



United States Department of Agriculture
Office of Inspector General





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TO: Joe Leonard, Jr., Ph.D
Assistant Secretary for Civil Rights
Office of the Assistant Secretary for Civil Rights

ATTN: Winona Lake Scott
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FROM: Gil H. Harden
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SUBJECT: Review of the Office of the Assistant Secretary for Civil Rights' Oversight of
Agreements Reached in Program Complaints

This report presents the results of our audit of the Office of the Assistant Secretary for Civil Rights' (OASCR) oversight of agreements reached in program complaints. OASCR's July 30, 2012, written response to the official draft report is included in its entirety with excerpts and the Office of Inspector General's position incorporated into the relevant sections of the report. Based on your response, we have accepted management decisions on all recommendations in the report.

Please follow your internal agency procedures in forwarding correspondence for final action correspondence to the Office of the Chief Financial Officer. Also, please note that Departmental Regulation 1720-1 requires that final action be taken on all recommendations within 1 year of the management decision date.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

Attachments

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Review of the Office of the Assistant Secretary for Civil Rights’ Oversight of Agreements Reached in Program Complaints (60601-0001-23)

Executive Summary

The Office of the Assistant Secretary for Civil Rights (OASCR) resolves civil rights complaints filed against the Department of Agriculture (USDA), closing an average of almost 1,000 program complaint cases per year since calendar year 2005. OASCR’s complaint processing system has evolved since prior OIG audits with a recently reorganized office and efforts to improve case handling and reduce backlogs.¹ Although previous Office of Inspector General (OIG) audits have disclosed that OASCR has not always been able to account for all complaint agreements and has not always closed cases properly, the office has worked to address processing deficiencies.² For instance, OASCR has developed a decision-making process for entering into settlement and conciliation agreements.³ To assess OASCR’s decision-making process for settling with complainants, we conducted an audit of all 15 cases closed through either settlement or conciliation agreements between January 1, 2008, and March 31, 2011. Through these 8 settlement agreements and 7 conciliation agreements, USDA awarded over \$10.5 million in damages to claimants, with 1 settlement agreement alone accounting for over \$9 million in damages.

Our current work disclosed no issues with the decision-making process for conciliation agreements. We also found that OASCR significantly improved its monitoring of settlement agreements and closure of program complaints. In addition, we determined that OASCR improved the organization of case files in its file room and took steps to improve the program complaints process by hiring a contractor to conduct a review of its management processes. However, we determined that OASCR needs to strengthen its procedures for settlement agreements, so that it can maintain current improvements, support its decisions, process cases timely, and report them accurately.

Specifically, we found that:

- OASCR did not maintain documents in the official case files to support its decisions to settle with two of eight complainants or to support compensatory damages and debt relief in any of the eight cases with settlement agreements that we reviewed. Although we found that the needed documentation did generally exist, its availability depended upon the personal knowledge and files of the officials who worked the cases. For example,

¹ Audit Report 60801-2-Hq, *Evaluation of the Office of Civil Rights’ Efforts to Implement Civil Rights Settlements*, dated March 1999, and Audit Report 60801-4-Hq, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, dated March 2000.

² Audit Report 60801-2-Hq, *Evaluation of the Office of Civil Rights’ Efforts to Implement Civil Rights Settlements*, dated March 1999, and Audit Report 60801-4-Hq, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, dated March 2000.

³ OASCR officials stated that a conciliation agreement is an agreement that resolves a complaint relating to a USDA-assisted program, such as the Supplemental Nutrition Assistance Program (SNAP), that issues program benefits to a participant through a third-party (i.e., State or county office).

although in one case OASCR awarded damages to 1 primary complainant and 15 secondary complainants, the agency did not retain any documents in the case file to support its decision to settle or to award a total of more than \$9 million to the complainants in this case. This occurred because OASCR officials recently hired by the agency were not aware of existing standard operating procedures for documenting settlement agreements, and placed a higher priority on maintaining the confidentiality of information associated with these cases, rather than documenting actions. Based on our discussions with OASCR officials and review of supplemental documentation, we are not questioning OASCR's decisions regarding the settlement agreements. However, without documented support in the official case file of the office's actions, OASCR may be unable to defend its decisions to settle complaints and to provide financial compensation.

