or could be, a member of a class action lawsuit. If these cases are not certified as class actions,

[12]A customer may file a complaint (1) with the agency, (2) in federal court, or (3) both. He or she need not file a claim with the agency before filing in federal court. Following a January 29, 1998 legal memorandum from the Department of Justice's Office of Legal Counsel, USDA will not award administrative settlements for Equal Credit Opportunity Act claims once the 2-year statute of limitations for filing such a claim in federal court has passed, unless the farmer has timely filed a complaint in federal court.

then ASCR will consider each complaint individually. Of the 92 cases, 58 appear to be complaints involving farm program litigation.

- 31 cases were classified as *Keepseagle*-related cases filed with USDA between November 1996 and January 2003. The *Keepseagle* case was filed in November 1999 and is certified as a class action case.
- 25 cases were classified as *Garcia*-related cases filed with USDA between March 1991 and January 2006. The *Garcia* case was filed in October 2000.
- 2 cases were classified as *Love*-related cases filed with USDA in 1997. The *Love* case was filed in October 2000.

We also identified one active discrimination complaint filed in 1990, 18 years ago. This complaint involves the American Indians of the Fort Berthold Reservation in North Dakota.[13] USDA investigated this case of alleged discrimination in farm lending in 1999. The lead complainant has requested USDA action many times, and in March 2008, a USDA administrative law judge approved this case for a decision. The judge has scheduled a June 2008 hearing on compensation, should he find in favor of the complainants.

Data ASCR provided contains additional disparities. In addition to its reporting to the Congress and the public, we identified other instances of disparities in the data reported by ASCR on its inventories of customer complaints, as illustrated in the following two tables. Table 2 shows that ASCR reported case resolution data differently to us than it did in an internal departmental briefing document 5 months later. Specifically, for fiscal year 2006, data we were given showed 290 complaints were resolved, while an internal briefing showed 991. Disparities were evident in the earlier fiscal years as well. Table 3 shows disparities in the dates of 10 discrimination complaint cases that ASCR provided us on two occasions. For example, in case number 7, data we were given first indicated that the case was open in May 2003, and subsequent data indicated 1998 or 1999, a 4- or 5-year variance.

[13]A second and separate case involving American Indians of the Fort Berthold Reservation has been incorporated within the *Keepseagle* class action case.

Table 2: USDA Customers' Complaints of Discrimination Resolved by ASCR, Fiscal Years 2004 through 2006

	Data provided to GAO August 2007	USDA briefing document January 2008
FY 2004	953	1,561
FY 2005	258	N/A[a]
FY 2006	290	991

Sources: ASCR data provided to GAO in August 2007 and an ASCR briefing document of January 2008

[a]As reported by USDA, without explanation.

Table 3: Examples of Variations in Opening Dates of Customers' Discrimination Complaint Cases Provided by ASCR to GAO

Case number assigned by GAO	Opening date reported to GAO in August 2007	Opening date reported to GAO in January 2008	Variance	Case age based on January 2008 data
1	December 2005	March 1991	14 years	17 years
2	[a]	November 1996	[a]	11 years
3	[a]	February 1998	[a]	10 years
4	[a]	October 1998	[a]	10 years
5	[a]	October 1998	[a]	10 years
6	[a]	October 1998	[a]	10 years
7	May 2003	1998-1999	4-5 years	9 years
8	September 2001	October 2000	11 months	7 years
9	June 2003	June 2001	2 years	6 years
10	April 2003	July 2002	11 months	5 years

Source: Data provided by USDA

Note: These cases are being held in abeyance by USDA (not being resolved at this time) because they have been associated with a class action lawsuit, or a potential class action lawsuit.

[a]No data on this case were provided in August 2007.

ASCR officials and staff recognize that the data they use are unreliable. They provided us with examples of known data inaccuracies, including (1) data that are being transferred into the new ASCR database, which is intended to address the existing data management problems, and (2) data that USDA reports to the Equal Employment Opportunity Commission on employees' complaints. Other ASCR officials and staff told us that erroneous data had been migrated to the new database, and start-up problems with the new system have further contributed to data inaccuracies. Furthermore, ASCR staff reported that occasionally

customers' case files cannot be readily found, the files are missing documents, and sometimes the files contain documents that pertain to other cases. Nevertheless, while correspondence from the former Director, Office of Adjudication and Compliance, to USDA's OIG said that only verified data were entered into the new system to prevent "garbage in, garbage out," USDA's OIG reported that ASCR had not implemented a process to validate the accuracy of its data and did not have sufficient controls over the entry and validation of data into its new system.

Steps ASCR took to speed up its work affected quality. We found that as ASCR accelerated the pace of its work to reduce its backlogs of discrimination complaints in 2004, it took steps may have affected the quality of its work. First, ASCR's plan to accelerate its work did not address how the quality of its work would be maintained.

- ASCR's plan called for USDA's investigators and adjudicators, who prepare agency decisions, to nearly double their normal pace of casework for about 12 months. For example, ASCR's investigators were expected to increase their productivity from about 16 to 30 cases per year.
- One technique that ASCR adopted was to have its investigators conduct interviews and interrogatories by phone and email whenever possible. Civil rights investigative standards indicate that interviews by telephone are acceptable under certain circumstances, such as when there is good reason to conclude that the complainant is the only person affected by the allegations of discrimination.[14] ASCR employees told us that it is now usual for ASCR investigations to be conducted by phone.
- Another feature called for one employee to respond to about 3,000 "claims and inquiries" submitted as a result of a letter writing campaign. However, the plan did not make clear what procedures ASCR staff were to use for reviewing and responding to these cases or the quality controls that were to be applied. ASCR employees reported to us that an unknown portion of these claims and inquiries were either lost or disregarded.

[14]Department of Justice, Civil Rights Division, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (Washington, D.C.: September 1998). In addition, the President's Council on Integrity and Efficiency, *Quality Standards for Investigations* (December 2003) calls for due professional care in performing investigations by, among other things, achieving thoroughness through the application of appropriate techniques.

Second, ASCR's former Director, Office of Adjudication and Compliance, commented in writing on the quality of USDA's work on employees' complaints in fiscal year 2004. The former Director stated that contractors' work in preparing draft decisions was fair to average and required much revision. In addition, the former Director related that USDA issued many "summary" decisions on employees' complaints that did not resolve questions of fact, leading to the appeal of many USDA decisions to the Equal Employment Opportunity Commission. The former Director expressed concern that such summary decisions by USDA "could call into question the integrity of the process because important issues were being overlooked."

Finally, as in the past, inadequate working relationships and communications within ASCR have complicated its efforts to produce quality work products, and adversely affected employees. According to ASCR documents and our interviews, instability in ASCR's civil rights offices resulting from reorganizations, management and staff turnover, low morale, and concerns about the treatment of staff in ASCR's civil rights offices have been a serious obstacle to improving the management of these programs. Over the past 5 years, many complaints of discrimination have been filed against ASCR program managers and officials. In addition, some staff have feared retaliation for reporting program and management related problems, or for raising questions about management actions.

USDA's OIG and GAO have long reported on problems in resolving discrimination complaints. USDA's stated policy is to efficiently respond to discrimination complaints, but over the past years it has not done so. USDA's OIG and GAO have together invested heavily in reporting on and developing recommendations to overcome USDA's untimely handling of discrimination complaints. In 1999, for example, while we reported that USDA had exceeded four target dates for closing backlogs of customers' complaints and three for employees' complaints, we made recommendations to address USDA's continual management turnover in civil rights offices, frequent reorganizations, inadequate staff and managerial expertise, and poor working relationships and communication within the Office of Civil Rights.[15] USDA management agreed with these reports and committed to implement our recommendations.

[15]GAO, *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints*, GAO/RCED-99-38 (Washington, D.C.: Jan. 29, 1999).

However, by 2000, USDA's OIG stated that it was making its seventh attempt to provide USDA's Office of Civil Rights with constructive ways to overcome its case processing inefficiencies.[16] The OIG also stated that officials of the Office of Civil Rights had agreed to a major transformation of the system for processing complaints, but, in fact, the office did not make any significant changes. The OIG stated that unless the Office of Civil Rights provided effective leadership, changed the organizational culture, and addressed its customer focus and process engineering, it would be questionable whether further complaints of discrimination would receive due care. In 2002, USDA officials again committed to setting and meeting time frames for processing discrimination complaints. In 2003, we identified the processing of discrimination complaints as a significant management challenge for USDA.[17] Four years later, in August 2007, USDA's OIG designated civil rights as a major management challenge at USDA.[18] The OIG commented that because of the conditions it had found, public confidence in USDA's upholding of civil rights might be lost.

