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Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints





UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
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REPORT TO THE SECRETARY ON CIVIL RIGHTS ISSUES - PHASE V

FROM: Roger C. Viadero
Inspector General

SUBJECT: Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints, Evaluation Report No. 60801-1-Hq

In July 1998, your Assistant Secretary for Administration asked the Office of Inspector General to review the efforts by the Office of Civil Rights (CR) to reduce the backlog of program complaints in USDA. Attached is a copy of the results of this review. This represents our fifth evaluation of the Department's efforts to reduce the program complaints backlog and to improve the overall complaint processing system, including the investigative process.

We found that the Department, through CR, has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998.

The problems we noted before in the complaints resolution process also continue. CR's data base remains an unreliable repository of information, and its casefiles are too slovenly to ensure the availability of critical documents. A disaffected staff and a leadership vacuum have contributed to a system that cannot ensure complainants a timely hearing of their grievances.

Of considerable concern to us is CR's lack of progress in reforming its operations in accordance with our previous recommendations. Few corrective actions have been taken to increase the efficiency of the complaints resolution process. We also noted that CR staffmembers have not always been honest in portraying the actual level of their performance. Some of the information they gave us proved to be inaccurate. Some of the information they gave you on earlier occasions proved likewise to be inaccurate.

Because of continuing problems in the complaints resolution process, we are recommending that you convene a Complaints Resolution Task Force (independent of CR) to immediately assume control of the backlog and have full authority to resolve complaints, including entering into settlement agreements. We are also recommending that the civil rights function within the Department be elevated to the level of Assistant Secretary.

At your request, we will be continuing our work with CR, giving special emphasis to its management of settlement agreements.

Executive Summary

Purpose

The Assistant Secretary for Administration asked us to perform a followup review of the operations of USDA's Office of Civil Rights (CR), the office responsible for resolving complaints made against the Department for alleged civil rights violations in the administration of its programs. During four previous reviews of the Department's civil rights program complaints system, we determined that the system was not functioning properly and that the Department had amassed a growing backlog of complaints that required immediate attention. Although CR itself could not accurately determine how large the backlog was at the time of our first review, it later identified 1,088 outstanding unresolved complaints before November 1, 1997.

Results in Brief

Our past reviews had questioned the productivity of CR; we had found a disaffected staff and a leadership vacuum. Little was being accomplished by USDA agencies to respond to citizen complaints of discrimination, and little was done by CR to manage the resolution process. Some complaints in CR's backlog had languished for over 2 years. After our February 1997 report, CR made the resolution of its backlog its first priority.

Our current review disclosed that the backlog of complaints of civil rights violations, although reduced, still stands at 616 cases as of September 11, 1998. Of these 616 cases, 80 are under investigation, 310 are awaiting adjudication, 23 are undergoing a legal sufficiency review, and 103 are pending closure. The remaining 100 cases still await a preliminary analysis. (Because 164 complainants are involved in lawsuits against the Department, their cases cannot currently be processed. Of these 164 cases, 147 are included in the remaining backlog.)

The backlog is not being resolved at a faster rate because CR itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past. We noted with considerable concern that after 20 months, CR has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations. The following table summarizes the key areas for which our recommendations were made and in which the uncorrected deficiencies persist.

RECURRING OFFICE OF CIVIL RIGHTS ISSUES

Issue	OIG Evaluation Phases					
	Alert (02/25/97)	I (02/27/97)	II (09/29/97)	Memo (12/18/97)	IV (03/04/98)	V (09/30/98)
Review State foreclosure actions	✗	✕	✕	✕	✕	✕
Send letters of acknowledgment (Completed November 1997)		✗	✕			
Develop and maintain a data base		✗	✕	✕	✕	✕
Evaluate each agency's civil rights staff		✗	✕	✕	✕	✕
Clean casefiles		✗	✕	✕	✕	✕
Clear backlog		✗	✕	✕	✕	✕
Publish regulations		✗	✕	✕	✕	✕
Reconcile casefiles with USDA agencies		✗	✕	✕	✕	✕
Write plans for compliance reviews		✗	✕	✕	✕	✕
Follow up on isolated instances of potential discrimination				✗	✕	✕
Find lost casefiles		✗	✕	✕	✕	✕
Use aging reports		✗	✕	✕	✕	✕
Train investigators			✗	✕	✕	✕

✗ Condition originally noted and recommendation made. ✕ Condition continues. ✕ Corrective action taken but not adequately implemented. See exhibits B and C for the Secretary's memoranda regarding Phases I and II.

Table 1: Areas of Deficiency Previously Noted by OIG and Still Uncorrected.

We estimate that if CR continues to operate under its current methods and at its current rate, the backlog of complaints existing on November 1, 1997, will not be completely resolved for at least another year.

Most conspicuous among the uncorrected problems is the continuing disorder within CR. The data base CR uses to report the status of cases is unreliable and full of errors, and the files it keeps to store needed documentation are slovenly and unmanaged. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications.

Of equal significance is the absence of written policy and procedures. It is incumbent upon CR to revise departmental policy to ensure it complies with civil rights laws and to establish the framework of its own activities. We believe standardized, written guidelines are essential to CR's operation, and it is a matter of concern to us that CR has, over the space of 20 months, produced nothing to lay the foundation for good management controls.

The absence of formal procedures and accurate records raises questions about due care within the complaints resolution process. We found critical quality control steps missing at every stage of the process. Staffmembers with little training and less experience were put to judging matters that carry serious legal and moral implications. Many of CR's adjudicators, who must determine whether discrimination occurred, were student interns. Legal staffmembers with the Office of the General Counsel (OGC), who review CR's decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis. We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit

Furthermore, CR may not understand the full scope of its authority. CR has concentrated its oversight on federally-conducted programs; it has largely ignored a host of federally-assisted programs (e.g., crop insurance, research grants) in which complaints of discrimination may have been made.

CR's unsuccessful efforts to resolve the backlog of civil rights complaints are in part the symptom of an insecurity that has affected office morale. The many reorganizations the complaints resolution staff has undergone, the high turnover the staff has experienced within the last several years,

and the inadequate training afforded both managers and staffmembers, have left the staff unfocused and without clear direction. The staff we found at the civil rights offices was not a coherent team of dedicated professionals with a shared vision but a fragmented order of individual fiefdoms, each mindful only of its own borders and its own responsibilities. Low office morale has contributed to a lack of productivity. CR's data base shows that since January 1997, CR closed only 19 cases through adjudication, 8 of which were not even investigated by CR. Through this inefficiency, complainants are being denied a timely hearing of their civil rights complaints.

Also disturbing was the evasiveness we encountered at CR. We found discrepancies between what we were told by staffmembers and what we were subsequently able to verify. We found similar discrepancies in information CR communicated to the Secretary. These discrepancies, in the number of open and closed complaints, were repeated at congressional hearings and other public forums.

We concluded that in order to complete the backlog of cases expeditiously, the Secretary needs to transfer resolution of the backlog to a complaints resolution task force, composed of seasoned adjudicators and well qualified civil rights personnel from Federal agencies outside USDA. The task force should have full authority to review and resolve all complaints.

To increase CR's efficiency in the long term, the Secretary should create an Assistant Secretary of Civil Rights with subcabinet-level status. Concurrently, the CR Director should emphasize hiring managers who have a solid background in civil rights and a good knowledge of Department programs.

Once in operation, the task force would provide CR with the opportunity to focus on its own structure and implement the reforms it needs to function efficiently. We believe CR is capable of these reforms and that it is in the best position within the Department to act objectively in resolving civil rights complaints. Consequently it should retain Department authority to investigate future complaints. We believe that when CR has taken the corrective actions we previously recommended, as well as the steps outlined in this followup report, it will provide more efficient service.

Key Recommendations

We recommend that the Secretary take the following actions to ensure that citizens who have complained of discrimination by USDA receive a timely hearing:

- Immediately convene a complaints resolution task force, composed of well qualified civil rights personnel from other Federal agencies and senior USDA program personnel with decision-making authority. The task force, under the direction of an Executive Director who reports directly to the Secretary, should immediately assume control of the backlog and have full authority to review and resolve complaints.

The complaints resolution task force could also assist the CR Director in reviewing new complaints that have exceeded the 180-day resolution deadline set by the Civil Rights Implementation Team.

The OGC and the CR Director should be available to assist the task force in its efforts.

The task force should perform a case-by-case, document-by-document sweep of the casefiles to restore retrievability to the information contained in the files.

- Elevate the Department's civil rights functions to the level of Assistant Secretary with full authority across agency lines.
- Require CR to (a) issue needed operational policies and procedures within a 2-month timeframe, (b) resolve within 2 months all other recommendations that we made in our previous reports but that CR has failed to implement, (c) keep open all cases with settlement agreements so the agreements may be tracked, and (d) institute other operational improvements that will ensure the efficient operation of the civil rights functions within the Department and ensure due care in the resolution of all civil rights complaints as well as a timely hearing for all complainants.

Statistical Data on Complaints According to CR's data base as of September 11, 1998, the Department's inventory of complaints totals 1,439 that are open and 582 that are closed. Of the total open and closed cases, 383 are part of 2 lawsuits brought against the Department; 77 from the *Brewington* lawsuit, and 256 from the *Pigford* lawsuit. These cases are identified separately because the court prohibited CR from processing the cases as long as they were under litigation.

CR categorizes complaints that have not yet been reviewed as "intend-to-file" cases. Normally these cases are considered "unperfected." However, if the complainant has indicated an intent to go forward with

the complaint once Congress waives the 2-year statute of limitations, the case is identified separately.

The three tables on the next page identify the status of all cases in the inventory.

Status of Civil Rights Program Complaints as of September 11, 1998.

	Not in Lawsuit			Pigford Lawsuit ^a			Brewington Lawsuit ^b			Total		
	Intend	Open	Closed	Intend	Open	Closed	Intend	Open	Closed	Intend	Open	Closed
Backlog		469	455		144	16		3	1		616	472
New		138	106		19	2		6	1		163	109
Unperfected	271		1	6			7			284		1
Statute of Limitations	248			69			59			376		
Totals	519	607	562	75	163	18	66	9	2	660	779	582

^a Actual total number of complainants in the Pigford lawsuit as of 08/06/98 is 481. Not all complainants are captured in CR's data base.

^b Actual total number of complainants in the Brewington lawsuit as of 08/06/98 is 132. Not all complainants are captured in CR's data base. CR is prohibited from processing cases under litigation and cannot yet process those cases which fall outside the statute of limitations.

Table 2: Status of Civil Rights Program Complaints as of September 11, 1998.

Status of Backlog Complaints

	Not in Lawsuit	Pigford Lawsuit	Brewington Lawsuit	Total
Pre-Investigation	69	31		100
Under Investigation	75	5		80
Adjudication	214	93	3	310
At OGC	19	4		23
Pending Closure	92	11		103
Closed	455	16	1	472
Total	924	160	4	1,088

Table 3: Status of Civil Rights Backlog Program Complaints as of September 11, 1998.

Status of New Complaints

	Not in Lawsuit	Pigford Lawsuit	Brewington Lawsuit	Total
Pre-Investigation	126	17	6	149
Under Investigation	2			2
Adjudication	7	2		9
At OGC				0
Pending Closure	3			3
Closed	106	2	1	109
Total	244	21	7	272

Table 4: Status of Civil Rights New Program Complaints as of September 11, 1998.

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Introduction

Background

In December 1996, at the direction of the Secretary, who had raised concerns about the performance of the Department's civil rights program complaint system, OIG began an evaluation of the system that has continued through five reporting phases and resulted in reappraisals over a 20-month period. This report presents the results of our fifth evaluation of civil rights at USDA.

