

**U. S. Department of Agriculture
Office of Inspector General
Audit Report**

**OFFICE OF CIVIL RIGHTS
STATUS OF THE IMPLEMENTATION
OF RECOMMENDATIONS MADE
IN PRIOR EVALUATIONS
OF PROGRAM COMPLAINTS**



**Audit Report No.
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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



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REPORT TO THE SECRETARY ON CIVIL RIGHTS ISSUES – PHASE VII

FROM: Roger C. Viadero
Inspector General

SUBJECT: Audit of the Office of Civil Rights' Management
of Program Complaints

In August 1999, you asked me to review the accuracy of the inventory data maintained by the Department's Office of Civil Rights (CR) with regard to USDA employees' complaints of discrimination (EEO). In your August letter, you also asked me to evaluate the efforts by CR to implement the recommendations we made during our six previous reviews of CR's process of complaints of discrimination in the distribution of USDA program benefits. We completed both requests in two separate reviews.

This is our *seventh* attempt to provide CR with constructive ways to overcome its inefficiencies. Based on the results of our review and on the operating environment we observed at CR, we cannot report encouraging news.

We found that CR continues to be inefficient in processing program complaints. Program complainants must wait, on average, 122 days before they are even notified by CR that it intends to investigate their complaints. The processing times CR reported to you do not reflect actual average times and do not provide meaningful comparisons on which to base notions of progress.

We also found that CR has reduced the large backlog of program complaints that it had identified in November 1997. At that time, there were 1,088 program complaints waiting to be processed and regarded as backlogged. This original backlog has now been reduced to 35. However, concerns remain about these 35 cases (the oldest of which is 7 years old), about another 646 cases that are stalled in CR's "intend-to-file" category, and about the 216 open cases that were accepted after November 1997 and that may not be receiving due care. Concerns also remain about 34 settlement agreements under which compensatory damages and debt relief were awarded without appropriate documentary support.

None of the above cases were related to the Pigford class action lawsuit, and none of the work we performed was in connection with that lawsuit.

During this review, we found that CR had fully implemented only 13 of the 54 recommendations from our six previous reviews. Although it had made an effort to implement another 19 recommendations, it had done little to address the remaining 22, some of which were made over 2 years ago. Based on the findings of our current review and on CR's poor record of responding to our past recommendations, it is difficult to recognize any significant level of progress. Unless CR implements a management plan that addresses effective leadership, changing organizational culture, customer focus, and process reengineering, we question whether future complaints of discrimination in the distribution of program benefits will receive due care.

Executive Summary

Results in Brief

This report presents the results of our review of the effectiveness of the U.S. Department of Agriculture's Office of Civil Rights (CR) in responding to recommendations made by OIG to improve the efficiency of CR's process for resolving complaints of discrimination in USDA programs. Questions concerning CR's efficiency arose in 1996, when minority farmers and other socially disadvantaged participants in USDA programs protested that little was being done to resolve their concerns about discrimination in the award of program benefits. In 1997, it was determined that CR had a growing backlog of complaints, and OIG began a series of reviews of CR's operations and its management of the backlog. Beginning with our February 1997 review, we put forward 67 recommendations to improve the efficiency of CR and the Farm Service Agency (FSA), the agency against which most of the complaints were brought. Fifty-four of our recommendations were addressed to CR. The Secretary of Agriculture requested this review to assess the status of the corrective actions CR has taken since February 1997 in response to those recommendations.

The Secretary also asked us to review CR's employment complaints process, which has come under recent criticism of its own. We performed reviews of both processes concurrently and are issuing the results of both audits under separate covers. (For issues concerning the employment complaints process, see Audit Report No. 60801-3-Hq.)

CR has implemented 13 of the 54 recommendations we made concerning program complaints. Among the actions taken, CR has been able, after 2 years of activity, to substantially clear the original backlog of complaints.¹ In November 1997, the backlog stood at 1,088 cases; 10 months later, it remained at 616 cases; as of this report, it has been reduced to 35. We are recommending that CR resolve these 35 cases with all deliberate speed.

Many other critical issues remain unresolved. Most notably, CR did not reengineer its complaints resolution process. Although CR officials had previously agreed that the system they used to process complaints was neither effective nor efficient and although we recommended a major transformation of this system,² *no significant changes in how complaints are processed have been made*. As a result, we cannot conclude that all complaints are processed with due care.

¹ CR defined its backlog as all complaints filed before November 1, 1997.

² See our *Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints (Phase V)*, dated September 30, 1998. The CR officials emphasized that the system was not designed by civil rights professionals who would know the intricacies of complaints processing.

We also note that CR’s method of clearing its backlog has raised a concern about the nature of its settlement agreements. Of the backlogged cases, 34 had been settled through agreements that awarded the complainants compensatory damages and relief from USDA debt. Damages awarded under settlement agreements are paid from USDA appropriations, and the awards in these 34 cases do not appear to satisfy all the requirements of appropriations law. Although the USDA task force that cleared the backlog recommended limited damages and debt relief in many cases, CR increased the amounts significantly but did not document its analysis of USDA’s liability. A Department of Justice opinion states that because damage awards are paid from appropriations, such awards should only be made if it is determined that a court would have made a similar award. Such a determination presupposes an assessment of the degree to which USDA was liable in the case. We found that the awards to the 34 claimants who accepted settlement offers were not fully supported by documentation that reasoned USDA’s degree of liability. These claimants received \$2.31 million in compensatory damages and \$3.66 million in debt relief. In 8 of these cases, the USDA task force had found either no finding of an inference of discrimination or a low to very low potential of discrimination. None of these 34 settlements were reviewed by the Office of the General Counsel (OGC) for legal sufficiency.

As noted above, CR has been slow to address our prior recommendations. The following table summarizes the correlation between our recommendations and the six reviews (phases) of our ongoing evaluation.

	Recommendations	Management Decision¹	Implemented	Not Implemented	Partially Implemented
Phase I	14	10	5	5	4
Phase II	16	16	12 ²	-	4 ³
Phase III	-	-	-	-	-
Phase IV	-	-	-	-	-
Phase V	29	7	4	15	10
Phase VI	8	2	1	2	5
TOTALS	67	35	22	22	23
¹ “Management Decision” is reached when OIG and CR agree which actions will likely correct the deficiency and satisfy the recommendation. ² Nine of these recommendations were directed at the Farm Service Agency (FSA). ³ All four of these recommendations were directed at FSA.					

Table 1. Summary of Recommendations Made in OIG Civil Rights Reports.

As the table shows, over three-fourths of the recommendations we directed at CR have not been fully addressed. Some of these issues were raised as long ago as our Phase I review in February 1997. The table on the following page summarizes the key areas for which our recommendations were made and in which uncorrected deficiencies persist.

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)	VI (03/24/99)	VII
Review State foreclosure actions	✘	✘	✘	✘	✘	✘	✘	
Send letters of acknowledgement (Completed November 1997)		✘	✘					✘
Develop and maintain a data base		✘	✘	✘	✘	✘	✘	✘
Evaluate each agency's civil rights staff		✘	✘	✘	✘	✘	✘	✘
Clean casefiles		✘	✘	✘	✘	✘	✘	✘
Clear original backlog		✘	✘	✘	✘	✘	✘	✘
Publish regulations		✘	✘	✘	✘	✘	✘	✘
Reconcile casesfiles with USDA agencies		✘	✘	✘	✘	✘	✘	✘
Write plans for compliance reviews		✘	✘	✘	✘	✘	✘	✘
Followup on isolated instances of potential discrimination				✘	✘	✘	✘	✘
Find lost casefiles		✘	✘	✘	✘	✘	✘	✘
Use aging reports		✘	✘	✘	✘	✘	✘	✘
Train investigators			✘	✘	✘	✘	✘	✘
Monitor Settlement Agreements							✘	✘

✘ Condition originally noted and recommendation made. ✘ Condition continues.
✘ Corrective action partially completed. ✘ Corrective action take but not adequately implemented.

Table 2. Recurring Office of Civil Rights Issues

Among the 22 recommendations that were not implemented are 5 that CR stated it had completed but that our review found incomplete. Several of these recommendations were in critical areas: we had asked CR to obtain legal sufficiency reviews from the Office of the General Counsel on 7 cases, to locate 40 files that were missing during our previous review, and to keep open cases that CR refers to the Food Nutrition Service (FNS) until it can be certain the cases are resolved. Of the 7 cases needing a legal sufficiency opinion, none has received one; of the 40 missing files, 14 remain missing; and of the 16 cases referred to FNS in fiscal year 1999, all were closed by CR on or shortly after the day of referral. We concluded that the complaints in these cases were not processed by CR with due care.

In addition to the issues listed in Table 2 was a problem encountered after we issued our December 18, 1997, memorandum. The memorandum contained nine recommendations³ relating to instances of unprofessional remarks or behavior by FSA personnel that may have adversely affected minorities. We had recommended that CR review each of the nine confidential cases. However, without informing OIG, CR referred all nine cases to FSA for review. CR later recalled the cases at our direction and has taken action on four of our recommendations. The other five recommendations are still unresolved.

In other areas of CR's current operating environment, we found no substantial improvement. CR's data base and file room remain poorly managed. The data base still contains missing dates, incorrect closure codes, and incorrect file locations: 21 casefiles are still checked out to an employee who left CR over 18 months ago; 1,215 casefiles are not recognized as being in any location; and 16 casefiles are shown as missing. CR has installed a new data base that promises to overcome many of the current inefficiencies. The new data base will allow only authorized employees to make changes to the data, and it will identify employees that are accountable for cases. However, CR has not implemented new procedures for data entry, and it has not provided sufficient training to ensure data integrity. Unless CR employees are trained to use the new system, it will prove no more efficient than the old one.

Given the condition of the program complaint files, we concluded that no document-by-document sweep of the files has occurred. Casefiles were still missing.

To determine if CR's client servicing had improved, we reviewed 188 cases that were in the earliest stage of processing or that had been closed during that stage. We found that many of the old inefficiencies were still in evidence. Over two-thirds of the closed cases had been closed even though the complainants had not been given an opportunity to provide the information needed to formalize the complaints, and nearly two-thirds of the complainants with open cases did not receive acknowledgement letters. Although CR

³ Because these 9 recommendations were contained in a confidential correspondence to the Assistant Secretary for Administration, they were not included in the 67 recommendations we issued through official channels.

has given itself 30 days to decide whether enough information exists to investigate a complaint, we found that it was taking an average of 126 days. At least 454 cases currently have exceeded this 30-day limit and may be considered backlog.

CR has presented data to the Secretary that suggests it has made progress in its operations; however, we found that the numbers are misleading and do not accurately reflect the average time it has taken CR to completely process a program complaint. CR's data base of open, perfected complaints does not show the time it took CR to determine that it had jurisdiction in the case, a time that in turn is not captured by CR in its average processing times. CR's actual average processing time for 1999, for example, would include the 126 days it expended on intake as well as the 174 days we calculated that CR took on average to investigate and adjudicate each case, clearly longer than the 124 days CR claimed was its average processing time for that year.

Of equal importance, CR has not maintained a consistent effort to acknowledge its receipt of complaints. Although it had sent Acknowledgment Letters to all complainants in the original backlogged cases, it has not been mailing these letters to new complainants in a timely manner and may not have sent some letters at all. Because the casefiles of 83 complainants were missing, we could not determine whether they received any acknowledgment of their complaints. Our Phase I review emphasized that complainants are not well served if the Department does not inform them of the status of their complaints.

The 13 recommendations directed at CR that were adequately implemented include 4 concerning the needed reduction of the backlog. In addition, CR issued departmental regulations governing the receipt, processing, and resolution of discrimination complaints. Another two recommendations were made during the formative stages of CR. We had recommended that the Department establish a uniform system that would hold designated USDA officials accountable for the receipt, processing, and resolution of program complaints within established timeframes. We had also recommended that the Department revoke the delegation of authority that granted FSA responsibility to conduct preliminary inquiries and give this authority to CR on a permanent basis. The Secretary implemented these recommendations by establishing the Office of Civil Rights and giving its director full responsibility to investigate and adjudicate discrimination complaints arising from conducted or assisted programs.

CR itself fully implemented another three recommendations that have aided the integrity of the complaints resolution process. In our Phase I evaluation, and again in our Phase II evaluation,⁴ we had recommended that CR send a letter signed by the Secretary to all complainants whose cases had not been resolved, assuring them that action would be taken. As of this review, these letters have been sent to all complainants in the original

⁴ Repeated recommendations, such as this one, count as two separate recommendations.

backlog of cases. We had also recommended in our Phase I evaluation that CR assume control of FSA’s program complaint system. CR did this temporarily between May and November 1997. The function was given back to FSA after FSA agreed to assign more personnel to its civil rights staff.

In more recent action in response to our Phase V report, CR has taken steps to realign some of its program staff, and has agreed to give due consideration to hiring managers with strong knowledge, skills, and experience in civil rights, and ensure that they receive training in departmental programs. In addition, in our Phase VI report, we recommended that a determination be made as to whether a settlement term in a settlement agreement would be implemented. CR and FSA took actions to implement the term in the settlement agreement.

Statistical Data on Complaints

According to CR’s data base as of December 1, 1999, the Department’s inventory of non-class action complaints totals 897 (open and intends). In addition, the class action lawsuit brought against the Department comprises an additional 185 cases. These cases are identified separately because the court prohibited CR from processing the cases as long as they were under litigation.

The tables below and on the following page identify the status of all cases in the inventory of Department complaints.

	Not in Class Action		Class Action ⁵		Total	
	Intend ⁶	Open	Intend	Open	Intend	Open
Original Backlog		35		93		128
New		216		19		235
Incomplete	563		14		577	
Statue of Limitations	83		59		142	
Totals	646	251	73	112	719	363

Table 3: Status of All Civil Rights Program Complaints as of December 1, 1999.

⁵ All of these class action cases should be either closed or reclassified as non-class action; however, CR has not properly updated its database for these cases.

⁶ ‘Intend-to-file’ cases are cases where no determination has been made as to whether to accept the complaint or not and some may be eligible under the waiver of the Statue of Limitation.

	Not in Class Action	Class Action	Total
Pre-Investigation	187	17	204
Under Investigation	8	2	10
Adjudication	16	0	16
At OGC	2	0	2
Pending Closure	3	0	3
Total	216	19	235

Table 4: Status of Open ‘New’ Civil Rights Program Complaints⁷ as of December 1, 1999.

Reason Closed	Non-Class	Percent*	Class	Percent*	Total
Withdrawn	217	25%	5	6%	222
Dismissed	162	18%	1	1%	163
Referred to FNS	13	1%	0	0%	13
Consent Decree	10	1%	63	82%	73
Settlement	98	11%	5	6%	103
Statute of Limitations	66	7%	1	1%	67
Final Agency Decision – No Discrimination	255	29%	0	0%	255
Final Agency Decision – Discrimination	12	1%	2	3%	14
Other	50	6%	0	0%	50
Subtotal	883		77		960
Cases Still Open	35		93		128
Total Backlogged Cases	918		170		1,088

Data compiled from 12/01/1999 data base and has not been audited.
* Percent is based on the subtotal of closed backlog non-class and class cases.

Table 5: Backlogged Cases Closed By Category as of December 1, 1999.

Key Recommendations

We are recommending that for future settlement awards, CR include in its operating procedures a requirement that it document the computations behind its awards of compensatory damages, debt relief, and attorney’s fees, in accordance with the legal opinion set forth by the Department of Justice’s Office of Legal Counsel, and submit this documentation to OGC as part of its legal sufficiency review, in accordance with the Secretary’s August 30, 1999, memorandum. We are also recommending the CR resolve the remaining 35 cases in the original backlog with all deliberate speed.

For the corrective actions that have not yet been completed on our previous recommendations, we recommend that these actions be implemented within 60 days of issuance of this report.

⁷ ‘New’ cases are those civil rights complaints received and perfected after November 1, 1997.

Although not included in the narrative of this report, we are recommending that CR implement a management plan that addresses the inefficiencies we have noted in past reviews of the program complaints process. These same inefficiencies were evident during our current review of CR's employment complaints process, and in the results of that review (Audit Report No. 60801-3-Hq), we discuss the need for such a management plan. The plan should address issues of effective leadership, changing organizational culture, customer focus, and process reengineering, the management areas we believe are essential to the successful operation of CR.

Finally, we are recommending that CR improve the operations of its intake unit to ensure that all complaints are processed with due care. CR should review all open intend-to-file cases and determine (1) if Acknowledgment Letters have been sent in all cases, (2) if any cases should be moved forward in the resolution process, and (3) if any cases have been open beyond the established timeframe. Further, Acknowledgment Letters should state clearly what CR's requirements are for a complaint of discrimination against USDA so that complainants are given a fair chance to fulfill those requirements.

Agency Response

On March 3, 2000, CR provided a written response to our draft report. Based on that response, we have made some revisions to the report. We have also incorporated excerpts from CR's response to our recommendations into the body of the report, along with our positions and the action necessary to reach management decision on those recommendations. In addition, CR's response to our draft report is included in its entirety as Exhibit D in this report.

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

INTRODUCTION..... 1

BACKGROUND..... 1

OBJECTIVES 3

SCOPE..... 3

METHODOLOGY 4

CONCLUSIONS AND RECOMMENDATIONS..... 5

1. CR’S ORIGINAL BACKLOG OF PROGRAM COMPLAINTS IS SUBSTANTIALLY CLEARED; CONCERNS REMAIN ABOUT UNRESOLVED BACKLOG CASES AND ABOUT SETTLEMENT AGREEMENTS USED TO CLEAR CASES 5

 Complainants Deserve Action on Remaining Backlogged Cases..... 6

 Recommendations..... 7

 Files Show Little or No Support for CR’s Settlement Agreements 8

 Recommendations..... 12

2. CR’S IMPLEMENTATION OF CORRECTIVE ACTIONS WAS INADEQUATE TO ENSURE COMPLAINTS WERE PROCESSED WITH DUE CARE 14

 CR Did Not Implement Prior Recommendations..... 15

 Recommendations..... 22

 CR Has Partially Implemented Some Prior Recommendations..... 23

 Recommendation 27

TABLE OF CONTENTS

3. CR NEEDS TO IMPROVE ITS INTAKE PROCESS OF CURRENT CASES	28
Not All New Complaints Are Processed With Due Care	
During CR's Intake Phase.....	32
Recommendations.....	37
Not All Complainants Are Informed of CR Requirements	
For a Complaint.....	40
Recommendations.....	42

EXHIBITS

A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS	44
B – INTEND CASES NOT LOCATED.....	63
C – SECRETARY'S REQUEST LETTER	64
D – AGENCY'S RESPONSE TO DRAFT REPORT	66

Introduction

Background

This review constitutes our seventh in a series of ongoing evaluations of CR. We began our evaluations 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. Program complaints, or complaints of discrimination in the award or distribution of program benefits, constitute the primary type of complaint made against the Department by nonemployees. Program discrimination is expressly prohibited by Title VI of the Civil Rights Act of 1964, as well as other statutes and Federal regulations.⁸ The Civil Rights Act of 1964 provides that no person will be excluded from participation in any Federal program (such as a farm loan program) because of race, color, or national origin. At the time of the Secretary's concerns in 1996, the Department's Civil Rights Enforcement and Adjudication branch was responsible for resolving complaints from individuals who alleged that they had been discriminated against in their participation in USDA programs. CR succeeded the Enforcement and Adjudication branch in May 1997.

Our first evaluation (Phase I) of the Department's civil rights complaints system found that that system was in disarray. Complaints of program discrimination were backlogged within the Department, and their status could not be determined. The Enforcement and Adjudication branch itself did not have a usable filing system or a reliable data base, and it did not have controls in place to monitor and track complaints. It also lacked current regulations and formal procedures for its operations.

