

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

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

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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 report² 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.

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.

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 audit⁶ 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

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.

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.

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