The Department's complaint system has been the subject of recent controversy. The Civil Rights Action Team (CRAT), assembled by the Secretary in December 1996, was appointed to look into the concerns of minority and disadvantaged farmers who had alleged USDA officials had discriminated against them in their participation in farm loan programs. As a result of its study, CRAT made 92 recommendations, one of which was to consolidate civil rights complaint activities that were largely posited in the Office of Operation's Civil Rights Enforcement and Adjudication branch and the Policy, Analysis, and Coordination Center - Civil Rights, and create a separate Office of Civil Rights (CR). Civil Rights Implementation Teams (CRIT) were created to implement the CRAT recommendations.

We began our first evaluation (Phase I) of the Department's complaint system in December 1996. At that time, CR's predecessor, the Civil Rights Enforcement and Adjudication branch, was responsible for resolving complaints from individuals who alleged they had been discriminated against in their participation in USDA programs. However, the branch's role in the resolution of these complaints was limited to an analysis of the preliminary inquiry that had been performed by the USDA agency against which the complaint had been made. Each individual agency was responsible to conduct its own preliminary inquiry of the complaint and, at the branch's direction, attempt conciliation with the complainant. Based on the preliminary inquiry, the branch would recommend a finding of discrimination or no finding of discrimination.

During our Phase I review, we determined that the Department's civil rights complaint system was in disarray. Complaints of program discrimination were backlogged at the agencies, and the civil rights branch could not determine the status of most of these complaints. Although the branch did not adequately track the complaints and could not determine how many were on file, we were able to identify 241 outstanding complaints from the Farm Service Agency that had not been resolved as of January 27, 1997.

As of May 16, 1997, as a result of CRAT's recommendations to the Secretary, the Assistant Secretary for Administration was given full responsibility to investigate and adjudicate all complaints of program discrimination. This authority was further delegated to the Director of CR. An ad hoc team was formed of USDA agency personnel to help reduce the backlog, but the team was unable to operate effectively, noting that poor documentation and disorganized casefiles stood in the way of easy resolution. The team's recommendations were rejected by the Director of CR because the complaints were never properly investigated.

Our Phase I review found several deficiencies that contributed to the backlog and to CR's inability to resolve these aging complaints. Specifically we noted that CR could not determine the number of outstanding complaints it had because it did not have a usable filing system or a reliable data base. Also, CR did not have controls in place to monitor and track complaints, and it did not have current regulations and formal procedures for its operations.

The deficiencies in CR's operations that we discovered during Phase I of our reviews were also present during Phase II, which we reported in September 1997, and during Phase IV, which we reported in March 1998. (See table 1.)

After the ad hoc team disbanded, CR hired additional staff and contracted with 11 firms to investigate the backlog of civil rights complaints. CR defined the backlog as those program complaints in existence when CR was formed, complaints resulting from the listening sessions held by CRAT, and any other complaint received before November 1, 1997. There were 1,088 complaints in this category. CR recognized as new program complaints those "perfected" complaints received on or after November 1, 1997, or those complaints that were filed but closed administratively. A complaint is said to be "perfected" once the issue and basis of the complaint have been determined. Administrative closures include instances where the complainant failed to pursue the complaint, failed to state a protected basis and issue, or failed to file a complaint in a timely manner. Also, cases are closed administratively when USDA lacks jurisdiction.

Besides backlogged and new complaints, CR recognizes a category called "intends to file." Intend-to-file cases are those complaints received on or after November 1, 1997, that have not yet been perfected, or cases that are part of two lawsuits against the Department.

One of CRIT's responsibilities was to formulate procedures regarding processing program complaints. The procedures CRIT developed for CR to process these complaints require that the complaints be resolved within 180 calendar days from the date of complaint. Out of the 125 open 'new' complaints, 38 were over this 180-day threshold at the beginning of our review. Therefore, CR in effect has a new backlog within its existing 'new' category of complaints.

As of September 11, 1998, CR has closed 472 backlog cases, has 103 pending closure, and 23 under review by OGC. The majority (310) of open backlog cases are in the adjudication (decision rendering) phase of the complaint investigation process. CR is in the process of investigating 80 complaints and has not begun investigating the remaining 100 backlog complaints.

As this report shows, we believe the inefficient operations of CR have contributed to the delay in eliminating the backlog of old complaints and to the creation of the backlog of new complaints.

Under CR's May 1997 reorganization, the office now consists of six divisions. Our evaluation focused on three of these: the Planning and Policy Division, whose function is to issue regulations and procedures; the Accountability Division, whose function is to oversee corrective actions prescribed by settlements and decisions finding discrimination; and the Program Investigations Division, whose function is to investigate complaints of program discrimination.

Objectives

The Assistant Secretary for Administration asked us to determine the effectiveness of CR's efforts to reduce the backlog of program complaints. Specifically, we evaluated the effectiveness of CR's information system, complaint processing system, organizational structure and environment, and policies and procedures. We also examined CR's progress in implementing recommendations from previous OIG audit reports.

Scope

We performed our work at the Office of Civil Rights in Washington, D.C. This review encompassed issues originally identified in our February 27, 1997, report (Evaluation Report for the Secretary on Civil Rights Issues - Phase I) to current operations. Since February 1997, we have issued 2 evaluation reports and 2 internal

memoranda to the Department which contained 44 recommendations regarding civil rights in the Department. (Of these, 31 recommendations related to CR's operations.) The field work was performed in August and September 1998. As of August 5, 1998, CR's data base reflected a backlog total of 1,088 cases, a new total of 203, an unperfected total of 314, and a lawsuit total of 354.

We only included closed cases in our selection universe. Open cases were not considered for review because we did not want to interfere with CR's processing of these cases. According to CR's data base dated August 5, 1998, CR had closed 515 cases. This figure breaks down to 437 backlog cases and 78 new cases (unperfected cases were recategorized as new prior to being closed).

We selected our sample based on type of closure. The closures were broken down into three main categories: cases closed by decision either with findings of discrimination or no findings of discrimination (26 total cases); cases closed by settlement agreement (64 total cases); and cases closed administratively (425 total cases). We reviewed 24 of the 26 cases closed by decision, 14 of the 64 cases closed by settlement agreement, and 33 of the 425 cases closed administratively. These cases were coded as such in CR's data base as of August 5, 1998. We originally selected all 26 cases closed for decision for a detailed review. However, after a 3-week search, CR was unable to locate two cases. In addition, during our review of one administratively closed case, we noted that a different complainant's file information was mistakenly included. This complainant's case was coded as open; however, it was actually closed with a settlement agreement. We reviewed this case, which brought the total number of cases we reviewed to 72.

Summary of Cases Reviewed

	Backlog		New		All Cases	
	Total	Reviewed	Total	Reviewed	Total	Reviewed
Closed by Decision	25	23^a	1	1	26	24
Settlements	63	14	1	0	64	14
Administratively	349	33	76	1	425	34^b
Total	437	70	78	2	515	72
^a CR personnel could not find the casefiles for two cases closed by decision. We had intended to review all 25 cases closed by decision. ^b 33 of these 34 were coded as administrative closures. Per CR's data base, the remaining case was open.						

Table 5: Cases Reviewed During This Evaluation.

Unless otherwise noted, all figures used in reference to the number of civil rights cases originated from CR's data base, as provided to us by CR officials on either August 5, 1998, or September 11, 1998.

This review was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency. Accordingly, the review included such tests of program and accounting records as were considered necessary to meet the review objectives.

Methodology

To accomplish our objectives, we:

- conducted interviews with responsible CR officials,
- reviewed investigative reports prepared by CR staff and contract investigators,
- reviewed draft and final decisions prepared by CR staff and relevant documentation from the sampled casefiles,
- analyzed CR's data base used to track program complaints,
- reviewed documentation concerning timeliness of processing of complaints and used this to estimate when the backlog of complaints will be resolved,

- evaluated the process to resolve complaints,
- reviewed CR policies and procedures,
- performed a physical inventory of all program complaints casefiles at CR,
- interviewed OGC officials to determine their role in the program civil rights complaints resolution process,
- reviewed CR's corrective actions taken in response to our prior recommendations,
- contacted 15 Department agencies to determine the number of open program civil rights complaints and compared these figures to CR's data base, and
- interviewed Department of Housing and Urban Development (HUD) officials regarding USDA's Memorandum of Understanding with HUD and HUD's process used to handle program civil rights complaints.

The Integrity of the Complaints Resolution Process Cannot Be Ascertained

Because CR does not systematically include critical quality control steps in its complaint process, we could not determine whether it resolved all cases properly. We found a lack of management controls in all stages of the process.

Complaints of program discrimination are resolved by CR's Program Investigations Division (PID). Program complaints follow a resolution process that consists of the following phases:

- Pre-investigation Phase. During this phase, PID reviews each complaint to determine if it is a bonafide complaint and if CR has jurisdiction. If more information is needed, PID contacts the complainant. This process is called "perfecting" the complaint. If the complainant fails to respond or the complainant is not a member of a protected class, the case may be closed administratively. Once enough information is assembled, the case is recommended for administrative closure, investigation, or adjudication.
- Investigation. Each bonafide complaint may be investigated either by CR personnel or by 1 of 11 contractors. The investigator of each complaint gathers information about the complainant, the program involved, and the practices of the office where the discrimination is alleged to have occurred.
- Adjudication. Using the reports of investigation, PID's adjudicators determine (1) if the complainant belongs to a protected class, (2) if the complainant was eligible to participate in USDA programs, (3) if the complainant was harmed by USDA's action, (4) if any statistical evidence shows the program office has been inequitable in its treatment of any group of participants or applicants, and (5) if there is some inference that the USDA decision-maker may have been motivated by prejudice. These determinations form the basis of a prima facie case of discrimination. Adjudicators use a similar analysis for assisted programs.

All PID decisions arrived at as a result of an investigation or a preliminary inquiry are to be reviewed by the Office of the General Counsel (OGC) for legal sufficiency.

We found that administrative closures were not properly reviewed by management. Five of the 33 administrative closures we reviewed did not have support for the closure decision. Cases that were investigated also needed better management oversight. Adjudicators estimated that 60 percent of the reports of investigation they received from PID investigators were deficient and needed to be returned for further development. They further estimated that 60 percent of the reports of investigation from contractors were also deficient. The adjudicators stated that the reports lacked important interviews, sufficient data collection, and complete case analysis. For their part, contractors complained of inadequate oversight and assistance from PID.

Management over complaints in USDA's federally-assisted programs also needs immediate review. CR currently focuses on federally-conducted programs, whose operations are carried out by USDA employees. CR does not consider those programs whose operations are carried out by States, universities, grantees, and others. CR needs to research these programs and determine if it should enter into agreements with the agencies regarding the processing of these complaints.

Among the management problems we encountered, most conspicuous were those over the adjudication stage. Our analysis showed that the resolution of complaints slowed dramatically during the adjudication stage. Inexperienced adjudicators, inadequate tracking, and a lack of formal procedures and quality control have contributed to the continuing inefficiency of PID's adjudications. In the absence of internal quality controls, OGC has acted as the only compensating control through its legal sufficiency review of adjudication decisions.

We concluded that CR does not currently demonstrate the efficiency needed to resolve the backlog of outstanding cases and that a task force of experienced adjudicators from outside the Department is a necessary and appropriate corrective measure to ensure a timely hearing to the complainants of the unresolved cases.

**Conclusion 1
CR Needs More Experienced
Adjudicators**

PID's quality control and adjudication team prepares decisions on discrimination complaints after reviewing draft investigation reports and (for some of the backlog cases) preliminary inquiries. The decision is the ruling on the factual and legal issues raised in the complaint. A decision includes findings of fact, conclusions of law, and a finding on the ultimate question of whether the agency discriminated against the complainant. We determined that PID's adjudicators were inexperienced and needed greater management oversight. Largely because of the inefficiencies of the adjudicator staff, the outstanding cases that backlogged in CR have been slow to reach resolution.

There was little management oversight to assess the efficiency of the adjudications staff or ensure that cases were resolved and complainants notified in a timely manner.