In addition, in 2007, USDA's OIG reported that material weaknesses persisted in ASCR's civil rights control structure and environment for processing employees' discrimination complaints.[19] The OIG found that although USDA's Office of Civil Rights had reduced the average time for processing employees' complaints, the average exceeded the Equal Employment Opportunity Commission's standard of 270 days. According to the OIG, 67 cases took, on average, over 500 days, which the OIG considered to be representative of cases in which ASCR had to issue a decision on the merits of the complaint. In addition, the OIG reported that:

- 13 of the 64 case files that the OIG selected to review could not be located for a month; one required 6 months to locate; and one had to be recreated;

[16]USDA Office of Inspector General, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, Audit Report No. 60801-4-Hq (Washington, D.C.: Mar. 10, 2007).

[17]GAO, *Major Management Challenges and Program Risks: Department of Agriculture*, GAO-03-96 (Washington, D.C.: January 2003).

[18]USDA Office of Inspector General, *Management Challenges* (Washington, D.C.: Aug. 1, 2007). USDA's OIG previously identified civil rights as a major management challenge for USDA in August 2004.

[19]USDA Office of Inspector General, *Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints*, Audit Report No. 60601-04-Hy (Washington, D.C.: May 14, 2007).

- 21 of the 64 case files had missing documentation; and
- 11 of the 64 cases had incorrect data recorded in ASCR's database, including one case in which the complainant was incorrectly identified as white rather than African-American.

ASCR's former Director, Office of Adjudication and Compliance, responded that there were several causes for these conditions: the Equal Employment Opportunity Commission standards were unrealistic, there was a substantial backlog of cases, there had been an influx of new cases, there were staffing and resource shortages, and individual USDA agencies were not meeting their responsibilities. ASCR's former Director also claimed that these weaknesses in resolving employees' discrimination complaints would be addressed in 5 years. However, the OIG observed that ASCR did not have an effective plan to get this done.

ASCR's Reports on Minority Participation in Programs Are Unreliable and of Limited Usefulness

ASCR has published three annual reports on the participation rate of socially disadvantaged farmers and ranchers in USDA programs, which are required by section 10708 of the 2002 Farm Bill.[20] Over time, these reports could help make more transparent the progress made by socially disadvantaged farmers and ranchers in accessing USDA programs. However, as USDA discloses in these reports, the data USDA has reported are statistically unreliable. In addition, our analysis of the USDA reports shows that they do not include basic reference data needed for understanding the reports and examining trends.

The reports are to provide statistical data on the participation of farmers and ranchers in USDA programs by race, ethnicity, and gender, and in addition, USDA has included descriptions of its success stories in providing outreach and assistance to socially disadvantaged farmers and ranchers. USDA has stated that through these reports, it intends to make clear that it is committed to and accountable for fair and equitable service to all customers. However, the statistical data USDA reports on program

[20]USDA, *Bridges to the Future: 2003 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: December 2004); *Bridges to the Future: 2004 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: December 2005); and, *Bridges to the Future: 2005 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: June 2007).

participation are unreliable. USDA stated that it does not have a uniform method of reporting and tabulating race and ethnicity data among its component agencies. More specifically, according to USDA, it does not have approval from OMB to implement standardized data collection of demographic information directly from program participants. For example, according to USDA, the Cooperative State Research, Education, and Extension Service; the Rural Business and Cooperative Service; and the Risk Management Agency are not authorized to collect race and ethnicity data for 18 programs. USDA reported that only the Farm Service Agencies' farm loan program collects reliable and complete information on socially disadvantaged farmers and ranchers. Except for the data of the Farm Service Agency, most of USDA's demographic data are gathered by visual observation of the applicants, and USDA states in its reports that it considers visual observation to be unreliable, especially for ethnicity. Individual traits, such as ethnicity, may not be readily evident to an observer. In addition, for some Farm Service Agency programs, applicants who chose not to identify their race were, until 2004, designated as "white male." When taken together, according to USDA, the mixture of data available for reporting is statistically unreliable.

In 2004, to overcome these conditions, ASCR published a notice in the *Federal Register* seeking public comment on its plan to collect additional data on race, ethnicity, gender, national origin, and age. While ASCR received some public comments, it did not follow through and obtain OMB's approval to collect the data. In a January 2008 briefing document, an ASCR work group stated that ASCR does not have the staff or financial resources to proceed with this project. On May 8, 2008, ASCR officials said that they plan to meet again in the near future to further discuss this matter.

In addition, our analysis of these USDA reports shows that they are of limited usefulness because they do not include the basic reference data needed for understanding the reports and examining trends. USDA has published its demographic data as the percentage of program participants by county and state. While observers can track the percentage changes in program participation over time, the data are of limited usefulness without knowing the actual number of program participants and the census data for each county and state. For example, USDA would now report that in a particular county, 20 percent of the farm program participants were minority farmers and 80 percent were nonminority farmers. Greater insight would be provided if USDA also reported that there were 100 program participants in the county—the report reader would then know that 20 were minority program participants. Further insight would be

provided if USDA reported from census data that in this county, 125 of the 1,000 farmers were minority farmers. By including census data, USDA could also facilitate the observation of population shifts along with changes in program participation. Furthermore, USDA's Web-based tables that contain data on program participation do not facilitate analysis. USDA publishes its data in about 1,370 separate tables and 146 maps that are not searchable files. Because the underlying data are not searchable, readers cannot make simple comparisons that would enhance data interpretation. If the data were searchable, it could be possible to compare minority participation by program, geographic location, and year.

Finally, a section of the report includes highlights of 16 USDA agencies' efforts to reach out to minority and socially disadvantaged farmers. While these highlights provide useful perspective on agency activities to serve socially disadvantaged farmers and ranchers, the information is somewhat limited because the many positive agency activities are reported as anecdotes, which do not reveal the full extent of USDA agency outreach activities. The following examples illustrate USDA's reporting of its outreach efforts for fiscal year 2005.

- *Farm Bill Forums.* USDA reported that in anticipation of the 2007 Farm Bill, the Office of Outreach assisted with planning and conducting "listening sessions" in various locations with minority farmers and ranchers.

- *Partners Meetings.* USDA reported that a second annual partners meeting was held in August 2005. The meeting provided opportunities for more than 125 representatives of community-based organizations for farmers and ranchers to engage with USDA officials about issues that affect the continued well-being of the minority and small farm and ranch community.

- *The Tobacco Buyout Program.* USDA reported that a comprehensive multimedia campaign was conducted to inform tobacco quota holders and farmers of the buyout program, and to encourage them to sign up for the buyout program. The Office of Outreach participated in the design of communication strategies to help ensure that small and limited-resource producers received accurate information about the buyout in a timely manner and the office also called attention to the need to promote financial investment planning and transitioning to alternative crops.

ASCR's Strategic Planning Is Limited and Does Not Address Key Steps Needed to Achieve Its Mission

In light of USDA's history involving significantly controversial issues, including allegations of systemic discrimination against USDA customers carried out through the design and delivery of USDA programs as well as discriminatory treatment of USDA employees, strategic planning is vital for providing proactive ASCR leadership. Results-oriented strategic planning provides a roadmap that clearly describes what an organization is attempting to achieve, and over time, it can serve as a focal point for communication with the Congress and the public about what has been accomplished. Results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and decision making to hone the strategic plan. Taken together, ASCR has started to develop a results-oriented approach as illustrated in its first strategic plan entitled *Assistant Secretary for Civil Rights: Strategic Plan, Fiscal Years 2005-2010* and its *ASCR Priorities for Fiscal Years 2007 and 2008.* The elements of these plans are summarized in appendix II. However, ASCR has a long distance to go before its approach and plans can be effective.

ASCR has designed its missions and strategic goal. We found that ASCR has made progress by describing a compelling mission and strategic goal, but has not involved stakeholders, assessed the environment, and aligned its activities, core processes, and resources to achieve its mission and strategic goal.

- One of ASCR's missions is to ensure that USDA is in compliance with civil rights laws and regulations. This mission calls for ASCR to process employees' discrimination complaints as required by the Equal Employment Opportunity Commission, and to review USDA agencies' implementation of civil rights laws and regulations.

- ASCR's second mission is to provide leadership to promote equal opportunity, equal access, and fair treatment for all USDA employees and customers.

ASCR also has a strategic goal—to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. This two-part strategic goal was the basis for the development of ASCR's strategic plan.