The deficiencies that we discovered during our Phase I review of the Enforcement and Adjudication branch remained uncorrected during our subsequent reviews of CR and were largely still in evidence during our Phase V evaluation, which we reported in September 1998. Of most pressing concern at that time was CR's original backlog of program complaints. The original backlog that had been identified as 1,088 cases⁹ in November 1997 still stood at 616 cases after 10 months (September 1998). Also of concern, however, was the continuing inaccuracy of CR's data base and the slovenliness of its file room. The Phase V review also noted that CR still lacked formal regulations and management stability.

OIG recommendations during these six phases of reviews aimed at correcting deficiencies in 10 areas:

⁸ Other statutes include the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Civil Rights Restoration Act of 1987.

⁹ CR defined its backlog as those program complaints that were in existence when CR was formed, complaints resulting from the "listening sessions" held by the Civil Rights Action Team, and any other complaints received before November 1, 1997. This group did not include cases that had been received on or after November 1, 1997.

Regulations needed to be published. CR had not published departmental regulations (DR-4330-1) to describe how discrimination complaints should be processed, and it had not updated the Department's codified regulations (7 CFR part 15) to reflect current programs and laws.

CR needed to reengineer its processing system. CR's processing system was not designed by civil rights professionals and was neither effective nor efficient. It operated on a component basis, whereby each team of CR personnel processed complaints through one segment of the system. We recommended that CR operate on a case management basis, allowing each team to process a caseload from intake to final adjudication.

CR needed to take control of its backlogs. As CR focused on clearing its original backlog of 1,088 complaints, it created another backlog of complaints filed after the November 1, 1997, date that identified the original backlog.

CR needed to reconcile its casefiles with other agencies. Comparisons of CR's list of open complaints with lists from the Farm Service Agency (FSA) and other agencies showed discrepancies.

CR needed plans for compliance reviews. CR is responsible to oversee civil rights compliance at all levels of the Department.

CR needed to find lost casefiles. Forty casefiles were identified as missing in September 1998.

CR needed to establish aging reports. CR needed to track the age of its complaints to ensure that none were left unattended. It also needed to report its agency data to Department officials.

CR needed to provide sufficient training to its staff. CR's training for civil rights investigators and adjudicators was inadequate.

CR needed to establish supervisory reviews. Reports of investigation and other documents did not reflect adequate supervisory reviews.

CR needed to monitor all settlement and conciliation agreements. CR procedures and policies for settlement and conciliation agreement tracking and monitoring needed to be developed.

The correlation between our recommendations and the six phases of our evaluation of civil rights activities at CR and FSA is denoted on the following table.

	Recommendations		Management Decision*		Implemented		Not Implemented	Partially Implemented	
	CR	FSA	CR	FSA	CR	FSA	CR	CR	FSA
Phase I	14	-	10	-	5	-	5	4	-
Phase II	3	13	3	13	3	9	-	-	4
Phase III	-	-	-	-	-	-	-	-	-
Phase IV	-	-	-	-	-	-	-	-	-
Phase V	29	-	7	-	4	-	15	10	-
Phase VI	8	-	2	-	1	-	2	5	-
TOTALS	54	13	22	13	13	9	22	19	4

* Management Decision is an evaluation by management of the findings, recommendations, and monetary results in an audit report and the issuance of a proposed decision concerning its response to such findings and recommendations, including action concluded to be necessary. (See Exhibit A)

Table 6: Summary of Recommendations in OIG Civil Rights Reports

The Secretary requested an assessment of CR's corrective actions. Although FSA has responded comprehensively to the 13 recommendations we directed at it, we did not, in responding to the Secretary's request, expand the scope of this evaluation to include an assessment of the effectiveness of FSA's corrective actions.

Currently, CR's Program Investigations Division and Program Adjudication Division are responsible for processing complaints of program discrimination within USDA. The Program Compliance Division is responsible for carrying out compliance reviews within the Department, and the Policy, Research and Analysis Division is responsible for developing Department regulations and guidance on implementing civil rights law and policies.

Objectives

Our objectives were defined by the Secretary in his letter to us dated August 24, 1999. Noting that OIG has issued six evaluation reports on the program complaints process since February 1997, the Secretary asked for our assessment of the corrective actions taken to date by CR on this process.

Scope

We performed our work at the Office of Civil Rights in Washington, D.C. Based on the Secretary's letter dated August 24, 1999, we were requested to perform an assessment of corrective actions taken to date by CR on the six Evaluation Reports that we have issued since February 1997. The six reports that we have issued contained 67 recommendations. Fifty-four of these recommendations were addressed to CR and 13 were addressed to FSA. The field work was performed in September through December 1999. As of December 1, 1999, CR's data base of cases

not involved in class action lawsuits reflected a total of 35 original backlogged cases, 216 new cases, and 646 intend-to-file cases.

We obtained CR's September 7, 1999 data base and determined there were 939 open intend-to-file cases and 711 closed intend-to-file cases. We reviewed 87 open intend-to-file cases, and 101 closed intend-to-file cases to determine how the intake process was functioning and if all cases were being included in the data base. The cases we reviewed totaled 188. We had also requested an additional 83 cases to review that CR could not locate.

The audit was conducted in accordance with Government Auditing Standards.

Methodology

To assess the corrective actions taken to date by CR, we:

- reviewed each recommendation we made in prior reports and the corrective actions CR has taken,
- conducted interviews with responsible CR officials,
- interviewed officials from the Farm Service Agency and the Office of Human Resource Management,
- analyzed CR's data base used to track program complaints,
- reviewed various documents related to settlement agreements,
- reviewed CR policies, procedures, and draft manuals, and
- interviewed various OGC officials.

To assess the impact of CR's corrective actions on current operations, we:

- reviewed complainants' casefiles processed under CR's intake procedures.

CR's Original Backlog of Program Complaints Is Substantially Cleared; Concerns Remain About Unresolved Backlogged Cases and About Settlement Agreements Used to Clear Cases

As of December 1, 1999, CR had closed all but 35 of its original backlog of 1,088 cases. Our concern remains that the complainants in these 35 cases have not received a resolution of their complaints. These complaints have been open up to 7 years, and CR's tracking system shows that eight of the complaints are still in the preinvestigation stage.

Also, in clearing the original backlog of 1,088 complaints, CR entered into 34 settlement agreements without adequately documenting how it arrived at the amounts of compensatory damages and debt relief it awarded the complainants. According to a Department of Justice opinion, because such awards are taken from USDA appropriations, they should only be made if an assessment of liability showed that USDA would be found liable for a similar amount by a court of law. We found no evidence that such an assessment had been made in any of the 34 cases.

Much of the reduction of the backlog has occurred as a result of the implementation of a task force, which we recommended in a previous report.¹⁰ The Early Case Resolution Task Force was initiated on October 1, 1998, by the Secretary and was assigned a total of 232 open cases to review. (Eighteen of these cases were actually part of the Pigford-Brewington class-action lawsuit, and therefore were exempt from Department action.)¹¹ The task force consisted of six specific teams that were assigned different groups of cases to review. Four of the teams reviewed the 214 open cases, and 2 teams reviewed an additional 462 cases that had been administratively closed. Reviews of the administratively closed cases were made to determine if they had been properly closed. The task force, which included representatives from the Office of the General Counsel, reported to the CR director. The CR director in turn appointed a CR Project Management Team to review the task force's recommendations. The CR director, in conjunction with the management team, made the final decision in each case.

The 34 settlement agreements were entered into by CR on behalf of other Department agencies (largely the Farm Service Agency and Rural Development). The task force reviewing these cases had found in 8 cases either no finding of an inference of

¹⁰ Recommendation Number 1a from our Phase V evaluation, *Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints*, (Audit Report No. 60801-1-Hq) dated September 30, 1998.

¹¹ CR's data base showed that the original 1,088 backlogged cases included 170 cases that were involved in the Pigford-Brewington class-action lawsuit. Since CR can take no action on these cases, they are considered closed. If the claimants decide to remove themselves from the class action lawsuit, their cases will be reopened and processed by CR.

discrimination or a low to very low potential of discrimination, and recommended small amounts (\$1,000 to \$2,000) or no compensatory damages and limited relief from program debt; nevertheless, the CR director and/or her project management team increased both the amount of damages and the amount of debt relief. In at least one case, settlement damages were 100 times the amount recommended by the task force. We found little or no support for the increased amounts and believe greater emphasis should have been placed on documenting a proper assessment of liability and damages.

**Conclusion No. 1
Complainants Deserve Action on
Remaining Backlogged Cases**

The 35 complaints remaining from the original backlog should be resolved with all deliberate speed. The complainants in these 35 cases have waited years to receive an answer to their complaints. CR's data base of December 1,

1999, shows that only 13 of these complaints are pending administrative closure. The other complaints are shown as either involved in some form of review by the Office of the General Counsel (2), in some stage of processing (12), or still pending an investigation (8). Four of the 35 complaints were considered backlogged as early as our Phase I report in February 1997, when we reported that FSA had 241 open cases. We concluded that CR should expedite the processing of these complaints.

The following chart depicts the age groups to which the 35 cases belong, according to CR's December 1, 1999, data base. The average age of the cases is 1,384 days, or about 3.8 years.

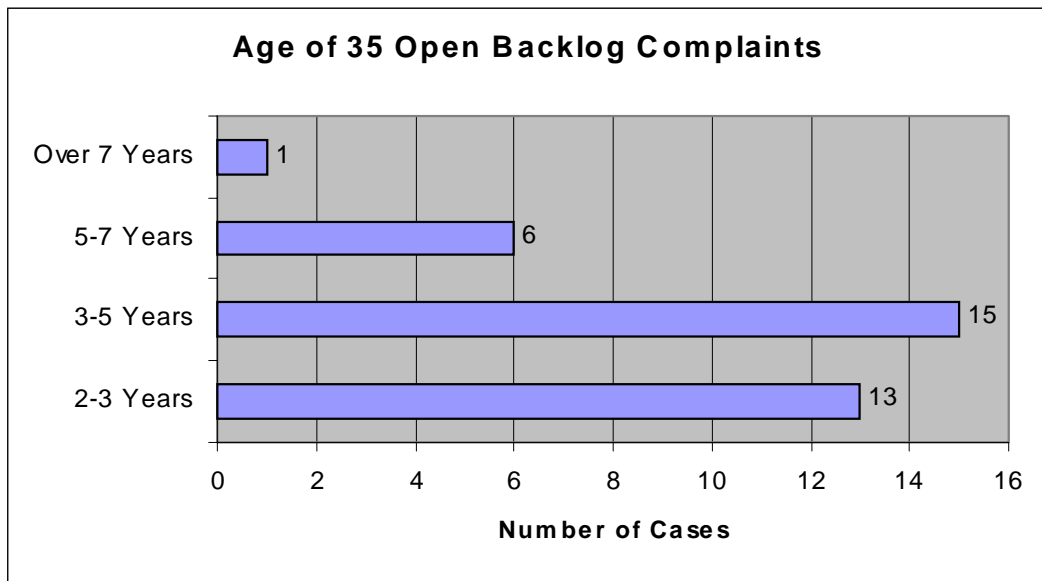


Table 7: Age of the 35 Complaints Remaining in CR's Original Backlog.

These cases should be resolved with all deliberate speed. Because it is unlikely that the eight cases still in the pre-investigations phase could be investigated at this late date, due to unavailability of personnel and records, we concluded that CR should seek authority to process these cases under an abbreviated system, such as was used by the Early Case Resolution Task Force in reducing the original backlog. The remaining 27 cases have already been investigated and should be moved through adjudication as quickly as possible.

Recommendation 1

Direct CR to resolve the 35 cases remaining from the original backlog with all deliberate speed.

CR Response:

As of February 28, 2000, the backlog had been reduced to 18 case files. As of March 3, 2000, the backlog has been reduced to 2 cases. CR will close the remaining two cases as expeditiously as possible.

OIG Position:

We agree with the actions taken. However, before we can agree with the management decision, we need a timeframe for expected closure of the remaining two cases. In addition, the CR response does not provide support for how the 33 cases were closed. CR needs to provide this support.

Recommendation 2

Grant CR the authority to use an abbreviated system and forego investigations to resolve the 8 cases shown as not yet having been investigated.

CR Response:

The creation of an abbreviated process for the investigation of the backlog cases is not necessary. Of the remaining open backlog complaints, only one requires an on-site investigation.

OIG Position:

We agree with the actions taken. However, before we can agree with the management decision we need to know which case still needs to be investigated and the expected date as to when the final case will be investigated.

**Conclusion No. 2
Files Show Little or No Support
For CR's Settlement Agreements**

For the 34 original backlogged cases that had reached the settlement stage and have been settled, we found little or no support for the amounts awarded to complainants for compensatory damages or relief of debts.

Although the task force reviewing the cases had found that in 8 of the cases either no finding of an inference of discrimination or a low to very low potential that discrimination had actually occurred, the CR director determined, based on recommendations by a CR project management team, that the claimants were entitled to much greater relief and much larger damage awards than the task force found reasonable. OGC was not given an opportunity to perform a legal sufficiency review of the settlements prior to the offers, and we were not given adequate documentation to explain how the CR director or her project management team determined the amounts. Since the award of damages goes to the legality of using agency funds, it is crucial that OGC review all determinations and awards. Without documentation, it cannot be known whether CR completed an assessment of court liability in accordance with a Department of Justice opinion and whether it has not violated appropriations laws. We concluded that the 34 claimants who accepted settlement offers received \$2,317,140 in damages and \$3,664,380 in debt relief whose equitability could not be substantiated by documentation.

The task force had recommended that 54 settlement offers be made to complainants, but only 38 of the complainants accepted these offers.¹² However, based on reviews by FSA and its program legal advisor, 4 of the 38 settlement agreements were not implemented because they did not involve credit transactions under the Equal Credit Opportunity Act (ECOA). The other 34 settlement agreements were implemented.

We have several concerns regarding the amounts paid out and debts written off as part of these settlements, as well as the process used to arrive at those amounts. In all 34 cases we found little or no support for the amounts awarded to the complainants for compensatory damages or relief of debt. In fact, in 8 cases the Early Case Resolution Task Force recommended that the complainants should not be awarded compensatory damages or should be awarded only small amounts, because they found either no finding of an inference of discrimination or low to very low potential of discrimination. However, the CR director and a CR project management team established to review the task force's recommendations, disagreed with the task force results and, using their judgment, awarded significant amounts of compensatory damages and relieved several complainants of all their debts to USDA.

¹² These settlements do not involve any of the cases included in the Pigford-Brewington class-action lawsuit nor any cases negotiated by the Department of Justice.

Included in CR's determination in at least 19 of 54 settlement offer cases was the understanding that 30 percent of the debt writeoff constituted a damages award. This 30 percent was considered an "income-tax rate." For example, the amount could be applied to the taxes the complainant would owe as a result of debt writeoff. However, we found no documentation showing how this 30 percent rate was arrived at.

According to guidelines¹³ issued by the Civil Rights Division of OGC, the basis for awarding compensatory damages and program relief (and the amount of any relief or payment awarded) is an assessment of court liability—that is, a determination of the extent to which the complainant's case would stand up in a court of law. Three characteristics of a case inform this determination: whether the complaint involves a credit transaction, whether there has been a finding of discrimination upon which the complainant may seek redress, and whether the court would regard the Government's liability in the case as sizeable or negligible.

Credit Transaction. Adverse action involving a credit transaction is recognized by the ECOA and by several official interpretations of the ECOA as the only type of case eligible for compensatory damages. The ECOA states that "any creditor who fails to comply with any requirement imposed [by the Act] shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class." Further, the OGC guidelines referred to above state that as a threshold issue, compensatory damages could only be paid in cases involving a credit transaction, since the sole authority for the Department to pay such damages is under ECOA. The OGC guidelines also reminded CR it was crucial that OGC review all settlement agreements for legal sufficiency.

Finding of Discrimination. Clarification of the authority for the Department to pay compensatory damages in ECOA cases stems from an April 18, 1994, Office of Legal Counsel (OLC), Department of Justice, opinion on the authority of USDA to award monetary relief in conducted program discrimination cases. In this opinion, OLC set forth the general rule on when agencies may lawfully use their funds to make monetary awards. Specifically, OLC stated that an agency may make such payments "if a court could award such relief in an action by the aggrieved person." Later in the opinion, OLC restated the rule: "Appropriations law provides that agencies have the authority to provide for monetary relief in a voluntary settlement of a discrimination claim *only if the agency would be subject to such relief in a court action regarding such discrimination brought by the aggrieved person.*" [Emphasis added.] OGC reiterated this opinion in its guidelines to CR.

OLC's conclusion is that an agency may use its funds to settle an ECOA claim when ECOA has been violated and court liability is possible. Since the Department is using this settlement authority, it must be guided by the accepted government-wide practice in

¹³ These are set forth in a letter from OGC to CR, dated September 22, 1998.

determining when such awards are proper.

The language of the OLC opinion makes clear that *some assessment of court liability must be performed* before an administrative award of compensatory damages can be made.¹⁴ The opinion also makes clear that this conclusion is a matter of appropriations law that goes to the legality of an agency's use of its appropriated funds. Thus, the Department must take seriously its obligation to make some assessment of potential court liability before making an ECOA award, or offering programmatic relief such as debt writeoff.

According to OGC, payment without a finding of discrimination could be made under an "abbreviated system" (i.e., no formal, published determination of discrimination), but even though the Department task force used such a system, it is important to note that the task force recommended little or no payment in many of the cases.

Amount of Damages. The conclusion that some assessment of potential court liability under ECOA must be made leaves open the question of what minimum assessment to support an award would be sufficient. Thus, an assessment of the risk of liability and of possible damages is conducted. According to a May 5, 1999, Congressional Research Service memo, a number of cases have attempted to define what constitutes "actual damages" under the ECOA. Some courts have found that actual damages may include out-of-pocket monetary losses, injury to credit reputation, mental anguish, humiliation or embarrassment. In other words, "actual damages" may include restitution for a loss that is not measurable in dollar terms. However, in cases in which there is not a sizeable risk of liability, discounting of damages may be applied. In the case of litigation, DOJ sometimes settles cases for "nuisance value," even if there is a minimal risk of court liability.

The CR project management team disagreed with the Early Resolution Task Force on at least 46 of 54 decisions regarding potential compensatory damage amounts for settlement agreement cases. (In some of the remaining 8 cases, we could not determine the amount that the task force recommended, if any.) In 42 of 54 cases, the task force recommended that either nothing be paid in compensatory damages or only a small amount (\$500 to \$10,000) be awarded. In addition, the task force offered no recommendation that claimants' debts be written off in 14 specific cases. However, the CR project management team and the CR director disagreed with the task force recommendations, and recommended the write-off of the debt of all 14 complainants, which totaled over \$1.7 million.

We were not given adequate documentation to support the CR project management team or the CR director's decisions to increase the compensatory damage awards or provide for the claimants' debt write-offs. Although we recognize that final authority to make

¹⁴ See the September 22, 1998, letter from OGC to CR, referred to on the previous page.

the awards rested with CR, there is no evidence that CR undertook an assessment of court liability, in accordance with the OLC opinion.

For example, in the case of one complainant who alleged that Rural Development wrongfully foreclosed on her home loan because of her disability, the task force recommended only that USDA provide the complainant with a safe and sanitary housing unit as a matter of program relief. To this program relief, however, CR added a complete writeoff of the complainant's mortgage debt as well as a monetary award of \$90,000--what CR regarded as the fair market value of the complainant's home, with improvements for handicap accessibility. There was no documentation to show how CR arrived at \$90,000 as the 1998 fair market value for a home the complainant purchased for \$9,000 in 1972 and for the added cost of making it handicap accessible, and no documentation to show why CR believed Rural Development would be liable for these amounts in a court of law.