- PID depended on the legal backgrounds of adjudicators in place of civil rights experience. Individuals who had legal backgrounds were hired as investigators late in 1997 and were made adjudicators in February 1998 because of bottlenecks in the adjudication process. Law student-interns supplemented the adjudications staff. CR management did not provide the adjudicators with training on reviewing reports of investigation and writing decisions, but depended upon the legal backgrounds of the individuals assigned to the job. The adjudicators and law student-interns had virtually no knowledge of the complexities of USDA programs. The co-team leader for quality control and adjudication, who has responsibility for the adjudicators and reviews their decisions, served as a law student-intern during 1997 before becoming a nonmanagerial staffperson.
- CR management is not fully aware of the inefficiency of the adjudication team. Since the CR data base is neither timely nor adequately maintained, PID cannot track the productivity of its adjudicators, the amount of time that cases spend in the adjudications process, or the number of times that decisions are returned for corrections by both the co-team leader and OGC.

The timeframe for getting cases adjudicated is 7 days. However, cases usually cannot be analyzed and decisions written in one continuous process because the reports of investigation may not be sufficient and need to be returned for additional information. Also, the quality control and adjudication team is not required to maintain records of the time that cases spend in this phase of the process.

The inefficiency of the adjudications staff was manifest from the productivity data we extracted from CR's data base. From this data, we determined that between January 1997 and August 1998, CR closed only 19 cases with adjudicated decisions.

According to the database as of August 5, 1998, CR closed 26 cases by issuing decision memos with either a finding or no finding of discrimination. We reviewed 24 of the 26 cases; two casefiles could not be located by CR during the 3 weeks our auditors conducted their fieldwork. Of these 24 cases, 3 were miscoded and were in fact not closed by decision (2 were administratively closed and 1 is still open). Another two cases were actually closed in 1995.

We confirmed 19 of the 26 cases listed in CR's data base were closed by decision between January 1997 and August 1998. Of these 19 cases:

Eleven were adjudicated based on a factual record resulting from investigative reports conducted by either in-house investigators or contractors. Eight of the 11 were closed with no finding of discrimination on July 2, 1998, and three were closed with findings of discrimination, one in November 1997 and two in March 1998.

Eight cases were adjudicated based on an agency preliminary inquiry and closed by decision. Five were closed with no finding of discrimination and three were closed with a finding of discrimination, six in 1997 and two in 1998.

The following chart represents CR's final accomplishments in adjudicating cases and issuing decisions as of August 5, 1998, according to CR's data base as corrected by the errors we noted.

Decision Adjudicated Based on:	Closed by decision - No Finding of Discrimination	Closed by decision - Finding of Discrimination	Total
In-house investigative reports	3 cases closed on July 2, 1998	1 case closed in 1998	4
Contractor investigative reports	5 cases closed on July 2, 1998	1 case closed in 1998 1 case closed in 1997	7
Agency preliminary inquiry	1 case closed in 1998 4 cases closed in 1997	1 case closed in 1998 2 cases closed in 1997	8
Total	13 ^a	6	19

^a Two additional cases were closed in 1995 and adjudicated based on an agency preliminary inquiry.

Table 6: Adjudicated Decisions Issued Since January 1997.

We noted that all five cases CR adjudicated based on an agency preliminary inquiry and closed with no findings of discrimination were closed with no OGC review for legal sufficiency. This occurred because there was no policy requiring this review prior to the establishment of the Civil Rights Division within OGC. We believe that CR should submit these cases to OGC for legal sufficiency review to ensure that the findings are adequately supported with factual data and sufficient legal analysis.

Our own tracking of CR's backlog demonstrated the proportion of unresolved cases that had slowed in the system when they reached the adjudication stage. Our Phase I review (Evaluation Report for the Secretary on Civil Rights Issues - Phase I dated February 27, 1997) showed that as of January 27, 1997, the Farm Service Agency (FSA) had maintained a backlog of 241 complaints. Since this report was issued, we tracked the progress CR made to bring these 241 complaints to closure. We obtained status updates on July 8, 1997, February 18, 1998, and August 5, 1998.

The following table depicts the progress made by CR to bring these 241 FSA cases to closure.

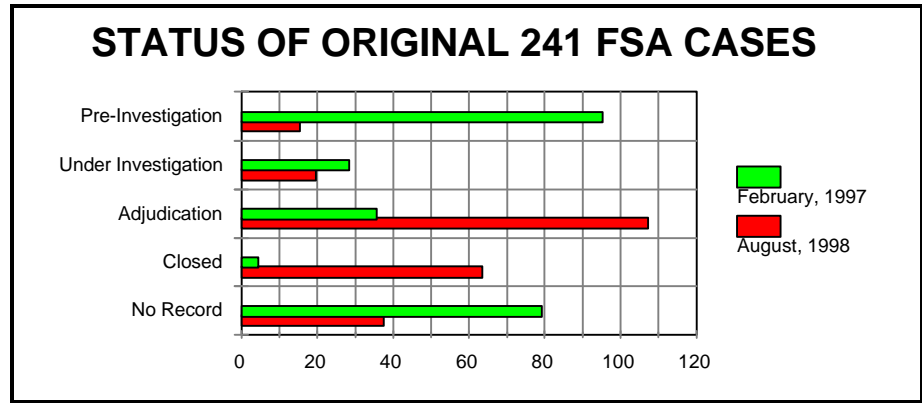


Table 7: Status of the Original 241 FSA Cases¹

The same proportion of cases in adjudication was evident in the greater Department backlog of cases. As of September 11, 1998, CR has closed 472 backlog cases, has 103 pending closure, and 23 under review by OGC. The majority (310) of open backlog cases are in the adjudication (decision rendering) phase of the complaint process. CR is in the process of investigating 80 complaints and has not begun investigating the remaining 100 backlog complaints.

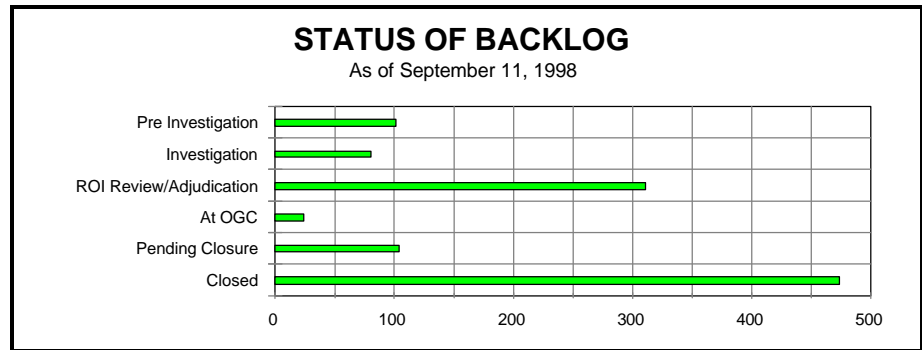


Table 8: Progress Toward Resolving the Backlog of 1,088 Cases

As Tables 7 and 8 indicate, the delay in processing cases appears in the adjudication phase. Fifty-two percent of the original 241 FSA cases had been investigated and reported on but were still awaiting adjudication as

¹As this table indicates, 15 cases still remain in the pre-investigation category. The average age of these 15 cases is 1,059 days.

of August 5, 1998. Similarly 45 percent of the unresolved backlog cases in the Department were reported on but were still awaiting adjudication on that date.

Based on the length of time it took CR to close the 472 cases, we estimate that it will take CR at least another year² to close the remaining 616 backlog cases using its current investigation process.

The quality of CR's adjudications is also in question. In the absence of quality control within the adjudications staff, OGC has acted as a compensatory control. OGC is responsible for reviewing CR's adjudications for legal sufficiency. OGC indicated that it does not substitute its judgment on findings of fact but will not concur if the findings are not supported with enough relevant evidence such that a reasonable person might arrive at the same conclusion stipulated in the CR decision. CR forwards the reports of investigation to OGC to facilitate the review of the proposed decisions.

An example of an OGC comment issued as a result of a legal sufficiency review was that the statement obtained from the complainant by the investigator was "overwhelmingly insubstantial" and that the report of investigation contained faulty analysis of an age-based complaint. The adjudicator's analysis was also deemed faulty. The complainant alleged he was denied an operating loan because of his age, but the analysis did not include an evaluation of whether the age of the complainant played a role in the denial.

OGC indicated that over time the quality of CR's proposed decisions has improved but that more improvements are needed. In OGC's opinion, the CR Director must change current practices and insist that proposed decisions receive additional supervision and a higher level of review before being dispatched to OGC.

The quality of adjudications was identified in a recent memo from OGC's Associate General Counsel for Civil Rights to the CR Director. The memo states, "the quality of the decisions has to improve for OGC to provide legal clearance and, for that matter, for the Department's

²Our estimate of 312 days is conservative and based on closed cases as of September 11, 1998. We believe most of the backlog cases CR has already closed were closed administratively, which would mean the remaining cases will need to go through the investigation and adjudication process. The average time it took CR to close a case that went through this process was 391 days. However, because staffing and training time is inherent in the 391-day timeframe, we believe a more reasonable estimate is based on a weighted average of cases closed by decision, by settlement, through complainant actions, and through administrative action. We have no statistical basis for this estimate; however, we believe it represents a reasonable timeframe, considering CR's current operations.

complaint process to have any credibility." Another document notes that during August 1998, OGC could concur with only 22 of 52 proposed program decisions prepared by CR. The remaining 30 were returned to CR because OGC determined that they were not legally sufficient to support a finding and needed to be rewritten.

We concluded that the backlog of complaints remains at an unacceptable level and that the complaints will not be resolved in a timely fashion because of the inefficiencies of CR's operations. We are therefore recommending that a special task force, composed of USDA program personnel and civil rights specialists from throughout the Federal Government, be constituted to take control of the backlog of complaints and resolve them in a timely manner.

Recommendation 1a

Immediately convene a complaints resolution task force, composed of well qualified civil rights personnel from other Federal agencies and senior USDA program personnel with decision-making authority. The task force, under the direction of an Executive Director who would report directly to the Secretary, should immediately assume control of the backlog and have full authority to review and resolve complaints.

The complaints resolution task force could also assist the CR Director in reviewing new complaints that have exceeded the 180-day resolution deadline set by CRAT.

The OGC and the CR Director should be available to assist the task force in its efforts.

The task force should ensure, through a case-by-case, document-by-document sweep of the casefiles, that accomplishment reports are accurate and that all settlement agreements and agency corrective actions are implemented in a timely manner.

The task force should also review all cases that were administratively closed and ensure that complainants received due care.

Recommendation 1b

Require the CR Director to implement a system which demands a higher level of supervision over the complaints process and makes the PID Chief responsible for closely reviewing all proposed and final decisions.

Recommendation 1c

Request OGC's legal sufficiency review for the seven cases closed with no findings of discrimination adjudicated based on the agency preliminary inquiry (this includes the two cases closed in 1995).

Conclusion 2 The Process For Handling New Complaints Needs Reengineering

CR officials agreed that the system for processing new complaints is neither effective nor efficient. They emphasized that the system was not designed by civil rights professionals who would know the intricacies of processing complaints.

Once the complaint is perfected through letter writing, the complaint is handed off to the agency against which the complaint was filed. CR instructed USDA agencies to include, at a minimum, the following in the agency response: (a) the agency's admission or denial of allegations and the reasons for the denial; (b) the agency's perspective on the events that led to the filing; (c) the criteria used by the agency to justify its position; and (d) additional relevant materials, including a copy of the complainant's file. Agencies were further instructed to refrain from seeking signed statements from complainants, members of complainants' families, or individuals not employed by USDA. Agencies were limited to 24 days to accomplish their fact finding tasks.

In general, we were informed that agencies were doing more than required (i.e., taking signed statements from the complainant and making decisions about whether or not discrimination had occurred). A CR official said that this stalls the process because the agencies routinely exceed the allowed timeframe. Out of the 125 open 'new' complaints, 38 were over the 180-day threshold at the beginning of our review. Once the agency response is received, the intake staff recommends further action. At this point, the case is handed off for further processing where a decision is made to administratively close, adjudicate, or investigate the case. These procedures result in fragmented case processing.

