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Office of Inspector General
Northeast Region

Audit Report

Followup on Prior Recommendations for Civil Rights Program and Employment Complaints

Report No. 60016-01-Hy
September 2005



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



September 8, 2005

REPLY TO

ATTN OF: 60016-01-Hy

TO: Sadhna G. True
Director
Office of Civil Rights

ATTN: Calvin Gibson
Special Assistant to Director
for Civil Rights

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Followup on Prior Recommendations for Civil Rights

This report presents the results of our audit of the Office of Inspector General's (OIG) followup on OIG's prior recommendations for the Office of Civil Rights program and employment complaints. Your response to the official draft, dated August 5, 2005, is included as exhibit C. Excerpts of your response and the OIG's position are incorporated into the Findings and Recommendations section of the report. Based on your response, we were able to reach management decision on the report's three recommendations. Please follow your agency's internal procedures in forwarding documentation for final action to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

Executive Summary

Followup on Prior Recommendations for Civil Rights Program and Employment Complaints (Audit Report No. 60016-01-Hy)

Results in Brief

This report presents the results of the Office of Inspector General's (OIG) followup on OIG's prior recommendations for the Office of Civil Rights (CR) program and employment complaints. Program complaints are complaints of discrimination in the award or distribution of Federal program benefits. Employment complaints are ones of discrimination in the hiring, promoting, or retaining of employees. Overall, we concluded that CR has strengthened its controls by implementing the agreed upon corrective actions for 22 of our 43 prior recommendations. However, we found that CR did not institute management controls to monitor corrective actions or report actions taken to the Office of the Chief Financial Officer (OCFO).

Operations at CR have undergone major changes since the release of our first report in February 1997. These changes include significant staff turnover, redesign of the agency's operations, and the installation of the first Assistant Secretary for Civil Rights at the U.S. Department of Agriculture (USDA). CR overlooked the audit liaison function during its period of major changes. That is, while an individual had been assigned the audit liaison responsibilities on paper, the implementation of agreed upon corrective actions was not incorporated into the day-to-day operations. Departmental regulation¹ establishes the audit liaison function as a critical management control to ensure that agencies take corrective actions on weaknesses identified by OIG audits.

CR has the responsibility to develop civil rights policy, to provide coordination and leadership for equal opportunity and civil rights, to provide technical assistance and training to USDA agencies, to enforce compliance with applicable regulations, and to investigate and resolve complaints in USDA employment and in programs operated or assisted by USDA.

From February 1997 to March 2000, OIG has issued five reports regarding program complaints. These reports described CR's efforts to process the complaints, reduce the complaints backlog, implement settlement agreements, and respond to our recommendations. In March 2000, we issued our first report on CR's processing of employment complaints, which highlighted weaknesses in CR's operating environment for tracking its complaint inventory, reporting its performance, processing complaints, and working with other USDA agencies (see Exhibit A).

Our current work analyzed our 43 prior recommendations to CR that focused on the agency's management and oversight of program and employment

¹ Departmental Regulation (DR) No. 1720-001, Audit Followup and Management Decision, dated April 22, 2002.

complaints. We found that CR did not respond to critical prior recommendations, because the role of the audit liaison had not been executed. An audit liaison had been designated, but we found this individual was not responsible for monitoring corrective actions or reporting actions implemented to OCFO. As a result, CR could not readily substantiate the actions taken for the 43 prior recommendations.

Departmental regulation² requires agencies to reach agreement with OIG on the corrective actions to take in response to audit recommendations. Agencies are also required to provide an audit followup process that encourages timely completion and reporting on the status of corrective actions to OCFO.

For 3 of the 43 prior recommendations, we found that agreement between CR and OIG has not been reached on the corrective actions to take (see Exhibit B). For example, we continue to work with CR to reach agreement on the recommendation that CR include in its procedures a requirement to document the computation behind its awards for compensatory damages, programmatic relief, and attorney fees. In CR's responses to this recommendation since January 2000, the agency agreed to include the Office of the General Counsel (OGC) in the process of drafting and clearing these procedures. CR finalized the procedures in September 2004, but did not clear them through OGC. We cannot reach agreement on the corrective action for this recommendation until the procedures have been cleared by OGC.

We also found that CR has not implemented the agreed-upon corrective actions for 18 of the 43 prior recommendations. For example, our first report in February 1997 included a recommendation that agencies develop a review system to evaluate civil rights compliance at all agency levels. CR developed the review guide and agreed to complete evaluations of 13 agencies between fiscal years 2002 and 2004. As part of our current review, we found that CR has used the guide to evaluate 3 of the 13 agencies. CR needs to complete the agreed upon evaluations of the remaining 10 agencies.

For the remaining 22 recommendations, we concluded that the agreed upon corrective actions had been implemented. However, CR had reported the implementation of corrective action to OCFO for only 1 of the 22 recommendations.³ The corrective actions implemented included such things as (1) assuming control of the Farm Service Agency (FSA) program complaint system and evaluating the adequacy of FSA's civil rights staffing to carry out its civil rights mandate and (2) placing a high priority on hiring CR managers who have a strong background in civil rights and knowledge of USDA programs and delivery systems.

² DR No. 1720-001, Audit Followup and Management Decision, dated April 22, 2002.

³ Subsequent to our audit fieldwork, CR reported the implementation of corrective action to OCFO for an additional three recommendations. OCFO accepted final action on these recommendations on May 20, 2005.