Results-oriented organizations take several steps to effectively implement their mission and achieve their desired outcomes. They (1) involve

stakeholders, (2) assess the environment, and (3) align activities, core processes, and resources. However, we found that ASCR's planning has several shortcomings. First, while results-oriented organizations base their strategic planning, to a large extent, on the interests and expectations of their stakeholders, ASCR's strategic plan states that ASCR relied on input from a variety of internal and external customers in developing its strategic plan. However, the plans do not identify who provided input or contain a discussion of the interests and perspectives of ASCR's stakeholders. For example, while ASCR's stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR's strategic planning does not address the diversity of USDA's field staff. ASCR's external stakeholders said that they have a high degree of interest in ASCR's planning, and several discussed their involvement in ASCR's annual meetings. ASCR refers to its stakeholders as "partners"—which include representatives of community-based organizations and minority interest groups. These partners have attended ASCR's annual partners meetings and discussed their wide ranging interests in ASCR's mission. However, ASCR's partners' interests vary from ASCR's strategic plan. We developed a summary of ASCR's partners' interests based on interviews with the representatives of a selection of USDA's partners' groups, and we also considered issues identified in past studies of USDA. For example, ASCR's partners are interested in improvements in (1) USDA's methods of delivering farm programs to facilitate access by underserved producers, (2) the county committee system so that they are better represented in local decisions, and (3) the diversity of USDA employees who work with minority producers. A list of these interests is included in appendix III.

In response, ASCR's Director of Outreach stated that some of ASCR's fiscal year 2008 priorities for outreach respond to particular interests of ASCR's partners. The Director referred, for example, to ASCR's initiatives to coordinate and report on USDA-wide outreach activities, to help ensure that USDA agencies have formal outreach programs with full-time staff, to train outreach coordinators, and to improve ASCR's annual reporting on minority participation in USDA programs.

Second, by building an environmental assessment into the strategic planning process, results-oriented organizations identify external and internal factors that can influence the achievement of their long-term goals. For example, some information about the civil rights environment

as it affects farmers is described in a study of the Mississippi Delta area by the U.S. Civil Rights Commission, and in a report on minority and women farmers by USDA's Economic Research Service.[21] ASCR's report does not discuss the development or use of such information. An assessment of the external environment is especially important because ASCR's Office of Outreach is to provide national leadership and coordination for USDA programs and services to ensure equal and timely access for all of USDA's constituents, especially the underserved. As for the internal environment, ASCR recognizes that the efforts of various USDA agencies and offices that perform critical functions are necessary for full implementation of ASCR's strategic goal. However, ASCR's planning does not identify the most critical agency functions that relate to ASCR's strategic goal including their culture, management practices, and business processes. While this is a significant endeavor, getting a good understanding of these facets of USDA operations could help contribute to determining what ASCR may need to accomplish and how ASCR could best work with other USDA agencies and offices. ASCR's Director of Outreach reported that her office is making some progress in developing relationships with USDA's agencies in their efforts to improve outreach to minority farmers.

Third, results-oriented organizations align their activities, core processes, and resources to support their mission and desired outcomes. Such organizations start by assessing the extent to which their programs and activities contribute to meeting their mission and make linkages between levels of funding and their anticipated results. ASCR used an organizational framework for developing its planning, according to an ASCR official, and developed objectives for each of ASCR's existing offices. However, these plans do not reflect consideration of the extent to which each of its office's activities is to contribute to ASCR's missions. For example, one ASCR strategic objective is to strengthen partnerships with historically black land-grant universities through scholarships provided by USDA, but it is not clear how scholarships bear significantly on ASCR's mission. Moreover, the plans do not make linkages between levels of funding and ASCR's anticipated results—without such a discussion it is not possible to determine whether ASCR has the resources needed to achieve its strategic goal.

[21]U.S. Civil Rights Commission, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume VII: The Mississippi Delta Report* (Washington, D.C.: February 2001) and U.S. Department of Agriculture, Economic Research Service, *Minority & Women Farmers in the U.S.* (Washington, D.C.: May 1998).

ASCR could better measure performance to gauge progress. Results-oriented organizations establish performance measures that demonstrate results, are limited to the vital few performance measures, respond to multiple priorities, and link to responsible programs. In addition, they pay special attention to issues relating to data collection. Moreover, they have to balance the cost of collecting data against the need for data that are complete, accurate and consistent enough to document performance and support decision making at various organizational levels. In this area, ASCR's plans leave room for many forward steps.

- While ASCR identified its Office of Outreach as having responsibility for providing national leadership and coordination for programs and services across USDA agencies to ensure customers have equal and timely access, the measures it adopted focus on counting participants at USDA training workshops, rather than on the outcome of its outreach efforts on access to benefits and services.

- ASCR's planning does not link to the plans of USDA agencies or department as a whole, and does not discuss the potential for linkages to be developed.

- To measure progress that USDA agencies make in compliance with relevant USDA government regulations and laws, ASCR states it will use a percentage of agencies in compliance, but had not established the baseline and targets.

ASCR's plans have an important gap in the area of performance measurement, especially in an era of limited resources. They do not discuss the kinds of data that USDA agencies collect or analyze that would demonstrate progress towards ASCR's strategic goal. To leverage resources, potential sources of data may be USDA's National Agricultural Statistics Service, which conducts the *Census of Agriculture*, and the Economic Research Service, which analyzes and reports on trends in agriculture, including social changes.[22]

[22]Measuring racial discrimination is important to understanding where it occurs, the extent of its impact, and what to do about it. Researchers have recommended that agencies explore the use of field studies, such as has been done since the 1970s to detect racially based discrimination in housing. See National Research Council, National Academy of Sciences, *Measuring Racial Discrimination* (Washington, D.C.: 2004).

ASCR's planning has not considered the use of performance information for identifying performance gaps. Results-oriented organizations—after building a performance measurement system—put performance data to work to identify gaps in their performance, report on that performance, and finally use that information to improve their performance to better support their missions. However, the data that ASCR now identifies in its plans, such as the number of persons who are aware of USDA programs, will contribute relatively little to an understanding of USDA's performance gaps in meeting ASCR's strategic goal. For example, such data will not provide any insight into how well USDA staff work with and assist minority and limited-resource customers, whether the programs provide for equitable treatment, and how well USDA upholds the civil rights of its employees. Also, ASCR will need to work closely with other USDA agencies, such as the Farm Service Agency, the Natural Resources Conservation Service, Cooperative State Research, Extension, and Education Service, and the Rural Development Mission Area, but the ASCR plans do not discuss how their data can be used to contribute to identifying gaps in USDA's performance. Nevertheless, ASCR officials said that they have taken steps in this direction through annual reviews of the performance of USDA agency heads. Through these reviews, ASCR officials said they are making some recommendations for agency change, although the USDA agencies are not required to follow those recommendations.

Concluding Observations

USDA has been addressing allegations of discrimination for decades. One lawsuit has cost taxpayers nearly a billion dollars in payouts to date, and several other groups are seeking redress for similar alleged discrimination. While ASCR's policy is to fairly and efficiently respond to complaints of discrimination, its efforts to establish the management system necessary to implement the policy have fallen far short. For example, both we and USDA's OIG have observed that ASCR does not have oversight and control over its inventory of discrimination complaints—controls that are vital to effective management. Despite the numerous past efforts to provide this office with constructive analysis, including recommendations to set timeframes for resolving complaints from beginning to end, significant management deficiencies remain. Such resistance to improve its management system calls into question USDA's commitment to more efficiently and effectively address discrimination complaints both within the department and in its programs.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

Contact and Staff Acknowledgments

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. For further information about this testimony, please contact Lisa Shames, Director, Natural Resources and Environment at (202) 512-3841 or shamesl@gao.gov. Key contributors to this statement were Charles M. Adams, Kevin Bray, Robert Cramer, Nancy Crothers, Richard Egan, Ronald Fecso, Bart Fischer, Cardell Johnson, Elizabeth Johnston, Karen Keegan, Kerry Lipsitz, Nhi Nguyen, Andrew O'Connell, Terry Richardson, and Susan Sawtelle.