We believe that CR needs to transition from component processing of their workload to a case management operational concept and structure. This would involve immediately assigning the case to a CR case management team for initial intake analysis, interviewing the complainant extensively, and gathering as much information as possible before requesting an "agency response" precisely tailored to the case. Upon receipt of the response, the case management team should recommend and ultimately implement a resolution (settlement or decision, with or without further investigation, as appropriate).

Recommendation 2a

Assure that the task force assists the CR Director in reviewing the new backlog and in recommending process changes, to include a system that emphasizes involvement of the complainant and a case management team approach to the resolution of the complaint from the initial phases of the process. Until this process is developed and implemented, however, require CR to get back control of the cases which exceeded the 24-day fact finding limit.

Recommendation 2b

Require USDA agencies to abide by CR instructions, limit their 24-day reviews to fact-finding, and immediately stop obtaining signed statements from complainants and other individuals not employed by USDA.

Conclusion 3 CR Does Not Practice Good Case Management

We learned that since its inception in late 1997, the investigations unit lacked the consistent leadership needed to ensure the quality of the investigative process. The investigations unit does not conduct supervisory reviews of investigation plans or supervisory reviews of the investigations to assure that they are being conducted in an effective and efficient manner.

Quality control of investigation reports does not occur within the investigations unit. Adjudicators review the investigation reports, determine if enough information has been provided for the purpose of adjudication, and then use the reports as a basis for preparing decisions. Therefore, the decision-makers can compromise the objectivity needed to fairly adjudicate allegations of discrimination.

The report review process is neither formalized nor adequately controlled. No documentation is maintained to record the number of deficient reports or the number of times that deficient reports are being returned for corrections. We were told by those involved with the review process that at least 60 percent of the reports of investigation are insufficient and need to be returned. They emphasized that this creates another delay in the complaints processing system.

The contractors' reports of investigation generally are returned to them to correct the deficiencies. Deficiencies in reports prepared by PID staff investigators are resolved informally through contacts between PID adjudicators and the staff investigators. Therefore, it is not possible for CR management to assess the quality of the staff investigative process.

Adjudicators informed us that in five cases they were instructed by the co-team leader or the PID chief either to write a decision without first determining whether the investigation report was sufficient or to write a decision with no finding of discrimination even though the investigation report was deemed insufficient by the adjudicator. In three cases, the contractor who had forwarded the reports had defaulted on the contract and would not be available to correct deficiencies in the reports.

Recommendation 3a

Direct CR to appropriately plan investigations and to conduct investigations in an effective and efficient manner. At a minimum, investigative plans should be reviewed by a CR manager who should also be following up to ensure that investigations are proceeding as planned.

Recommendation 3b

Direct CR to design and implement a quality control system over the review process for reports of investigation. At a minimum, the system should include tracking procedures for recording the dates of reviews, the deficiencies noted, the corrective actions taken, the adequacy of the actions taken, and the number of times and to whom deficient reports are returned. Quality control reviews of reports must not be conducted by adjudicators.

Conclusion 4 No Assurance That CR Is Closing All Cases Properly

CR does not properly manage the cases it closes administratively and through settlements. CR did not ensure that all terms of settlement agreements were implemented before closing the cases, and it did not have support for its decisions in all cases it closed administratively. Of the 33 cases coded as administrative closure, 5 did not show support for the closure, and another 16 were improperly coded.

Cases Closed Administratively

We reviewed 33 of 349 backlogged complaint cases that were closed administratively. Typically, these cases may be closed for failure to pursue by the complainant, failure to state a protected basis and issue, failure to file a complaint timely, lack of USDA jurisdiction over complaint issues, referral of complaint to the Food Nutrition Service (FNS) for processing, and other administrative reasons.

CR's data base, dated September 11, 1998, indicated that 37 cases that had been closed administratively had been investigated. It appears that these complaints had not been properly screened. As a result, time, money, and effort were wasted investigating these cases.

Overall, the files did not contain sufficient documentation for us to determine if the cases were appropriately reviewed by management before they were closed. This became apparent after we found that 5 of 33 casefiles did not contain any evidence to support closing the case. Another 16 cases were improperly coded.

Cases Closed With Settlements

We reviewed a total of 18 settlement agreements some of which were not recorded as such in CR's data base. We found five cases coded as closed by a decision of discrimination that had settlement agreements as a result of the finding. We found two settlement cases that were not recorded in the data base as such (1 of these was among the 33 cases closed administratively).

All seven cases we reviewed as closed by a decision with a finding of discrimination and not coded for settlement also had settlement agreements or required agency corrective action. However, there was no evidence maintained in the casefiles to show that the agreements were implemented or the required corrective actions were taken. CR does not track the settlement agreements after they are executed, nor does it require agencies to implement corrective actions prior to closing the cases.

The settlement agreements known to CR are not all cases in which a settlement agreement was reached. In August 1998, the Director of CR provided us with 17 settlement cases which the Director believed to be the total number of settlements. CR's data base, dated September 11, 1998, listed 73 cases as closed with either a settlement agreement or final agency decision with findings of discrimination (which included a settlement agreement). During our evaluation, we reviewed 6 other closed cases not included in the 17 closed settlement cases provided by the Director. Therefore, the total universe of settlements is not known to CR management.

Without a case-by-case review, CR continues to be uninformed about all settlement agreements and whether all terms were implemented. Without a system to monitor the implementation of settlement agreements, there is no assurance that complainants are receiving timely redress.

We concluded the Secretary needs to require a followup review of all settlement agreements to determine whether the complainants are receiving timely redress. In a September 4, 1998, memorandum, the Secretary asked us to perform such a review. We will therefore continue our work to determine the status of all settlements agreed upon by CR.

Recommendation 4a

Require the CR Director to close cases only after all terms and conditions of settlement agreements and other required agency corrective actions are implemented.

Recommendation 4b

Direct CR to immediately establish a system to control and monitor implementation of settlement agreements.

Recommendation 4c

Direct CR to review the five administratively closed cases that did not contain any evidence to support closing them.

**Conclusion 5
CR Did Not Manage
Contractors Effectively**

Although the CRIT team responsible for eliminating backlog cases was disbanded in June 1997, the need for urgent investigations continued due to congressional inquiries, media attention, and complainants' frequent calls.

Beginning in July 1997, CR began to acquire the services of investigative firms through the use of sole source, small purchase, and negotiated contracts. We concluded that CR did not manage these contractors effectively to provide quality investigations of the backlog of complaints.

In July 1997, CR contacted over 20 contractors and found only 1 that had actual experience in conducting investigations of program discrimination complaints. Citing unusual and compelling urgency, CR received approval from the Office of Operations for an initial sole-source contract for 1 contractor to perform 10 program complaint investigations. In all, CR acquired the services of 11 investigative firms.

The first sole-source contractor eventually investigated and reported on only three complaint cases, returning the rest to CR because the casefiles were in disarray. This contractor was paid \$45,000. As of September 11, 1998, the 11 contractors were assigned 297 cases, have finalized 105 investigative reports for PID, and have been paid approximately \$1.3 million.

We reviewed the contractors' technical proposals and determined that some stated they had experience in investigating program complaints. However, most contractors' experience was limited to EEO complaint investigations, whereas CR's investigations involve federally-assisted and federally-conducted programs, not EEO issues. The need for initial training, coordination, and oversight of these investigators was critical to the management of the backlog. However, we noted during our review that CR management failed to adequately oversee and assist the investigators or manage the backlog. One official stated that this was due to a lack of CR staff to supervise the contractors.

In January 1998, one contractor was notified that failure to perform in a timely manner was considered a default under the contract. The contractor was 50 days delinquent on 16 investigations. Correspondence from contractors state that key CR managers ignored repeated requests from the contractors for assistance. The contractors raised questions about mismanagement of the contracts.

We noted one case in which the contractor was selected by CR management even though there was an apparent conflict of interest between the contractor and FSA. The contractor has on ongoing dispute with FSA over additional funds owed to the contractor for extra work provided to FSA. We believe that CR management exercised poor judgement in allowing its contract to proceed and assigning FSA cases to that contractor. Because of this conflict, there is no assurance that the contractor supplied CR with impartial, objective investigative reports.

CR staff estimate the insufficiency of contractor reports of investigation has ranged from about 60 to 80 percent, with a current insufficiency rate of about 60 percent. Reports may be insufficient for a number of reasons, including lack of interviews with complainants, witnesses, or agency officials; incomplete data collection; and insufficient comparative analysis or statistical data.

The report insufficiency problem with the commercial investigative firms was and continues to be exacerbated by the lack of proper oversight by a contracting officer or a technical representative. This responsibility had been delegated to the PID chief, who in turn delegated the work to a temporarily detailed employee. After this employee's detail expired, the oversight responsibility was never properly redelegated.

Currently, the oversight of the contractors' work is performed directly by PID adjudicators. This means that the individual who reviews a

contractor's investigation reports for accuracy and completeness may also review it a second time for sufficiency. This situation compromises the decision-maker's ability to remain objective in exercising his or her duties to fairly adjudicate allegations of discrimination.

CR officials informed us that contracting will continue to be used to acquire resources within PID and other CR units. Therefore, we recommend that CR create a permanent position for a contracting specialist.

Recommendation 5

Direct CR to create a position for managing the contracts (contracting specialist) to provide proper and timely oversight of the quality of work submitted by contractors to ensure that work products and reports meet the expectations and requirements as stated in the contract.

Conclusion 6 CR Did Not Understand the Full Scope of Its Delegated Authority For Assisted Programs

We found that CR was not using Memoranda of Understanding (MOU's) effectively to manage its caseload or to track cases of discrimination that affect USDA operations. Typically MOU's may be used for USDA's assisted programs and cover processing of administrative complaints of discrimination against recipients of financial assistance from USDA. USDA has many agencies (e.g., FNS, the Risk Management Agency, and the Cooperative State Research, Education, and Extension Service) whose programs participants (state and local governments, insurance companies, and universities) are classified as recipients of Federal financial assistance. USDA is responsible to ensure that recipients of financial assistance comply with all civil rights laws and regulations and may revoke funding of entities who do not comply.

Currently CR has MOU's with two organizations, the U.S. Department of Housing and Urban Development (HUD) and FNS. Other programs exist that could be monitored more effectively through agreements contained in MOU's, but CR has not surveyed these programs to determine how effective the agreements could be.

Memorandum of Understanding with HUD

The scope of the MOU with HUD, which became effective in the fall of 1997, is limited to allegations of violations of the Fair Housing Act that are made against participants of housing-related programs and activities

administered by USDA's Rural Housing Service. HUD is responsible for investigating and enforcing Fair Housing Act violations. The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability.

Typically, complainants allege discrimination by persons or entities who receive Federal financial assistance from USDA. These can be housing developers and other non-USDA groups or non-USDA employees. The MOU does not cover complaints alleging that USDA officials have violated the Fair Housing Act.

CR's data base shows that CR referred 59 backlog cases and 1 new complaint case to HUD for processing as of September 11, 1998. Eighteen backlog cases were closed administratively.

According to the terms of the MOU, HUD and USDA shall meet once a year to discuss the operation of the MOU, make recommendations for improvements, and clarify the status of particular investigations. To date, CR has not clearly defined its relationship with HUD because Rural Housing Service officials executed the MOU with HUD officials without CR's involvement.

We discovered that HUD may be processing up to 24 additional complaints alleging discrimination against USDA officials in the single-family housing program. CR officials stated they were not aware of these complaints. We believe that complaints of this nature should be reported immediately by HUD to CR.