We did not fully evaluate CR's organizational structure for processing program and employment complaints, because USDA's civil rights functions underwent major restructuring when the Assistant Secretary for Civil Rights was sworn in April 2003. The Assistant Secretary for Civil Rights established a temporary organizational structure to facilitate the elimination of the backlog of civil rights complaints. We found that the temporary structure was designed to facilitate the elimination of the backlog and address some concerns made in our prior recommendations. CR's organizational structure has not been finalized. According to CR officials, the CR reorganization plan was conditionally approved by USDA officials in July 2005.

**Recommendations
In Brief**

CR needs to designate an individual to carry out the responsibilities for audit followup, implement a system of controls to monitor corrective actions, and report the implementation of these actions to OCFO.

Agency Responses

CR agreed with the reports's recommendations. We have incorporated the agency's response in the Findings and Recommendations section of this report, along with the OIG position. The response is included as Exhibit C.

OIG Position

Based on the response, we were able to reach management decision on the report's three recommendations.

Abbreviations Used in This Report

C.F.R.	Code of Federal Regulations
DR	Departmental Regulation
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAD	Final Agency Decision
FSA	Farm Service Agency
MOU	Memorandum Of Understanding
OCFO	Office of the Chief Financial Officer
CR	Office of Civil Rights
OGC	Office of the General Counsel
OHRM	Office of Human Resources Management
OIG	Office of Inspector General
ROI	Report of Investigation
Secretary	Secretary of Agriculture
TAAD	Tracking Applications and Analysis Division
USDA	U.S. Department of Agriculture

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Background and Objectives

Background

The U. S. Department of Agriculture's (USDA) Office of Civil Rights (CR) is responsible for resolving all complaints of discrimination that are made against USDA. These complaints generally fall into two main categories: (1) complaints of discrimination in the award or distribution of Federal program benefits (program complaints) and (2) complaints of discrimination in the hiring, promoting, or retaining of employees (employment complaints). The Civil Rights Act of 1964 prohibits discrimination in Federal programs and employment.

Title VI of the Civil Rights Act of 1964⁴ states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Program discrimination complaints are processed under regulations found in Title 7 Code of Federal Regulations (C.F.R.), Part 15-Nondiscrimination.⁵

Title VII of the Civil Rights Act of 1964,⁶ as amended, prohibits employment discrimination based on race, color, religion, sex, or national origin. Employment discrimination complaints are processed under the Equal Employment Opportunity Commission (EEOC) regulations found in Title 29 C.F.R., Part 1614-Federal Sector Equal Employment Opportunity (EEO).⁷

From February 1997 to March 2000, the Office of Inspector General (OIG) has issued five reports regarding program complaints, which have reported on CR's efforts to process the complaints, reduce the complaints backlog, implement settlement agreements, and respond to our recommendations (see Exhibit A). In March 2000, we reported on CR's effectiveness in responding to recommendations made by OIG to improve the efficiency of CR's process for resolving complaints of discrimination in USDA programs. We concluded that CR's original backlog of program complaints had been substantially cleared; however, concerns remained about unresolved backlog cases and about settlement agreements used to clear cases. We also questioned the adequacy of corrective actions implemented by CR to ensure complaints were processed with due care. Finally, we concluded that CR needed to improve the intake process of current cases.

In March 2000, we issued our first report on CR's processing of employment complaints (see Exhibit A). In this report, we concluded that CR's systems to track its complaint inventory were unreliable and CR's representation of its

⁴ Subchapter V-Federally Assisted Program, Section 2000d.

⁵ 7 C.F.R. Part 15 revised January 1, 2004.

⁶ Section 2000e, dated July 2, 1964.

⁷ 29 C.F.R. Part 1614 revised July 1, 2003.

activity did not reflect actual performance. CR’s management practices prevented the agency from processing complaints with due care and from resolving them within required timeframes. We found that CR needed to strengthen its relationship with other USDA agencies to improve complaints processing. Finally, CR needed separate controls for complaints made against CR management.

In both reports issued in March 2000, we recommended that CR develop and implement a management plan to address the areas of effective leadership, changing organizational culture, customer focus, process improvement, and reengineering, with emphasis on long-term planning. In our opinion, these management areas were essential to the successful operation of CR. In response to our recommendation, CR developed a long-term improvement plan, which was approved by the Assistant Secretary for Administration in October 2000. CR worked to implement this plan, with specific tasks to be completed during the next 3 years.

The Secretary of Agriculture’s (Secretary) Memorandum 1030-57, dated March 7, 2003, restructured USDA’s civil rights functions. This memorandum gave the Assistant Secretary for Civil Rights the full authority and responsibility for leadership and oversight of USDA civil rights, EEO, outreach, alternative dispute resolution, diversity councils, and the USDA 1890 Initiative. Effective upon the date of appointment of the first Assistant Secretary for Civil Rights and all its functions transferred from the Assistant Secretary for Administration to the Assistant Secretary for Civil Rights. The Director of CR has full responsibility for investigating, adjudicating, and resolving complaints of discrimination arising out of USDA employment activities or in the context of federally-assisted or federally-conducted programs, including complaints made by USDA employees, applicants for employment, and USDA program participants and customers.