Appendix I: Scope and Methodology

During this performance audit, we reviewed relevant reports prepared by the U.S. Department of Agriculture (USDA), USDA's Office of Inspector General (OIG), the U.S. Civil Rights Commission, the U.S. Equal Employment Opportunity Commission, and GAO, among others. We also conducted over 50 interviews with officials and staff of USDA's Office of the Assistant Secretary for Civil Rights (ASCR); over 65 interviews with staff of USDA's Farm Service Agency, Natural Resources Conservation Service, Rural Development Mission Area, Cooperative State Research, Extension, and Education Service, the National Agricultural Statistical Service, and USDA field offices in California, Florida, North Carolina, Texas, and Washington; 20 interviews with USDA stakeholder groups, including The Rural Coalition, United Farmers USA, the Federation of Southern Cooperatives, South East Asian American Farmers Association, the Intertribal Agricultural Council, the National Tribal Development Association, the Hispanic Farmers and Ranchers of America, the National Black Farmers Association, National Hmong American Farmers, and the Coalition of USDA Minority Employees; and three interviews with officials of the U.S. Commission on Civil Rights and the U.S. Equal Employment Opportunity Commission. In addition, we considered GAO and the Office of Management and Budget's (OMB) guidance on strategic planning and performance.[1]

Unlike our prior reviews of USDA civil rights activities when we readily obtained access to records that were necessary for our work, in this case our efforts were impeded by delays in obtaining records. We made repeated requests for USDA records—including requests directly to the Assistant Secretary for Civil Rights and the Deputy Secretary. These requests concerned records relating to ASCR's priorities, ASCR's strategic plan, ASCR civil rights related performance assessments of agency heads, correspondence between ASCR and USDA's Office of General Counsel, unresolved discrimination complaints, outreach, ASCR office budgets, and USDA's request for OMB approval to collect data needed for reporting on minority farmer participation in USDA programs, among others. In January 2008, we requested the Deputy Secretary's cooperation and assistance in arranging for access to USDA records, and we subsequently received many, but not all, of the records we sought. Nevertheless, the records we received were sufficient for our work to meet generally accepted government auditing standards. These standards require that we

[1]GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Furthermore, starting in January 2008, several USDA employees contacted us with certain allegations pertinent to our work, such as the possible destruction of records and manipulation of discrimination complaint data related to GAO's engagement. Consequently, we and USDA's OIG conducted a number of additional interviews with agency staff. Based on the interviews we conducted, we learned of additional deficiencies in the handling of discrimination complaints, among other things, but did not find evidence that our work had been purposely undermined. Also, several allegations not directly related to our work came to our attention that we will refer to USDA's OIG and the Department of Justice for further investigation.

Appendix II: USDA ASCR Initiatives, and Strategic and Priority Plans

Table 4: ASCR Initiatives for Fiscal Year 2004

Challenges	Initiatives/Accomplishments	Status as of Dec. 2007
Organization	Consolidated USDA offices with civil rights focus into ASCR	Complete
	Staff were temporarily assigned to address discrimination complaints	Complete
Systems	Develop a professional system for managing discrimination complaints	On-going
Procedural	Regulations are being drafted to address the relationship between USDA's Office of General Counsel and ASCR's Office of Adjudication and Compliance	On-going
Operational	Created a unit to handle incoming phone calls for ASCR	Complete
	Reduced backlogs of customer and employee discrimination complaints	Complete
	USDA's alternative dispute resolution policy was amended in April 2006 to enhance the use of alternative dispute resolution	Complete
	Conduct a public awareness campaign—several public forums and "listening sessions" have been held to discuss partnerships, the *Minority Farm Registry*, the *Notice of Farm Loan Application Receipts*, and the next Farm Bill	On-going
Accountability	Prevent program complaints—ASCR has convened three Partners Meetings with community based organizations and groups representing minority and limited resource farmers to address concerns about access to farm programs	On-going
	Prevent employee complaints—training for managers on equal employment opportunity is mandatory, and employee development programs are being implemented	On-going
	Implement the "No Fear Act"—Public Law 107-174 requires federal agencies to be held accountable for violations of anti-discrimination laws—USDA's quarterly reports are being posted on time, and all employees have received training	Complete
	ASCR completed an accountability policy for USDA—USDA's Office of Human Resources will ensure that all USDA managers are held accountable for discriminatory actions	Complete
	An annual civil rights conference has been established	Complete

Source: USDA ASCR briefing document as of November 2007

Table 5: ASCR Strategic Objectives for Fiscal Years 2005 through 2010

Objective	Selected Key Performance Indicator for 2010
Strengthen partnerships between USDA and 1890 Community (historically black land-grant institutions).	Increase student scholarships provided by USDA from 25 to 33.
Strengthen partnerships between USDA and 1994 land-grant institutions (Native American tribal colleges).	Increase student scholarships provided by USDA from 5 to 9 by 2010.
Enhance the Office of the Secretary and Departmental Office employees' knowledge of the fairness, neutrality, and confidentiality of alternative dispute resolution (ADR) usage.	Increase the knowledge of employees familiar with alternative dispute resolution from 100 to 950.
Ensure USDA agencies and offices are in compliance with USDA regulations and government-wide ADR laws and regulations.	Percentage of agencies in compliance—baseline and targets to be determined.
Achieve an efficient USDA-wide outreach program for all customers.	Numbers of socially and economically disadvantaged persons who received training for the first time—baseline and targets to be determined.
Create and strengthen partnerships with community and faith-based organizations, corporations, foundations, educational institutions and other targeted communities to build coalitions for USDA programs and opportunities.	Increase number of partnerships and coalitions from 10 to 50.
Increase the awareness of USDA programs and opportunities for the socially and economically disadvantaged persons and also under-represented persons.	Increase number of individuals aware of participation requirements from 100,000 to 160,000.
Develop and implement an efficient complaint process that adheres to civil rights laws and regulations.	Increase the number of cases processed within regulatory timeframe from 40 to 100 percent for employee complaints and from 16 to 100 percent for customer complaints.
Ensure USDA agencies and offices are in compliance with EEO laws.	Percentage of USDA agencies brought into compliance—baseline and targets to be determined.
Meet EEOC standards for a Model EEO Program.	Increase percentage of EEOC indicators that are met from 33 to 100 percent by 2009.

Source: USDA

Table 6: List of Civil Rights Priorities and Selected Initiatives for Fiscal Y ars 2007 and 2008

Diversity	Fill senior executive position to lead ASCR's Outreach and Diversity Division
	Add workplace diversity as a core value
	Develop and conduct mandatory Diversity Awareness Training for all supervisors and employees
	Offer training, including a disability training conference and an AgLearn training module on sexual orientation
	Establish a diversity forum to foster communication between USDA senior management and internal customers of USDA
Outreach	Develop and implement a comprehensive USDA-wide outreach plan
	Provide oversight and coordination of minority participation data
	Conduct a joint review with USDA's Agricultural Research Service of the Hispanic Serving Institutions National Program
Conflict Prevention and Resolution	Create an Alternative Dispute Resolution (ADR) video on mediation
	Recommend establishing dedicated ADR Director positions in USDA agencies
	Conduct a USDA-wide ADR awareness survey
Continuing Civil Rights Initiatives	Comply with No FEAR Act requirements
	Update civil rights directives, regulations, and policies as needed
	Continue to strive to ensure that Final Agency Decisions meet legal sufficiency standards and time requirements
	Convene biennial USDA Civil Rights Conference in 2008
Communications and Public Awareness	Create a strategic marketing campaign focused on ASCR goals and civil rights accomplishments by USDA agencies
	Recognize and award internal and external stakeholders for civil rights best practices

Source USDA

Appendix III: Interests of Selected USDA Stakeholders in Civil Rights Related Matters as Identified by GAO in 2007 and 2008

USDA Programs	
Outr ach Programs	USDA outreach programs for underserved producers could be much better.
	Systematic data on minority participation in USDA programs are not available.
	The 10708 Report and Minority Farm Register have been ineffective.
	Partnerships with community-based organizations could be better used.
Program Delivery	Methods of USDA program delivery need to better facilitate the participation of underserved producers and address their needs.
	USDA could do more to provide assistance in accessing markets and programs.
	USDA could better address cultural and language differences for providing services.
	Some USDA program rules and features hinder participation by underserved producers.
	Some USDA employees have little incentive to work with small and minority producers.
	County offices working with underserved producers continue to lack diversity, and some have poor customer service and/or display discriminatory behaviors towards underserved producers.
	USDA lacks a program that addresses farm worker needs.
	There continues to be reports of cases where USDA is not processing loans for underserved producers.
	Some Hmong poultry farmers with guaranteed loans facilitated by USDA are experiencing foreclosures.
County System	The county committee system does not well represent minority producers.
	Minority advisors are ineffective because they have no voting power.
	USDA has not done enough to make underserved producers fully aware of county committee elections, and underserved producers have difficulties winning elections.
Investment	There is a lack of USDA investment in research and extension services that would determine the extent of minority needs.
Census of Agriculture	The Census of Agriculture needs to better count minority producers.
Foreclosure	USDA may continue to be foreclosing on farms belonging to producers who are awaiting decisions on discrimination complaints.
USDA Internal Issues	
Authority	ASCR needs authority to exercise leadership for making changes at USDA.
Resources	USDA and ASCR need additional resources to carry out civil rights functions.
Diversity	Greater diversity among USDA employees would facilitate USDA's work with minority producers.
Access	Producers must still access services through some USDA employees who discriminated against them.
Management Structure	The Office of Adjudication and Compliance needs better management structure and function.
	Backlogs of discrimination complaints need to be addressed.
	Alternative dispute resolution techniques to resolve informally employee complaints should be used consistently and documented.
	Civil rights compliance reviews of USDA agencies are behind schedule and should be conducted.
General Counsel Review	USDA's Office of General Counsel continues to be involved in complaint cases.