HUD has special processing procedures concerning jurisdiction. Potential complainants must be notified that HUD has no authority under the Fair Housing Act to determine whether the Act has been violated by other Federal agencies (such as USDA) or Federal officials.³ However, a HUD official told us that while HUD's authority to conduct investigations and engage in conciliation may be challenged by Federal agencies, HUD's procedure is not to drop a case because of a lack of jurisdiction under the Act. Instead, HUD will continue to accept housing discrimination complaints filed against Federal agencies and officials.

³See Office of Legal Counsel (OLC) for the Department of Justice memorandum, issued May 17, 1994, entitled: "Enforcement Proceedings Against Executive Agencies Under the Fair Housing Act". OLC accepted USDA's interpretation that, although USDA "is subject to discrimination prohibitions in the Act [and] is required to cooperate with HUD to further the purposes of the Act,...it may not be made a respondent in enforcement proceedings brought by HUD under the Act...or pay money damages as is allowed under the Act in either an administrative or judicial forum."

During our review, we obtained information from HUD's data base involving cases where USDA is the respondent to complaints filed since January 1, 1997. There were 24 possible cases involving such complaints. We believe that CR should process these complaints, account for them in its information system, and be otherwise cognizant of all potential investigations and settlements involving allegations against USDA officials. Furthermore, we believe that CR and OGC, in cooperation with HUD officials, should determine procedures under which HUD should forward all future complaints against USDA employees to CR for case processing and resolution.

The current MOU with HUD states, "This memorandum does not cover complaints alleging that USDA has violated the Fair Housing Act. The disposition of such complaints will be addressed at a future date in a separate Memorandum of Understanding." However, we believe that CR in consultation with OGC should amend the existing MOU to include the requirement that HUD forward all future complaints against USDA employees to CR.

Memorandum of Understanding with FNS

The MOU with FNS, dated April 1998, establishes the guidelines by which FNS will process, within 90 days of receipt, discrimination complaints under the various laws and regulations which prohibit discrimination in FNS programs. According to the agreement, CR retains oversight authority for handling complaints and processing appeals. CR is to monitor FNS activities through reporting systems and onsite reviews. During our evaluation, we found no such monitoring of the FNS' complaints processing activities. In addition, CR has not assured itself that FNS regional and State office personnel receive adequate training to carry out complaint processing procedures or compliance reviews.

CR procedures for implementing the MOU include accepting and acknowledging complaints which are then referred to FNS for case processing. Upon referral, CR closes the case. We believe that CR should not close these cases but instead track them to resolution. CR's role in processing FNS complaints is limited to a reconsideration of FNS decisions upon appeal by complainants.

During our review, we noted that of the 1,088 backlog cases, 93 were FNS complaints. As of September 11, 1998, there have been 17 new complaints and another 8 "intend-to-file" cases. In all, 33 backlog cases were sent to FNS for processing and closed by CR.

We believe that agencies such as FNS should continue to process complaints against recipients of Federal financial assistance and to conduct reviews of recipients' operations to ensure compliance with civil rights laws and regulations. However, we feel it is imperative that CR execute its oversight responsibilities through periodic monitoring of agencies' procedures and staff. Therefore, we recommend that CR establish timeframes for conducting reviews of FNS compliance and effectiveness in carrying out its civil rights mission.

Other Agencies Responsible For Financial Assistance Programs

In addition to the housing and entitlement programs administered under FNS and the Rural Housing Service, many more programs are conducted by recipients of federal financial assistance through USDA. These include public works projects, research projects, job creation projects, conservation board districts and conservation commissions, Indian reservations, insurance programs, state prisons, public and private social services, world food distribution agencies, park and recreation facilities, and water and solid waste systems.

These programs are conducted by State, local, and regional entities, universities and colleges; tax-exempt or non-profit organizations; private individuals (fellowships), insurance companies, etc. We believe that CR should survey all USDA agencies who administer programs subject to Federal financial assistance to determine the need for additional MOU's for complaint processing and compliance reviews. Agencies such as the Risk Management Agency and the Agricultural Marketing Service lend themselves to conducting complaint investigations of civil rights allegations. However, CR needs to assure itself that agreed-upon procedures are followed and investigations and reviews are conducted by staff trained and experienced in civil rights laws and regulations.

Recommendation 6a

Direct CR, in consultation with OGC, to amend the MOU to include the requirement that HUD forward all future complaints against USDA employees to CR.

Recommendation 6b

Direct CR to immediately determine the status of 24 possible complaints against USDA employees that are currently in HUD's intake process and to analyze these for resolution. For cases that cannot be resolved, CR needs to determine when and how HUD should transfer case processing to CR.

Recommendation 6c

Direct CR to immediately conduct surveys of all USDA programs to determine the need to execute additional MOU's to ensure that civil rights complaint processing and compliance review procedures adhere to standards established by the Director of CR and are consistently applied by staff trained and experienced in civil rights laws and regulations.

Recommendation 6d

Direct CR to keep open the cases it refers to FNS. Oversee, monitor, and track complaints resolution for FNS and all future agencies with MOUs to ensure complaints receive a fair hearing.

The Office of Civil Rights Needs an Environment of Stability and Commitment to Civil Rights

CR's unsuccessful efforts to resolve the backlog of civil rights complaints are in part the symptom of an insecurity that has affected office morale. The many reorganizations the complaints resolution staff has undergone, the high turnover the staff has experienced within the last several years, and the inadequate training afforded both managers and staffmembers, have left the staff unfocused and without clear direction. The staff we found at the civil rights offices was not a coherent team of dedicated professionals with a shared vision but a fragmented order of individual fiefdoms, each mindful only of its own borders and its own responsibilities.

We believe the Department needs to create an environment in which CR can realize a sense of stability and permanence, and in which it can recognize a commitment to civil rights by the Department as a whole. Without a commitment from the separate agency heads, and a level of accountability from them, CR may continue to perceive itself as an agency without real authority.

We concluded that the Secretary needs to motivate the CR staff by elevating its function to the subcabinet level. We are therefore recommending that the Secretary create an Assistant Secretary of Civil Rights to be responsible for all cross-cutting civil rights issues within the Department.

Conclusion 7 CR Needs the Stability of Subcabinet-Level Status

Civil rights enforcement and compliance in USDA have been adversely affected by the many changes in the Department's civil rights structure. Civil Rights at USDA has undergone numerous realignments in the 1990's, leaving Civil Rights staffmembers uncertain where they belong in the Department hierarchy. High turnover among management and staffmembers has also contributed to a feeling of impermanence. Employees cite these conditions as two major causes of lack of commitment and low morale. The instability has contributed to the dysfunctional civil rights program at the Department and has hampered the ability of the Department to efficiently resolve its program complaints.

In 1994, the Office of Advocacy and Enterprise was reorganized and its name changed to the Office of Civil Rights Enforcement. In 1995, another reorganization established the Policy, Analysis and Coordination Center - Civil Rights (PACC-CR). All policy and compliance activities for civil rights, human resources management, property and procurement and information resources management were realigned with the PACC-CR. At the same time, the processing of civil rights program complaints was transferred to the Office of Operations, a separate staff office aligned under the Assistant Secretary for Administration.

The latest reorganization resulted from recommendations contained in the CRAT report issued in February 1997. The report recommended that one agency should be made responsible for ensuring compliance and enforcement with civil rights laws and regulations. As a result, the PACC-CR incorporated the functions performed by the Office of Operations in May 1997. PACC-CR was then renamed the Office of Civil Rights. This reorganization was in accordance with the Secretary's Memorandum 1010-4, Restructuring of Departmental Administration, dated May 16, 1997. OIG agreed that one agency should be responsible for civil rights at the Department.

The two highest priorities assigned to CR at its inception were the resolution of the backlog of cases in the Department and the issuance of policies and procedures for civil rights operations. We found that high turnover among management and intermittent pressures to solve other operational problems distracted staffmembers from focusing on these priorities.

- CR has a history of turnover. The constant turnover in Civil Rights' management was cited in the CRAT report as a factor contributing to the disarray in civil rights at USDA. We found that this trend continues. There have been eight Directors of USDA Civil Rights Functions since 1990 and five Chiefs of the Program Complaints Division since 1991. Also, since the issuance of our fourth report, dated March 4, 1998, the Department has appointed a new Acting Assistant Secretary for Administration and a new Civil Rights Director. Recently the Deputy Director for Programs was reassigned to a different position within the agency, and the Chief of Program Investigations Division (PID) accepted a position at another agency. In the last year alone, CR has reassigned its Deputy Director for Employment to a different position within the agency, and the Chief Investigator, PID, returned to the agency from which he was detailed. The CR Director who was appointed in March 1997 retired on May

2, 1998, and a special assistant to the Secretary was named the Acting CR Director.

On July 13, 1998, the Department named the new Director for CR. The new Director has recognized the recent failures of CR to effectively process program complaints. The Director has shown a commitment to staffing changes to bring in more qualified personnel. She has also shown a commitment to developing policy and procedures, establishing supervisory reviews and quality controls, and reengineering the complaint process system to handle complaints more effectively.

- Problem-solving detracted from higher priorities. Efforts to staff the PID, respond to court orders, organize files, and improve the data base impeded staffmembers in their ability to resolve the backlog of program complaints in a timely fashion.

In October 1997, CR was instructed by court order to collect and copy county files in response to the *Pigford* lawsuit. In November, CR began to receive and make copies of county files to meet the 2-week period specified in the court order. Over 5 million pages were copied and date stamped. In December, the judge issued a court order to the Department to cease the administrative processing of complaints for persons named in the lawsuit.

In November 1997, CR conducted an inventory of its program complaints. The CR found that the files were in disarray. CR established a file organization team to organize the complaint files. The backlog of program complaints was defined as 1,088 program complaints filed prior to November 1, 1997. That month, CR began notifying complainants by letter that their complaints were being processed. The mass mailing was made in response to a recommendation by OIG.

Also in November 1997, at the direction of the Secretary, a team was formed to improve data entries to the stopgap program complaint data base. The team members, from different agencies within the Department, added and verified over 40 data elements for the 1,088 complaints. The project was completed by the second week of January 1998.

The turnover of personnel and the distraction of changing assignments reflect the need for greater stability within the Department's lines of authority. The CRAT report debated whether the CR Director should report directly to the Secretary or remain under the Assistant Secretary for Administration. Some officials noted that elevation of the civil rights role directly to the Secretary would increase both accountability and visibility, while others felt a more effective program could be obtained by building accountability into agency heads' performance standards and giving full authority for civil rights oversight, compliance, and enforcement to the Assistant Secretary for Administration.

In his May 16, 1997, memorandum, the Secretary gave the Assistant Secretary for Administration the authority for oversight of all civil rights functions within the Department. The memorandum stated that the Assistant Secretary for Administration would serve as the Department's Director of Equal Employment Opportunity and have authority to make final determinations on discrimination in conducted or assisted programs, and on discrimination in programs subject to the Equal Credit Opportunity Act (ECOA). The Assistant Secretary for Administration was also given the authority to delegate the performance of civil rights functions to the heads of USDA agencies.

The Secretary also gave the Assistant Secretary for Administration responsibility for four other departmental offices: the Office of Human Resources Management, the Office of Procurement and Property Management, the Office of Operations, and the Office of Small and Disadvantaged Business Utilization.

Because the Assistant Secretary for Administration is responsible for five staff offices (including CR) whose functions are departmentwide, we concluded that serious consideration should be given to establishing an Assistant Secretary position for Civil Rights. Other Departments we contacted or visited, such as the Department of Education and the Department of Housing and Urban Development, have subcabinet-level positions for civil rights or equal opportunity.

Establishing an Assistant Secretary for Civil Rights should help to stabilize the civil rights functions at the Department and will give civil rights the attention needed to implement departmentwide changes. Also, an Assistant Secretary for Civil Rights would have the same authority delegated to the CR Director but would be on equal footing with other Assistant and Under Secretaries in the Department. This would give civil

rights the sinews it needs to enforce civil rights compliance in the Department.