In April 2003, the Secretary swore in the first Assistant Secretary for Civil Rights. In October 2003, the Assistant Secretary for Civil Rights issued 13 initiatives to address the major challenges facing USDA. According to CR officials, the implementation of the 13 initiatives replaced the implementation of the long-term improvement plan. The challenges and initiatives were classified as follows:

Challenges	Initiatives
Structural	1. Consolidation of Staff Offices with CR Focus
	2. Realignment of Personnel and Functions in CR
Systems	3. CR Enterprise System
Procedural	4. Intradepartmental Relations
Operational	5. Improving Customer Service
Operational	6. Complaint Inventory Reduction (Program and Employment)

Challenges	Initiatives
	7. Increasing Informal EEO Complaint Resolution Rates
	8. Public Awareness Campaign
Accountability	9. Prevention of Program Complaints
	10. Prevention of EEO Complaints
	11. Implementation of the NoFEAR Act
	12. Implementing an Accountability Policy in Personnel Actions
	13. Establishing an Annual Civil Rights Forum

Objectives

Our objectives were to (1) identify and evaluate the structure and controls over CR’s program and employment complaints and (2) evaluate CR’s implementation of our 43 prior recommendations.

To accomplish the objectives, we performed fieldwork at CR and the Office of the Chief Financial Officer (OCFO) in Washington, D.C. Our work covered CR’s current policies and procedures, CR’s actions to implement our prior audit recommendations, and the agency’s actions to implement the 13 initiatives proposed by the Assistant Secretary for Civil Rights in October 2003. (See Scope and Methodology for details.)

Findings and Recommendations

Section 1. Implementation of Prior Audit Recommendations

Finding 1

Audit Liaison Responsibilities Not Fully Executed

CR did not respond to critical prior recommendations, because the role of the audit liaison had not been executed. An audit liaison had been designated, but we found this individual was not responsible for monitoring corrective actions or reporting actions implemented to the OCFO. As a result, CR could not readily substantiate the actions taken for the 43 prior recommendations we reviewed.

Departmental regulation⁸ requires agencies to reach agreement with the OIG on the corrective actions to take in response to audit recommendations. The agreement is known as management decision. Agencies are also required to provide an audit followup process that encourages timely completion and reporting on the status of corrective actions to OCFO. An agency audit liaison official is designated to implement these responsibilities. Some of the agency audit liaison official's specific responsibilities include (1) instituting systems to monitor and track OIG audit recommendations, (2) ensuring management decisions are reached in a timely manner, (3) ensuring corrective actions are implemented, and (4) providing the appropriate documentation to OCFO.

Our current work analyzed 43 prior recommendations to CR that focused on the agency's management and oversight of program and employment complaints. We found that management decisions have not been reached on 3 recommendations and CR has not implemented the agreed-upon corrective actions for 18 recommendations. For the remaining 22 recommendations, we concluded that the agreed upon corrective actions had been implemented. However, CR had reported the implementation of corrective action to OCFO for only 1 of the 22 recommendations (see Exhibit B).

Recommendations Without Management Decision

We found that agreement between CR and OIG has not been reached on the corrective action to respond to 3 of the 43 prior recommendations. These three recommendations were included in the two reports⁹ that were issued in March 2000. One recommendation was included in the report on the management of employment complaints and two recommendations were included in our followup report on program complaints. We continue to work with CR to reach management decision on these recommendations.

⁸ DR No. 1720-001, Audit Followup and Management Decision, dated April 22, 2002.

⁹ Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints (Audit Report No. 60801-04-Hq, March 2000), and Management of Employment Complaints (Audit Report No. 60801-03-Hq, March 2000)

- (1) Employment Complaints. In March 2000, we reported that CR's tracking system was not supported by its case files. As a result, we recommended that the Secretary direct CR to perform a document-by-document sweep of its employment complaints case files to ensure that all documentation is accounted for and that the documentation in the files reflects the status of each case (Recommendation 3). In our prior audit, we considered CR's document-by-document sweep of case files to be one of the most significant areas since we found that the case files did not tell the story of the complaint.

As part of our current review, we determined that CR's initiative to reduce the inventory of complaints should address the concern we previously reported. The action plan to implement this initiative required all files to be returned to the file room for a comprehensive internal review, which included a document-by-document sweep. To reach management decision, CR needs to provide evidence that they performed a document-by-document sweep of its case files in executing the initiative to reduce the inventory of complaints.

- (2) Program Complaints. Our March 2000 audit report comprised a review of corrective actions taken in response to 4 prior reviews and the resulting 54 recommendations made to CR. In that report, we noted that CR had been slow to address our prior recommendations; some of the unresolved issues had been raised as long ago as our Phase I review in February 1997. The results of our current review demonstrate that management decisions have not been reached on two of the report's recommendations.

- a. Standard Operating Procedures. We recommended that the Secretary direct CR to include in its standard operating procedures a requirement to document the computation 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 Office of the General Counsel (OGC) as part of its legal sufficiency review, in accordance with the Secretary's August 30, 1999, memorandum (Recommendation 3). In CR's responses to this recommendation since January 2000, the agency agreed to include OGC in the process of drafting and clearing its standard operating procedures.

CR stated that the standard operating procedures were finalized on September 15, 2004. However, on December 16, 2004, OGC officials informed us that OGC had not approved the standard operating procedures. Since OGC is part of the clearance process, we cannot

accept management decision until the procedures have been cleared by OGC.

- b. Prior Recommendations from Earlier Reviews. We recommended that the Secretary direct CR to complete all actions necessary to implement 17 recommendations from 3 of our prior reports within 60 days of issuance of our report in March 2000 (Recommendation 7). These 17 recommendations originated from work we reported as long ago as our Phase I review in February 1997. Due to CR's lack of action, we were concerned that CR may not have been providing due care when processing complaints alleging discrimination in USDA programs. As a result, we decided to not accept management decision on Recommendation 7 until CR provided sufficient evidence that the 17 prior recommendations had been implemented.

As part of our current review, we found that CR had implemented 15 of the 17 prior recommendations; however, the agency had not requested closure from OCFO. To close these recommendations, CR needs to provide OCFO with the documentation supporting the implementation of these 15 recommendations. Our audit tests disclosed that 2 of the 17 prior recommendations have not been implemented.