Source GAO Analysis of 18 interviews with USDA stakeholders and review of 16 reports related to civil rights at USDA

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Mr. TOWNS. Thank you very much. Let me thank all three of you for your testimony.

Let me begin, I guess, by asking the IG, throughout GAO's investigation there were reports that the Department withheld access to certain records, instructed employees not to cooperate with the GAO, and actually forced GAO's investigators to leave USDA premises when GAO was seeking to interview USDA employees as part of its review.

Because GAO is an independent nonpartisan agency that works for Congress, your Department's denial of access of GAO to records and employees also denies Congress' role in providing effective and appropriate oversight.

Why was GAO told to leave USDA's offices in February 2008? Who made that decision?

Ms. FONG. I will take a crack at that question, and I would invite any information from Ms. Shames, as well.

We were called by GAO in February, after the situation had come to a head, and what we were told by GAO was that they had sought to interview USDA employees about some allegations that documents may have been shredded improperly or that data may have been erroneously changed. At that time, we did not know the background on that, but we immediately saw that there was an issue. Our sense was that the allegations, if true, would potentially indicate criminal conduct, and so we felt very clearly that we had jurisdiction within the IG's office to look into this, so we reached out to GAO's investigative staff and decided that we would work this jointly to deal with the concerns that had been articulated by USDA's General Counsel.

I think the General Counsel had two concerns. One is whether GAO's investigative staff had authority to conduct criminal investigations; and, second, whether or not USDA employees were given the appropriate advice on their rights and responsibilities. We believed that by getting involved ourselves with GAO that we could address those concerns on the part of the General Counsel, and at the same time accommodate GAO's need to get access to the information, as well as carry out our responsibility to look into potential criminal issues.

I think we were able to successfully resolve that situation. We were able to interview the employees that were involved, and to complete the work.

Ms. SHAMES. If I might jump in, Mr. Chairman?

Mr. TOWNS. Sure.

Ms. SHAMES. The bottom line is that in the end GAO was able to interview, along with the OIG, all of the USDA employees that we felt we needed to talk to to gather more information concerning several allegations that we heard concerning obstructing GAO's work, shredding some documents, as well as manipulating some of the data.

In the end, we got full cooperation from USDA. We were able to gather sufficient information to either refer some of these allegations back to the Inspector General or to the Department of Justice, and in the end GAO was able to get sufficient information to be able to report out on the findings that I gave to you today.

Mr. TOWNS. Right. Thank you very much.

Let me go to you, Ms. McKay. You heard the testimony from Mr. Boyd, of course, and Mr. Givens, and you stated that county committees played no role in the disbursement of USDA program benefits. But we have heard time and time again from farmers that are discriminated against by these county boards when they apply for loans. You heard, as indicated, Mr. Givens, Mr. Boyd, and, of course, I have talked to others, and there are no minorities on these county committees. What role does the county committee play?

Ms. MCKAY. The county committee does not get involved in applications for credit programs. There are other USDA programs and benefits that they do get involved in, such as disaster assistance. They do have a very important role in making sure that local farmers have access to USDA programs and services. However, there is a misconception that they still play a role in approving applications for credit. They do not and have not since 1999. Applications for farm loans, operating loans, go directly to the FSA county office, not to the county committees.

Mr. TOWNS. Now, you indicated that you made some progress.

Ms. MCKAY. Yes.

Mr. TOWNS. Could you be specifics, because the general feeling out there is that nothing is really being done, and they have actually lost confidence in you and your Civil Rights Division. They have lost confidence in it. You heard some of the comments here today.

Ms. MCKAY. Yes.

Mr. TOWNS. So could you respond to that?

Ms. MCKAY. Well, I think that a lot of the comments that were made predate my tenure at USDA, and I understand how they feel. I would feel the same way. But, respectfully, I think they are not looking at what we are trying to do. It is a large ship and it turns slowly, and the initiatives that I am working on right now will eventually pay off. These problems were years in the making; they are not going to go away overnight.

I think I can do a better job in communicating what we are working on, which is why I really appreciate the opportunity to be here today to talk about what we are doing. And I do honestly believe that it will pay off.

Mr. TOWNS. Right. Do you have time tables, aims, objectives, and goals?

Ms. MCKAY. We do. We have a diversity strategic plan. We have an outreach strategic plan. We have strategic plans in place or in clearance for our initiatives.

Mr. TOWNS. Let me just point out to you, USDA's recent history has included several serious accusations of non-compliance with Federal and Civil Rights statutes. As a result of *Pigford,* USDA health as recompensed more than 13,000 Black farmers nearly $1 billion—that is B as in Boy—in damages for Civil Rights violations. Since then, three other class action suits have been filed alleging racial or gender discrimination in FSA programs: *Garcia* v. *Glickman on behalf of Hispanic farmers; Keepseigel* v. *Glickman on behalf of American Indians;* and *Love* v. *Glickman on behalf of women.*

How many USDA employees were terminated or in any way disciplined for those more than 13,000 instances of discrimination?

Ms. MCKAY. I can't tell you that. First of all, I was not here then. Second, there was no reporting mechanism at the time, at the time of *Pigford* in the 1990's. As I mentioned in my statement, we do now have an accountable policy that requires, whenever there is a finding of discrimination, and even sometimes in a settlement, that persons who are found to have committed wrongdoing are referred to the appropriate H.R. office for disciplinary action.

Mr. TOWNS. So do you hear whether anybody was fired?

Ms. MCKAY. I have heard, but I don't think it would be appropriate for me to say here because I don't have any basis in fact for what I am hearing.

Mr. TOWNS. I just find it sort of difficult to think about 13,000 wrongdoings. If it was in private industry, some heads would roll, no ifs, ands, and buts about it, and you know that.

Ms. MCKAY. I don't know that they didn't roll. I just don't know one way or the other.

Mr. TOWNS. Well, according to the information that we have, they did not roll. Many of the farmers in the first panel pointed out discrimination in the administration of programs benefit by FSA. Although the details vary from farmer to farmer, the general outlines of the stories remain the same. A minority farmer tries to apply for farm operating loan through the FSA county office, well in advance of planting season. The FSA county office might claim to have no applications—can you imagine that? No applications available, and ask the farmer to return later.

Now, planting is a timely thing that you have to do during a certain timeframe, and you can't plant after a certain date and time because of a lot of reasons. And upon returning, the farmer might receive an application without any assistance in completing it, and then asked repeatedly to correct mistakes or complete oversight in the loan application.

Why wouldn't somebody give him technical assistance, because some of these farmers don't have a lot of training in terms of their educational training, but they know how to farm.

Ms. MCKAY. Right.

Mr. TOWNS. And they have been doing it all their lives. That is all they know. I mean, why wouldn't technical assistance be available to those farmers?

Ms. MCKAY. Well, we rely on the community-based organizations to provide that kind of local hands-on technical assistance. In addition, we have a Center for Minority Farmers at USDA so that if someone calls we might be able to assist, but we don't have the staff to be throughout the country assisting farmers to fill out applications. We do work with our partners, our community-based and faith-based organizations. We train them. We rely upon them when we have our partners meeting, which we do regularly. And actually they get grants also to provide that kind of technical assistance.

Mr. TOWNS. Another thing they complain about is that when they get the loan, if they get it, it is reduce, and then it is not enough to be able to go and to pay the vendors and to move forward. Of course, here they are with not enough, stuck with a loan,

not being able to plant. How do you expect them to pay it? That is the reason why I think technical assistance just would be automatic, because we know that farmers don't generally have Ph.Ds.

Ms. MCKAY. Right. And also the local FSA office is supposed to provide technical assistance, and if they don't then we need to hear about it through the complaint process.

Mr. TOWNS. Let me ask this, then. If you have an office or an agency that is not complying, what happens to them? If these complaints come in and the fact that there is no applications in the office, and they complain, what generally happens in a case like this? Help me.

Ms. MCKAY. I don't understand what you mean what generally happens.

Mr. TOWNS. There is no repercussion? For instance, if I have an agency and I am providing applications and I have no applications, and I had no applications last year, and I had no applications when I came in, then something should happen to that agency. I mean, the person that is providing the service, shouldn't they be penalized? What happens to them?

Ms. MCKAY. If the case——

Mr. TOWNS. Because if I say to you that I went and they had no application, and then I let you know there is no application, isn't somebody supposed to do something about that?