Recommendation 7

Establish an Assistant Secretary for Civil Rights at the subcabinet-level to resolve cross-cutting issues between agencies and CR.

Conclusion 8 CR Needs To Be Staffed By Qualified Managers and Personnel

High level officials and managers who play a key role in civil rights at the Department lack civil rights expertise or experience. The Assistant Secretary for Administration is responsible for civil rights, but this position is normally not filled by an individual with a civil rights background. As mentioned previously, the Assistant Secretary for Administration has been traditionally responsible for departmentwide functions distinct from civil rights, such as procurement and property management. The lack of civil rights expertise by the one official responsible for civil rights at the Department impacts USDA's ability to enforce civil rights laws and regulations and indicates a lack of commitment towards civil rights.

Also, the CR Director appointed in March 1997 in response to the CRAT recommendation had years of experience in USDA's program delivery but did not have a strong background in civil rights. This was also true of CR's Deputy Director for Programs, who was also appointed in March 1997. This individual had an advanced degree in statistics, but did not have a background in civil rights.

Although the CR was established in May 1997, its PID, which is responsible for investigating and adjudicating complaints, did not have a chief until October 1997. The Chief of PID had both USDA program and civil rights experience, but his civil rights experience was limited to policy and planning. Also, as stated previously, the Chief of PID left the agency within 1 year. His experience was limited regarding the intake, investigation, and adjudication of program complaints. We also found this to be true of managers or team leaders placed in charge of the different units within PID. The team leaders lacked the necessary experience and knowledge of civil rights laws and the analytical framework to effectively process program complaints.

The investigators hired by CR to investigate program complaints did not come on board until November 1997. The majority of the investigators hired by CR had advanced degrees or law degrees but lacked civil rights investigative experience and had little knowledge of the Department's

programs and county delivery systems. To further compound the situation, CR provided minimal training to its staff of investigators (see Conclusion 9). Investigators informed us that they were expected to prepare an investigative plan, conduct the investigation, and write a report of investigation in 3 weeks. Some said they were sent out to investigate cases within days of reporting for duty at CR.

CR also hired up to 20 law students to work part time organizing files, reviewing reports of investigation, and adjudicating cases. When we questioned the expertise of law students to adjudicate program cases, we were told by a CR official that the students were “third or fourth year law students and were excellent writers.” In our opinion, an individual who adjudicates civil rights program complaint cases should be versed in civil rights laws and regulations and have knowledge of programs and county delivery systems unique to the Department of Agriculture.

The PID compliance staff lacked a manager with knowledge of how to plan for a compliance review, how to conduct a compliance review, and how to report on the results of a compliance review. Also, since CR had not conducted a compliance review for several years, the staff assigned to the compliance unit had little or no experience in conducting a program compliance review. No one assigned to the staff had previously conducted a program compliance review.

Nevertheless, CR decided to conduct compliance reviews with an inexperienced staff. Some compliance reviews were conducted in the Virgin Islands, Oklahoma, Virginia, Mississippi, South Dakota, Montana, and Colorado. Only the report on the compliance review for the Virgin Islands has been released. This report remains unresolved because the agencies involved have not accepted the conclusion reached by CR. The new CR Director has sent the remaining reports back to the staff for rewrites. The CR Director feels that the findings contained in the reports lack support.

Recommendation 8

Require the CR Director to place high priority on hiring civil rights managers who have a strong background in civil rights and a knowledge of USDA programs and delivery systems.

**Conclusion 9
Inadequate Training of Staff
and Contractors Delayed
Investigations**

Contractors and CR staff were not adequately trained to perform the tasks assigned to them. Contractors received little training because CR did not properly plan for a training period for them, and CR staff received only minimal training because CR had not analyzed their training needs.

In addition, no formal training has been given to CR adjudicators, who in many instances began adjudicating cases after performing only one or two program investigations. We concluded that insufficient contractor and staff training resulted in deficient investigations, some of which had to be redone so that cases could be properly adjudicated. These deficiencies delayed resolution of complaints.

We reported in Phase II of our progressive evaluations of CR the need for training of CR staff. The Phase II report was issued in September 1997. We are particularly concerned that now, after a year, CR has done little to improve its staff's capabilities through formal training.

Staff Training

CR does not establish training plans for members of its PID staff. Individual training plans, although not required by the Department, act as a tool for managers to assess the capabilities of their staff and to determine where to invest training resources to get the most benefit for the agency and employees. Without a formal training plan, an agency may not direct its training efforts in areas where there is the most need. Many CR staffmembers stated during our interviews with them that more training was needed to improve the performance of investigations and achieve consistency in the reports of investigations.

Based on information provided by CR, most of the PID staff received some type of training during fiscal year 1998; however, specific types of training appear to be lacking. For example, the investigators did not receive specific training on how to write and organize investigative reports. Also, adjudicators received no formal training on the adjudications process. As a result, reports of investigation were not in standard formats, and adjudicators may not have been using consistent methods of analysis while adjudicating cases.

Contractor Training

Training provided to contractor investigators was minimal. However, based on the resumes presented with the contract proposals, some of the contractor investigators did not have any experience conducting program

complaint investigations. CR should therefore have ensured that the contractor investigators received thorough program and investigative training before they were assigned any cases.

From interviews with various adjudicators, it was apparent that many of the investigations performed by these contractors were deficient and lacked consistency.

Recommendation 9a

Develop staff training plans that adequately reflect the training needs of the agency.

Recommendation 9b

Provide training to staff personnel as soon as possible, when it is determined that specific members of the staff have not received necessary training to properly perform their assigned tasks.

**Conclusion 10
Morale Among Staffmembers
Is Low**

Most of the 43 PID staffmembers we interviewed told us that morale in the office was poor. Although several causes for the low morale were named, the common cause was high management turnover. Staffmembers felt the turnover resulted in a lack of consistent direction and in a changing vision of CR's purpose. Low morale can easily affect the productivity of a staff and may be one reason for CR's poor performance over the last year.

We interviewed members of the PID staff, including those from grade GS-5 through grade GS-15. Based on these interviews, we attempted to document the staff's opinions toward office morale and office operations.

The majority of the staff stated that morale was low. They offered several reasons for this condition:

- * management was never consistent because of a high turnover
- * direction from management was lacking
- * communications from management needed improvement
- * training was inadequate
- * timeframes were unreasonable
- * the temporary staff faced an uncertain future
- * supervision was inadequate at some levels
- * some employees appeared to be unproductive

PID has had at least five directors over the last 8 years. This turnover has left the leadership of the division fragmented and inconsistent, resulting in a shifting vision that has frustrated employees and damaged the efficiency of the unit. In addition, many staffmembers are temporary and therefore face an unknown future concerning their employment. This uncertainty can have an effect on the productivity of these employees.

Communication between management and staff also appears to be a primary source of low morale. Many employees stated that when decisions are made, the staff is never consulted for ideas. As a result, many staffmembers believe that unreasonable and unattainable timeframes for work issues are established. Also, many employees in PID do not have formal performance standards and have not received their semiannual performance appraisals. We were told that in the future these appraisals will be based on a point system, and that this system may not have been clearly articulated to the staffmembers.

Recommendation 10

Provide a mechanism for employee input into office operations through quality control sessions and other forums.

CR Needs To Systematize its Data Entry Procedures and Reorganize its Casefiles

CR's data base for tracking the status of program complaints is incomplete and contains numerous errors and outdated information. CR's casefiles, that support the data base, have been filed haphazardly in many cases, making retrievability difficult if not impossible. Data has not been reconciled with complaint files from other agencies, and filing in general is unsystematic and needs reorganization. Forty casefiles could not be found, and 130 complaints listed in USDA agency files are not in CR's data base.

Overall, CR does not make the best use of the technology it has to track and maintain information. Personnel are not trained to use the data base, and controls over casefiles are too casual, allowing too many documents to be passed between division personnel with no accountability.

We reported these deficiencies during our previous review. We noted especially that casefiles needed to be standardized and controlled by a log sheet showing who had possession of the file. We had also noted that CR's data base needed to include the key dates associated with the complaint process and case numbers that would allow CR to monitor each case's progress. Because agencies do not always forward complaints, reconciliation with their data bases was a critical recommendation in our Phase I report. Although CR had indicated it would take corrective actions to use its data base efficiently and reorganize its files, these actions have not been successfully implemented.

Conclusion 11 CR's Data Base Is Not Reliable

CR's data base for tracking the status of program complaints is incomplete and contains numerous errors and outdated information. This condition exists because CR has no data-input procedures, has not provided personnel with adequate training, and has not established a system for second-party review. As a result, CR produces unreliable management reports, provides inaccurate and untimely information to the Secretary, and is unable to provide the status of a complaint when requested by the complainant. The Secretary has repeated these inaccuracies at congressional hearings and other public forums.

Problems in the data base indicate that CR personnel did not know how to use the system efficiently. They did not make full use of the data fields in the system, and they did not update information to effectively track cases.

- CR personnel do not make full use of the data base. Even though separate data fields exist to record when correspondence is mailed and when CR receives a response, CR personnel ignore these fields and enter this information in a general "status" field. Further, we found instances when CR personnel did not use all the fields necessary to track the progress of a case. For instance, a case that has gone through the investigation process and has been closed may not have all the intermediate dates, such as the date of the final report of investigation, date of draft decision, etc., properly noted. These conditions make it impossible for CR to query the data base on these data fields. They also limit the reliability of the management reports that may use these data fields.
- CR personnel are not required to update the data base in a timely manner. On two occasions during our review, CR personnel updated the data base after they obtained knowledge of our request for information. We obtained a copy of CR's data base on August 5, 1998, which showed at that time 78 closed cases in the 'new' category of program complaints. On August 6, 1998, CR personnel were requested to provide a list of all closed 'new' complaints. CR's report, which was generated on August 6, 1998, had 11 more closed 'new' complaints than were noted in OIG's copy of the data base. However, none of the 11 cases were closed during August. CR had not increased its productivity; it had only updated its data base.

On the second occasion, we used CR's data base to produce a list of backlog cases sent to contractors for investigation. The list indicated that CR had not yet received a report from the contractors. When we asked CR personnel to show us the status of these cases, they generated a list from their data base that showed 53 fewer cases under investigation than shown on our list. Again, this was a result of belated updating, not productivity. Our list also showed that 59 cases were under investigation by CR investigators, but CR officials told us that 35 of these had been returned for administrative action as far back as February.

File updating continued throughout our fieldwork. Table 9 shows the change in the status of backlogged cases that was reflected in CR's data base at the beginning of our fieldwork (August 5, 1998) and at the end of our fieldwork (September 11, 1998). Most of the changes were the result of updating.

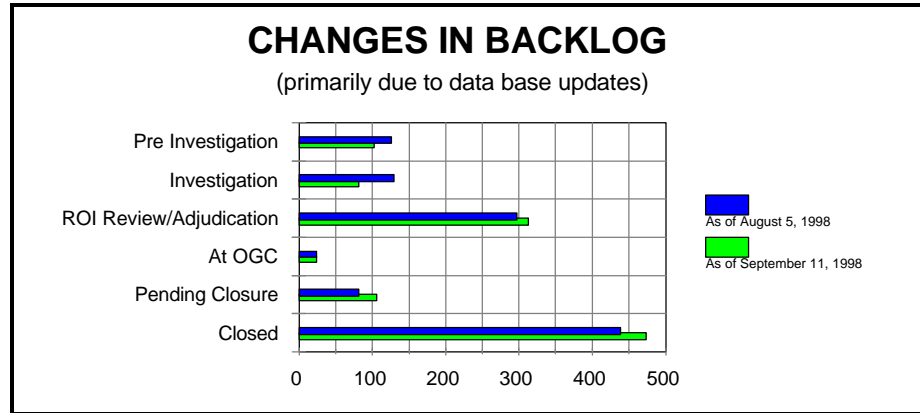


Table 9: 37-Day Status Changes Resulting Primarily From File Updating.