1. Memorandum of Understanding (MOU). For one unimplemented prior recommendation, CR agreed to amend the MOU with the U.S. Department of Housing and Urban Development to ensure that all future complaints against USDA employees are forwarded to CR. Management decision on this recommendation was reached on February 1, 2005, after CR officials reported that the MOU was in the internal USDA clearance process. CR officials estimated the MOU would clear USDA's review in the next 6 months. To close this recommendation, CR needs to provide OCFO with the MOU once it clears the USDA clearance process.
2. Standard Operating Procedures. For the second unimplemented prior recommendation, CR agreed to develop standard operating procedures regarding the negotiation of settlement agreements. As noted above for Recommendation 3, these procedures have not been finalized. To reach management decision, the standard operating procedures must complete the clearance process and be finalized.

Recommendations Not Implemented

We found that agreed-upon corrective actions have not been implemented for 18 of the 43 prior recommendations. Closure on these recommendations cannot be achieved until the corrective actions are implemented. One recommendation was included in the report¹⁰ issued in February 1997, which addressed concerns about the effectiveness of USDA's work with socially disadvantaged and minority farmers and ranchers. The remaining 17 recommendations were included in the 2 reports that were issued March 2000. Eleven of the recommendations were included in the report on the management of employment complaints and six recommendations were included in our followup report on program complaints.

- (1) Management Reviews. Our February 1997 report included a recommendation that agencies develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels (Recommendation 7). CR developed the comprehensive management evaluation guide and agreed to complete evaluations of 13 agencies between fiscal years 2002 and 2004. Management decision was reached on March 9, 2001. To close this recommendation, CR needed to provide OCFO with the copies of CR's review reports of the agencies and the agency's corrective actions when applicable.

Our audit tests disclosed that CR has developed the comprehensive management evaluation guide, but this guide has only been used in evaluating 3 of the 13 agencies. CR needs to complete the agreed upon evaluations of the remaining 10 agencies.

- (2) Employment Complaints. Our March 2000 audit report on employment complaints encompassed a review of CR's controls for processing employment complaints. In that report, we concluded that CR's systems to track its complaint inventory were unreliable and CR's representation of its activity did not reflect actual performance. CR's management practices prevented the agency from processing complaints with due care and from resolving them within required timeframes. We also found that CR needed to strengthen its relationship with other USDA agencies to improve complaints processing.
 - a. Recommendations Connected with CR's 13 Initiatives. The Assistant Secretary for Civil Rights issued 13 initiatives to address the major challenges facing USDA in October 2003. The major challenges were in the areas of structure, systems, procedures, operations, and accountability. CR plans to execute these initiatives by September 30, 2005.

¹⁰ Evaluation Report for the Secretary on CR Issues—Phase I (Report No. 50801-02-Hq (1), February 1997)

As part of our current review, we determined that when executed, the 13 initiatives should address 10 of the 11 unimplemented recommendations¹¹ from our March 2000 report on employment complaints. These 10 recommendations were intended to address aspects of CR's operating environment including the agency's tracking of its complaint inventory, reporting of its performance, processing of complaints, and working relationship with other USDA agencies.

Management decisions have been reached on each of these 10 recommendations. The corrective actions agreed to, however, do not reference the execution of the 13 initiatives for achieving closure. CR needs to request a change in management decision from OCFO for these 10 recommendations. The request for changes in management decision should detail the specific actions taken as part of the 13 initiatives to address the 10 recommendations.

- b. Recommendation Not Connected with CR's 13 Initiatives. In our March 2000 report, we concluded, in part, that CR's relations with other USDA agencies had deteriorated. One of the recommendations required CR to publish a current organization chart and points of contact phone listing, which show the names of staff personnel and their areas of responsibility. Each time CR reorganizes, an updated list should be published (Recommendation 18). In response to our recommendation, CR officials agreed to keep this information updated on its website and to assign the agency's Tracking Applications and Analysis Division (TAAD) the responsibility for ensuring this information is updated when needed. Management decision on this recommendation was reached on January 12, 2001. To close this recommendation, CR should provide OCFO with documentation that TAAD is aware of its new responsibility and a copy of the current organization chart.

As part of our current review, we found that the organization chart and points of contact phone listing did not reflect the agency's temporary agency structure that was designed to facilitate the elimination of the backlog of civil rights complaints. According to the Associate Assistant Secretary for Civil Rights, the backlog of civil rights complaints was eliminated in September 2004. CR officials explained that the Assistant Secretary for Civil Rights submitted a reorganization plan that was conditionally approved by USDA officials in July 2005.

¹¹ Audit Report No. 60801-03-Hq, Recommendations 5, 9, 10, 11, 12, 13, 14, 17, 19, and 20.

CR needs to provide OCFO with the organizational chart reflecting the approved reorganization and the point of contact phone listing. CR also needs to provide OCFO with documentation that TAAD is aware of its responsibility to update this information on CR's website when needed.

(3) Program Complaints. Our March 2000 audit report on program complaints comprised a review of corrective actions taken in response to 4 prior reviews and the resulting 54 recommendations made to CR. In that report, we noted that CR had been slow to address our prior recommendations; some of the unresolved issues had been raised as long ago as our Phase I review in February 1997. The results of our current review demonstrate that progress has been made, but that lingering issues still need to be dealt with.

a. Resolution of Eight Cases. In March 2000, we recommended that the Secretary grant CR the authority to use an abbreviated system and forego investigations to resolve the eight cases that had not been investigated (Recommendation 2). Management decision on this recommendation was reached on August 28, 2000.