The unlikelihood of court liability also raises questions about CR's decisions to increase the amounts of damages awarded. In 12 of the 54 cases where settlement offers were made the task force stated that there was either no finding of an inference of discrimination or low to very low potential of discrimination, and therefore recommended either no settlement amount or a small settlement amount. However, the CR project management team and/or the CR director disagreed with the task force conclusions and awarded larger compensatory damage settlements.

- In one case, the task force stated that there was a low potential of discrimination, and the allegations were not very strong. They recommended a monetary award of \$1,000 and no debt forgiveness. However, the CR director and project management team awarded the complainant \$100,000 and provided debt relief of \$338,021. We found no documentation to support the decision to award the larger amount or to forgive the debt.
- In another case, the task force stated that the allegations had a potential inference of discrimination with regard to sex, and recommended an award of \$2,000 and no debt forgiveness. However, the CR director and project management team awarded the complainant \$110,000 in compensatory damages and provided debt relief of \$188,639. No documentation supported this award.
- And in a third case, CR's records showed that the task force recommended the complainant's debt be written off because of a potential inference of discrimination on the basis of marital status, but nothing was recommended for compensatory damages. CR recommended that the claimant's \$692,258 debt be written off and awarded an additional \$150,000 in damages. The damage award was not supported.

After the 34 settlements had been awarded, the Secretary issued a memorandum in

which he recognized the need to abide by OGC guidelines. In his August 30, 1999, memorandum to the CR Director, the Secretary stated that each proposed settlement must be reviewed by OGC to ensure that all conclusions are supported by evidence, that there is legal support for any determination of discrimination, and that there is legal authority for the settlement. The Secretary emphasized that OGC's conclusions must be documented in CR's files. The civil rights staff at OGC said that they had not been given an opportunity to perform a legal sufficiency review of any of the 34 settlements that resulted from CR's attempt to clear its backlog. This occurred because CR did not adhere to OGC's advice that it review all determinations and awards. In addition, we found that CR does not have standard procedures which require CR to document the computations behind its awards of compensatory damages, programmatic relief, and attorney's fees.

Also unresolved is the question of accountability. None of the 34 settlement cases were referred to the Office of Human Resources Management for consideration of disciplinary action against a USDA employee. Although not all cases may have warranted disciplinary action, the Office of Human Resources Management and not CR is responsible for that determination. Further, OGC has noted that a finding of discrimination is not prerequisite to disciplinary action. In its April 3, 1998, memorandum to CR, OGC stated that even without a finding of discrimination, "CR may direct a personnel misconduct investigation of a USDA employee."

Because the award of settlement amounts is a matter of appropriations law, as OGC has pointed out,¹⁵ and because excessive settlements could be a violation of that law, we concluded that CR needs to document carefully its assessment of the damages and relief that would meet the test of court liability. Although such documentation would no longer affect the settlement cases that are already closed, we believe it is necessary, for future settlement cases, for CR to document the computations behind the awards of compensatory damages, program relief, and attorney's fees in accordance with the legal opinion set forth by the Department of Justice's Office of Legal Counsel. We also conclude that CR should refer all settlement cases to the Office of Human Resources Management for consideration of disciplinary action.

Recommendation 3

For future settlement cases, direct CR to include in its standard operating procedures a requirement to document the computations behind its awards of compensatory damages, programmatic relief, and attorney's fees in accordance with the legal opinion set forth by the Department of Justice's Office of Legal Counsel. In addition, CR should submit this documentation to OGC as part of its legal sufficiency review, in accordance with the Secretary's August 30, 1999, memorandum.

¹⁵ See its September 22, 1998, letter to CR, quoted earlier in this report.

CR Response:

CR has in its procedures and operations the requirement of documentation of compensatory damages, programmatic relief, and attorney's fees. CR will develop and issue a written directive within 45 days to codify these procedures. Compensatory damages documentation cannot be submitted to OGC as part of its legal sufficiency review. The legal sufficiency review precedes a FAD, and compensatory damages claims are developed only if there is a final agency decision.

OIG Position:

We agree with the actions planned for a written directive to codify the indicated procedures. However, before we can reach management decision, CR needs to develop a standard operating procedure whereby OGC can review the settlement agreements. Per the Secretary's Memorandum dated August 30, 1999, "prior to the settlement or adjudication of a program or equal employment claim, the proposed settlement must be reviewed by the Office of the General Counsel to determine that the facts cited are supported by the evidence and that there is legal authority for the proposed settlement or adjudication."

Recommendation 4

Refer all settlement cases to the Office of Human Resources Management for consideration of disciplinary action.

CR Response:

CR has drafted a disciplinary policy that requires cases to be referred to the Office of Human Resources Management. This policy will be circulated through the appropriate Departmental offices within 60 days.

OIG Position:

We agree with the actions taken. However before we can agree with the management decision, CR needs to provide us with assurance that for all the settlement agreements paid as a result of the Early Case Resolution Task Force, the cases will be forwarded to the Office of Human Resources Management for a determination as to whether any disciplinary actions are warranted.

CR's Implementation of Corrective Actions Was Inadequate To Ensure Complaints Were Processed With Due Care

Since February 1997, we have issued six reports on civil rights issues relating to the program complaints process administered by CR. Those six reports contained 67 recommendations, 54 of which were directed at CR (the remaining 13 were directed at the Farm Service Agency). During the current review, we found that 41 recommendations (all directed to CR) have not been adequately addressed by CR, based on the actions taken as of December 1, 1999. (See exhibit A.) As a result, we still have concerns that CR may not be providing due care when processing complaints alleging discrimination in USDA programs.

In this chapter, we are detailing the issues involved in many of the major recommendations that have not been implemented or that have been partially implemented.

Of primary concern is CR's adherence to an inefficient processing system. We reported in our "Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints" (Phase V), dated September 30, 1998, that CR officials agreed that the system for processing new complaints was neither effective nor efficient. The officials emphasized that the system was not designed by civil rights professionals who would know the intricacies of complaints processing. However, despite this agreement and despite our recommendations for a change in how program complaints were processed, *no significant changes in how complaints are processed have been made.*

To determine if CR's draft procedures, as written, resulted in an improved complaint processing system, we reviewed some intend-to-file cases and identified five areas of concern with the current process. (See Chapter 3: *New Issues of Concern*, for complete details of the problems we continue to encounter due to CR's complaint processing system.) Based on the number of problems we encountered with the system as it is outlined in the draft manuals,¹⁶ we concluded this system does not lend itself to adequate and timely processing of program complaints.

We also found that CR has not kept settlement agreements open until all terms of the agreements have been met, and it has not conducted sufficient training to ensure complaints are processed properly. We recommended in our Phase VI report that CR track settlements to ensure their terms had been met, but CR continues to close these cases once a settlement has been reached. We recommended in our Phase V report that

¹⁶ Draft Department Manual 4330-2 contains guidance on conducted programs, and Draft Department Manual 4330-3 contains guidance on assisted programs.

CR provide training to staff personnel as soon as possible. In over a year's time, only 2½ days of training have been provided to the investigators. CR's investigators and adjudicators may not be adequately prepared to handle complaints without more formalized training.

In those instances in which CR has partially implemented our recommendations, we did not always find significant improvement. Most notably, CR's data base remains unreliable. We had recommended in our Phase V report that CR cleanse its data base and casefiles, but CR is depending on a new data base to ensure the integrity of new data while the old data remains corrupted. CR had also done little to improve employee morale. In response to our recommendation that CR provide a mechanism for employee input into office operations, CR solicited ideas from its management team only. From our current observations, we concluded that employee morale remains low.

Of particular concern to us was the status of five specific recommendations. For these five recommendations, CR had reported that corrective actions had been completed, yet we found that little effective action was taken and that the deficiencies remained. Among these deficiencies was CR's inability to locate all complainants' casefiles. (During Phase V, CR was unable to locate 40 casefiles.) These missing files have led to serious delays in complaint processing and may result in the permanent loss of important information. We are recommending that the Secretary require CR management to immediately develop a corrective action plan to address these five issues.

Conclusion No. 3 CR Did Not Implement Prior Recommendations

CR did not implement 22 of our prior recommendations. Five of these were recommendations that CR stated it had completed but which our review indicated were incomplete. These five recommendations

included actions to obtain legal sufficiency reviews for cases that had not previously been submitted for such a review, and to locate casefiles that CR was unable to locate during our prior evaluation. We concluded that the cases associated with these five recommendations were not being processed with due care. These five recommendations are highlighted below. The other 17 recommendations not implemented are also detailed.

We recommended that CR obtain legal sufficiency reviews¹⁷ from OGC for seven cases closed with no findings of discrimination adjudicated based on the agency preliminary inquiry. CR responded by stating OGC reviewed these seven cases and concurred with CR that there were no findings of discrimination. When we contacted OGC to obtain evidence of its review, OGC stated it had no record of reviewing these

¹⁷ Recommendation 1c from our Phase V evaluation, *Evaluation of the Office of Civil Rights' Efforts To Reduce the Backlog of Program Complaints*, (Report No. 60801-1-Hq), dated September 30, 1998.

cases. We reviewed the casefiles for these seven cases and found no evidence of an OGC review.

We recommended that CR locate 40 missing files.¹⁸ CR responded by stating the files were located and had been in the possession of staff members or had been misfiled. On November 3, 1999, we requested these files to ensure they had been located. On November 30, 1999, CR made an effort to locate the files. As of December 8, 1999, they were unable to locate 14 of them.

We continue to have concerns about CR's ability to account for all of its casefiles. During our current review of program complaints intake activities, CR employees were unable to locate all the files we requested. We requested a total of 384 cases to review, including both open and closed intend-to-file cases. As of December 8, 1999, CR was able to locate only 301 of the 384 cases. CR could not locate the remaining 83 cases. (See exhibit B.)

We recommended the task force assist 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.¹⁹ CR responded that its draft manuals addressed our concerns over the processing of complaints. However, the draft manuals described a process that was no different from the one we took exception to. We reported in our Phase V review that CR needed to transition from component processing of its workload to a case management operational concept and structure. This would involve assigning each case to a CR case management team, which would process the case from initial intake to final adjudication. In spite of CR's agreement that the component processing system is inadequate, it continues to operate under this system. Based on the number of problems we found in the draft manuals and on the deficiencies we observed during our current review of intake processes (see Chapter 3), we concluded that the system was inadequate.

Part of our concern in this area was CR's processing of complaints during intake, and we recommended that CR get back control of cases that exceeded the 24-day fact-finding limit.²⁰ We had identified 38 cases that were under the control of different USDA agencies, not CR. CR responded that it had gotten control of these 38 cases. We found that 37 of these cases had been moved beyond the fact-finding stage, but that the 38th case was still at the agency, where the data base indicated it was still in the fact-finding stage.

¹⁸ Recommendation 12b from our Phase V evaluation, dated September 30, 1998.

¹⁹ Recommendation 2a from our Phase V evaluation, dated September 30, 1998.

²⁰ This was part of Recommendation 2a, listed in footnote 19.

We recommended that CR keep open the cases it refers to FNS.²¹ CR responded by stating that cases referred to FNS under its Memorandum of Understanding with CR would be kept open until satisfactorily resolved. CR said it would also monitor all referrals to FNS in monthly reconciliation meetings and through a quarterly review of complaint processing.

According to CR's September 7, 1999, data base, CR is still closing cases referred to FNS with a closed code of FNSref. A CR manager said that the new data base has the capability to track the FNS referrals without closing them. However, he said that to his knowledge it is still CR's policy to close FNS cases once they are referred to the agency. The chief of the Program Investigation Division supported this view. She said that the only reason for keeping a case open would be an assumption that FNS' decision would be appealed.

We still have concerns about this practice of closing FNS referrals. CR has overall authority regarding civil rights in USDA and has a responsibility to oversee how FNS is processing the complaints. By closing a case, CR may forget the case exists and will only be concerned if FNS' decision is appealed. In fiscal year 1999, CR closed 16 of these referral cases, 7 of which it closed after it had responded to our recommendation, stating it would keep these cases open.

We also have concerns about how these cases are reported. We found that CR was including these FNS referrals in its reports to the Secretary on how efficiently it was resolving cases. By including the referrals in its reports, CR was taking credit for resolving cases in 1 day when in fact it was not resolving the cases at all.

We recommended that CR establish a second-party review over its data entry process²² 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. CR responded by stating the processes already in place would ensure second-party review procedures for information entered into the data systems. Also, all manuals and standard internal operating procedures would be implemented by July 30, 1999.

We reviewed the final Departmental Regulation as well as the draft Departmental Manual. We did not see any description of a second-party review process as described in CR's response. Neither CR's manuals nor its internal procedures address this type of second-party review.

The chief of CR's Program Investigation Division said that she performs a second-party review of some of the data, but that there is nothing in the standard operating procedures that requires her to do so. The chief of the Tracking Applications and

²¹ Recommendation 6d from our Phase V evaluation, dated September 30, 1998.

²² Recommendation 11b from our Phase V evaluation, dated September 30, 1998.

Analysis staff said that he understood an intake specialist would perform a second-party review of data for some of the case files, but he said he has not seen this internal procedure in a manual or regulation.

We recommended that CR cleanse its data base and casefiles with a document-by-document sweep of the files.²³ We also recommended that CR establish procedures and provide training to personnel on how to use the data base and input data.²⁴ One of the most critical deficiencies we noted in our previous evaluations was the lack of integrity in CR's caseload tracking system. The data used to inform the Secretary and Congress of the status of program complaints was inaccurate. As of this review, CR has not cleansed the data that still exists on its old data base, has not implemented procedures on data base usage, and has not effectively trained users on the use of the data base or data input. CR employees still do not update the data base properly with milestone dates in case processing. For instance, on September 7, 1999, CR's program complaints data base showed that 13 original backlogged complaints were still awaiting investigation. However, our review of the casefiles for 11 of these cases showed that 3 had already been settled; the data base had not been updated to reflect this fact. Inaccurate data and corrupted casefiles may impair CR's ability to process these complaints with due care.

CR also uses its data base to track the location of the physical casefiles. Using a field in the data base, CR employees can tell whether files are in the file room or in the possession of another employee. We found that CR has also not improved its efforts to properly update this location field. CR's data base as of September 7, 1999, shows 1,215 cases for which the file location field is blank. CR was also unable to locate 83 of the 384 cases we requested during our review. Furthermore, its data base showed that 21 casefiles were still in the possession of the former director of CR, who retired from USDA in early 1998. The data base should be updated to reflect the actual location of these files.

In October 1999, CR implemented its Civil Rights Complaint Tracking System (CRCTS). CRCTS has security features that allow read-and-write access to the data base based on an employee's job function. It also acts as a workflow system, identifying employees who are accountable for cases and allowing management to track the progress of the case from start to finish. And it acts as a repository for documents. Documents created by employees, such as correspondence, can be stored in the system along with other documents that can be scanned into the system. These features are a considerable improvement over the old system and will, over the long run, improve CR's ability to track and manage its caseload.

²³ Recommendations 11d and 12a from our Phase V evaluation, dated September 30, 1998.

²⁴ Recommendation 11a from our Phase V evaluation, dated September 30, 1998.

Other factors contributing to data base inaccuracies are inadequate training, lack of procedures for data input, and failure to hold employees accountable for data accuracy. CR has also not established formal procedures defining proper use of the data base and what constitutes timely data input. Without formal procedures, it is difficult, if not impossible, to hold employees accountable for their actions or inaction.

We recommended that CR develop a data base for outstanding program complaints.²⁵ The new CRCTS system contains the necessary information to allow workers to determine what actions are needed to resolve the complaint (only new cases as of October 1, 1999 will be tracked by CRCTS). However, as stated earlier in this chapter, the old program complaints data base remains unreliable.

We recommended that CR send agencies a report each week that shows the age of open complaints.²⁶ CR stated it has begun issuing complaint reports to all agencies on a monthly basis. CR did not show that this report included an aging report.

During Phase I, we recommended that CR standardize its files.²⁷ During a subsequent phase, we were provided with draft file room procedures that outlined the steps CR would take when files were assembled. Based on these procedures and a review of some files, we felt this recommendation was substantially complete. However, during our Phase V review, we noted the files were still in disarray. Based on this review, we could not reach management decision for this recommendation.

On November 15, 1999, CR began an inventory project designed to account for all program complaint case files, standardize these files, and reconcile selected information with the information in the data base. The tentative completion date of this project was December 11, 1999.

We recommended that CR perform compliance reviews of each USDA agency's civil rights staffing²⁸ to determine if the agencies had committed adequately trained staff and had adequate procedures to process complaints. Although this recommendation was originally made in February 27, 1997, CR has yet to implement it.

While some effort to implement this recommendation is apparent (hiring of permanent compliance staff and drafting procedures), most of the recommendation has not been acted upon. The first recommendation in this area has been outstanding for over 2½

²⁵ Recommendations 1e and 2 from our Phase I evaluation, dated February 27, 1997. Note: Recommendation 2 appears as 3 in Exhibit A.

²⁶ Recommendation 3 from our Phase I evaluation, dated February 27, 1997. Note: This recommendation appears as 4 in Exhibit A.

²⁷ Recommendation 4 from our Phase I evaluation, dated February 27, 1997. Note: This recommendation appears as 5 in Exhibit A.

²⁸ Recommendations 1h from our Phase I evaluation, *Evaluation Report for the Secretary on Civil Rights*, (Report No. 50801-2-Hq(1)) dated February 27, 1997.

years and CR has yet to permanently fill the role of compliance manager and issue any compliance reports as of December 1, 1999. We credit CR with its use of a task force to ensure quality compliance reports; however, we believe these steps should have been taken earlier.

We recommended that CR require agencies to limit their 24-day reviews to fact-finding and stop obtaining signed statements from complainants and other non-USDA employees.²⁹ CR stated that the Assistant Secretary for Administration issued a memo stating what was required of the agencies, but CR has not produced a copy of the memo.

We recommended that CR amend its memorandum of understanding with HUD to require HUD to forward all future complaints against USDA employees to CR.³⁰ CR responded that the memorandum was being reviewed to determine if it should be continued. CR stated that at the very least, there would be substantial modification to ensure USDA maintained greater control over referrals of cases involving USDA employees.

CR has not specifically addressed this recommendation. In CR's first response, it said it would review the memorandum at the end of its first operational year. We determined that the memorandum had been in effect over a year at the time of CR's response and yet the review had not been completed.

The memorandum 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." To date, a separate memorandum has not been executed.

We recommended that CR determine if memorandums of understanding with agencies other than HUD are needed.³¹ CR responded that enhanced monitoring by its compliance unit will obviate the need for other memorandums of understanding; however, this unit has not yet been fully staffed.

We recommended that CR determine the status of 24 possible complaints against USDA employees that are currently in HUD's intake process³² and to analyze these for resolution. CR responded by stating the cases from HUD had been reviewed by the task force along with all the other cases.

We were informed by Rural Development, which administers the memorandum of understanding with HUD, that CR had not reviewed these cases and the cases never

²⁹ Recommendation 2b from our Phase V evaluation, dated September 30, 1998.

³⁰ Recommendation 6a from our Phase V evaluation, dated September 30, 1998.

³¹ Recommendation 6c from our Phase V evaluation, dated September 30, 1998.

³² Recommendation 6b from our Phase V evaluation, dated September 30, 1998.

left HUD's control. CR did not provide us with any documentation showing the results of its review. CR said the task force reviewed the cases when, in fact, this was not the case.

We recommended that CR encourage conciliation with complainants in discrimination cases.³³ We found that a policy to this effect was drafted but later rescinded. Currently no policy is documented.