- CR personnel do not always use correct closure codes. CR uses 18 codes to indicate why each case is closed. We found several cases with blank closure code fields even though the cases were closed. In 15 percent (64) of the cases in CR's August 5th data base, CR personnel simply used the closed code "other." In eight of these cases, another status field showed the nature of the closure. Although specific codes were available for these cases, the codes were not used.
- CR personnel do not use all codes possible to identify closure. We found instances where at least two closure codes would have been appropriate in the case; however CR personnel only included one. For instance, CR concluded that there were findings of discrimination that resulted in a settlement agreement between the complainant and the Department. CR personnel only coded the case as closed with findings of discrimination but did not identify that the case included a settlement agreement.

We believe that many of these errors were caused by CR's lack of procedures, guidance, and training on how to use the data base. Further, CR does not have a policy for second-party review of the data once it is in the system.

CR is in the process of creating a new data base which will give USDA agencies access to CR's data base to determine the status of program

complaints against their agencies. CR's new data base, as described to us, would allow more extensive edit checks to ensure the integrity of the data being entered. However, we believe that before this new data base is implemented, CR needs to ensure the integrity of the data in its current data base so the new data base will not be corrupted by bad data. CR must therefore establish procedures and provide training to personnel on how to use the data base and input data. CR also needs to establish a second-party review process that ensures the accuracy of input data and requires a concurrent updating of each casefile.

Our review also disclosed that CR is not reconciling its data base with those of other agencies. CR was established to be a central and independent receptacle for all program civil rights complaints within the Department. However, some agencies do not always forward their complaints to CR, and CR does not followup with agencies to resolve differences. According to CR officials, a monthly report of open complaints is sent to each agency for purposes of reconciling. Nevertheless, officials at FSA and Rural Development refuted this statement. FSA officials said they have only received reports from CR when specifically requested, and Rural Development officials said they have only received one report in August 1998. Rural Development officials told us this report was given to them during a face-to-face meeting with CR officials.

We contacted the civil rights offices of 15 agencies within the Department and asked them to verify that the complaints shown on CR's data base as of August 5, 1998, were correct and complete. Five of the fifteen agencies stated they did not have open civil rights complaints. Of the remaining 10 agencies, we found discrepancies between CR's data base and the data bases of 5 agencies. These 5 agencies (FSA, FNS, Rural Development, the Natural Resources and Conservation Service, and the Risk Management Agency) had 739 open complaints according to CR's August 5, 1998, data base. We found a total of 130 cases from these 5 agencies which were not on CR's data base, including 70 at Rural Development. Without timely knowledge of civil rights program complaints collected by other agencies, CR can not begin the process of resolving these cases.

We also rereviewed the status of the cases in our original sample of 241 FSA complaints. CR did not show 37 of these cases in its data base. (See exhibit A.) Four of these cases were previously identified in the 130 unreconciled cases. We reviewed a listing provided by FSA and found 13

of these 37 cases. Of the 13, FSA had a status of "closed" for 8 cases and "sent to Dept." for 5 cases.

A lack of complaint reconciliations between CR and Department agencies has been a recurring theme throughout our reviews. We first mentioned this discrepancy in our Phase I report, and we noted the reconciliations had not been implemented in our Phase IV report.

Recommendation 11a

Before the new data base is implemented, direct CR to ensure the integrity of the data in its current data base by establishing procedures and providing training to personnel on how to use the data base and input data.

Recommendation 11b

Direct CR to establish a second-party review process to ensure the data is reviewed at the time it is entered and that all relevant case data is reviewed at the time the case is closed. Second-party review procedures should require that all changes made in the data base be documented in the casefile along with an explanation of why the change was made. Finally, CR should establish procedures that require the data base to be timely updated to ensure management reports provide an accurate picture of the status of program complaints.

Recommendation 11c

Direct CR to institutionalize a process of reconciliation that holds each agency head accountable for reconciling its data with that of CR.

Recommendation 11d

Direct CR to cleanse the current data base by reconciling all cases in CR's data base with agency data and by determining the identity and status of the 130 missing cases and the additional 33 cases from FSA original backlog (37 cases less 4 cases identified as part of the 130).

**Conclusion 12
Condition of Casefiles Renders
Critical Material Inaccessible**

CR lacks control and accountability over the casefiles that are in its charge. Because of our concerns with the data base, we conducted an inventory of CR's program complaint casefiles. CR was unable to locate 40 casefiles that were listed on its data base, did not retain all confidential casefiles in a secure location, and did not maintain all documentation in the correct

casefile. We could not determine if enough information was available to render a decision on the propriety of case closures.

We obtained a listing of all complaints on CR's data base, which included cases categorized as backlog, new, and intend-to-file. We performed a physical inventory of all cases at CR and attempted to reconcile these files with CR's data base. As of August 5, 1998, CR claimed to have a backlog total of 1,088, a new total of 203, and an intend-to-file total of 668. We worked with CR for about 3 weeks to try to locate all of these casefiles. However, we could only physically locate 1,054 backlogged cases, 201 new cases, and 664 intend-to-file cases. We could not locate 40 files.

When we first attempted to physically locate every casefile, we found that not all files were in the secured file room. Most files that were categorized as new and intend-to-file or that were part of the two lawsuits were kept in the work area of two of the Program Investigations Division (PID) employees. Whereas only authorized personnel have access to the file room, all PID staff have access to these other areas. CR drafted file room procedures, but these procedures were never implemented. We found the following discrepancies:

- The procedures state that the file manager will be responsible for maintaining the complaint files, but new, intend-to-file, and lawsuit files were not under the control of the file manager.
- The procedures require that all files leaving the file room be checked out. Files moving between staff in PID remain checked out to the original requestor of those files. According to the file manager, when a PID official receives a file he or she personally did not check out, the official is required to e-mail the file manager and inform her the file has changed possession. However, the file manager told us that PID employees do not inform her of this change of possession. Usually the individual who returns the file is not the individual who checked it out.
- CR's procedures also state that when files are checked out, the file manager will enter the name of the requestor immediately into the data base case record. The file owner field will show the requestor's name and date, and that person will be responsible for the files until they are returned to the file room. We found this field did not contain updated information which would lead us to the casefile. For example, we found a few of the missing cases were still checked out to the former Director of CR who officially retired over 3 months prior to our

review. Many of the missing casefiles listed "missing" as the file owner.

- The CR's procedures state that files are to be separated by agency and complainant, in alphabetical order. During our inventory, we found cases for FNS, the Rural Housing Service, and the Cooperative State Research, Education, and Extension Service filed with FSA cases. We also found cases which were filed by first name and not last, and one case where the complainant's folder was haphazardly placed in the file without regard to either first or last name. Also, although procedures state that closed files will be separated from active files, we found many cases in the active file whose folders indicated the cases were closed.

During our physical inventory, we intended to compare certain dates on correspondence with dates in the data base. However, we found the correspondence was misfiled. Occasionally documents from one complainant's casefile would turn up in the file of a completely different complainant. We also found that if a complainant had multiple folders, CR had not numbered the folders so the reviewer would know whether he or she had a complete file. In several instances, the multiple folders of a case were filed separately: one folder was filed in one part of the file room and another folder in a different part of the file room. In addition, we observed general disarray in the file room. We saw files stacked against the wall, strewn across the floor, and piled on top of filing cabinets. Many of these files were duplicate copies of agency casefiles that CR did not need (see photo).



Figure 1: The State of CR's File Room



Figure 2: Numerous Copies of FSA Casefiles

Recommendation 12a

The complaints resolution task force should immediately establish control of the files to ensure their integrity and to perform a document-by-document sweep of the files.

Recommendation 12b

Direct CR to find the 40 missing files.

CR Needs To Update Civil Rights Guidelines To Ensure Due Care

CR has not provided adequate guidance to resolve program complaints. There are no procedures for investigations, adjudications and compliance reviews to ensure that these programs achieve their results, and that reliable and timely information is obtained, maintained, reported and used for decision-making. We attributed many of the inefficiencies in CR's operations to a lack of guidance through formal written procedures. Management has not implemented the kinds of controls needed to ensure an effective and efficient operation. Without published regulations and formalized procedures, CR has no complete assurances that the Program Investigations Division is providing due care on each program complaint.

We reported this same condition during our first review of the complaints resolution process in February 1997, and again in March of this year. We believe that standardized, written guidelines are essential to CR's operation. It is a matter of some concern to us that CR has, over the space of 20 months, produced nothing to lay the foundation for good management controls.

Office of Management and Budget (OMB) Circular No. A-123, states: "Management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision-making."

CR's delay in publishing regulations and procedures has also resulted in the current lack of Department accountability to CR. CR has the authority to enforce USDA agency compliance with Department civil right policies, but has not revised the policy guidelines to implement this authority.

OMB Circular No. A-123 states, "Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that

programs are managed with integrity and in compliance with applicable laws."

**Conclusion 13
CR Needs To Revise Its
Department Regulatory
Guidelines**

CR still does not have adequate controls over the receipt, processing, and resolution of program complaints within its civil rights complaint processing system. Because CR's Policy and Planning Division has made little effort to revise the entire 7 CFR part 15 on nondiscrimination or to redraft Departmental Regulation 4330-1, there are no effective guidelines to include the departmental agencies, programs (federally-assisted and federally-conducted), and civil rights laws which USDA has the authority to enforce.

In an effort to improve program operations, the program staff of CR held a retreat in Beltsville, Maryland, in May 1998, and developed an immediate workplan with 11 goals. Noteworthy goals included resolving the 1,088 backlog program complaints by October 1, 1998, resolving all new complaints within 180 days, developing effective management information systems, developing policies that are founded in civil rights laws and regulations, instituting reviews that effectively assesses agencies' compliance with civil rights requirements, and providing job related training as necessary.

We agree with the goals CR established at the retreat. However, CR did not proceed to the next step by formulating policy and procedures to carry out its stated goals. Our first report dated February 27, 1997, emphasized the need for policy and procedures to govern the processing of civil rights complaints. CR continues to lack the basic procedures, supervisory reviews or quality controls to accomplish its goals and ensure integrity in its operations.

Since May 16, 1997, when the Secretary established the Office of Civil Rights and gave its Director full responsibility to resolve discrimination complaints, CR's Policy and Planning Division has written no departmental guidelines to describe the complaint process governing the receipt, processing, and the resolution of complaints within established timeframes. Although the division was created solely to create such guidelines, it has produced nothing on these key policy statements over the 20 months of its existence.

Also, because of the lack of departmental guidelines, CR does not properly oversee agencies' civil rights activities. We found the

Accountability Division is responsible for monitoring corrective actions prescribed by settlement agreements and decisions with findings of discrimination; however, no one has actually been tracking the agencies' progress in the program complaint process.

Recommendation 13

Direct CR either to issue within a 2-month timeframe the departmental regulations governing the receipt, processing, and resolution of discrimination complaints, or to consider alternative means of hastening the issuance of these documents.

Conclusion 14 Standard Procedures Need To Be Published for Investigations and Compliance Reviews

CR has no standard procedures for the bulk of the operations of the PID, including investigations, adjudications, and compliance reviews. PID itself has not formalized its procedures for processing program complaints and conducting compliance reviews. The division operates in a generally informal environment. As a result, there is no reasonable assurance that program complaints are handled with due care and that compliance reviews achieve their intended results.

The Program Investigations Division has divided itself into nine functional areas. These areas included new complaints, investigations, adjudication, file management, administrative closures, and compliance reviews. We were able to identify new complaints and file management as the only two functional areas with formal procedures. The new complaints' procedures were not sufficient because the process was too segmented to determine the objective of each step. The file management's procedures were sufficient, but were not implemented by PID. For the remaining seven areas, no formal procedures were in place to ensure that USDA program complaints would generally receive the kind of processing needed to ensure a timely hearing for the complainants.