- In order to support monetary damages awarded administratively for violations of the Equal Credit Opportunity Act (ECOA), administrative settlements must take place within ECOA's limitations period, which generally is 2 years from the violation.⁴ However, OASCR did not have standard operating procedures in place for prioritizing cases brought under ECOA. OASCR applied the "continuing violations theory" to extend the limitations period in four of the seven credit-related settlements we reviewed.⁵ Although OASCR was within its legal authority to do this, the continuing violations theory is not fully settled in the courts, and may therefore not always be available for this purpose. As a result, we believe that OASCR needs to develop operating procedures that will allow it to complete cases in a timely manner.

In addition, we determined that OASCR's recordkeeping system did not accurately depict information related to settlement agreements. Although we reviewed all 8 settlement agreements and 7 conciliation agreements, our analysis of OASCR's record keeping system, the Program Complaints Management System (PCMS), determined that OASCR personnel inaccurately coded 15 complaints as closed settlement agreements. In addition, OASCR personnel did not close 3 settlement agreements and 1 conciliation agreement in PCMS that were subsequently shown as open complaints.⁶ This occurred because OASCR did not develop and implement second-party review procedures to identify data entry errors and closed cases that were left open in the system due to a program design issue. Without accurate and complete data in PCMS, managers who relied on the recorded data in PCMS to make decisions did not always have accurate information.

⁴ ECOA had required that actions be brought within 2 years of the violation. 15 U.S.C. § 1691(f). *The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Pub. L. No. 111-203 (July 21, 2010) extended ECOA's limitations period to 5 years from the violation date for incidents occurring after July 21, 2009. All the administrative settlements within the scope of this audit were subject to the prior 2 year limitations period.

⁵ The continuing violations theory applies when a defendant commits "repeated, but distinct, discriminatory acts, some inside and some outside the limitations period." See *Hargraves et al. v. Capital City Mortgage Corp.*, 140 F. Supp. 2d 7, 18 (D.D.C. September 29, 2000). Application of this theory has the effect of extending the applicable limitations period by running that period from the latest possible violations.

⁶ Subsequent to our initial review of the 15 closed agreements, which consisted of 7 conciliation agreements and 8 settlement agreements, we obtained read-only access to the Program Complaints Management System (PCMS) and ran a report to identify the number of agreements closed in the system during the scope of our audit. PCMS incorrectly indicated that there were 20 settlement agreements closed in PCMS, instead of 8. In addition, three settlement agreements and one conciliation agreement that we reviewed were not closed in PCMS at all.

Recommendation Summary

We recommend that OASCR develop and implement procedures for documenting settlement agreements to support that settling with complainants was an appropriate course of action, and show that it awarded compensation appropriately. We also recommend that OASCR develop and implement procedures to prioritize and timely complete investigations of ECOA cases. In addition, we recommend OASCR ensure that PCMS contains accurate data by implementing reviews to verify the information in their system.

Agency Response

In OASCR's response to the official draft report dated July 30, 2012, OASCR officials concurred with the report's findings and recommendations. Excerpts from the response and OIG's position have been incorporated into the relevant sections of the report. OASCR's response to the official draft report is included at the end of the audit report.

OIG Position

Based on the response, we concur with OASCR's management decisions for recommendations 1 through 5.

Background and Objectives

Background

The Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) is responsible for making final determinations on complaints of discrimination filed by participants in USDA programs.⁷ The Secretary of Agriculture established the position of the Assistant Secretary for Civil Rights to comply with the *Farm Security and Rural Investment Act of 2002*.⁸ In recent years, OASCR has processed an average of almost 1,000 program complaints per year.⁹ The current Secretary has highlighted the need to address discrimination at USDA and has emphasized that processing ECOA complaints is a priority.