Ms. MCKAY. I would agree with you. I don't disagree with you. And if the case can be proven, then there should be consequences.

Mr. TOWNS. Well, let me put it this way: I have been in this business a long time. In fact, I am in my 26th year here in the U.S. Congress. I started in this 26 years ago, and I heard the complaints 26 years ago coming from some names that I hear right here on this paper right today. Of course, the complaints were basically saying—I can't hold you responsible for all 26 years, but I can hold you responsible for the years that you have been here, because getting applications does not require a big plan of action and all that; it just requires having some papers where they are supposed to be. Somebody has to be responsible. In terms of your role as the Secretary for Civil Rights, I mean, and knowing these complaints exist, wouldn't you find it necessary to make certain that everyone has applications that they can give out to people?

Ms. MCKAY. Absolutely, but this is the first I am hearing of it. I have not received a case with that allegation.

Mr. TOWNS. Well, let me just say this. There is a problem, and I think you should at least be aware of the fact there is a problem.

Ms. MCKAY. If someone brings those facts to me, I will make sure they get into the system and are thoroughly vetted and looked at.

Mr. TOWNS. And also I just wanted to let you know that *Pigford* v. *USDA*—you know about that one—and then you have these other three that are pending. To me, that is a message. That says that something has to be straightened out here, because also you have *Love* v. *Glickman on behalf of women.* These are problems.

When you talk to people in general, they are not positive at all. I just think you need to know that.

I want to help you. I want to help you. I want to see what we can do. Now, I know we talked about the advisory committees, and

there is very little confidence in that. I understand that the people that oversee, once they get their loan they don't see anything. That is a problem. If I am supposed to work with everybody and see that everybody is treated fairly, and then I come in and put my application in and you give me my loan and then I am blind from that point on, I don't see anything, that is not the way to go. So we need to sort of find a way that makes it possible for people to feel that they are being treated fairly and that they are being treated fairly, and that the farmer has an opportunity to plant in a timely fashion.

If you get the money in December and say that you didn't get it before, what can you plant in December? That is the problem.

So all these things are what people are saying to me, and I have indicated the fact that I started with this 26 years ago. Of course, I left it alone because we had people that were working on the Agriculture Committee and they sort of took it over, but a lot has not happened positively since that time.

So let me put it this way: we are not going to go away. We are going to stay on this. I am willing to help you. Maybe you need some resources. I don't know what it is, but I think you need to be open and honest with us, because this has to be fixed, because if not you are going to have more suits, more suits, more people going to lose their farms, and that is not anything you want to leave as your legacy, that you were around when X percent lost their farms. I don't think you want that as a legacy. I don't think so.

Anyway, thank you for your testimony. I thank all of you for the work that you are doing. I want you to know that we are going to be following up on this. This is not the last time you are hearing from me.

Ms. McKay. Thank you, Chairman. We look forward to working with you.

Mr. Towns. Right. Thank you. Thank you very much.

On that note, the committee is adjourned.

[Whereupon, at 6:13 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

USDA Forest Service
Chief Abigail Kimbell
Yates Building
4th Floor, NW Wing
1400 Independence Ave. SW
Washington, DC 20250

April 21, 2008

Dear Chief Kimbell:

We are writing you this letter to advise you of the egregious civil rights violations occurring in the Forest Service in the Region 5, California. We are women who have been committed to caring for the land and serving the people for many years, with a combined total of over 270 years in service. Our dedication to our jobs and public service appears to hold little importance to the management of Region 5. Between us, we have endured gender discrimination, racial discrimination, harassment, verbal abuse, threats and intimidation, and physical assault and sexual assault. Each of us have been retaliated against for reporting the perpetrators' actions.

Region Five management's failure to prevent and eliminate the hostile work environment has resulted in numerous complaints. We have observed management employees take illegal and underhanded actions to prevent our issues from being brought to light. Managers have lied under oath, undermined our jobs, made false allegations us, refused to deal with workplace violence, taken disciplinary actions against us, and made our workplaces intolerable.

There have been class action lawsuits filed in Region Five by employees desperate for cultural change in the workplace. The *Bernardi* lawsuit was based on discrimination against women in hiring, training and promotion. Region Five was in litigation on that lawsuit from approximately 1978 through 1994. Before the *Bernardi* court oversight ended, women filed the *Donnelly* lawsuit which was based on sexual harassment, hostile work environment and retaliation. The *Donnelly* litigation went from 1995 through 2006. This amounts to almost 30 years of continuous court oversight on gender discrimination issues.

The question we ask you today is why after those many years of litigation, consent decrees, and policies created to prevent and eliminate discrimination against female employees, we are still working in a culture of unequal treatment, verbal and physical abuse, and retaliation for reporting it? Will it take another class action lawsuit before the Forest Service and Department of Agriculture realize that failure to deal with gender discrimination issues is not acceptable? Millions and millions of tax payer dollars were wasted on over 25 years of litigation in Region Five with no one ever being held accountable. Rampant violations of regulations, law, and public policy are continuing – ignored and unchecked.

As chief of the Forest Service it is your responsibility to make certain your managers follow the law and insure your employees work in an environment that is free from harassment and discrimination. It is not happening in Region Five.

Chief Kimball, we know we are not the only employees enduring harassment, discrimination and reprisal in Region Five, and have been told that Region Five's poor civil rights practices are a microcosm of the Forest Service. As you can see by the signatures on this page, there are women in Region 6 and Region 2 who are also enduring discriminatory practices. The situation for all employees treated unfairly and unreasonably must change. Women cannot continue to work in an environment that is fear-based, exclusive and non-productive. We ask that you personally look into our claims, help relieve employees' anguish, and take steps to change this culture of fear. Please take action soon, many good people are suffering.

Sincerely,

/s/ Kristine Levitoff, R-5 Plumas National Forest
/s/ Charlotte Wild Jordan, R-5 Sierra National Forest
/s/ Theresa Farrar, R-5, Plumas National Forest
/s/ Priscilla Peterson, R-5, Lassen National Forest
/s/ Barbara Bussey, R-5, Plumas National Forest
/s/ Cindy Roberts, R-5, Plumas National Forest
/s/ Henrietta Haaziq, R-5, Plumas National Forest
/s/ Pam Balazer, R-5, Los Padres National Forest
/s/ Barbara Alvis, R-5, Los Padres National Forest
/s/ Jade Martinez, R-5, Modoc National Forest (before termination)
/s/ Kari Moser, R-6
/s/ Audrey Gemmell, R-6
/s/ Carolyn Gosse, R-4
/s/ Genie Ott Mendiola, R-2

DECLARATION

I, Audrey Gemmell, hereby declare the following:

1. I work for the USDA, Forest Service, Region 6, Rogue Siskiyou National Forest. I am a GS-0462-09 Helitack Manager for the Siskiyou Rappel Base. It is my job to manage a crew of employees who rappel from a helicopter into a fire. I have worked for the USDA, Forest Service for 14 years. If called as a witness to testify, I could and would competently testify to the following based on my own personal knowledge:

2. I am a female supervisor of a 16 person male crewmen. Some consider Helitack Manager a non-traditional job for a woman. The men on my crew have been vocal that they do not want a female manager.

3. I am supervised by male managers. The managers give preferential treatment, training and career opportunities to my male subordinate employees at the expense of my career.

4. Males on my crew have started false rumors that I am having sex with another member of the crew. The Siskiyou Rogue National Forest management has no evidence that the rumor is true, yet they have disciplined me for the rumor.

5. In 2006, one of my male crew members took his penis out of his pants, straddled me while I was sitting in a chair, and waved his penis in my face. He said, several times, "You want it? Yeah, this is what you want. You want it don't you." This same crew member has undermined my authority with the crew and with upper level management.

6. For three years I've tried to get my upper level managers to assist me with the sexism and the uncontrollable drinking of the crew. They have been non-responsive.

7. In April, 2008, I was given a letter of proposed removal. The removal is based on a couple of minor administrative mistakes I made. Some of the charges are completely untrue. The proposed removal is not proper. Male firefighters on my unit are not disciplined for serious misconduct. For example, it is common knowledge that one of the male managers came to work intoxicated on a regular basis and could not perform his job because of it. He received no discipline. One of my crew members came into work intoxicated and passed out. He received no discipline. I am treated differently than the men.

8. I believe the reason I've been given a proposed removal is because the men on the Rappel Crew do not want a female supervisor/manager and they have convinced management that a male would be better for the job.

9. When an employee's forest management will not assist with claims of harassment and discrimination, the only option is for the employee to file and EEO complaint. I never filed an EEO complaint because I have witnessed complainants retaliated against. It is a no-win situation. I will lose my career and my financial stability if the Rogue Siskiyou National Forest is allowed to terminate me for little-to-no cause.