Our audit tests disclosed that CR appropriately closed seven of the eight cases. CR, however, has not been able to locate the eighth file. CR has not requested closure from OCFO for this recommendation. To do so, CR needs to provide OCFO with documentation on the resolution of the eight cases. If the eighth file cannot be located, CR needs to provide OCFO the methodology employed in attempting to locate the file and the reasons why additional efforts to locate the file are not warranted.

b. Find 83 Missing Files. In March 2000, we recommended that the Secretary direct CR to find the 83 missing files and determine their status (Recommendation 5). Management decision on this recommendation was reached on March 10, 2000.

CR officials did not assign an individual the specific tasks of locating the 83 missing files and determining their status. This lack of action was not identified, because CR assigned no one the responsibility of monitoring the implementation of audit recommendations. As part of our current review, we attempted to locate the 83 missing files through an inventory of the file room. However, we were only able to locate 71 of the files.

CR has not requested closure from OCFO for this recommendation. To do so, CR needs to provide OCFO with documentation that CR located the 83 missing files and determined their status. If the

12 outstanding files cannot be located, CR needs to provide OCFO the methodology employed in attempting to locate the files and the reasons why additional efforts to locate the files are not warranted.

- c. Incorrectly Reported Recommendations. In March 2000, we recommended that the Secretary direct CR to immediately develop a corrective action plan to implement five recommendations CR incorrectly reported as implemented (Recommendation 6). Management decision on this recommendation was reached on July 12, 2001.

As part of our current review, we found that CR implemented four of the five prior recommendations. However, CR had not requested closure from OCFO on these recommendations. To do so, CR needs to provide OCFO with the documentation supporting the implementation of these four recommendations.

The fifth recommendation included with Recommendation 6 was from the report¹² we issued in September 1998. In that report, we recommended that the Secretary direct CR to find the 40 missing files (Recommendation 12b). In response to our recommendation, CR located 32 of the missing files and reconstructed an additional 7 based on the copy of the files maintained by the USDA agencies involved with the complaints. The last complaint was carried as an incomplete complaint, according to the agency, and thus no file was created. Management decision on this recommendation was reached on August 28, 2000.

As part of our current review, we tested whether the 40 files that could not be found during our prior review were filed in CR's file room and recorded in CR's information system. Our audit tests disclosed that 31 of the 40 files were appropriately filed and recorded. We found that 6 of the 40 files were recorded in CR's information system, but the physical file could not be located. For the remaining three files, we could not find either the physical file or a record of the case in the information system. CR has not requested closure from OCFO on this recommendation. To do so, CR needs to provide OCFO with documentation on the resolution of the 40 files. If the nine files cannot be located, CR needs to provide OCFO with the methodology employed in attempting to locate the files and the reasons why additional efforts to locate the files are not warranted.

- d. Recommendations Not Fully Addressed. In March 2000, we recommended that the Secretary direct CR to complete all actions necessary to implement 19 recommendations that CR had not

¹² Evaluation of CR's Efforts to Reduce the Backlog of Program Complaints—Phase V (Report No. 60801-01-Hq, September 1998)

fully addressed within 60 days of issuance of the report, (Recommendation 8). Management decision on this recommendation was reached on July 12, 2001.

As part of our current review, we found that CR implemented 16 of the 19 prior recommendations. However, CR has not requested closure from OCFO on these recommendations. To do so, CR needs to provide OCFO with the documentation supporting the implementation of these 16 recommendations.

(1) Employee Input. In the report issued in September 1998, we recommended that CR provide a mechanism for employee input into office operations through quality control sessions and other forums (Recommendation 10a). In response to this recommendation, CR agreed to obtain employee input through quarterly meetings with employees, to record the results in memoranda to CR management, and to maintain a record of the memoranda. Management decision on this recommendation was reached on March 9, 2001.

Discussions with CR officials as part of our current review disclosed that CR managers held meetings with their staff. However, CR officials were unable to provide any record of the matters that were communicated between staff and managers. CR has not requested closure from OCFO on this recommendation. To do so, CR needs to provide OCFO with the schedule for the meetings developed and evidence of the first quarterly meeting.

(2) Disciplinary Actions. In the report¹³ issued in March 1999, we recommended that the Secretary direct CR, in consultation with OGC and the Office of Human Resource Management (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 (Recommendation 2a). Management decision on this recommendation was reached on February 1, 2000.

Our audit tests disclosed that this regulation has been drafted and is currently with OGC for review. Upon completing the clearance process, this regulation will amend DR 4300-006, Section 3c-Accountability. CR needs to finalize the regulation. When CR requests closure on this recommendation from OCFO, CR should provide a copy of the implemented regulation to OCFO.

¹³ Evaluation of CR’s Efforts to Implement Civil Rights Settlements—Phase VI, (Report No. 60801-02-Hq, March 1999)

(3) Disciplinary Actions Taken. In the report issued in March 1999, we recommended that the Secretary 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 (Recommendation 2b). Management decision on this recommendation was reached on March 9, 2001.

Our audit tests disclosed that CR forwarded 16 cases to OHRM; however, CR did not followup to determine if any disciplinary actions were taken. CR needs to determine whether OHRM recommended disciplinary actions in any of the 16 cases. To close this recommendation, CR should provide OCFO with the results of OHRM's review of the 16 cases.

e. Acknowledgement Letters to Complainants. In March 2000, we recommended that the Secretary direct CR to issue acknowledgement letters to all complainants within 5 days after receipt of the complaint, in accordance with the Departmental manual, (Recommendation 9). In response to this recommendation, CR agreed to assign new personnel as intake specialists and to develop an aging report in CR's complaint tracking system to identify cases that were over 5 days old and the complainant had not been mailed an acknowledgement letter. Management decision was reached on this recommendation on August 28, 2000. To close this recommendation, CR needed to provide OCFO with evidence the aging report was generated and used by management to ensure acknowledgement letters were mailed within 5 days of being entered into the complaint tracking system.