We recommended that CR assemble a team of OGC civil rights attorneys and cognizant agency program officials to meet prior to each settlement agreement negotiation.³⁴ CR responded that it would continue to consult with OGC and with agency officials as it had done in the past, but that it would not assemble a team. We believe a team is needed to help ensure all terms of the agreements are proper and can be implemented.

We recommended that CR appropriately plan its investigations and conduct them in an effective and efficient manner.³⁵ CR stated the new departmental regulations and procedures would address our recommendation. However, the draft procedures do not state that a CR manager or investigations supervisor needs to review and approve the investigative plans. The draft procedures also do not call for any supervisory oversight during the investigative process. The only supervisory oversight mentioned in the draft procedure deals with the approval of the ROI after the investigator writes it.

The chief of the Program Investigation Division said she was putting together procedures that would require her to review and approve all investigative plans. The procedures, as described to us, would address our concerns.

We recommended that CR design and implement a quality control system over the review process for reports of investigation.³⁶ We recommended in our Phase V report that CR implement a quality control system that, at a minimum, would include tracking procedures for recording the dates of supervisory reviews, the deficiencies noted, the corrective actions taken, the adequacy of actions taken, and the number of times and to whom deficient reports were returned for corrections.

CR responded by stating that the head of the investigative unit will review the ROI's and submit them to the adjudication unit. However, there is no mention of this quality control process in CR's regulations and procedures. Also, CR's response calls for the adjudication unit to review the report and make a determination of whether the report

³³ Recommendation 3 (Note: Recommendation 3a in Exhibit A) from our Phase VI evaluation, *Evaluation of the Office of Civil Rights' Efforts to Implement Civil Rights Settlements*, (Report No. 60801-2-Hq), dated March 24, 1999.

³⁴ Recommendation 4b from our Phase VI evaluation, dated March 24, 1999.

³⁵ Recommendation 3a from our Phase V evaluation, dated September 30, 1998.

³⁶ Recommendation 3b from our Phase V evaluation, dated September 30, 1998.

is complete and sufficient. In our recommendation, we stated that adjudicators should not conduct the quality control reviews of reports.

We recommended that CR resolve all our prior recommendation within 2 months (of September 30, 1998).³⁷ As noted, over half the recommendations are unresolved.

Recommendation 5

Direct CR to find the 83 missing files and determine their status.

CR Response

Through the file room project, CR will identify any missing files, as well as establish files for any intend-to-file cases for which CR has received correspondence but has not yet developed a file. CR will have statistics available on these 83 files by March 31, 2000.

OIG Position

CR's response is sufficient to reach management decision.

Recommendation 6

For the five recommendations CR reported as implemented but that were not implemented, direct CR to immediately develop a corrective action plan. The CR director should be held accountable for the implementation of this plan.

CR Response

At the exit discussion on February 24, 2000, and as part of CR's official response to the draft report, CR provided us information related to this recommendation.

OIG Position

We will review the information provided and will meet with CR to make a determination as to whether we can reach a management decision.

³⁷ Recommendation 15 from our Phase V evaluation, dated September 30, 1998. Note: This recommendation appears as 15a in Exhibit A)

Recommendation 7

For the other 17 recommendations that CR has not yet addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.

CR Response:

At the exit discussion on February 24, 2000, and as part of CR's official response to the draft report, CR provided us information related to this recommendation.

OIG Position:

We will review the information provided and will meet with CR to make a determination as to whether we can reach a management decision.

Conclusion No. 4 CR Has Partially Implemented Some Prior Recommendations

Although CR has partially implemented 19 of our prior recommendations, we concluded that significant improvements in CR operations are still needed in order for CR to operate efficiently and effectively.

We recommended that CR review the five administratively closed cases that did not contain any evidence to support closing them.³⁸ CR stated that these cases were part of the original backlog and were consequently reviewed. We received a listing of the cases reviewed by the administrative closure teams from the Early Case Resolution Task Force. We found that these teams had reviewed four of the five cases. They did not review the fifth case.

We recommended that CR create a position for managing contracts³⁹ (contracting specialist) to provide proper and timely oversight of the quality of work submitted by contractors. CR stated that this position has been created. However, CR's reorganization package (known as a "1010 package") did not reflect a contract specialist position. An unapproved version of the package reflected a contract specialist under the resource management staff. We were told that this position had been announced. The position description was in draft and was currently awaiting signature in the director's office.

³⁸ Recommendation 4c from our Phase V evaluation, dated September 30, 1998.

³⁹ Recommendation 5 from our Phase V evaluation, dated September 30, 1998. Note: This recommendation appears as 5a in Exhibit A.

We recommended that Federal and departmental regulations on processing program discrimination complaints be updated and published.⁴⁰ CR responded that they and OGC have worked on developing revised departmental regulations, internal regulations, and manuals, scheduled to be finalized by December 31, 1998. We were provided with the finalized Departmental Regulations. We have not been provided with the finalized Code of Federal Regulations (CFR's).

We recommended that CR provide training to staff personnel as soon as possible.⁴¹ CR responded that the deputy director for systems and administration would develop plans for future training needs of CR staff. In addition, civil rights training was being planned for all USDA staff.

We determined the deputy director for systems and administration no longer has any direct involvement in the development of training plans. We were told that CR is working with Howard University to develop a continuing education program. However, little or no actual training has been provided. CR has made some effort to assess the training needs of its staffmembers, but it has not followed through with the training.

We recommended that CR close cases only after all terms and conditions of settlement agreements have been implemented.⁴² CR responded that it is developing procedures to monitor and track all settlement agreements. These procedures have not yet been issued, and CR continues to close all settlement cases.

We recommended that CR reevaluate all discrimination complaints closed and forwarded to program managers by FSA without concurrence from CR.⁴³ There were originally 26 cases in this category, but CR had reduced them to 5 by the time of our Phase IV evaluation. Little or no effort has been made since then to review the remaining five cases.

We recommended that CR reconcile its data base with those of the agencies.⁴⁴ CR responded by stating that it had formalized its monthly meetings to reconcile complaint data. During this review, we found that CR has some procedures in place to accomplish the monthly reconciliations, but that the procedures were not being followed. Also the procedures have not been formalized in any manual.

The deputy director for systems and administration said that the reconciliation

⁴⁰ Recommendation 5 from our Phase I evaluation, dated February 27, 1997. Note: This recommendation appears as 6 in Exhibit A)

⁴¹ Recommendation 9b from our Phase V evaluation, dated September 30, 1998.

⁴² Recommendation 4a from our Phase V evaluation, dated September 30, 1998.

⁴³ Recommendation 1c from our Phase I evaluation, dated February 27, 1997.

⁴⁴ Recommendation 1d from our Phase I evaluation, dated February 27, 1997, and recommendation 11c from our Phase V evaluation, dated September 30, 1998.

meetings do not achieve any consensus on the number of open complaints in existence. He said that when the agencies note discrepancies in CR reports, he forwards the discrepancies to the chief of program investigations to make the changes. The chief of program investigations said that when she receives the proposed changes, she evaluates them and makes those that are warranted. However the deputy director said that when he gets the report for the agencies the next month, he sees the same errors.

We recommended that CR establish a system to control and monitor the implementation of settlement and conciliation agreements.⁴⁵ CR asserted that the regulations, manuals, and procedures will adequately address our concerns. According to CR's draft procedures, the director of the compliance division will follow up with the agency biweekly or as needed on implementation progress and conduct periodic checks with the complainant concerning implementation of the agreement. CR needs to issue the procedures in final form or establish a timeframe within which to issue them in final form.

We recommended that CR urge the Secretary to establish an Assistant Secretary for Civil Rights at the subcabinet-level⁴⁶ to resolve cross-cutting issues between agencies and CR. CR stated that effective fiscal year 2000, CR would not be a part of Departmental Administration. CR gave us a copy of the legislative program establishing the position of Assistant Secretary for Civil Rights. According to the CR director, as of October 29, 1999, the legislation was still at the Office of Management and Budget. Final action will not be completed until the legislation is finalized.

We recommended that CR develop staff training plans that adequately reflect the training needs of the agency.⁴⁷ CR stated it established a committee composed of CR employees to review the training requests submitted by the employees. Based on the recommendations of the committee, CR is approving one training request for each employee. If funds are available, CR will consider additional training opportunities. CR will establish job-specific training for its staff.

In related developments, a CR official had been meeting with a Howard University professor to establish a comprehensive training program. The official expected the Howard University training to begin sometime in December 1999. He also noted that all the investigators and some of the other staff attended training by the Department of Justice on federally assisted programs.

CR needs to provide us with its assessment for training and timeframes for

⁴⁵ Recommendation 4b from our Phase V evaluation, dated September 30, 1998, and recommendations 1a, 1b, 1c, and 2b from our Phase VI evaluation, dated March 24, 1999.

⁴⁶ Recommendation 7 (Note: Recommendation 7a in Exhibit A) from our Phase V evaluation, dated September 30, 1998.

⁴⁷ Recommendation 9a from our Phase V evaluation, dated September 30, 1998.

establishing training plans.

We recommended that CR provide a mechanism for employee input into office operations⁴⁸ through quality control sessions and other forums. CR stated their management staff solicited input and ideas from its management team and key staff members prior to developing its reorganization. CR also stated that the director and other management staff will hold regular staff meetings to provide information and opportunities for all employees to voice concerns.

We reviewed the approved reorganization of CR. We believe CR has provided a mechanism for employee input, but as yet CR's actions have had little effect. We observed that employee morale was still low.

We recommended that CR issue within a 2-month timeframe standard operating procedures for program complaint processing.⁴⁹ In its first response, CR stated it was scheduled to issue the standard operating procedures by February 1, 1999. In its second response, CR stated the standard internal operating procedures would be completed and implemented by July 30, 1999. As of the date of this review, these procedures have not been finalized, but a very detailed draft version has been completed, and according to the chief of the Program Investigation Division, that version is currently being followed by CR investigators.

We recommend that CR, in consultation with OGC and the Office of Human Resource Management (OHRM), include a disciplinary action section in the departmental regulations⁵⁰ as a means of formalizing general requirements and procedures applicable to employees cited by complainants in program discrimination cases who have acted in an improper manner. CR, OGC and OHRM have drafted a detailed policy on discipline in civil rights cases. This policy has been transmitted to the Secretary for signature. As of the date of our review, these procedures have not been made official.

We recommended that CR develop a comprehensive plan to review civil rights compliance at all agency levels.⁵¹ CR responded that it will be providing agency program orientation to staff assigned to the compliance division. No timeframe has been established to complete this recommendation.

⁴⁸ Recommendation 10 from our Phase V evaluation, dated September 30, 1998. (Note: Recommendation 10 is listed as 10a in exhibit A.)

⁴⁹ Recommendation 14 from our Phase V evaluation, dated September 30, 1998. (Note: Recommendation 14 is listed as 14a in exhibit A.)

⁵⁰ Recommendation 2a from our Phase VI evaluation, dated March 24, 1999.

⁵¹ Recommendation 6 from our Phase I evaluation, dated February 27, 1997. (Note: Recommendation 6 is listed as 7 in exhibit A.)

Recommendation 8

For the 19 recommendations that CR has not yet fully addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.

CR Response:

At the exit discussion on February 24, 2000, and as part of CR's official response to the draft report, CR provided us information related to this recommendation.

OIG Position:

We will review the information provided and will meet with CR to make a determination as to whether we can reach a management decision.

CR Needs To Improve Its Intake Process of Current Cases

During our Phase V review, we questioned the system CR used to process program complaints. CR was operating under a component system, which assigned staff to a single component of processing, such as the intake component, rather than to a caseload, which they would process completely, from intake to adjudication. CR agreed with our assessment of their system. In response to our recommendation to adopt a case management system, CR stated that departmental regulations and the draft manual would address our concerns. We found that the process described in the draft regulation was not significantly different from the process we took exception to.

To determine if the system in place had improved, we reviewed CR's management of program discrimination complaints that had been received since November 1, 1997, the date used by CR to distinguish new complaints from the original backlog it had inherited from the old Civil Rights Enforcement and Adjudication branch of the Department. Our main focus was on CR's handling of complaints during the intake phase of processing.

Under CR procedures, when a complaint letter is received by the Intake Unit of CR, it is assigned a case number and entered into the data base in the "intend-to-file" group until CR determines whether it has jurisdiction to process the complaint.⁵² While in this group, CR gathers information to either process the complaint or close it. This process is called "perfecting" the complaint.

During the perfecting process, CR must determine if the complainant has a statutory "basis" and an "issue." In other words, the complainant must declare himself or herself a member of a protected group to show the basis for a civil rights complaint, and he or she must indicate that the adverse action taken was because he or she was a member of this protected group (issue). Once all the necessary information is obtained, the complaint is formally accepted and should be moved to the "new" group and processed as a formal complaint, where it will be investigated and adjudicated.

We determined that the current system still does not move cases efficiently through the intake phase. Under the current system, CR has imposed on itself a deadline of 30 days to "perfect" a complaint⁵³ and another 180 days to resolve it.⁵⁴ Using CR's data base, we determined that for fiscal year 1999, CR took, on average, 126 days to perfect

⁵² When CR implemented its new CRCTS data base, it began calling "intend-to-file" cases "claims" and no longer uses "new" for perfected complaints. These are simply called "complaints."

⁵³ Departmental Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 1.b.

⁵⁴ Departmental Regulation 4330-3, dated March 3, 1999, 10.e. (4).

its complaints and another 174 days to process cases (see Table 9) through investigation and adjudication.

The CR Director maintained that CR has shown progress in processing program complaints under the system that is in place. During an August 3, 1999, briefing of the Secretary and other USDA officials, the CR director used the chart below to show that the average number of days taken to process a program complaint had been reduced over the past 3 years.

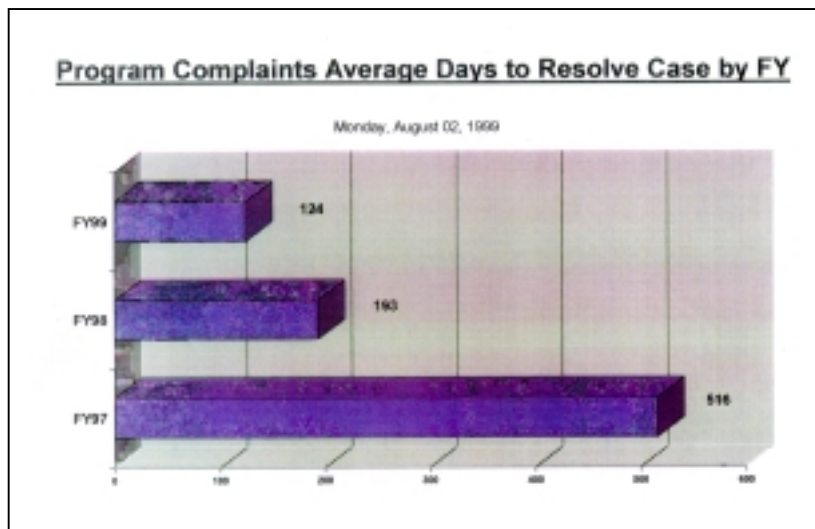


Table 8: Chart Used by CR Director To Show Progress in CR’s Processing Time

To understand how these numbers were derived, we examined the data CR used. We found that the numbers are misleading and do not accurately reflect the average time it has taken CR to completely process a program complaint. The numbers used for fiscal years 1998 and 1999 represent the average number of days to close complaints regardless of whether or not the case was accepted as formal. The numbers for these years include intend-to-file cases, many of which never became formal, either because CR had no jurisdiction in the matter or because the complainant withdrew the complaint. Consequently, these cases were never processed as formal complaints. The numbers also include intend-to-file cases that had incorrectly been classified as “new” and closed immediately, thereby showing a processing time of (zero) days. We discovered that these types of cases made up over a third of CR’s fiscal year 1998 processing average of 193 days (see Table 9). Furthermore, because CR measured the processing time beginning with the date of formal acceptance of a complaint, the amount of time it took CR to perfect a complaint was not included in the averages. We found that it took CR 126 days in FY 1999 to perfect complaints. This is over 3 months longer than CR’s self-imposed timeframe of 30 days (see conclusion 5, subsection c).

We also determined that the numbers used in the CR Director’s chart do not provide a meaningful comparison of timeframes for the 3 fiscal years. Although the numbers may

be understood to represent the number of days that it took to close all cases closed during those 3 fiscal years, they actually represent the average number of days to close cases that were *opened* in each of those fiscal years. This gives a statistical advantage to cases opened most recently. For example, the figure of 124 days for fiscal year 1999 is the average number of days that it took to close all cases that had been opened between October 1, 1998, and August 2, 1999, a processing period that could not exceed 306 days. By comparison, the figure of 516 days for fiscal year 1997 is the average number of days it took to close all cases that had been opened between October 1, 1996, and September 30, 1997, *and that had been closed as late as August 2, 1999*. This counts all cases that were opened in the 365-day period and that may have been processed over as long a timeframe as 1,033 days.

We recalculated CR’s processing time by excluding those cases with zero days but using CR’s date of formal acceptance as a start date. The chart below shows our averages, as well as the average age of open cases as of August 2, 1999 for the 3 years depicted. We suggest that the average age of open cases more closely reflects processing time because CR’s figures are based on those 1999 cases that could be closed within the first 306 days of the fiscal year; the remaining open cases are those that are clearly taking longer.

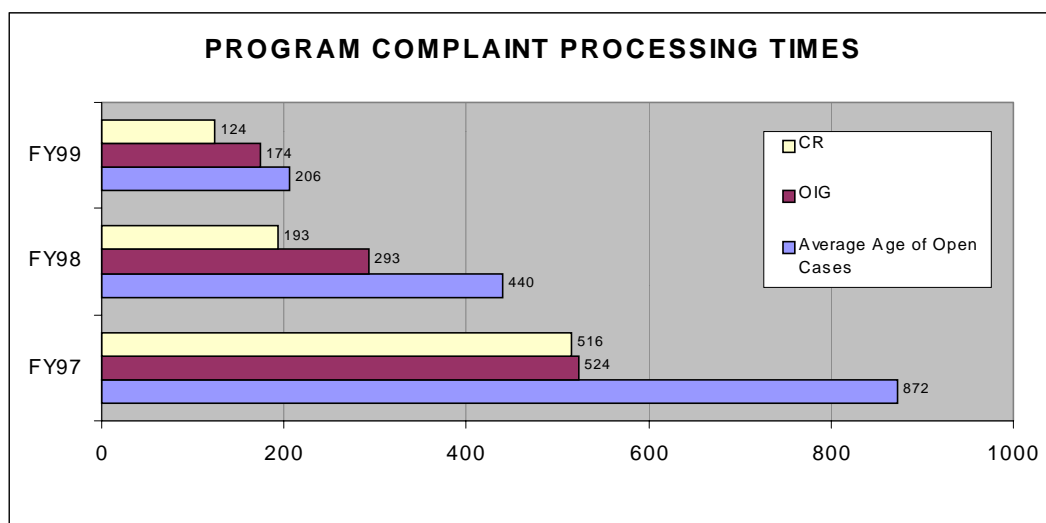


Table 9. OIG Calculation of Program Complaint Processing Time Using CR’s Data Base.

We emphasize that because cases from 1998 and 1999 are still open, the chart in Table 9 cannot offer a meaningful comparison between the 3 fiscal years. As the cases become resolved in fiscal year 2000, the average processing times for both years will grow.

When we asked the CR Director about her charts, she stated that her staff had prepared them and that she did not know what data made up the averages. She maintained, however, that in her opinion, the charts were a valid presentation of the data.