Signed this date, May 8, 2008.

Audrey Gemmell
Rogue Siskiyou National Forest

DECLARATION

I, Francis Mangels, hereby declare the following:

1. I worked for the USDA, Forest Service from 1966 to 2007. I worked in California Region 5, Shasta-Trinity National Forest from 1981 to 2007. I was a GS-0486-11 Wildlife Biologist. I was forced to retire from the Forest Service. If called as a witness to testify, I could and would competently testify to the following based on my own personal knowledge:

2. In 1992, I was 45 years old. From 1992 to 2006 I was discriminated against based upon my age. Managers commented that they wanted to retire me in order to hire a young woman in my place for the affirmative action consent decree.

3. In 1996, I was physically assaulted by a younger male coworker. I reported the incident but no observable action or co-worker attitude change occurred.

4. In 1999, I was physically assaulted by another male coworker. I reported it again but no action or co-worker attitude change occurred.

5. From 1992 through 2006 I was sexually harassed by male and female employees in my office. I received lewd pornographic pictures and obscene jokes on my desk implying that as range officer I was having sex with sheep. Attached are copies of three obscene documents on my desk by coworkers. I

reported these incidents to Shasta-Trinity NF management but no they took no action.

6. In 2006, I received a death threat from a coworker. A document of a ring-tailed cat was placed on my desk. An employee drew a telescopic sight cross-hairs diagram over the cat and wrote in red, "You're busted." The term is used by hunters to indicate how a high-powered rifle busts open the victim. I reported this threat to management but they took no action.

7. Female employees in the office called me vulgar names and used profanity at me on a regular basis. I reported it but no change occurred.

8. In 2005, a coworker placed human fecal matter in my office. I reported it but it was repeated three times and management took no action. Co-workers publicly laughed at me.

9. Several times employees made false allegations against me. An employee made a false report that I violated the Hatch Act. An employee falsely reported that I left the restroom door open and exposed myself. An employee falsely accused me of sexual harassment. I was investigated for the false allegations and received disciplinary actions. Management would not address my complaints of harassment and workplace violence.

10. In 2006, I filed a complaint with the Equal Employment Opportunity Commission for sexual harassment because management took no action and the harassment was causing me physical and emotional harm.

11. After I filed the EEO complaint, Shasta Trinity National Forest Supervisor Sharon Heywood, and the Shasta McCloud District Ranger Mike Hupp retaliated against me. Ms. Heywood and Mr. Hupp falsely charged me with workplace violence and misconduct. They placed me on Administrative Leave and denied me office access. Ms. Heywood and Mr. Hupp investigated me, involuntarily reassigned me, accused me of poor performance, and disciplined me.

12. I reported the incidents of reprisal to the R5 Regional Forester and the Washington Office. No one took action to investigate my claims of reprisal. My health suffered and I developed heart problems from the stress.

13. In 2007 I entered mediation. My request to stay in the agency and work in a different office with a new supervisor was denied. I was offered only the choice of retirement and a small sum of compensatory damages that did not cover financial losses. I had no choice but to accept the offer or suffer serious health risks. The doctors said I could die.

14. After retirement I went to the Forest Service office to return government property. I was assaulted by the Shasta McCloud District

Ranger and filed an EEO reprisal complaint. The agency has refused to settle this complaint. The Forest Service resolving official fell asleep and laughed at me several times, indicating incompetence and lack of good faith. It will cost the taxpayer thousands of dollars to further investigate and process this reprisal complaint.

15. The Forest Service wasted tax payer money by hiring a contract attorney named Gary Gilbert (who was preparing to extend my case and cost the tax payers thousands more dollars) when there are numerous USDA employed attorneys. The R-5 Associate Regional Forester intervened and settled the my case, but poorly.

15. A method for addressing employee claims of civil rights violations outside of the EEO process must be developed to address reprisal.

I declare under penalty of perjury, and under the laws of the United States, that the foregoing statement is true and correct to the best of my knowledge.

Signed this date, May 7, 2008 .

Francis W. Mangels 5/7/08
Francis W. Mangels
Shasta-Trinity National Forest
(ret.)

DECLARATION

I, Lesa L. Donnelly, hereby declare the following:

1. I worked for the USDA, Forest Service, Region 5, (California) in various administrative positions from 1978 through 2002. In 1995, I filed a class action lawsuit on behalf of six thousand women in California on the basis of sexual harassment, hostile work environment and reprisal. In 1997, the lawsuit was certified in District Court as *Donnelly v. Glickman* and resulted in a court ordered Consent Decree that lasted until 2006. I am vice president of the USDA Coalition of Minority Employees. As a Lay Advocate, I have represented federal employees in the Equal Employment Opportunity Commission (EEOC) and Merit System Protection Board (MSPB) administrative processes for fourteen years. If called as a witness to testify, I could and would competently testify to the following based on my own personal knowledge:

2. I currently represent USDA, Forest Service employees in Region 2 (Colorado), Region 3 (Arizona), Region 4 (Utah), Region 5 (California), Region 6 (Oregon), and Region 10 (Alaska).

3. The employees I represent are victims of sexual assault, physical assault, sexual harassment, gender discrimination, racial discrimination, disability discrimination and reprisal.

4. In each case, I advised Regional and Washington Office agency managers of the incidents in an attempt to resolve the issues at the lowest level of alternative dispute resolution. USDA management is non-responsive to communication attempts.

5. In 2005, I met with Under Secretary Mark Rey to discuss the rape of a female firefighter on a Southern California forest. Prior to the rape, the young woman had complained of sexual harassment from males on her fire crew. Forest Service management did not respond to her complaint. She was subsequently raped by a male crew member. Mr. Rey advised me that he, and the USDA, Forest Service were not concerned with the incident because it was solely a police matter.

6. In 2005, another female firefighter was sexually assaulted while on training in Sacramento, CA. When the Donnelly v. Glickman Settlement Monitor spoke to Assistant Secretary for Civil Rights, Vernon Parker about the incident, Mr. Parker's immediate response to her was, "It was not rape because there was no penis penetration." The employee had assaulted her with his hand. When the Monitor told Mr. Parker it was sexual assault, he

changed the subject and would not discuss it. These callous and insensitive attitudes are representative of USDA top management's lack of concern and inhumanity toward victimized employees. These poorly handled situations highlight the agency's failure to address violations of law, regulations and policy.

7. There have been many other sexual harassment incidents, and sexual assaults in Region 5. For example, in 2005 and 2006, Kristine Levitoff, a Forest Service Emergency Control Center Manager with 17 years of service, and who is in charge of dispatching resources for large, complex fires, natural disasters, and other emergencies, was sexually assaulted, stalked, continually touched, and asked for sex by the Plumas National Forest Fire Management Manager. She reported it immediately to her supervisor, but the agency took no action. She filed a formal complaint and the Fire Management Officer was forced into retirement. Six months later, in 2007, the agency tried to rehire the man. Ms. Levitoff filed a complaint on that action and in 2008 has been retaliated against in the form of supervisory assault, verbal abuse, public humiliation and a 30-day suspension. The Regional Office and Washington Office will not take action to stop the ongoing harassment and reprisal. Unfortunately, there are too numerous other cases of women being treated similarly and there is not enough time to

discuss these situations. Please believe me, the problem is rampant in Region 5 and throughout the Forest Service.

8. Workplace violence is a serious problem in USDA and USDOI. It is particularly problematic in Region 5 of the Forest Service. I have observed that Region 5 management often does not follow regulations and policy which require immediate investigation and employee safety measures. In February, 2008, a white male supervisor on the Plumas National Forest stated that he wanted to bring in his gun and shoot the employees he hates. He stated that he hated his African American female subordinate more than anyone. The woman who reported it and the threatened African American employee were fearful for their lives. The District Ranger did not take the situation seriously and told the women that he was a decent man and that they had nothing to fear. For a period of time the supervisor continued to enter the office. Proper safety precautions were never followed. The two women have been retaliated against for reporting the supervisor.

9. I have observed a pattern and practice by agency managers to retaliate against employees who raise claims of harassment, discrimination and workplace violence. The retaliation takes the form of shunning and isolation; threats and intimidation; investigations; disciplinary actions;

negative performance; denial of training; removal of job duties; and termination.

10. The Secretary of Agriculture issued Alternative Dispute Resolution directives that require the agencies and mission areas to mediate, and in good faith, attempt to resolve employee complaints prior to hearing and litigation. If followed, these directives would save the tax payer millions of dollars yearly. A large number of complainants are denied mediation. A larger number of complaints that are mediated do not settle due to Resolving Official bias, ignorance of the process, incompetence, resentment toward complainants, retaliation, contract attorneys' desire to prolong litigation, and a widespread belief that complainants are troublemakers that should not be rewarded.