As part of our current review, we determined that CR has not requested closure on this recommendation from OCFO. Moreover, we found that CR is not implementing the corrective action it agreed to in August 2000. We determined that CR is ensuring that acknowledgement letters are mailed within the 5 days through the execution of its initiative to reduce the complaint inventory. One component of the action plan to implement this initiative calls for adherence to all required timeframes. This initiative is 1 of the 13 initiatives issued by the Assistant Secretary for Civil Rights in October 2003. CR plans to execute these initiatives by September 30, 2005.

Since management decision was reached for this recommendation on August 28, 2000, CR needs to request a change in management decision from OCFO. The request for change in management decision should detail the specific action taken as part of the initiative to address the recommendation.

- f. Cases Improperly Closed. In March 2000, we recommended that the Secretary direct CR to determine if any other incomplete cases were improperly closed (Recommendation 18). To address this recommendation, CR performed a review and took action to address cases that were improperly closed. However, no one reported this until we raised the issue as part of this review. This occurred because no CR official was assigned the responsibility of monitoring that audit recommendations were implemented.

After questioning during our current review, the information was formally reported to us on November 5, 2004, and management decision was reached on February 1, 2005. To close this recommendation, CR will need to provide OCFO with the results of its review of improperly closed cases as reported to OIG.

Recommendations Awaiting Closure

CR implemented 22 of the 43 prior audit recommendations (see Exhibit B). Although CR had implemented these recommendations, CR had not requested closure from OCFO on 21 of the recommendations.¹⁴ We updated Exhibit B to reflect this change. Closure was not requested, because the role of the audit liaison had not been executed. An audit liaison had been designated, but we found this individual was not responsible for reporting actions implemented to OCFO. We found that CR provided OCFO with documentation that the remaining recommendation had been implemented. To validate the corrective actions taken on the 22 recommendations, we met with the applicable officials for program and employment complaints and examined the documentation they maintained to support the recommendations had been implemented.

In summary, CR did not respond to our 43 prior recommendations that focused on the agency's management and oversight of program and employment complaints. This occurred because CR did not institute management controls to oversee the implementation of audit recommendations. Accordingly, the agency could not readily substantiate the corrective actions taken. CR should appoint an individual to carry out the audit liaison responsibilities of DR No. 1720-001. This individual should implement a system of controls to monitor corrective actions and report the implementation of these actions to OCFO.

¹⁴ Subsequent to our audit fieldwork, CR reported the implementation of corrective action to OCFO for an additional three recommendations. These recommendations included Recommendations 1, 7, and 21 from Audit Report No. 60801-03-Hq, issued March 2000. OCFO accepted final action on these recommendations on May 20, 2005. We updated Exhibit B to reflect this change.

Recommendation 1

Designate an individual to carry out the responsibilities of DR No. 1720-001.

Agency Response.

An individual has been designated to carry out the responsibilities of DR 1720-001. The individual's performance elements for fiscal year 2006 will include CR compliance with DR 1720-001 as a critical element. A copy of the performance element is attached.

OIG Position.

We accept CR's management decision. For final action, CR needs to provide OCFO with a copy of the performance element designating the responsibilities for DR No. 1720-001.

Recommendation 2

Implement a system of controls to monitor corrective actions on audit recommendations and report the implementation of these actions to the OCFO.

Agency Response.

The Assistant Secretary for Civil Rights reorganization plan has been approved. A copy of the plan is attached. One component of the restructure calls for establishment of the Accountability and Resource Management Division, which has responsibility for performing liaison duties in accordance with DR 1720-001. One individual within the Division will have specific performance elements for fiscal year 2006 that include CR compliance with DR 1720-001 as a critical element.

Physical files have been established within this Division for each of the outstanding audit recommendations. An e-file has also been created to aid in organizing CR's response to outstanding audits. Thus, we have completed the actions required in this recommendation.

OIG Position.

We accept CR's management decision. For final action, CR needs to provide OCFO with a copy of the approved reorganization plan and a description of the procedures and controls implemented to monitor and track audit recommendations.

Recommendation 3

Request changes in management decision for the 10 recommendations from our report on employment complaints and the 1 recommendation from our report on program complaints that will be addressed by CR's 13 initiatives. The request for changes in management decision should detail the specific actions taken as part of the initiatives to address the 11 recommendations.

Agency Response.

The requested changes in management decision for the 10 recommendations from OIG's report on employment complaints and the 1 recommendation from the report on program complaints addressed by CR's 13 initiatives will detail the specific actions taken as part of the initiatives to address the 11 recommendations. These requests will be submitted no later than September 30, 2005.

OIG Position.

We accept CR's management decision. For final action on this recommendation, CR needs to provide OCFO with the agreed upon changes in management decisions for the 11 recommendations. The changes in management decisions will identify the documentation to be provided to OCFO to close the 11 prior recommendations.

Scope and Methodology

To accomplish the objective, we performed fieldwork at CR and OCFO in Washington, D.C. Our work covered CR's current policies and procedures, CR's actions to implement our prior audit recommendations, and the agency's actions to implement the 13 initiatives proposed by the Assistant Secretary for Civil Rights in October 2003. Fieldwork was performed from June to October 2004. We updated our understanding of the timing of CR's reorganization in January 2005 and at our exit briefing in July 2005. Our audit was conducted in accordance with Generally Accepted Government Auditing Standards.