To test our assumptions about the efficiency of CR’s current processing system, we reviewed the status of current complaints that were in the intake stage of processing or

had been closed during intake. From CR's September 7, 1999, data base, we determined there were 939 open intend-to-file cases (of which 92 were classified in CR's data base as class complaints) and 711 closed intend-to-file cases (of which 86 were class complaints). We selected 188 of these cases for a detailed review (87 open cases and 101 closed) and found CR had closed 69 percent of the closed cases without following proper procedures. We identified five specific areas of concern with the current process:

- CR did not mail acknowledgment letters to 30 complainants in a timely manner and did not send letters at all to 57 complainants,
- CR's acknowledgment letters are poorly worded and may confuse complainants, which may result in improper case closures,
- Although CR had obtained the necessary information for 39 of the 87 open intend-to-file cases we selected for review, CR was not processing these cases as complete complaints,
- CR did not close 16 intend-to-file cases after the complainant failed to provide CR with required information, and
- Of the 101 closed intend-to-file cases we reviewed, CR had closed 69 percent without giving the complainant an opportunity to submit a perfected complaint or ensuring that the complainant understood the requirements for a program discrimination complaint.

We noted that CR's inefficiency during the intake process has resulted in a backlog of intend-to-file cases. During our audit, CR has tried to decrease its number of open intend-to-file cases, reducing it from 939 as of September 7, 1999, to 719 as of December 1, 1999. Although not all 719 cases show when the complaints were filed, we determined that all 454 cases with a date of complaint in the data base have been in intake longer than 30 days. Of these, the average open file had been in intake a total of 371 days. The chart on the following page depicts the numbers of cases in five age categories, as well as the number of cases whose age was undeterminable.

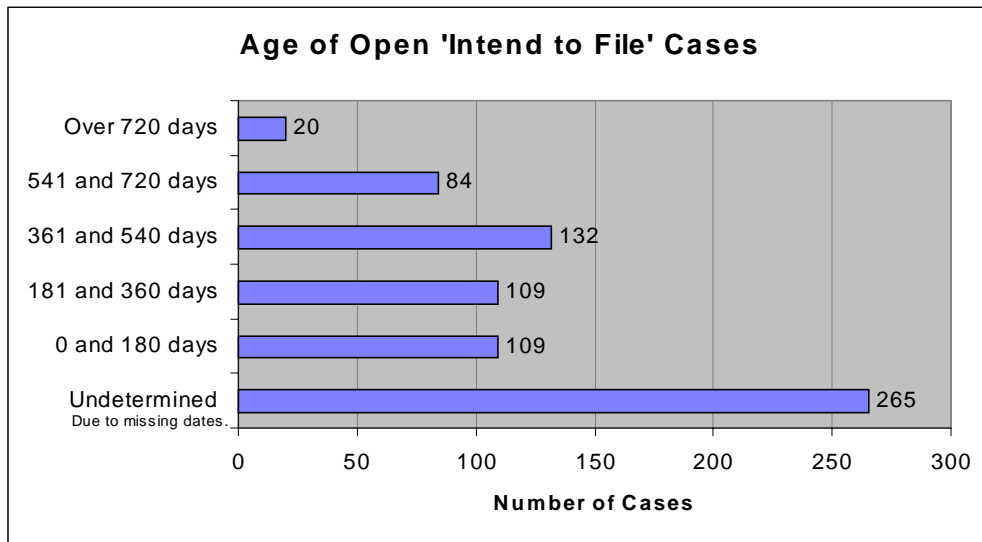


Table 10. Age of CR's Open Intend-To-File Cases, as of December 1, 1999.

As Table 10 suggests, at CR's current rate of perfecting complaints, the average age of the open intend-to-file cases will only grow over time because the bulk of the cases already exceed by tenfold CR's 30-day timeframe for perfecting the complaints, while additional cases are added to the Intake Unit's workload at an average rate of about 25 a month.

**Conclusion 5
Not All New Complaints Are Processed
With Due Care During CR's Intake Phase**

CR had not ensured that all complainants were given an equal opportunity to voice their concerns regarding alleged discriminatory treatment. During our audit, we noted inconsistent actions during each phase of

CR's intake process, from acknowledging when a complaint was received to reclassifying intends as new complaints. We noted CR had acknowledged some of the complaints but not others and had continued processing some complaints but not others. As a result, CR is not treating all complainants fairly.

In addition, we found that CR does not monitor and report its entire processing times for complaints because its data base is designed to overwrite the actual date of complaint with the date CR considers the complaint to be perfected. This is because the 180 day self-imposed timeframe for processing a complaint starts on the day CR determines it has jurisdiction to process the complaint. We found that on average, it took CR 241 days to determine that it did not have jurisdiction to process 82 intends cases before closing them, even though CR's own self-imposed timeframe is 30 days. We also found that it took CR an average of 126 days to perfect complaints in addition to 174 days to process those complaints in FY 1999. For those complaints processed

in FY 1998, which took 293 days to complete, it took CR, on average, 64 days to perfect them, about half the time it is taking CR to perfect complaints in FY 1999.

When a possible discrimination complaint is received, CR assigns a case number and classifies the complaint in its data base as an “intend-to-file” case until it determines whether it has jurisdiction. Within 5 days of receiving a discrimination complaint, CR must send the complainant a letter acknowledging that the complaint was received⁵⁵. During this intake phase, CR must make a determination of whether or not to accept the complaint for investigation.⁵⁶ To fully process a complaint, CR must have jurisdiction over both the subject matter of the complaint and the agency, program, or activity in which discrimination is alleged to have occurred. CR may not be able to make this determination based on the initial correspondence from the complainant and may request additional information through its Acknowledgment Letter. If all necessary information is not received in a timely manner, CR may close the case.⁵⁷ CR has a self-imposed 30-day time limit to either close the intend case or reclassify the complaint as “new.”⁵⁸

During our audit, we noted problems with each phase of CR’s intake process. We reviewed 87 open intend-to-file cases and found CR had not been mailing Acknowledgment Letters in a timely manner, if it was mailing them at all; the Acknowledgment Letters CR sent were poorly worded and confusing; CR was not processing cases as “new” complaints after all the necessary information was received; and CR had not closed intend cases even though the complainant failed to supply the necessary information.

a. Not All Complainants Receive Acknowledgment Letters in a Timely Manner

CR has not been mailing Acknowledgment Letters to the complainants in a timely manner and may not have sent some letters at all. In our sample of 87 open intend-to-file cases, we noted that in 57 cases an Acknowledgment Letter was not sent (66 percent) and in the remaining 30 cases the letter was not sent in a timely manner. Based on the date of the complaint and the date of the letter, we calculated that the average time it took CR to acknowledge these 30 complaints was 122 days. CR procedures require an Acknowledgment Letter be sent within 5 days.⁵⁹ The 57 complainants who did not have Acknowledgment Letters in their files have waited for 264 days without receiving any form of acknowledgment (as of our file review date of October 1, 1999).

⁵⁵ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 9.a. and 10.b.

⁵⁶ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 10.a.

⁵⁷ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 10.b.ii (5)

⁵⁸ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 1.b.

⁵⁹ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 9.a. and 10.b.

b. Acknowledgment Letters for Incomplete Complaints Are Poorly Worded and Confusing

CR's Incomplete Complaint Acknowledgment Letters are poorly worded and may result in improper case closures due to confusion on the part of complainants. In the letter, CR is to describe in as much detail as possible the information needed in order for the complainant to complete the complaint and to enable it to be processed further.⁶⁰ The letters do not provide the complainant with fundamental information and may not be effective in extracting necessary information from the complainant so CR can make an informed decision on whether the complaint needs to be processed further. The letters do not assist the complainant with the complaint process but may, in effect, lead to confusion and unresponsiveness, causing CR to close cases with legitimate complaints of discrimination.

CR had three form letters for incomplete complaints. We found these letters ambiguous and open to multiple interpretations. Complainants typically do not have experience writing discrimination complaints and may need examples of what is expected. The letters did not always provide these examples.

For instance, one of the letters noted a covered "basis" and "issue" were two of the conditions that had to be met. The letter stated, "This means that you have reason to believe that one or more of your personal characteristics motivated the officials, and the law bars that characteristic from playing a role in their decision making." No examples of either a "basis" or an "issue" were given. We believe CR was asking if the complainant was a member of a protected class (identified by race, national origin, color, religion, etc.), and we believe CR was asking the complainant to show that the alleged discriminating official used this basis as a factor in the adverse action. However, this letter was not clear in the information being requested.

We also noted that the three form letters were inconsistent in their response requirements. The first form letter states, "If we have not received the information within 30 days from the date you receive this letter, your complaint will be closed with no further action by CR." The second form letter states, "If we have not received the information within 20 days from the date you receive this letter, your complaint will be closed with no further action by CR." The third form letter states, "you must provide our office with additional information within 15 days of the date of receipt of this letter" (emphasis included in form letter).

⁶⁰ Department Manual 4330-2Man (draft), dated June 1999, section III-A Intake, 10.b.

CR's procedures⁶¹ state that the complainant should be informed that he or she has 15 days from the date of receipt of the Acknowledgment Letter to provide the requested information. The procedures also instruct the letter-writer to notify the complainant that he or she may request up to 10 additional days to provide the requested information under certain circumstances (listed in the procedures). The third form letter listed the correct number of days, but it did not inform the complainant that he or she may request an additional 10 days.

c. Not All Complaints Are Processed Expeditiously

CR had not reclassified 45 percent of the open cases we reviewed from incomplete complaint to complete complaint after the necessary information was obtained. As a result, complainants' completed or perfected complaints are not being resolved and "new" complaint totals are in reality higher than reported in the data base.

CR procedures⁶² state a complaint is complete (perfected) if it includes five required elements. These five required elements are a signature from the complainant, the complainant's name and contact information, the basis of the complaint, identification of the agency, program, or representative alleged to have committed illegal discrimination, and a description of issues or subject matter and the date when the alleged discrimination took place.

We found CR did not reclassify 39 of the 87 open incomplete complaints as complete after receiving the five required elements. These cases are still thought of as incomplete complaints. As such, resolution of these complaints, either through an investigation, early resolution, or pre-investigation settlement, had not begun.

We also found that CR does not track its processing times for intends cases because CR starts tracking the 180-day processing limit on the day intends are reclassified as "new" complaints. Using CR's data base, we determined in fiscal year 1999 it had taken CR an average of 126 days to process intends cases and reclassify them as "new."

d. CR Needs To Clear Its Data Base of Cases From Unresponsive Complainants

CR did not close all intend-to-file cases after the complainant failed to provide CR with required information in the allotted time period. As a result, CR has an artificially high total of incomplete open complaints and complainants are unaware that their cases have not been accepted by CR.

⁶¹ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 10.b.ii (2) and (3).

⁶² Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 7.a. through e.

If a complainant does not provide CR with all necessary information needed to complete a complaint in the original complaint letter, CR requests additional information. The most time CR gives the complainant for submission of this necessary information is 25 days after the Acknowledgment Letter is received.⁶³

We previously reported that CR only formally acknowledged 30 of the 87 open cases we reviewed. However, 2 of these 30 complainants have since become part of the class action which bars CR from processing these cases. The remaining 28 are broken down into 2 categories: those who responded to the Acknowledgement Letter (14 cases) and those who did not (14 cases). The 14 cases in which the complainant did not respond to the Acknowledgment Letter had been open an average of over 6 months (from the date of the data base of September 7, 1999). Twelve of these cases should be closed. (We determined that two individuals had submitted all the required information in their original complaint letters and did not need to respond to CR's Acknowledgment Letter.)

Of the 14 complainants who responded to the Acknowledgment Letter, 4 did not provide enough information to complete the complaint while 10 submitted the required information and should have been considered complete and moved forward in the complaint processing system (these 10 are part of the 39 we detailed in subsection c of this conclusion). The four cases in which the complainant did not provide the required information should be closed. These cases had been open an average of 200 days since the complainant responded to the Acknowledgment Letter.

In total, we determined 16 cases should be closed either because the complainant failed to respond to CR's Acknowledgment Letter (12 cases) or because their response did not include all required information (4 cases).

Delays in closing cases not only affect the complainant but also the agency with which the complaint was lodged. For example, under FSA's Farm Loan Programs, adverse servicing action against a borrower is normally suspended if a complaint of discrimination has been filed and the complaint remains unresolved. FSA's Deputy Administrator for Farm Loan Programs informed us that once a civil rights discrimination complaint is filed, regardless of whether CR considers it complete or not, servicing actions such as foreclosure must be halted and may not proceed until CR closes the borrower's discrimination complaint. Although we were not aware of any servicing problems, we did find a case in which CR did not timely notify FSA of an outstanding complaint. CR's data base indicated the complaint was received on April 8, 1999; we determined that FSA was not notified until October 21, 1999, over 6 months later. The agencies need to be

⁶³ Department Manual 4330-2MAN (draft), dated June 1999, section III-A Intake, 10.b.ii (2) and (3).

informed immediately of outstanding complaints so no adverse action is taken against the complainant until CR closes the case. Likewise, agencies should be notified expeditiously of all closed intend cases so that agency administrative processing can continue.

Recommendation 9

Direct CR to issue Acknowledgement Letters to all complainants within 5 days after receipt of the complaint, in accordance with the Department manual.

CR Response:

CR's Procedures Manual requires Acknowledgment letters to be sent to complainants within five days of receipt of the complaint.

OIG Position:

In order to reach a management decision, CR needs to demonstrate that internal controls will be put in place to ensure that the Acknowledgment Letters are sent to complainants within 5 days as prescribed by CR's procedures manual.

Recommendation 10

Direct CR to review all remaining open intend-to-file cases and determine whether CR had acknowledged all complaints; whether any cases should be moved forward in the complaint resolution process; and whether any have been open beyond the established timeframe. Where appropriate, immediately send Acknowledgment Letters to complainants; move cases forward in the resolution process; and close complaints from unresponsive complainants.

CR Response:

CR is currently in the process of completing a project that will resolve all outstanding intend complaints currently listed as open in the database. As of February 28, 2000, the number of open non-class intend complaints is 169. CR anticipates a complete resolution of these cases by March 31, 2000. Prior to acceptance, referral, or closure of any intend complaint, a member of the Deputy Director's staff will review the case file and ensure that the correct action is being taken on the cases.

OIG Position:

We agree with the action taken. However, to reach a management decision, CR needs to provide us with statistics on the resolution of the intend-to-file cases since our review.

As of December 1, 1999, there were 646 open intend-to-file cases. CR needs to account for the difference between the 646 cases and the 169 open intend-to-file cases it indicates were remaining as of February 28, 2000.

Recommendation 11

Direct CR to standardize the Acknowledgement Letters so they contain all the required information and explain what information is needed from the complainant.

CR Response:

CR has modified its 15-day letter to communicate more clearly the information needed to process the complaint.

OIG Position:

We still have concerns about the modified letter. The protected bases are defined in Departmental Regulations 4330-2 and 4330-3. According to these regulations, the protected bases are race, color, national origin, gender, religion, age, disability, marital status, familial status, sexual orientation, or because all or part of an individual's income is derived from any public assistance source. The modified letter lists political beliefs and income as protected bases. Also the revised letter failed to inform the complainant that familial status and sexual orientation are protected bases. In addition, the letter should inform the complainant that he or she could request an additional 10 days to send the requested information.

In order to reach management decision on this recommendation, CR needs to consider the other bases mentioned in the regulations and provide us with a revised letter.

Recommendation 12

Direct CR to reclassify the 39 cases as new complaints and move them forward in the complaints resolution process.

CR Response:

CR has initiated the process of evaluating open intend-to-file claims. The 39 cases will be reclassified as necessary as a result of this process.

OIG Position:

Before we can reach management decision, CR needs to provide us with the statistics on these 39 cases.

Recommendation 13

Direct CR to monitor and report its processing times for incomplete cases in order to determine whether it is achieving its standard of 30 days to process these cases and to identify trends and other areas needing immediate attention.

CR Response:

The CRCTS system tracks this automatically. The review system described provides for these cases to be reviewed weekly. With regard to the existing “intend-to-file” cases, CR has already identified them and is working to resolve them.

OIG Position:

CR’s response is sufficient to reach management decision.

Recommendation 14

Direct CR to close the 16 incomplete cases that we determined remained open beyond the established timeframe.

CR Response:

CR has initiated the process of evaluating open intends-to-file claims. The 16 incomplete cases will be closed as a result of this process.

OIG Position:

Before we can reach management decision, CR needs to provide us with the statistics on these 16 incomplete cases.

Recommendation 15

Direct CR to immediately notify program agencies of all open and closed intend-to-file cases (now referred to as “claims” by CR) so that proper actions can be taken, and ensure that this is routinely done on all future cases.

CR Response:

CR’s reconciliation SOP currently calls for a monthly report containing this information to be issued. CR may modify the SOP to require the report to be distributed weekly.

The modification will take effect on or before March 31, 2000.

OIG Position:

The current monthly report does not appear to be a timely notification to the agencies. Before we can agree to a management decision, CR needs to provide for some other method of immediately notifying the agencies of open or closed cases.

**Conclusion 6
Not All Complainants Are Informed
Of CR Requirements for a Complaint**

CR improperly closed 70 of 101 (69 percent) cases by not affording the complainant an opportunity to submit a perfected complaint or ensuring that the complainant understood the requirements for a program discrimination complaint. The remaining 31 complainants had obtained or been provided the additional information needed for a perfected complaint. As a result, some complainants who had been discriminated against may have had their cases closed, not through the formal investigation and adjudication process, but simply because they did not understand how to submit a complaint.

We reviewed 25 closed intend-to-file cases to determine if the case was properly closed. We found 15 of the cases were not properly closed. Based on this, we expanded our review. In total, we reviewed 101 closed intend-to-file cases and determined that 70 were not properly closed.

We found that when complainants did not provide all the necessary information to CR with their original complaint letter, they were not always told why their original complaint was incomplete. CR closed some complaints without giving the complainant an opportunity to fully explain his or her situation within the boundaries of CR's definition of a complete complaint.

One case file we reviewed contained a complaint against a county office's pricing practice in the Loan Deficiency Payment program. The complainant's letter did not contain all of the required elements of a complete complaint. The complainant did not provide CR with the basis or issue of the complaint.

In this case, CR did not send the complainant an Incomplete Complaint Acknowledgment Letter requesting the necessary information, as required. Instead, CR sent the complainant a closure letter. CR's letter states, "The Office of Civil Rights (CR) has received your October 29, 1998, letter in which you complain that FSA . . . gave you misinformation which caused you to lose money under the Loan Deficiency Payment program. We do not understand you to allege that this action was motivated by a personal characteristic covered by the civil rights provisions that regulate the conduct of FSA officials." CR's letter further states that because CR did

not have the authority to review actions that did not involve a potential civil rights violation, it was administratively closing the case.

While CR's claim that it had no authority in the case may appear valid, the complainant may not have known the procedures CR follows when processing complaints. The complainant may not have known what elements were required when submitting a complaint. The purpose of the Acknowledgment Letter is to tell the complainant what is required to further process the complaint. Only after the complainant is informed of the requirements and submits a response to the Acknowledgment Letter should CR make a determination of whether to further process the complaint or close it.

CR also failed to fully inform complainants of required information. CR requires complainants to state a correlation between the "basis" of the complaint (e.g., race) and the "issue" (e.g. denial of financing). For example, if a complaint argues that he did not get a loan and uses age as his protected basis, the complainant would have to show his age was the deciding factor when the USDA official denied the loan. CR will no longer accept a simple statement by the complaint that age was the "basis."

We found one instance where the case was closed because the complainant failed to show a correlation between the basis and the alleged discriminatory act. In this case, the complainant used the USDA Program Discrimination Complaint form to state his basis. The basis area of this form includes boxes to check next to protected bases. The complainant is instructed on the form to "Check all which apply – not all bases apply to all programs." No further instructions on the basis of discrimination are provided on the form. This complainant checked the boxes next to "Age" and "Family status."