Again, CR's Policy and Planning Division is responsible to issue procedures for the activities involved in the complaints resolution process. The division has done some work on a procedures manual for compliance reviews, but to date it has produced no procedural guidelines on the critical processes of investigation and adjudication.

In the absence of formal procedures, several PID functions are relying on borrowed guidelines or truncated direction. For example, investigators are using draft procedures developed by the Department of Justice for investigation of complaints of discrimination against recipients of Federal

financial assistance. Also, adjudicators are using a form called "Criteria for Assessing The Sufficiency of Investigative Report," but this form does not provide formal procedures to explain the process entailed in arriving at a finding of discrimination or at no finding of discrimination.

A manual on compliance reviews had been in circulation but was discontinued after heavy criticism was aimed at both the manual and Departmental Regulation 4330-1. The 1996 Report of the U.S. Commission on Civil Rights found that the manual did not detail specific timeframes for completing tasks, nor did it address the legal standards for discrimination under Title VI. The manual suffered from the same lack of clarity as Departmental Regulation 4330-1, particularly in its discussion of different kinds of compliance reviews. OGC is currently drafting a revised version of the compliance manual.

For fiscal year 1998, CR conducted 19 compliance reviews. However, in the absence of adequate policy guidelines for the performance of these reviews, the Department has no reasonable assurance that agencies are complying with Title VI of the Civil Rights Act for both federally-assisted and federally-conducted programs.

Recommendation 14

Direct CR to issue within a 2-month timeframe standard operating procedures for program complaint processing.

Past Deficiencies Continue: CR Has Not Implemented Corrective Actions

In February of this year, we performed a review (Phase IV of our continuing evaluation) of CR's efforts to implement recommendations we had made to help improve its system for processing civil rights complaints. These recommendations were contained in two evaluation reports and two internal memoranda we issued the previous year. We found that of the 31 CR-related recommendations we had made in those documents, 8 had been resolved and 23 had not. As of September 30 of this year, these 23 recommendations have not been implemented.

As this report has elsewhere indicated, the deficiencies for which last year's recommendations were made continue to weaken CR's performance. We reported last year that the program discrimination complaint process lacked integrity, direction, and accountability. This continues to be the case. Although CR has taken steps to clear its backlog of complaints and impose some order on its processing operations, those operations remain largely unsystematized and without the normal structure of quality control.

The unresolved recommendations generally concern CR's need to create plans to operate effectively and its need to impose timeframes on its operations.

Regulations Are Not Yet Published. We recommended in February 1997 that CR update and publish Federal and departmental regulations on processing program discrimination complaints for federally-assisted and federally-conducted programs. CR responded in March 1998 that departmental regulations (DR 4330-1) were being finalized in conjunction with the Office of the General Counsel. However, as we have noted in Chapter 6 of this report, the Department's codified regulations, 7 CFR part 15-Discrimination, are still outdated and do not reflect current departmental agencies, programs, and laws. Also, as of the date of this evaluation, DR 4330-1, which should describe how discrimination complaints should be processed, has not yet been published.

Publishing regulations governing the complaints process is vital to maintaining accountability within the system. In the absence of any formal regulations describing how the process should work, operations at CR appear directionless and unfocused.

Reconciliation With Other Agency Casefiles is Still a Priority. In February 1997, we recommended that CR determine the number of outstanding complaints at FSA and other departmental agencies with the assistance of those agencies. We concluded such a reconciliation was necessary because our comparison of CR's list of open complaints with lists from FSA and Rural Development showed names on the agencies' lists that were not on CR's list and vice-versa. Nevertheless, as of March 1998, CR had not completed such a reconciliation and had no formal plan to perform one. As noted in Chapter 4 of this report, reconciliation continues to be a problem at CR.

The absence of a formalized reconciliation process makes an accurate count of program complaints impossible. We noted in March of this year that during congressional hearings and other public forums, Department officials have repeatedly misstated the number of open program complaints and the number of complaints closed by the Department.

Deadlines Not Enforced for Agencies To Forward Complaints. In February 1997, in order to ensure an independent review of complaints of discrimination in the farm credit programs, we recommended that (1) FSA State executive directors transfer to CR the responsibility to conduct complaint reviews and (2) that CR re-review all 734 complaints already reviewed by the State executive directors. We noted in March 1998 that the State executive directors had not submitted all their cases, whether reviewed or not, and we further instructed CR to give the State executive directors a deadline to forward all complaints. As of this evaluation, the State executive directors have not forwarded all complaints and CR has not established a timeframe to hold FSA accountable.

Plans Are Needed for Compliance Reviews. Our February 1997 evaluation report contained two recommendations specifically requiring CR (1) to develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all levels, and (2) to evaluate each agency's civil rights unit to determine if staffing and procedures were adequate.

CR responded in March 1998 that it had created a division to develop procedures for performing compliance reviews and to carry out those reviews of Department agencies. The CR division had performed 19 reviews by August of 1998, but it has issued only 1 report.

Sensitive Issues Are Being Mishandled. Nine recommendations relating to instances of unprofessional remarks or behavior were contained in the December 1997 memorandum. The memorandum was issued to inform the Assistant Secretary for Administration of these specific situations in which employee conduct involving loan-making, loan-servicing, and foreclosure proceedings may have adversely affected minorities. We recommended that CR review each of the nine instances. Although the cases were confidential, CR referred them all to FSA for review. Meanwhile CR responded to OIG's recommendations without revealing what it had done. CR simply informed OIG that it intended to perform a comprehensive review at each of the locations. Upon discovering that CR had referred the cases to the agency, we demanded that CR call them back. FSA returned the cases without formally investigating them. As of this evaluation, CR has also done nothing to investigate them.

CR Needs To Make a Determined Effort To Find Lost Casefiles. In February 1997, we reported that CR needed to reevaluate 26 discrimination complaints that had been closed by FSA program managers without CR's concurrence. In March 1998, CR responded that it had reevaluated 21 of the complaints but had no record of the remaining 5 cases. As of this evaluation, CR has still not found the 5 cases.

Plan To Handle Backlog May Not Be Necessary. Our February 1997 evaluation report and our September 1997 evaluation report contained four recommendations concerning CR's backlog of civil rights complaints. By March 1998, CR had identified the full extent of its backlog and placed its reliance on contractors and inhouse investigators to investigate the complaints. We asked CR for a plan to reduce the backlog within a reasonable timeframe, but CR did not provide us with such a plan. However, if our recommendation to convene a task force to clear the backlog is accepted, such a plan from CR would no longer be necessary.

Distribution of Aging Reports Is Vital. In February 1997, we recommended that CR send aging reports of complaints each week to responsible officials. During our February review, we noted that CR

did not prepare aging reports to identify trends or situations in need of attention. This was still true in March of 1998. If a task force is assembled to undertake to clear CR's backlog of complaints, CR may not need to age them for management purposes; however, CR still needs to track the age of its current complaints to ensure that none of these are left unattended.

Training of Investigators Should Be Higher Priority. Our September 1997 evaluation report recommended that CR retain the authority to conduct investigations of program discrimination complaints and that it ensure that its staff is adequately trained to perform these investigations. In March 1998, CR responded that it had divided the investigative efforts between the agencies, which would perform fact-finding activities, and its own staff and that it provided its staff with 10 hours of orientation, none relating specifically to investigative procedures. We concluded that CR's training in the complex area of conducting civil rights investigations was inadequate. We required CR to provide us with a training plan for investigators, but as of the time of this evaluation it has not produced one.

We have attached as exhibits B and C to this report the letters sent by the Secretary directing CR to implement the recommendations summarized in this chapter. The letter in exhibit B refers to the recommendations made in our Phase I report and was sent on February 26, 1998. The letter in exhibit C refers to the recommendations made in our Phase II report and was sent on October 1, 1997.

Because this report makes many recommendations similar to those already discussed in this chapter, we are not restating any of the unresolved recommendations. We will administratively resolve the recommendations concerning a plan to clear the backlog, if our recommendation to transfer the backlog to a task force is implemented.

We will continue to work with CR to resolve these outstanding issues and to ensure that corrective actions are implemented in a timely manner.

Recommendation 15

Direct CR to resolve within 2 months all recommendations that we made in our Phase I and Phase II reports and that CR has failed to implement.

EXHIBIT B - SECRETARY'S RESPONSE TO OIG'S PHASE I REPORT



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

FEB 26 1997

Roger C. Viadero
Inspector General
U.S. Department of Agriculture
Washington, DC 20250

Dear Roger:

Thank you for your evaluation report no. 50801-2-Hq(1). I also appreciated the briefing you provided on the contents of the report. This report provides extremely valuable information as we move forward with what is likely to be the most aggressive civil rights agenda in Government. I find that your report substantially supports the findings and recommendations of the Civil Rights Action Team (CRAT) report.

As you know, I am deeply concerned about allegations that USDA is not delivering its programs in ways that live up to the spirit and letter of the relevant civil rights laws, regulations, and policies of the United States. While your report does not address the merits of these allegations, it does confirm that the program discrimination complaint process at the Farm Service Agency lacks integrity, direction, and accountability. After reviewing your report, it is clear that Department wide policy and guidance is needed on many aspects of the complaints processing system.

I am asking that Pearlie Reed, who will direct the implementation of the recommendations of the CRAT, work closely with you and the Office of Inspector General staff to assure that your concerns and recommendations are addressed fully. The immediate actions you suggest will be helpful as the implementation team designs a plan to reduce the backlog of civil rights program complaints within the Department. The long term actions included in your report fully conform with the CRAT findings and recommendations.

Again, thank you for the expeditious action you took to address the issues which I asked you to review. The task at hand is great, if not monumental. We can all look forward to a better USDA as a result of the actions which will begin with release of your report, and the CRAT report.

Sincerely,

A handwritten signature in black ink that reads "Dan Glickman".

DAN GLICKMAN
Secretary of Agriculture

cc: Pearlie Reed
Team Leader, Civil Rights Action Team

AN EQUAL OPPORTUNITY EMPLOYER

**EXHIBIT C - SECRETARY'S RESPONSE TO OIG'S PHASE II
REPORT**



**DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20280**

October 1, 1997

**Pearlie S. Reed
Acting Assistant Secretary
for Administration
U.S. Department of Agriculture
Washington, D.C. 20250**

Dear Pearlie:

The Office of Inspector General issued its Evaluation Report No. 50801-3-Hq entitled "Minority Participation in Farm Service Agency's Farm Loan Programs" on September 29, 1997. The report contains several key recommendations which need immediate action. I am asking that you work closely with the Office of Inspector General staff to ensure that the findings and recommendations are promptly addressed and implemented.

I believe that the immediate actions the Office of Inspector General recommends will be helpful in our efforts to reduce the backlog of civil rights program complaints within the Department.

Also, the Office of Inspector General will provide you, under separate cover, with information about situations it found during its review which involve employee conduct, foreclosure actions, loan-making, and loan-servicing in particular locations that may have adversely affected individual minorities. These situations should be reviewed by the Office of Civil Rights and actions should be taken as appropriate.

If you have any questions concerning the report, please contact Roger C. Viadero, Inspector General, at 720-8001.

Sincerely,

A handwritten signature in black ink that reads "Dan".

**DAN GLICKMAN
Secretary**

cc:
Roger C. Viadero
Inspector General

ABBREVIATIONS

CR	The Office of Civil Rights
CRAT	Civil Rights Action Team
CRIT	Civil Rights Implementation Team (convened to implement CRAT's recommendations)
ECOA	Equal Credit Opportunity Act
FNS	Food and Nutrition Service
FSA	Farm Service Agency
HUD	U.S. Department of Housing and Urban Development
MOU	Memorandum of Understanding
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PACC - CR	The Policy, Analysis, and Coordination Center - Civil Rights (a predecessor of CR)
PID	Program Investigations Division (a division of CR)
ROI	Report of Investigation
USDA	U.S. Department of Agriculture