CR

At CR, we met with program and management officials to obtain an understanding of the actions taken to implement our prior audit recommendations. This included work to understand the relationship between our prior recommendations, the long-term improvement plan, and the 13 initiatives proposed by the Assistant Secretary for Civil Rights.

We examined the documentation on file at CR to verify the agency's actions to implement our prior audit recommendations.

OCFO

We met with OCFO officials to obtain understanding of what documentation CR had submitted to substantiate actions taken on our prior recommendations.

Reports on Program Complaints

1. Report No. 50801-02-Hq (1), Evaluation Report for the Secretary on Civil Rights Issues—Phase I, February 1997
2. Report No. 50801-05-Hq, Implementation of OIG’s Recommendations – Department’s Civil Rights Complaint System and the Direct Farm Loan Program—Phase IV, March 1998
3. Report No. 60801-01-Hq, Evaluation of CR Efforts to Reduce the Backlog of Program Complaints—Phase V, September 1998
4. Report No. 60801-02-Hq, Evaluations of CR Efforts to Implement Civil Rights Settlements—Phase VI, March 1999
5. Report No. 60801-04-Hq, Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints—Phase VII, March 2000

Report on Employment Complaints

Report No. 60801-03-Hq, Management of Employment Complaints—Phase VII, March 2000

Exhibit B – Followup on OIG’s 43 Prior Recommendations

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
PROGRAM COMPLAINTS: Report No. 50801-02-Hq (1), Phase I						
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.		No	Yes	Yes	Yes
7	Agencies should develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.		No	Yes	No	No
PROGRAM COMPLAINTS: Report No. 60801-01-Hq, Phase V						
8	Require the CR Director to place high priority on hiring CR managers who have a strong background in civil rights and knowledge of USDA programs and delivery systems.		No	Yes	Yes	No
PROGRAM COMPLAINTS: Report No. 60801-02-Hq, Phase VI						
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 of inventory property in accordance with his settlement agreement.		No	Yes	Yes	No
EMPLOYMENT COMPLAINTS: Audit Report No. 60801-03-Hq, Phase VII						
1	Direct CR to locate the 18 missing case files.		No	Yes	Yes	Yes
2	Direct CR to review and determine the proper status of the 87 open complaints we identified as closed, and the 2 closed complaints we identified as open.		No	Yes	Yes	No
3	Direct CR to perform a document-by-document sweep of its employment complaints case files to ensure that all documentation is accounted for and that the documentation in the files reflects the status of each case.		Yes	No	No	No

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
4	Direct CR to immediately reconcile its case files with those of the agencies. CR should make the appropriate changes to its tracking system based on these reconciliations.		No	Yes	Yes	No
5	Direct CR to modify DR 4300-7 to require agencies and CR to reconcile their caseloads on a monthly basis.		Yes	Yes	No	No
6	Direct CR to implement timely management controls to ensure timely and accurate reconciliation between CR and the agencies.		No	Yes	Yes	No
7	Direct CR to immediately reconcile its cases with those listed by the EEOC as pending hearings and appeals.		No	Yes	Yes	Yes
8	Direct CR to reconcile its cases on a quarterly basis with those cases listed by EEOC as pending appeal and hearings.		No	Yes	Yes	No
9	Direct CR, when presenting data regarding civil rights activities, to provide full disclosure about the data, methodology on how the data is used, and what exactly it means, and to be consistent in reporting over time.		Yes	Yes	No	No
10	Direct CR to expedite the implementation of its new employment tracking system containing advanced edit checks to ensure the integrity of the data and providing workflow functions for case file management.		Yes	Yes	No	No
11	Direct CR to maintain the integrity of the data in its tracking system by identifying suspect data in the system through routine searches for anomalies, and by assigning someone the responsibility to follow up on those suspect cases.		Yes	Yes	No	No

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
12	Direct CR to discontinue using its database to track case file location, or otherwise develop a system that ensures accurate case file location that can be updated only by those with the authority to do so.		Yes	Yes	No	No
13	Direct CR to cleanse its current database before migrating the information to the new EEO tracking system.		Yes	Yes	No	No
14	Develop a management plan to address issues identified concerning effective leadership, changing organizational culture, customer focus, processing improvement, and reengineering. This plan should include the development of a workforce planning strategy. The use of a management consultant to help develop such a plan should be considered.		Yes	Yes	No	No
15	Develop management controls to ensure the reviews of Report of Investigation's (ROI) and Final Agency Decision's (FAD) are performed thoroughly and provide accurate information.		No	Yes	Yes	No
16	Direct CR to revisit the ROI's and FAD's that we found deficient and ensure that the complaint in each of these cases has been handled with due care.		No	Yes	Yes	No
17	Direct CR and the civil rights directors of USDA agencies to establish and develop ways to enhance the working relationship between CR and the agencies' civil rights staff.		Yes	Yes	No	No
18	Direct CR to publish a current organizational chart and points of contact phone listings, which shows the names of staff personnel and their areas of responsibility. Each time the Department reorganizes, an updated list should be published.		No	Yes	No	No