CR received the complaint form and sent the complainant a letter stating that he had not indicated a connection between the issues he raised and the basis for his discrimination complaint. CR's letter said that because CR could not infer any prohibited motives on the part of the USDA agency, it was closing the case file.

In this situation, the complainant did what was required of him. Without informing the complainant of the requirement that there be a connection between the issues and the basis, CR closed the case.

CR did not close all cases as peremptorily as it did the cases described above. For one case we reviewed, the complainant did not provide CR with the basis or issue, but instead of closing this case, CR sent the complainant an Incomplete Complaint Acknowledgment Letter. This letter gave a brief explanation of the complaint process and told the complainant what was still required.

Although this complainant did not provide the required information and CR eventually closed his case, he was nevertheless given the opportunity to understand what was required of him in the complaint process. The complainants in the other two cases described above were not afforded the same opportunity.

Of 101 selected cases, we found 70 that were closed by CR without giving the complainant a chance to understand the process and what CR's requirements were within that process. The others were given the chance to understand the process and submit all the required information. CR either contacted these complainants (through written correspondence or by telephone) or did not require them to show a correlation between issue and basis as it did for others.

Recommendation 16

Direct CR to ensure, before closing a case, that any complainant who did not provide all of the required elements of a complaint, or who did not state a connection between "basis" and "issue," understands that he or she is required to do so.

CR Response:

The revised 15-day letter will accomplish this.

OIG Position:

In order to reach a management decision, CR needs to ensure that its revised 15-day letter noted in our position to Recommendation 11 still contains the appropriate clarifying language.

Recommendation 17

Direct CR to reopen the 70 cases we determined were improperly closed, and to adhere to its documented procedures when processing these complaints.

CR Response:

CR has drafted a letter that will be mailed to each complainant in the 70 cases. The letter states that if the complainant believes his or her complaint was improperly closed, he or she may request that the case be reopened. To initiate the process, the complainant need only send CR a letter explaining briefly why he or she thinks the case should be reopened. CR will reopen any case for which such a letter is received.

OIG Position:

CR's resolution of this matter involves the active participation of the complainants. However, this may not be appropriate, because the cases should not have been closed initially. We believe that CR should reopen these cases and send the 70 complainants Incomplete Complaint Acknowledgement Letters and then make determinations as appropriate.

Recommendation 18

Direct CR to determine if any other incomplete cases were improperly closed.

CR Response:

Based upon review of the total number of closed cases, it is estimated that approximately 1,900 cases would need to be reviewed for closure to determine the appropriateness of closure. CR provided four options to address this concern. A determination will be made as to a preferred option.

OIG Position:

We will review the information provided and will meet with CR to make a determination as to whether we can reach a management decision.

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
		Farm Loan Program - Civil Rights Complaint System - Phase I Audit Number 50801-2-Hq (1)				
1a	Yes	Send a letter signed by the Secretary to all complainants whose cases have not yet been resolved assuring the complainants that action will be taken. The letter should include an assigned case file number and the name and phone number of a responsible person who knows the general status of the case.	CR Director sent a letter to each complainant.	Yes		(Yes) Repeated as recommendation 1a, Phase II
1b		Immediately assume control of the FSA program complaint system and evaluate the adequacy of FSA's civil rights staffing to carry out its civil rights mandate.	CR took control of FSA's program complaint system and assisted in developing staff and internal controls.	Yes		Yes
1c		Reevaluate all discrimination complaints closed and forwarded to program managers by FSA without concurrence from CREA.	All complaints closed by FSA have been reevaluated.	No	We identified 26 cases forwarded to program managers without concurrence from CREA. CR has reevaluated 21 of these 26. CR could not locate the remaining 5.	Partially
1d	Yes	Determine the number of outstanding program complaints at FSA and other departmental agencies with the assistance of the agencies and CREA.	CR has formalized monthly meetings to reconcile complaint data by Director's policy memorandum.	Yes		(Partially) Repeated as recommendation 11c, Phase V

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
1e	Yes	Develop a data base for the outstanding program complaints. The data base should contain the status of a complaint, the official responsible for processing the case, the actions taken to date, the actions needed to resolve the complaint, the days taken to complete specific tasks, and the age of the complaint.	A comprehensive and reliable data base is in place.	Yes		(No) Repeated as recommendations 2, (shown as 3 in exhibit A) Phase I and 11a, Phase V
1f	Yes	Process complaints still at the agency level.	CR task force reviewed their original backlog cases and made settlements, as they deemed appropriate.	Yes		(Yes) Repeated as recommendations 1b, Phase II and 1a, Phase V
1g	Yes	Help CREA reduce the original backlog of complaints at the departmental level.	CR task force reviewed their original backlog cases and made settlements, as they deemed appropriate.	Yes		(Yes) Repeated as recommendations 1b, Phase II and 1a, Phase V
1h	Yes	Evaluate each agency's civil rights staffing to determine if the agency has committed adequately trained staff and has adequate procedures to process complaints.	Once CR's staffing is completed, its compliance unit will conduct a systematic analysis of the agencies.	Yes		(No) Repeated as recommendation 6c, Phase V
2		A uniform system is needed within the Department that holds designated USDA officials responsible and accountable for the receipt, processing, and resolution of program complaints within established timeframes.	CR has created a unit for monitoring agencies accountability. Systems have been developed which require quarterly reporting from the agencies on all civil rights responsibilities. These submissions are evaluated and a report submitted to the Secretary.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
3	Yes	A master data base for program complaints should be maintained at the departmental level. This data base should be shared with agencies on a periodic basis to ensure its accuracy.	A comprehensive and reliable data base is in place.	Yes		(No) Repeated as recommendations 1e, Phase I, 11c, and 11d, Phase V
4		A weekly distribution of an aging report of complaints should be sent to responsible officials. This report should be used as a management tool to identify trends or situations in need of attention.	CR has begun issuing complaint reports on a monthly basis to all agencies.	No	CR needs to provide us with documentation that the complaints reports include an aging report of complaints.	No
5	Yes	Case files need to be standardized.	CR has secured the services of a contractor to develop and establish the file system in accordance to Record Book -16. File Plan for the Secretary.	Yes		(No) Repeated as recommendation 12a, Phase V
6		Federal and departmental regulations on processing program discrimination complaints need to be updated and published.	Department regulations have been issued.	No	Federal regulations (CFRs) need to be updated and published.	Partially
7		Agencies should develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.	Staff assigned to the compliance division will be provided CR and agency program orientation. Annual reports submitted to DOJ will be reviewed, prior to submission.	No	We need a timeframe as to when these actions will take place.	Partially

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
		Minority Participation in Farm Service Agency's Farm Loan Programs - Phase II Audit Number 50801-3-Hq				
1a	Yes	Immediately send a letter signed by the Secretary or his designee to all complainants whose cases are still open, assuring the complainants that action will be taken.	CR Director sent a letter to each complainant.	Yes		(Yes) Repeated recommendation 1a from Phase I
1b	Yes	Convene ad hoc teams to process and significantly reduce the original backlog of outstanding discrimination complaints.	CR convened a task force to review the original backlog cases.	Yes		(Yes) Repeated as recommendation 1a, Phase V
2a		Revoke the authority that granted FSA responsibility to conduct preliminary inquiries of program discrimination complaints.	Delegation of authority to FSA to conduct PI's has been revoked.	Yes		Yes
3a FSA		Develop and implement effective methods of outreach, and establish uniform standards and benchmarks by which to evaluate outreach performance.	Memorandums to SED's requesting an Outreach Coordinator and proposed national Outreach Training meets OIG's requirement.	Yes		Partially
4a FSA		Appoint minority advisors to the county office committees based on recommendations from the underrepresented groups in the county.	Soliciting candidates for advisors from the minority community or underrepresented groups is the process that FSA has always intended to follow.	Yes		Partially
4b FSA		Provide training so that minority advisors are aware of their responsibilities to inform minority individuals and farmers about FSA programs and activities.	Beginning in 1997 FSA will instruct states to ensure that minority advisors are included in annual training of COCs.	Yes		Partially
5a FSA		Work to increase the number of minority employees in FSA county offices where minority groups are underrepresented.	A memorandum was issued to all SEDs to ensure all appropriate groups are notified for employment.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
6a FSA		Establish pre-application interviews with prospective applicants to determine the nature of their request and help identify information needed to complete the application process.	As part of FSA's Customer Service Training schedule for August 1998, FSA will emphasize that producers are to be made aware of the fact that the Agency must provide assistance in completing loan applications.	Yes		Yes
6b FSA		Establish an assistance program that includes provisions for one-on-one attention between the loan officer and the farmer, and for farm visits, if necessary, to help farmers prepare information needed to complete application packages.	Farm Loan programs regulations are to be published in the FR as a proposed rule. It will address increased assistance to FSA borrowers. The proposed rule is expected to be published by June 2000.	Yes		Partially
6c FSA		Discontinue county office committee involvement in determining creditworthiness of farm applicants.	Agency Instruction 1910-A, 1910.5© states that the Agency determines creditworthiness. FSA continues to issue annual notices that FSA loan approval officials determine credit worthiness.	Yes		Yes
7a FSA		Establish and maintain a tracking system to monitor the servicing of farm loan accounts, especially in connection with delinquency rates and borrower responses to notification of availability of loan service programs, and to ensure equality in the servicing of all farm loan accounts.	Notice FLP-90 was issued to the field on October 28, 1999. The notice indicated that implementation of MAC would take place in November or December of 1999. The input system of the software has been released to field offices.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
7b FSA		Make personal contact with those borrowers who do not respond to the notifications or the requests for information within the prescribed timeframes, and ensure that the borrowers fully understand the significance of the notifications and the requirements for acquiring loan servicing.	FSA will contact the borrower within 10 working days after the initial loan servicing notice is sent to, determine if the borrower received the application material, reminded the borrower of the importance of responding, and answer any questions.	Yes		Yes
7c FSA		Incorporate a review of civil rights issues in FSA's formal National Internal Reviews and County Operations Reviews, and have district directors address civil rights issues when conducting periodic reviews of loan service centers and county offices.	The recommended changes were included in the fiscal year (FY) 2000 NIR Guide pages 86,87, and 99. Similar questions were issued in the FY 1999 NIR Guide.	Yes		Yes
8a FSA		Seek legislation to "pool" SDA direct operating loan funds into the national reserve to redistribute to States with unfunded, approved direct operating loan applications.	Legislation was introduced to Congress regarding the pooling of SDA funds between States. Congress gave consideration to this proposal but it was not passed. FSA has again submitted a legislative proposal to the Department.	Yes		Yes
8b FSA		Develop procedures to establish a record keeping system to retain, document, and justify funding of loan applications from the national reserve.	FSA agrees that reserve records including any lists of applicants, which have been funded with reserve funds, should be maintained for 3 years.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
8c FSA		Discontinue the process of informally transferring funds between States and return all unused funds to the National office for redistribution as appropriate.	FSA intends to continue this type of transaction because it encourages States to utilize every resource and opportunity available to them in their efforts to assist minority farmers.	Yes		(Yes) The recommendation was not implemented as stated. However, the explanation provided was adequate.

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
		Evaluation of the OCR's Efforts to Reduce the Backlog of Program Complaints - Phase V Audit Number 60801-1-Hq				
1a	Yes	Immediately convene a complaints resolution task force, composed of well qualified civil rights personnel from other Federal agencies and senior USDA program personnel... who would report to the Secretary.	CR convened a task force to review the original backlog cases.	Yes		(Yes) Repeated recommendation 1b from Phase II
1b		Require the Civil Rights 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.	CR 1010 package shows their realignment. OHRM has approved all management positions and vacancy announcements are closed. Interviews will start when the certified candidates list is forwarded to CR.	Yes		Yes. The Program Adjudication Division is now responsible for this.
1c		Request OGC's legal sufficiency review for the seven cases closed with no findings of discrimination adjudicated based on the agency preliminary inquiry.	OGC reviewed and returned the cases with a concurrence on the findings of no discrimination.	No	CR needs to provide us with the documentation from OGC that details that the cases were reviewed.	No
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.	Manuals on conducting investigations will be completed by July 30, 1999.	No	Draft manuals do not incorporate a case management team approach.	No

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
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.	Assistant Secretary for Administration issued memo to Under Secretaries directing them to limit their fact-finding to the 24-day time limit and to stop obtaining signed statements from complainants and non-USDA employees.	No	CR needs to provide us with the ASA memo. Note: The memo was not attached to the CR response.	No
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.	The manual on how to conduct investigations will be implemented effective July 30, 1999.	No	Manuals still in draft as of November 1999. However, the draft manual does not address all our concerns.	No
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 actions taken, and the number of times and to whom deficient reports are returned.	The head of the investigative unit will review investigation reports. Adjudication unit will also review reports.	No	Standard operating procedures not completed as of December 1999. These procedures do not address our concerns.	No
4a	Yes	Require the CR Director to close cases only after all terms and conditions of settlement agreements and other required agency corrective actions are implemented.	CR has assigned a special Assistant to the Director to track all settlement agreements.	Yes		(Partially) Repeated as recommendation 1a, Phase VI
4b	Yes	Direct CR to immediately establish a system to control and monitor implementation of settlement agreements.	All regulations, manuals, and standard internal procedures will be implemented by July 30, 1999.	Yes		(Partially) Repeated as recommendation 1a, Phase VI

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
4c		Direct CR to review the five administratively closed cases that did not contain any evidence to support closing them.	A task force was established to review all administrative closed cases.	No	Four of the 5 cases we cited were reviewed. The fifth one was not assigned for a review, and still needs to be reviewed.	Partially
5a		Direct CR to create a position for managing the contracts to provide proper and timely oversight of the quality of the work submitted by contractors.	CR's budget was approved February 6, 1999. Plan was cleared on May 1, 1999. The 1010 package shows the identification of the position. All positions have been cleared by OHRM and were to be announced by June 15, 1999.	No	A date for the advertising of the position needs to be established.	Partially
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.	The MOU with HUD is being reviewed to determine if it should be continued.	No	CR needs to determine whether the MOU needs to be revised or discontinued	No
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.	The task forces have reviewed the cases from HUD along with other cases.	No	CR needs to identify the cases reviewed from HUD and provide us with the results of the reviews.	No

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
6c	Yes	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 established standards.	CR is not considering executing any MOUs. Appropriate monitoring by CR's enhanced compliance unit will ensure compliance.	No	We need a timeframe and schedule for conducting the systematic analysis of each agencies' civil rights staff.	(No) Repeated recommendation 1h from Phase I
6d		Direct CR to keep open the cases it refers to FNS. Oversee, monitor, and track complaint resolution for FNS and all future agencies with MOU's to ensure complaints receive a fair hearing.	CR's new tracking system will identify all cases referred to FNS.	No	A procedure needs to be developed and issued which addresses the issues in our recommendation.	No
7a		Establish an Assistant Secretary for Civil Rights at the sub cabinet-level to resolve cross-cutting issues between agencies and CR.	Effective FY 2000 CR will not be a part of Departmental Administration. Legislation has been introduced for an Assistant Secretary for Civil Rights.	Yes		Partially
8a		Require the CR Director to place high priority on hiring civil rights managers who have a strong background in civil rights and knowledge of USDA programs and delivery systems.	CR will give due consideration to candidates with strong knowledge, skills, and experience in civil rights. CR will ensure that all managers receive training in USDA programs.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
9a		Develop staff training plans that adequately reflect the training needs of the agency.	CR is assessing specific skills needed for policy, compliance, investigation, adjudication, EEO complaint processing and training.	No	CR needs to provide us with their assessment for training and timeframes for establishing training plans.	Partially
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.	DOJ conducted its training, May 18 - 20, 1999.	No	CR needs to provide us with time frames for the Howard University training.	Partially
10a		Provide a mechanism for employee input into office operations through quality control sessions and other forums.	CR solicited important ideas from its management team and key staff members prior to developing its reorganization.	No	CR needs to provide us with the specific methods or opportunities that made input available to all employees.	Partially
11a	Yes	Before the new data base is implemented, direct CR to ensure the integrity of the data in its current data base.	A contractor has been secured to establish and set up a filing system.	No	CR needs to ensure the integrity of its ProgCom data base, since old complaints will not be transferred to the new data base.	(No) Repeated recommendation 1e from Phase I

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
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.	The processes already in place will ensure the second party review procedures for information entered into the data system.	No	CR needs to provide us with the timeframes that the second party review procedures will be formalized and implemented .	No
11c	Yes	Direct CR to institutionalize a process of reconciliation that holds each agency head accountable for reconciling its data with that of CR.	CR has been conducting monthly meetings with agency staff to reconcile complaint data according to Director's policy memorandum.	No	CR needs to provide us with documentation that the reconciliation process has been included in their standard operating procedures. This process needs to be formalized, to ensure that all data bases are updated based on the results of the monthly meetings with agencies.	(Partially) Repeated recommendation 1d and 3 from Phase I.