11. Agency managers' failure to address employee claims results in formal complaints. Employees are forced into unwieldy and dysfunctional EEO and MSPB systems that do not address or correct the underlying problems. The federal government spends billions of dollars fighting employees instead of resolving the issues. Agency attorneys prolong the EEO process causing unnecessary costs to employees and the government. Contract attorneys refuse to settle complaints and purposely prolong the EEO process for their own financial gain.

12. There is no oversight of agency managers. They consistently fail to follow civil rights laws and waste millions of taxpayer dollars in the process.

13. Coalition of Minority Employees president Lawrence Lucas has provided the most reasonable and potentially successful recommendations to address the USDA civil rights problems. I will emphasize that an independent advisory board should be created to address these issues. The USDA should be placed into receivership until there is evidence that employees' civil rights will be recognized and the laws will be followed.

14. I hereby submit for the record 6 employee Declarations that describe violations of employee civil rights and a letter to Forest Service Chief Abigail Kimball signed by fourteen Forest Service women asking for assistance.

I declare under penalty of perjury, and under the laws of the United States, that the foregoing statement is true and correct to the best of my knowledge.

Signed this date, May 12, 2008.

Lesa L. Donnelly
USDA Coalition of
Minority Employees

DECLARATION

I, Priscilla Peterson, hereby declare the following:

1. I work for the USDA, Forest Service, Region 5 (California), Lassen National Forest. I am a GS-0401-9, Resource Information Specialist. I have worked for the USDA, Forest Service for 22 years. I am an Hispanic female. If called as a witness to testify, I could and would competently testify to the following based on my own personal knowledge:

2. In 1988 I was hired under the Region 5 *Bernardi Consent Decree*, a court-ordered affirmative action for hiring and promotion of women based on a class action lawsuit. I worked as Firefighter and Archaeologist on the Plumas National Forest. Many male employees resented women hired under *Bernardi*. They publicly called the court order, "The Cuntsent Decree." From 1988 through 1994, I was shunned, isolated, ignored and treated like a second class citizen by my male coworkers and male supervisor. I did not receive training opportunities or assignments equal to my male co-workers. I was ridiculed, called names, and tripped by male co-workers. I was sexually harassed by a male staff officer. The staff officer grabbed the buttocks of my fourteen year old daughter. When I complained of this and other treatment I was termed, "a whiner." I witnessed many other women endure

sexual harassment, humiliations, unequal treatment and retaliation for reporting it.

3. In 1994, I assisted Lesa Donnelly with filing the *Donnelly v. Glickman* class action complaint. I was an original class member. I was labeled as a "trouble-maker." I was retaliated against for my role in the lawsuit. I filed an individual EEO complaint based on sexual harassment and retaliation. For settlement I moved to the Lassen National Forest, Almanor Ranger District in 1999.

4. Because I was blacklisted as a "Donnelly Trouble-maker" in Region 5 for my role in *Donnelly* I was harassed by my new supervisor. I filed a retaliation EEO complaint and the 2001 settlement was to move me to the Lassen National Forest Supervisor's Office in a Geographic Information System (GIS) position as a Resource Information Specialist.

5. The GIS position should have been a career opportunity, but it is not. I am the only Hispanic and until January 2008, I was the only woman in the unit. My white male supervisor, Mark Nebel treats me differently than my white male coworkers. Mr. Nebel does not provide me training opportunities, work assignments, equipment or information as he does for my coworkers. Mr. Nebel accuses me of poor performance and ridicules me in front of my coworkers, yet I have never received an unsuccessful

performance rating. He takes my coworkers on field assignments but directs me to stay behind. Mr. Nebel allows my coworkers to work with task groups and present training. He has removed me from the task groups I was on prior to his arrival and has prevented me from going on the Emergency Incident assignments, which I've been doing for fifteen years. This has harmed my career and my financial status. Forest Supervisor Laurie Tippen and my second-line supervisor, Elizabeth Norton always supported Mr. Nebel's actions.

6. I filed an EEO complaint on Mark Nebel's discrimination and Region 5 retaliation. I requested alternative dispute resolution four separate times but the agency refused to mediate and forced me into a hearing. The judge dismissed my case without allowing a hearing, even though I had witnesses willing to testify on my behalf. My due process rights have been violated.

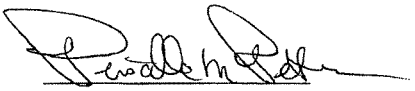
7. My current status is, 1) I filed a breach of settlement on the 2001 settlement. It has been almost a year and I've had no answer from the EEOC; 2) I filed an appeal on the dismissal. It has been eight months and I have heard nothing from EEOC; 3) I am preparing to file a new retaliation complaint. The EEOC is not held to any time frame or standard for processing complaints and appeals. This EEO nightmare for me has no end in sight.

8. I contacted Regional and Washington Office management for assistance to stop the continual harassment and unequal treatment, but there has been no response and no help.

9. As a member of the *Bernardi* class action and a member of the *Donnelly* class action, I've observed Region 5 undergo almost 30 years of lawsuits, consent decrees and court ordered oversight on female gender discrimination issues. Yet, Region 5 has still not managed to promote respect, dignity and equal opportunity for women. The processes that were agreed to in the *Donnelly* Settlement Agreement were only minimally followed during the court oversight and are not even considered for use now. If R5 management were held to those processes for early intervention, alternative dispute resolution, investigation of complaints, a reprisal investigation panel, and accountability for offenders, then prevention and elimination of the wide-spread discrimination, harassment and retaliation could occur. Court oversight did not make it happen. I hope that Congressional oversight will make it happen.

I declare under penalty of perjury, and under the laws of the United States, that the foregoing statement is true and correct to the best of my knowledge.

Signed this date, May 6, 2008.



Priscilla Peterson
Lassen National Forest

DECLARATION

I, Kristine Levitoff, hereby declare the following:

1. I work for the USDA, Forest Service, Region 5, Plumas National Forest. I am a GS-0462-11 Emergency Command Center Manager. I manage an incident command center that handles forest fires and other emergency incidents. I have worked for the USDA, Forest Service for 21 years. If called as a witness to testify, I could and would competently testify to the following based on my own personal knowledge:

2. In 2005, I was sexually assaulted by Plumas National Forest Fire Management Officer Michael Condon. In addition to the assault, he made numerous attempts to have a sexual relationship with me. I reported this to forest management and no action was taken.

3. In 2006, Mr. Condon started stalking me at my home. When I rebuffed Mr. Condon he took performance and disciplinary action against me. I reported Mr. Condon to Plumas National Forest Deputy Forest Supervisor Rob McWhorter and he threatened me with his attorney. Mr. McWhorter has had inappropriate sexual relationships with subordinate employees during his career.

4. I filed an EEO complaint in 2006 because agency management would not stop Mr. Condon's behavior. My complaints were sustained in an investigation and Mr. Condon was forced to retire in 2007.

5. Approximately six months after his retirement, Plumas National Forest Fire Management Officer Allan Setzer attempted to secretly rehire Mr. Condon. I filed a complaint on this action. Mr. Setzer was caught lying under oath about his actions. No actions were taken against Mr. Setzer.

6. Since filing the EEO complaint I have been retaliated against. Prior to the EEO complaint my eighteen years of performance and conduct were exceptional. After filing the complaint Mr. Setzer has charged me with poor performance. I have been investigated twice for misconduct. I have been given a proposed suspension.

7. In 2008, Mr. Setzer, in a rage, accosted me in the Forest Service parking. I was frightened and filed an assault report with the Plumas County Sheriff's Department. Plumas National Forest refused to investigate my claim of workplace violence in violation of USDA regulations.

8. Despite the availability of USDA employed attorneys, the Forest Service hired contract attorney Gary Gilbert to represent the agency against me. Mr. Gilbert has made it clear that he is not interested in settling my case

prior to court. I believe he is prolonging the case for his own financial interest.

9. Allan Setzer has continued to yell at me and publicly humiliate me in front of my subordinate employees. His actions have created an environment in which my employees do not respect me.

10. I tried on several occasions to get Regional Forester Randy Moore, Forest Service Chief Abigail Kimball, and USDA Secretary Ed Shafer to stop the continued harassment from Plumas National Forest Management. They have not responded to my requests for help.

11. I have witnessed harassment and discrimination against other female employees on the Plumas National Forest. There is no avenue for employees to have their civil rights issues addressed in a non-threatening and productive manner.

I declare under penalty of perjury, and under the laws of the United States, that the foregoing statement is true and correct to the best of my knowledge.

Signed this date, April 11, 2008.

Kristine Levitoff
Plumas National Forest