Rec.	43 Prior	Related to	Addressed by	Management	Recommendation	Sent to
No.	Recommendations	Prior Rec.	13 Initiatives	Decision	Implemented	OCFO
	Addressed by this Report		Yes/No	Yes/No	Yes/No	Yes/No
19	Direct CR to establish and provide guidance on training to the agencies and work with agencies to ensure training is developed and conducted in accordance with regulatory guidance and EEO standards. This should include identifying and developing EEO training needs for agency civil rights personnel.		Yes	Yes	No	No
20	Direct CR to distribute the notes of monthly meetings with agency civil rights directors to facilitate followup action.		Yes	Yes	No	No
21	Direct CR to develop procedures for processing in-house complaints. The procedures should provide a mechanism for processing complaints against the Director of CR and the Assistant Secretary for Administration outside of USDA. There should also be appropriate controls on processing the remaining in-house complaints to ensure complainants are afforded unbiased due care. These controls would include adequate safeguarding and maintenance of the files and database records.		No	Yes	Yes	Yes
PROGRAM COMPLAINTS: Audit Report No. 60801-04-Hq, Phase VII						
1	Direct CR to resolve the 35 cases remaining from the original backlog with all deliberate speed.		No	Yes	Yes	No
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.		No	Yes	No	No

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
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.		No	No	No	No
4	Refer all settlement cases to OHRM for consideration of disciplinary action.		No	Yes	Yes	No
5	Direct CR to find the 83 missing files and determine their status.		No	Yes	No	No
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.	1c, 2a, 6d, 11b, and 12 b (phase V)	No	Yes	No	No
7	For the other 17 recommendations CR has not yet addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.	1e, 1h, 2, 3, 4 (phase I), 2b, 3a, 3b, 6a, 6b, 6c, 11a, 11d, 12a, 15a (phase V) and 3a, 4b (phase VI)	No	No	No	No

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
8	For the 19 recommendations 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.	1c, 1d, 6, 5 (phase I), 4a, 4b, 4c, 5a, 7a, 9a, 9b, 10a, 11c, 14a (phase V) and 1a, 1b, 1c, 2a, 2b (phase VI)	No	Yes	No	No
9	Direct CR to issue Acknowledgement Letters to all complainants within 5 days after receipt of the complaint, in accordance with the Departmental manual.		Yes	Yes	No	No
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.		No	Yes	Yes	No
11	Direct CR to standardize the Acknowledgment Letters so they contain all the required information and explain what information is needed from the complainant.		No	Yes	Yes	No
12	Direct CR to reclassify the 39 cases as new complaints and move them forward in the complaints resolution process.		No	Yes	Yes	No
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.		No	Yes	Yes	No

Rec. No.	43 Prior Recommendations Addressed by this Report	Related to Prior Rec.	Addressed by	Management	Recommendation	Sent to
			13 Initiatives	Decision	Implemented	OCFO
			Yes/No	Yes/No	Yes/No	Yes/No
14	Direct CR to close the 16 incomplete cases that we determined remained open beyond the established timeframe.		No	Yes	Yes	No
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.		No	Yes	Yes	No
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.		No	Yes	Yes	No
17	Direct CR to reopen the 70 cases we determined were improperly closed, and to adhere to its documented procedures when processing these complaints.		No	Yes	Yes	No
18	Direct CR to determine if any other incomplete cases were improperly closed.		No	Yes	No	No

Exhibit C – Agency Response

Exhibit C – Page 1 of 2



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

Office of
Civil Rights

1400 Independence
Avenue SW

Washington, DC
20250

TO: Robert W. Young
Assistant Inspector General for Audit
Office of Inspector General

AUG 29 2005

FROM: Sadhna G. True *Sadhna G. True*
Director
Office of Civil Rights

SUBJECT: Response to Followup on Prior Recommendations for Civil Rights
Program and Employment Complaints

Audit Number 60016-01-Hy

This is the Office of Civil Right's response to the Recommendations contained in Audit Number 60016-01-Hy.

Recommendation 1

Designate an individual to carry out the responsibilities of Departmental Regulation No. 1720-001.

Agency Response

An individual has been designated to carry out the responsibilities of DR 1720-001. The individual's performance elements for fiscal year 2006 will include CR compliance with DR 1720-001 as a critical element. A copy of the performance element is attached.

Recommendation 2

Implement a system of controls to monitor corrective actions on audit recommendations and report the implementation of these actions to the OCFO.

Agency Response

The Assistant Secretary for Civil Rights reorganization plan has been approved. A copy of the plan is attached. One component of the restructure calls for establishment of the Accountability and Resource Management Division, which has responsibility for performing audit liaison duties in accordance with DR 1720-001. One individual within the Division will have specific performance elements for fiscal year 2006 that include CR compliance with DR 1720-001 as a critical element.

Physical files have been established within this Division for each of the outstanding audit recommendations. An e-file has also been created to aid in organizing CR's response to outstanding audits. Thus, we have completed the actions required in this recommendation.

Recommendation 3

Request changes in management decision for the 10 recommendations from our report on employment complaints and the 1 recommendation from our report on program complaints that will be addressed by CR's 13 initiatives. The request for changes in management decision should detail the specific actions taken as part of the initiatives to address the 11 recommendations.

Agency Response

The requested changes in management decision for the 10 recommendations from OIG's report on employment complaints and the 1 recommendation from the report on program complaints addressed by CR's 13 initiatives will be undertaken immediately. The request for changes in management decision will detail the specific actions taken as part of the initiatives to address the 11 recommendations. These requests will be submitted no later than September 30, 2005.

Comment to Exhibit B to the Draft Audit Report

The Office of Civil Rights has achieved final action on three of the pending audit recommendations, 60801-3-HQ, Recommendations 1, 7 and 21. Pertinent correspondence from OCFO is attached. We request that the exhibit be updated to reflect these events.

Attachments