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
11d	Yes	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.	All new and backlogged case files have been located, properly identified, and secured.	No	CR needs to reconcile its data base with agency data and make changes as needed. CR also needs to locate the missing files or provide an explanation as to why the files can not be found.	(No) Repeated recommendation 3 from Phase I.
12a	Yes	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.	The systematic survey of all case files has been done, although it is an ongoing process.	No	The task force never performed the sweep of the files. CR should provide a date as to when this will be completed.	(No) Repeated recommendation 5 from Phase I.
12b		Direct CR to find the 40 missing files.	All new and backlogged complaint case files have been located, properly identified and stored in the file room.	No	CR needs to locate the fourteen case files that are still missing.	No
13a		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.	Departmental regulations for employment and program complaints are complete.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
14a		Direct CR to issue within a 2-month timeframe standard operating procedures for program complaint processing.	The SOPs will be completed and implemented by July 30, 1999.	No	SOPs are still in draft form, we need an estimated completion date.	Partially
15a		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.	CR has implemented several of the recommendations from the previous reports.	No	Based on responses to Phase I and II.	No

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
		<p>Evaluation of the OCR's Efforts to Implement Civil Rights Settlements Audit Number 60801-2-Hq</p>				
1a	Yes	<p>Require the CR Director to immediately implement procedures to review conciliation agreements reached at the agency level, and to monitor and track all settlement and conciliation agreements applicable to all USDA agencies, and ensure their complete and expeditious implementation.</p>	<p>CR has completed the development of procedures for monitoring and tracking settlement and conciliation agreements. These procedures are outlined in the draft CR procedures manuals. These procedures remain in draft and are under review by the Office of the General Counsel. CR has developed an independent database to monitor and track these agreements.</p>	No	<p>In order for us to reach a management decision, CR needs to provide us a timeframe for the finalization of the draft procedures.</p>	<p>(Partially) Repeated recommendations 4a and 4b from Phase V</p>
1b		<p>Direct CR to provide guidance to agencies regarding the establishment of appropriate systems for monitoring and tracking conciliation agreements.</p>	<p>The procedures referenced in 1a are in final draft and under review by the Office of the General Counsel. These draft procedures were shared with the agency civil rights directors in August 1999 and limited feedback was received. Agencies were instructed to establish procedures for processing complaints internally in compliance with these procedures.</p>	No	<p>In order for us to reach a management decision, we need an estimated completion date for the referenced procedures.</p>	<p>Partially</p>

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
1c		Direct CR to report to the Secretary on a semiannual basis those terms, which have not yet been implemented.	The Director, CR reports to the Secretary on the status of all settlement agreements as part of the annual performance review process	No	In order for us to reach a management decision we need to be assured that the annual performance reports are being submitted to the Secretary, and they contain information related to settlement agreement terms that have not been implemented.	Partially
2a		Direct CR, in consultation with OGC and the OHRM, to include a "disciplinary action" section in the departmental regulations as a means of formalizing general requirements and procedures applicable to employees cited by complainants in program discrimination cases who have acted in an improper manner.	CR and OHRM have drafted a policy for handling disciplinary and corrective actions based on findings of discrimination by CR. The policy has gone through clearance and is currently in the Secretary's Office for signature.	Yes		Partially
2b		Direct CR to forward to the OHRM all prior settlement agreement cases in which discipline might be appropriate, and direct CR to follow up on the cases to determine if any actions are taken.	While discussions have been initiated with OHRM to determine how best to report findings of discrimination and misconduct which would require and support taking disciplinary and corrective actions, a process remains to be developed.	No	Before we can agree to a management decision, CR needs to assure us that they plan to continue to develop a liaison with OHRM to determine if any disciplinary actions are taken. Also, the prior settlement agreements should be forwarded to OHRM to determine if disciplinary actions are needed.	Partially

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
3a		Direct CR to formalize its conciliation policy in the Department regulations to encourage conciliation with complainants in program discrimination cases early in the complaint process.	See response to 1a, which will not require implementation of this recommendation.	No	The response to 1a does not respond to the issue of encouraging agencies to conciliate with complainants early in the complaint process. CR needs to formalize its conciliation policy.	No
4a		Require the CR Director to instruct FSA to obtain an OGC opinion on whether the one complainant is eligible for priority consideration for inventory property under the definition of a Socially Disadvantaged Applicant; and if so, immediately notify the one complainant of the availability or unavailability of inventory property in accordance with his settlement agreement.	CR instructed FSA to implement the term of the settlement agreement for the one applicant or to provide an explanation to CR if it is unable to do so. FSA's provided us a copy of the letter that the State office sent to the complainant to notify him of the availability of inventory property.	Yes		Yes

EXHIBIT A - SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action needed for Mgmt. Decision	Recommendation Implemented
4b		<p>Require the CR Director to assemble and chair a team of OGC civil rights attorneys and cognizant agency program officials that will meet prior to each agreement negotiation to: (a) perform an expeditious review of the economic analyses and other information compiled as support for the terms proposed in the settlement agreement and (b) analyze all components of the agreement prior to presentation to the complainant to assure they conform with applicable statutes, Departmental regulations, and program regulations. Every effort should be made to assure that these procedures do not inhibit cases from moving through the process within 180 days.</p>	<p>CR continues to implement this recommendation. The OGC, Civil Rights Division attorneys participate in settlement negotiations and review findings of discrimination for legal sufficiency. CR has staff in Programs who review information from the complainants and economists in the Tracking and Applications Division who perform the economic analyses to support settlement offers.</p>	No	<p>We continue to believe that it would be in the best interest of the Department, for CR to assemble and chair a team of OGC attorneys and cognizant agency program officials prior to presentation of the settlement agreement to the complainant. This process will help ensure that all terms of the agreement are proper and can be implemented.</p>	No

EXHIBIT B - INTEND CASES NOT LOCATED (83)

<i>Counter</i>	<i>Case ID</i>	<i>Agency</i>	<i>Date of Complaint</i>	<i>Counter</i>	<i>Case ID</i>	<i>Agency</i>	<i>Date of Complaint</i>
1	1272	FSA	A/	43	3332	FSA	A/
2	2848	FSA	A/	44	1523	FSA	A/
3	2880	FSA	A/	45	1705	FS	A/
4	2664	FSA	A/	46	3371	FSA	May 25, 1999
5	1897	RHS	A/	47	3374	NRCS	A/
6	1277	FSA	A/	48	3318	FSA	November 23, 1998
7	2217	NRCS/FSA	A/	49	1318	FSA	A/
8	2733	FSA	A/	50	2510	APHIS	October 24, 1998
9	1348	FSA	A/	51	3060	FSA	A/
10	2960	FSA	January 11, 1999	52	3188	FSA	A/
11	2480	A/	October 9, 1998	53	3069	FSA	A/
12	2528	FNS	A/	54	3016	FSA	A/
13	2328	RD	A/	55	3322	FSA	April 5, 1999
14	1265	FSA	A/	56	2591	FSA	A/
15	1407	FSA	A/	57	2564	FSA	November 4, 1998
16	1260	FSA	A/	58	3133	A/	A/
17	1898	RHS	A/	59	2707	FSA	A/
18	3431	A/	July 9, 1999	60	1602	FSA	A/
19	3379	FSA	May 24, 1999	61	1659	FSA	A/
20	1338	FSA	A/	62	2683	FSA	A/
21	1471	FSA	A/	63	1439	FSA	A/
22	2684	FSA/NRCS	A/	64	1288	FSA	A/
23	2563	A/	A/	65	2266	FSA	A/
24	2951	FSA	A/	66	3348	A/	A/
25	2406	NRCS	A/	67	2756	FSA	A/
26	2355	FSA	A/	68	3347	A/	A/
27	1717	FSA	A/	69	3382	A/	A/
28	3375	FSA	A/	70	1935	RHS	A/
29	2806	RHS	November 25, 1998	71	1319	FSA	A/
30	2923	FSA	A/	72	1470	FSA	A/
31	1601	FSA	A/	73	3093	RHS	A/
32	3384	A/	February 19, 1999	74	2487	FSA	October 7, 1998
33	1352	FSA	A/	75	3414	A/	A/
34	2926	FSA	A/	76	3370	FSA	April 15, 1999
35	1440	FSA	A/	77	1608	FSA	A/
36	2819	A/	A/	78	3141	RD	A/
37	2461	FSA	November 2, 1998	79	2901	FSA	A/
38	1329	RHS	A/	80	2939	FSA	A/
39	2716	FSA	A/	81	3364	FNS	A/
40	3149	FSA	A/	82	2334	FSA	A/
41	3146	A/	A/	83	2513	A/	A/
42	3358	FNS	A/				

A/ This field is blank in CR's data base.

EXHIBIT C – SECRETARY’S REQUEST LETTER



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

AUG 24 1998

MEMORANDUM FROM THE SECRETARY

TO: Roger Viadero, Inspector General

SUBJECT: Civil Rights Policies, Procedures, and Settlements

One of my most important objectives has been to assure that equal employment opportunity (EEO) complaints by Department of Agriculture (USDA) employees are resolved on a fair and timely basis. As you know, Members of Congress have repeatedly asked me about this. Accordingly, I want to make sure that USDA's Office of Civil Rights (CR) has established a reliable tracking system for these complaints, and I want to examine CR's employment complaints files to determine the following.

1. The number of open EEO complaints, in the following categories:
 - a. complaints pending acceptance;
 - b. complaints accepted as formal and pending within USDA;
 - c. complaints pending before the Equal Employment Opportunity Commission; and
 - d. complaints pending in the courts.
2. The number of complainants, by the same categories listed in #1.
3. Whether all complaint files can be located.

Questions about the status of EEO cases have increased my concern about the expeditious acquisition of an accurate case tracking system. As part of your report, please identify whether there are adequate case tracking systems available as "off-the-shelf" software and how long it would take to bring such a system on-line if we used the most expeditious procurement approach.

Finally, since February 1997, the Office of Inspector General has issued six Evaluation Reports on civil rights issues relating to the program complaints process. I would also like your assessment of corrective actions taken to date by CR on this vital and important process.

When you have assessed this request, please give me an estimate of how long you will need to complete your examination and make recommendations, including any other matters you discover in the course of carrying out this examination that you believe need to be addressed.

An Equal Opportunity Employer

EXHIBIT C – SECRETARY’S REQUEST LETTER


2

The Acting Assistant Secretary for Administration will work with you on a cost-reimbursable agreement for this special review.

Thank you for your help on this important matter.

cc: Deputy Secretary Richard Rominger
Rosalind Gray, Director, CR
Charlie Rawls, General Counsel
Sally Thompson, Acting Assistant Secretary for Administration

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration


Office of
Civil Rights


1400 Independence
Avenue SW

Washington, DC
20250

MAR 3 2000

TO: Roger Viadero
Inspector General

THROUGH: Paul W. Fiddick 
Assistant Secretary
for Administration

FROM: Rosalind D. Gray 
Director
Office of Civil Rights

SUBJECT: Response to OIG Audit Report No. 60801-4-Hq

Attached are Office of Civil Rights' responses to the OIG Audit Report,
No. 60801-4-Hq.

Attachment

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

OIG Report Audit Number 60801-4-Hq: Status of Implementation of Recommendations Made in Prior Evaluations of Program Complaints

Recommendation 1: Direct CR to resolve the 35 cases remaining from the original backlog with all deliberate speed.

CR Response: On Thursday, February 3, 2000, a ProgCom Query of Open Backlog cases with a run date of January 24, 2000, was provided by the Deputy Director, Programs with direction to research the cases, identify those cases for closure, and resolve any remaining open cases. This query indicated 35 cases were being carried as backlog.

As of February 28, 2000, the Backlog had been reduced to 18 case files. This information is reflected on the latest ProgComp query, run date of February 28, 2000, which is attached. The cases are broken into the following distinct categories: cases requiring Final Agency Decision (FAD) or confirmation of FAD; cases in process; and cases requiring review. As of March 3, 2000, the backlog has been reduced to 2 cases. CR will close the remaining two cases as expeditiously as possible.

A. Cases with Adjudications - 8

Reports were prepared on eight cases and forwarded to the Deputy Director for assignment to the Adjudication Division:

(45) –	Forwarded February 17, 2000
(73) –	Forwarded February 9, 2000
(408) –	Forwarded February 17, 2000
(679) –	Forwarded February 17, 2000
(686) –	Forwarded February 15, 2000
(763) –	Forwarded February 17, 2000
(1105) –	Forwarded February 15, 2000

B. Cases in process - 7

Seven cases are process, as follows:

(875) -	ROI prepared - In Review (suspense 3/1/00)
(876) -	ROI prepared - In Review (suspense 3/1/00)
(211) -	ROI prepared - In Review (suspense 3/1/00)
(2) -	Recommend Compliance Review
(677) -	15 day letter forwarded (suspense 2/28/00)
(238) -	15 day letter forwarded (suspense 2/28/00)
(710) -	Closure Letter forwarded for signature (non-jurisdictional)

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

C. Cases in review - 3

(591) -	Filed in review
(308) -	Confirm Settlement
(1113) -	Confirm SOL

Recommendation 2: Grant CR the authority to use an abbreviated system and forego investigations to resolve the eight cases shown as not yet having been investigated.

CR Response: The creation of an abbreviated process for the investigation of backlog cases is not necessary. Of the remaining open backlog complaints, only one requires an on-site investigation. The remaining cases are currently under investigation or the investigation has been completed. Therefore implementation of this recommendation is not necessary. (See tabs relating to #1)

Recommendation 3: For future settlement cases, direct CR to include in its standard operating procedures a requirement to document the computations behind its awards of compensatory damages, programmatic relief and attorney’s fees in accordance with the legal opinion set forth by the Department of Justice’s Office of Legal Counsel. In addition, CR should submit this documentation to OGC as part of its legal sufficiency review, in accordance with the Secretary’s August 30, 1999 memorandum.

CR Response: The Office of Civil Rights has in its procedures and operations the requirement of documentation of compensatory damages, programmatic relief and attorney’s fees. CR will develop and issue a written directive within 45 days to codify these procedures. Compensatory damages documented cannot be submitted as part of its legal sufficiency review. The legal sufficiency review precedes a FAD, and compensatory damages claims are developed only if there is a final agency decision.

Recommendation 4: Refer all settlement cases to the Office of Human Resources Management for consideration of disciplinary action.

CR Response: Attached is a copy of the draft disciplinary policy that requires cases to be referred to the Office of Human Resources Management. This policy will be circulated through the appropriate Departmental offices within 60 days.

Recommendation 5: Direct CR to find the 83 missing files and determine their status.

CR Response: Through the file room project CR will identify any missing files, as well as establish files for any intend-to-file cases for which CR has received correspondence but has not yet developed a file. CR will have statistics available on these 83 files by March 31, 2000.

Recommendation 6: Of the five recommendations CR reported as implemented but that were not implemented, direct CR to immediately develop a corrective action plan. The CR Director should be held accountable for the implementation of this plan.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

CR Response: CR will refer to the previous recommendations as Recommendations 7A through 7E. For CR’s responses to these recommendations see Tabs A through E, immediately following.

Recommendation 6A (former Recommendation 1c, Phase V): Direct CR to obtain legal sufficiency reviews from OGC for seven cases closed with no findings of discrimination; adjudicated based on the agency preliminary inquiry.

CR Response: CR has completed its search for the 7 case files. Memoranda dated February 17 were sent to OGC requesting their completion of reviews by June 30, 2000. See attached.

Recommendation 6B (former Recommendation 12b, Phase V): Direct CR to find the 40 missing files.

CR Response: CR has implemented SOPs for reconciling agency complaint data with CR complaint data. See attached.

To date 32 of the missing files have been located. Memos have been forwarded from the Deputy Director for Program Operations to the Rural Housing Service, Food and Nutrition Service and Forest Service requesting copies of the remaining 8 files. (See memo.)

Recommendation 6C (former Recommendation 2a, Phase V): 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.

CR Response: The Deputy Director is currently developing a case management system whereby the Deputy’s staff will routinely review the processing of each case. The review will evaluate the case from both a substantive and a records-maintenance perspective. The evidence relevant to the case will be evaluated in light of applicable legal standards, and the case’s procedural history as delineated in the case file will be compared with that presented in the CRCTS or ProgComp database. Because of the volume of cases, it will be impossible to review each case on a weekly basis; however, the following types of cases (other than Statute of Limitations (SOL) cases) will be reviewed weekly:

- All closures
- All old backlogged cases
- All cases for which an agency response was received during the current week
- All cases that have been at the intake stage for more than 30 days
- All cases in which a cause finding is probable
- All cases with systemic implications
- All potential disparate impact cases
- One quarter of all other open cases, in order of case number

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

A separate system is being developed for SOL cases. The following Statute of Limitations cases will be reviewed weekly:

- All cases for which an order from the Office of Administrative Law Judges is pending
- All cases for which a Position Statement was completed during the current week
- All cases for which a Statement of Facts (formerly, Administrative Review Recommendations) was completed during the current week
- All new SOL cases

Both review systems will be operational by March 31, 2000.

Recommendation 6D (former Recommendation 6d, Phase V): Direct CR to keep open the cases it refers to FNS.

CR Response: An internal procedures memorandum has been issued to that effect. See attached.

Recommendation 6E (former Recommendation 11b, Phase V): 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.

CR Response: The Deputy has issued a procedures memorandum establishing a second-tier review system for data entry. See attached. In addition, the Deputy is developing a review system whereby his personal staff will review, on a weekly basis, actions taken in certain types of cases. Part of this effort will include reconciling the information in the case management databases to reflect accurate the status of cases that have closed during the current week. The review system will be operational by March 31, 2000. See response to Recommendation 7D, previous Tab.

Recommendation 7: For the other 17 recommendations that CR has not yet addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.

CR Response: CR will refer to the above-referenced 17 recommendations as Recommendations 7A through 7Q. For CR’s responses, see Tabs A through Q, immediately following.

Recommendation 7A (formerly Recommendation 11d, Phase V): Direct CR to cleanse the current database by reconciling all cases in CR’s database with agency data.

CR Response: Through the file room project files are being reviewed and compared to the ProgComp database. Copies of missing files have been requested from agencies to assure that CR’s files all complainants in the database have files located at CR and that they contain all relevant information. Where applicable, changes have been made to correct information in files. This is an on going process, but will end with the discontinuance of the use of the ProgComp system.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Recommendation 7B (formerly Recommendation 12a, Phase V): 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.

CR Response: Through the file room project files are being reviewed. Documents are being reviewed to ascertain that they belong to the file. When documents have been identified as not belonging to the file those documents have been removed and associated with the appropriate file.

Recommendation 7C (formerly Recommendation 11a, Phase V): Before the new database is implemented, direct CR to ensure the integrity of the data in its current database. In addition, direct CR to establish procedures and provide training to personnel on how to use the database and input data.

CR Response: CR has implemented SOPs on operating and maintaining its filing system. The process to install and set up the new filing system will be completed by July 1, 2000. Further, appropriate staff members have been assigned to, and trained on, CRCTS and ProgComp. In addition, a procedures memorandum providing for a second-tier data entry review process was distributed February 18, 2000. See attached.

Recommendation 7D (formerly Recommendation 1e, Phase I): Develop a database for the outstanding program complaints. The database should contain the status of a complaint, the official responsible for processing the case, the actions taken to date, the actions needed to resolve the complaint, the days taken to complete specific tasks, and the age of the complaint. (Per Audit Report No. 60801-4-hq, the old program complaints database (ProgComp) remains unreliable.)

CR Response: The cost of developing a new database to track cases in the “old” database is not feasible. However, CR has taken steps to ensure that only accurate data is entered into the “old” and “new” databases. For example, CR is currently completing an existing project within its file room to “cleanse” the database. New procedures are being developed to cleanse the database of errors. Please refer to the attached memorandum on the file room.

In addition, each manager will conduct a weekly review of the information entered into the database as a result of the work performed by the specialist. CR’s “new” database tracking system (CRCTS) currently has quality assurance steps built into the database prior to the case moving forward at each step of the program complaints process. Please see the attached “bubble” flow chart of CRCTS.

Recommendation 7E (formerly Recommendation 3, Phase I): A master database for program complaints should be maintained at the departmental level. Direct CR to develop a uniform system within the Department that holds designated USDA officials responsible and accountable for the receipt, processing, and resolution of program complaints within established time frames. (Per Audit Report No. 60801-4-hq, the old program complaints database (ProgComp) remains unreliable.)

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

CR Response: CR has implemented the CRCTS system to assure that cases are maintained in a central database. CRCTS will serve as the central database for all program complaints with each agency having access to the system to submit information, conduct queries on complaints. A memorandum has been prepared for the Deputy Director for review. See attached.

Recommendation 7F (formerly Recommendation 4, Phase I): A weekly distribution of an aging report of complaints should be sent to responsible officials. Per Audit Report No. 60801-4-hq, CR has begun to issue monthly reports to the agencies, but they do not include any “aging” information.

CR Response: CR has begun issuing open complaint reports to USDA agencies on a monthly basis and has developed SOPs documenting this process. The Deputy is currently considering to what extent the frequency of distribution will be increased.

Recommendation 7G (formerly Recommendation 5, Phase I): Case files need to be standardized. Per Audit Report No. 60801-4-hq, the files are still in disarray.

CR Response: The filing system has been ordered and the projected delivery date is March 9, 2000. The contractor will begin set up by March 15, 2000. The projected completion date for the file room is July 1, 2000. See attached memorandum.

Recommendation 7H (formerly Recommendation 1h, Phase I): Evaluate each agency’s civil rights staffing to determine if the agency has committed adequately trained staff and has adequate procedures to process complaints.

CR Response: CR is planning a comprehensive civil rights evaluation series that will focus on 15 USDA agencies. The evaluations will include analyses of staffing, training, and procedures.

Recommendation 7I (formerly Recommendation 2b, Phase V): 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. Per Audit Report No. 60801-4-hq, CR has not produced a copy of the relevant memorandum that was sent from the Assistant Secretary for Administration to the agencies.

CR Response: CR will require USDA agencies to abide by its instructions within 30 days. Any new instructions necessary to monitor an insure compliance will be issued by CR.

Recommendation 7J (formerly Recommendation 6a, Phase V): 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. Per Audit Report No. 60801-4-hq, the memorandum has not been amended; in addition, a separate memorandum covering

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

complaints alleging USDA violations of the Fair Housing Act has never been executed by CR.

CR Response: CR is currently in the process of determining whether the MOU should be revised. Recommendations will be made to the Director of CR by March 31, 2000.

Recommendation 7K (formerly Recommendation 6c, Phase V): Direct CR to immediately conduct surveys of all USDA programs to determine the need to execute additional MOUs. Per Audit Report No. 60801-4-hq, CR has not staffed its compliance unit to adequately to conduct civil rights evaluations, which, it asserts, will obviate the need for MOUs.

CR Response: CR will conduct civil rights evaluations, which will obviate the need for additional MOUs. CR has staffed its compliance unit; however, staff skills are below those necessary to produce acceptable work products. Arrangements are being made to supplement staff with temporary employees until staff skills are developed.

Recommendation 7L (formerly Recommendation 6b, Phase V): 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.

CR Response: On February 22, 2000, the Chief, Program Adjudication Division spoke with representatives from HUD to obtain the status of USDA cases at HUD. Officials from HUD have indicated that they will review their records and provide CR with copy of all available files. They have indicated that they will not be able to release any files to CR where USDA is listed as the Respondent. We do not anticipate any of the requested cases to have USDA listed as a Respondent. Please see the attached memorandum from Charles Pearson regarding this matter.

Recommendation 7M (formerly Recommendation 3a, Phase VI): Direct CR to formalize its conciliation policy in the Department regulations to encourage conciliation with complainants in program discrimination cases early in the complaint process.

CR Response: The Deputy Director for Program Operations will discuss CR’s response to this recommendation with the Director and the Chief of the Policy and Planning Division, and issue a departmental regulation within 45 days.

Recommendation 7N (formerly Recommendation 4b, Phase VI): Require the CR Director to assemble and chair a team of OGC civil rights attorneys and cognizant agency program officials that will meet prior to each agreement negotiation to: (a) perform an expeditious review of the economic analyses and other information compiled as support for the terms proposed in the settlement agreement and (b) analyze all components of the agreement prior to presentation to the complainant to assure they conform with applicable statutes, Departmental regulations, and program regulations. Every effort should be made to assure that these procedures do not inhibit cases moving through the process within 180 days.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Per Audit Report No. 60801-4-Hq, CR responded that it would not convene a team. The Audit Report reiterates that the Office of Inspector General believes such a team is necessary to ensure all terms of the agreements are proper and can be implemented.

CR Response: The procedures that have been established and that are in place insure the achievement of this recommendation. It is not appropriate for the program official to participate in discussions prior to a negotiation. CR will consult, through OGC, to establish parameters of the programmatic aspects based on a finding of discrimination. To do otherwise is to chill the civil rights, and, therefore, the constitutional rights, to equity in program delivery that have been guaranteed to the complainant.

Recommendation 7O (formerly Recommendation 3a, Phase V): Direct CR to appropriately plan investigations and to conduct investigations in an effective and efficient manner. Per Audit Report No. 60801-4-Hq, CR still needs to establish procedures that would require the Chief of Investigations to review and approve all investigative plans.

CR Response: CR has instituted SOPs for the investigative process which require the Chief of Investigations to review and approve all investigative plans. See attached and SOP notebook.

Recommendation 7P (formerly Recommendation 3b, Phase V): Direct CR to design and implement a quality control system over the review process for reports of investigation.

Per Audit Report No. 60801-4-Hq, CR still needs to incorporate the above quality control process into its regulations and procedures. The Office of Inspector General process whereby the Chief of Investigations reviews the ROIs prior to submitting them to the Program Adjudication Division is not mentioned in CR’s regulations and procedures. Further, the Office of Inspector General believes adjudicators should not conduct quality control reviews of ROIs.

CR Response: Program Investigations Division (PID) has implemented Standard Operating Procedures (SOP) which address quality control in the review process for reports of investigation. The SOP establishes the following reviews for quality assurance:

Once the Report of Investigation (ROI) is completed and signed by the investigator, it is submitted to the Chief of the Investigation Unit for approval. The Chief reviews the ROI to ensure that it is accurate, complete, and comprehensive. If the ROI requires further work, it is returned to the investigator with comments directly on the draft report and/or on the ROI Review Sheet. When necessary, an internal memo is prepared by the Chief to clarify the additional work needed. If the report is complete, the Chief approves the ROI by signature and the case is forwarded to the Adjudication Unit for further processing.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

To facilitate its quality control efforts, PID utilizes four distinct forms, an Investigative Assignment Sheet; Investigative Review Sheet; Investigative Plan; and an ROI Review Sheet. The Investigative Assignment Sheet is used to track cases from date of assignment through completion and supervisory approval of the ROI. The Investigative Review Sheet is used to assess the complaint to ensure that it is jurisdictional and determine the nature of investigative efforts needed. The Investigative Plan ensures that a prima facie case exists and that appropriate planning has been completed to assure an efficient investigative effort. The ROI Review Sheet is used by the Chief, specifically, to ensure quality control of the ROI. It includes a checklist addressing the adequacy of investigative efforts and identifying any additional work needed, if any, on the ROI. (With the exception of the ROI Review Sheet, these review procedures have been in place since June 1999.)

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

ROI REVIEW SHEET

Complainant: _____

Case Number: _____

Date of Complaint: _____

Date of ROI (1st draft): _____ **Returned to Investigator**
2nd draft: _____ **(If needed)** _____
3rd draft: _____

Has the issue(s) been identified? _____ Yes _____ No

Has the basis(es) been identified? _____ Yes _____ No

Is an Agency Position Statement included? _____ Yes _____ No
Reason for non-inclusion _____

Are additional interviews needed? _____ Yes _____ No

Interviews are required of the following persons: _____

A rebuttal interview is needed of the following person:

Is the ROI in the appropriate format? _____ Yes _____ No

Does the ROI contain typographical errors? _____ Yes _____ No

Are all identified attachments included? _____ Yes _____ No

Remarks: _____

ROI Approved: _____ **Date:** _____
Chief, PID

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Recommendation 7Q (formerly Recommendation 15a, Phase V): Direct CR to resolve within 2 months all recommendations that the Office of Inspector General made in Phase I and Phase II reports and that CR has failed to implement.

Per Audit Report No. 60801-4-Hq, the unimplemented Phase I and II recommendations were to have been resolved within 2 months of September 30, 1998; however, less than half of them have been resolved to date.

CR Response: Management decision has been made on several of the recommendations in Phase I. The remaining recommendations in Phase I have been responded to by CR through previous communications.

Recommendation 8: For the 19 recommendations that CR has not yet fully addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of the issuance of this report.

CR Response : CR refers to the 19 above recommendations as Recommendations 9A through 9S. See Tabs A through S, immediately following, for CR’s responses.

Recommendation 8A (formerly Recommendation 4c, Phase V): Direct CR to review the five administratively closed cases that did not contain any evidence to support closing them.

Per the Audit Report No. 60801-4-Hq, CR still needs to review the fifth case.

CR Response: The Program Staff of CR has searched its offices and this file has not been found. The complainant was mailed a letter (dated February 17, 2000) to determine if he in fact withdrew his complaint. The letter also informed the complainant that his complaint may be eligible for consideration under the Statute of Limitations Project. We have given the complainant 30 days to respond to our letter. If we do not receive a response, we will consider the matter closed. Please find attached the letter to the complainant.

Recommendation 8B (former Recommendation 5a, Phase V): Direct CR to create a position for managing the contracts to provide proper and timely oversight of the quality of the work submitted by contractors.

Per Audit Report No. 60801-4-Hq, the position needs to be advertised.

CR Response: The Director, CR, submitted a request to fill position to HRM and there has been no action on request.

Recommendation 8C (former Recommendation 6, Phase I): Federal and departmental regulations on processing program discrimination complaints need to be updated and published.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

CR Response: CR has issued updated Federal regulations on USDA-conducted programs at 7 CFR Part 15d. See attached. CR is currently considering to what extent other Federal regulations will be updated.

In addition, CR has issued Departmental regulations on conducted and assisted programs (DRs 4330-2, 4330-3). See attached.

Recommendation 8D (former Recommendation 9b, Phase V): Provide training to staff personnel as soon as possible.

CR Response: CR has acted to assess and address the training and development needs of its staff in programs since this recommendation was made. Investigators participated in Farmers Legal Action Group (FLAG) training in November, 1997. The training addressed identification of applicable civil rights statutes and laws in relation to programs, identification of bases and issues in complaints, conducting investigations, and securing evidence to meet legal sufficiency requirements. Further training on conducting Investigations and Compliance Reviews was provided to all staff assigned to carry out those functions in June, 1998. Copies of the notice to employees, the course objectives and agenda are attached.)

Throughout FY99, staff assigned to the former Program Investigations Division (PID), now Program Operations, were provided individual training through local vendors based on needs that were self identified and concurred on by the immediate supervisor. Employees were permitted to identify courses which they believed met their needs. Approvals occurred through a process of a peer committee review and final approval by the Director, CR. During FY99, PID completed an internal assessment of staff training needs in July, 1999. A copy of the resulting proposal is attached. This proposal was not implemented as PID was split into 3 divisions in August, 1999 and it was determined that further staff training should be done after the new Deputy Director was selected and brought on board.

Shortly after the arrival of the current Deputy Director, actions were initiated to further assess and meet the training and development needs of current and future staff in light of the new direction of Program Operations. Interactions with the Howard University School of Law began under an existing agreement to have the tailored training developed for staff and delivered at the end of April, 2000. This effort is the HU Civil Rights Training and Development Project. Records of meetings, employee needs assessment interview schedules, and a schedule of actions is included to substantiate this ongoing project.

In addition to the HU Civil Rights Training and Development Project, the Deputy Director directed that the entire staff be instructed to complete individual development plans. An instructing memorandum to all Program Operations employees with a copy of the USDA Individual Development Plan form attached was prepared and electronically distributed to staff. A copy is attached.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Finally, the Deputy Director recently proposed to the Director, CR that funds be approved this fiscal year for provision of various types of training determined by the Deputy to be critical to improved staff performance of job responsibilities related to the overarching, central functions of Program Operations. Funding was requested at a level of \$58K and approved by the Director, CR. Efforts are being initiated to identify sources to begin delivery of the specific training identified during this fiscal year. A copy of the proposal memorandum is attached

Recommendation 8E (former Recommendation 4a, Phase V): Require the CR Director to close cases only after all terms and conditions of settlement agreements and other required agency corrective actions are implemented.

CR Response: CR has developed SOPs for tracking settlement agreements. See SOP notebook. In addition, the CRCTS database includes a feature that allows cases in which settlement has been reached to be kept open, while distinguishing settled cases from those still under investigation. Thus, those cases that were initiated in the CRCTS system will not run the risk of premature closure. The Deputy Director is currently assessing the prospect of migrating ProgComp-initiated cases that have reached settlement into the CRCTS system.

Recommendation 8F (former Recommendation 1c, Phase J): Reevaluate all discrimination complaints closed and forwarded to program managers by FSA without concurrence from CREA.

CR Response: See attachment.

Recommendation 8G (former Recommendation 1d, Phase J): Determine the number of outstanding program complaints at FSA and other departmental agencies with the assistance of the agencies and CREA.

Per Audit Report No. 60801-4-Hq, CR needs to formalize its reconciliation procedures.

CR Response: The SOP for the reconciliation process has been completed. See SOP notebook.

Recommendation 8H (former Recommendation 11c, Phase V): Direct CR to institutionalize a process of reconciliation that holds each agency head accountable for reconciling its data with that of CR.

CR Response: The SOP for the reconciliation process has been completed. See SOP notebook.

Recommendation 8I (former Recommendation 4b, Phase V): Direct CR to immediately establish a system to control and monitor implementation of settlement agreements.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

CR Response: A system and an automated database are in place for monitoring and tracking Departmental CR settlement agreements. A SOP of the process has been prepared. See SOP notebook.

Recommendation 8J (former Recommendation 1a, Phase VI): Require the CR Director to immediately implement procedures to review conciliation agreements reached at the agency level, and to monitor and track all settlement and conciliation agreements applicable to all USDA agencies, and ensure their complete and expeditious implementation.

CR Response: Memo requesting agencies to submit copies of conciliation agreements to Programs has been issued to Agency Civil Rights Directors by the Deputy Director, Programs. Copy attached. A tracking system for both conciliation and settlement agreements will be developed and coordinated with agencies by June 30, 2000. A SOP of the system will be developed by April 30, 2000.

Recommendation 8K (former Recommendation 1b, Phase VI): Direct CR to provide guidance to agencies regarding the establishment of appropriate systems for monitoring and tracking conciliation agreements.

CR Response: Memo requesting agencies to submit copies of conciliation agreements to Programs has been issued to Agency Civil Rights Directors by the Deputy Director, Programs. Copy attached. A tracking system will be developed and coordinated with agencies by June 30, 2000. A SOP of the system will be developed by April 30, 2000, and will be distributed to agencies at that time.

Recommendation 8L (former Recommendation 1c, Phase VI): Direct CR to report to the Secretary on a semiannual basis those terms that have not yet been implemented.

CR Response: Program Operations will include settlement and conciliation agreement tracking information in its performance report for the quarter ending June 30, 2000. The information will also be reflected in the FY 2000 annual report.

Recommendation 8M (former Recommendation 2b, Phase VI): Direct CR to forward to the OHRM all prior settled cases in which discipline might be appropriate, and direct CR to follow up on the cases to determine if any actions are taken.

CR Response: The Director will respond to this recommendation.

Recommendation 8N (former Recommendation 7a, Phase V): Establish an Assistant Secretary for Civil Rights at the sub cabinet-level to resolve crosscutting issues between agencies and CR.

CR Response: The Director, CR, will respond to this recommendation.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Recommendation 8O (former Recommendation 9a, Phase V): Develop staff training plans that adequately reflect the training needs of the agency.

CR Response: Program Operations staff has and will continue to receive job-related training. Tailored civil rights training will be provided by Howard University School of Law in May, 2000. In addition, Programs staff has received individual development plan forms, which must be completed and submitted to the Deputy’s staff by March 3, 2000. These forms will be assessed, and a schedule of ongoing training and development will be completed for staff by March 31, 2000.

Recommendation 8P (former Recommendation 10a, Phase V): Provide a mechanism for employee input into office operations through quality control sessions and other forums.

Per Audit Report No. 60801-4-Hq, the efforts to improve office morale by establishing a mechanism for employee input have not been fully successful.

CR Response: The Director, Deputy Directors, and Division Chiefs will discuss ways to incorporate employee input more effectively.

Recommendation 8Q (former Recommendation 14a, Phase V): Direct CR to issue within a 2-month time frame standard operating procedures for program complaint processing.

CR Response: SOPs are complete for all PO Divisions and key administrative functions and have been approved by the Deputy. See SOP notebook.

Recommendation 8R (former Recommendation 2a, Phase VI): Direct CR, in consultation with OGC and the OHRM, to include a "disciplinary action" section in the departmental regulations as a means of formalizing general requirements and procedures applicable to employees cited by complainants in program discrimination cases who have acted in an improper manner. In the interim, direct CR to immediately issue guidelines to the agencies detailing how to proceed with disciplinary action based on a finding of discrimination by CR and how to determine when further evidence is required to support the level of disciplinary action contemplated.

CR Response: The Director, CR, will respond to this recommendation.

Recommendation 8S (former Recommendation 7, Phase I): Agencies should develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.

CR Response: CR has developed a plan to evaluate 15 USDA agencies, and is in the process of hiring four contract compliance officers to assist in this effort. See attached proposal, schedule, and statement of work.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Recommendation 9: Direct CR to issue Acknowledgement Letters to all complainants within 5 days of receipt of the complaint, in accordance with the Department manual.

CR Response: CR’s Procedures Manual requires Acknowledgment letters to be sent to complainants within five days of receipt of the complaint. See attached.

Recommendation 10: Direct CR to review all remaining open intend-to-file cases and determine whether CR had acknowledged all complaints; whether any cases should be moved forward in the complaint resolution process; and whether any have been open beyond the established timeframes. Where appropriate, immediately send Acknowledgment Letters to complainants; move cases forward in the resolution process; and close complaints from unresponsive complainants.

CR Response: CR is currently in the process of completing a project that will resolve all outstanding intend complaints currently listed as open in the database. As of February 28, 2000, the number of open non-class intend complaints is 169. We anticipate a complete resolution of these cases by March 31, 2000. Prior to the acceptance, referral, or closure of any intend complaint, a member of the Deputy Director’s staff will review the case file and ensure that the correct action is being taken on the case.

Recommendation 11: Direct CR to standardize the Acknowledgement Letters so they contain all the required information and explain what information is needed from the complainant.

CR Response: CR has modified its “fifteen day” letter to communicate more clearly the information needed to process the complaint. See

Recommendation 12: Direct CR to reclassify the 39 cases as new complaints and move them forward in the complaints resolution process.

CR Response: CR has initiated the process of evaluating open intend-to-file claims. See Tab 11. The 39 cases will be reclassified as necessary as a result of this process.

Recommendation 13: Direct CR to monitor and report its processing times for incomplete cases in order to determine whether it is achieving its standard of 30 days to process cases and to identify trends and other areas needing immediate attention.

CR Response: The CRCTS system tracks this automatically. The review system described in Tab 7C provides for these cases to be reviewed weekly. With regard to the existing “intend-to-file” cases, CR has already identified them and is working to resolve them. See Tab

Recommendation 14: Direct CR to close the 16 incomplete cases that we determined remained open beyond the established timeframe.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

CR Response: CR has initiated the process of evaluating open intends-to-file claims. See Tab 11. The 16 incomplete cases will be closed as a result of this process.

Recommendation 15: Direct CR to immediately notify program agencies of all open and closed intend-to-file cases (now referred to as “claims” by CR) so that proper actions can be taken, and ensure that this is routinely done on all future cases.

CR Response: CR’s reconciliation SOP currently calls for a monthly report containing this information to be issued. CR may modify the SOP to require the report to be distributed weekly. The modification will take effect on or before March 31, 2000.

Recommendation 16: Direct CR to ensure, before closing a case, that any complainant who did not provide all of the required elements of a complaint, or who did not state a connection between “basis” and “issue,” understands that he or she is required to do so.

CR Response: The revised 15-day letter will accomplish this. See attached.

Recommendation 17: Direct CR to reopen the 70 cases we determined were improperly closed, and to adhere to its documented procedures when processing these complaints.

CR Response: CR has drafted a letter that will be mailed to each complainant in the 70 cases. The letter states that if the complainant believes his or her complaint was improperly closed, he or she may request that the case be reopened. To initiate the process, the complainant need only send CR a letter explaining briefly why he or she thinks the case should be reopened. CR will reopen any case for which such a letter is received. See attached.

Recommendation 18: Direct CR to determine if any other incomplete cases were improperly closed.

CR Response: Based upon review of the total number of closed cases, it is estimated that approximately 1900 cases would need to be reviewed for closure to determine the appropriateness of closure. The following options are listed to address this concern. CR in consultation with OIG would make a determination as to the preferred method.

Option 1: Conduct a random sampling of closed files. If it is statistically determined that there is high volume of inappropriate closures then all files could be reviewed for closure. If sampling did not produce a significantly high inappropriate closure rate then additional files would not be reviewed.

Option 2: Send letters to all complainants whose files were closed requesting that they advise CR of their desire to have their case reviewed again. Closed cases reviewed based upon response to CR’s solicitation.

Option 3: Program Operations would use contractors to physically review each closed file for appropriateness of closure.

EXHIBIT D – AGENCY’S RESPONSE TO DRAFT REPORT

Option 4: This would be an impossible task to perform with the current workload and staffing. With the CRCTS system all cases recommended for closure will be reviewed by supervisory personnel to determine the appropriateness of closure.