Effective October 1, 2009, the Secretary reorganized USDA staff offices, merging USDA management offices such as the Office of the Chief Financial Officer, Office of Human Resource Management, Office of the Chief Information Officer, and OASCR into one unified management area titled Departmental Management. At the same time, OASCR took steps to reorganize its organizational structure. For instance, prior to October 1, 2009, OASCR's Program Complaints Adjudication Division and its Intake and Investigation Divisions were separate divisions.¹⁰ OASCR consolidated these three divisions into the Office of Adjudication. As part of its reorganization, OASCR also hired 13 adjudicators and investigators to help facilitate the process, effectively doubling its personnel resources devoted to program complaint processing.

The program complaint process begins in the Program Intake Division, where OASCR officials determine if the complaint is complete and within USDA's jurisdiction before moving it to the Program Investigations Division, if appropriate. Following an investigative plan and a position summary written by the applicable agency, the assigned investigator then obtains the facts regarding the complaint and prepares a report summarizing the investigation. This report is then submitted to the Program Adjudication Division. The Program Adjudication Division proposes a final decision on the merits regarding whether or not discrimination was present.

A settlement agreement is one possible outcome of a program discrimination complaint made against a USDA agency that issues benefits directly to a program participant. A settlement agreement is an agreement between USDA and the complainant to resolve the complaint. A conciliation agreement is another possible outcome of a complaint made against a USDA-assisted program that issues program benefits to a participant through a third-party (i.e., State or county office). The Supplemental Nutrition Assistance Program (SNAP) is an example of a USDA-assisted program because State and county offices assist USDA in issuing benefits to

⁷ Discrimination in Federal programs is prohibited by a number of statutes, including Title VI of the *Civil Rights Act of 1964*, the *Rehabilitation Act of 1973*, and the *Equal Credit Opportunity Act of 1974* (ECOA). Program discrimination complaints are governed by Title 7 of the *Code of Federal Regulation* (CFR), part 15. ECOA prohibits creditors from discriminating against applicants with respect to any aspect of a credit transaction. Any actions on the complainant's behalf are limited by a statute of limitations. 15 U.S.C. § 1691 et seq.

⁸ Pub. L. No. 107-171 (2002).

⁹ This total includes all complaints filed with USDA, including non-USDA related complaints.

¹⁰ The Intake and Investigations Divisions were combined into one Division titled the "Program Complaints Division."

program participants. Settlement agreements can contain compensatory damages, while conciliation agreements typically contain terms for providing the complainant with appropriate USDA program benefits, such as SNAP. Once OASCR officials determine that settling with a complainant is in USDA's best interest, OASCR, the Office of the General Counsel (OGC), the USDA agency involved in the complaint, and the complainant negotiate the terms of the agreement.

OASCR can propose a settlement at any point in the process. Officials in each of OASCR's three program complaint divisions have the authority to notify their managers when evidence in the complaint indicates that discrimination was present and that resolving the complaint is in the best interests of all parties involved. OASCR's Special Counsel, the primary agency expert in all USDA civil rights matters, who reports directly to the Assistant Secretary for Civil Rights, was the key USDA official involved in negotiating five of the eight settlement agreements that we reviewed. The Assistant Secretary for Civil Rights has the ultimate authority to decide whether discrimination was present, to award damages accordingly, and to sign all settlement agreements.

OASCR processes all program complaints in its Program Complaints Management System (PCMS). PCMS is a web-based database that allows OASCR to track, process, and manage complaints. Users can process, store, and view complaints, including case events, contact information, electronic documents, and any other associated correspondence. PCMS allows each user to be given a role with specific permissions regarding data entry, updating, deleting, and queries. OASCR also uses PCMS to develop internal and external reports, including OASCR's annual Farm Bill Report to Congress, regarding civil rights complaints, resolutions, and actions.

We previously evaluated OASCR's efforts to implement civil rights settlement agreements in September 1998¹¹ and March 1999.¹² We also previously reviewed the implementation of prior audit recommendations in 2000¹³ and 2005¹⁴ that related to the oversight and management of program and employment complaints. As part of this audit, we reviewed all 11 prior OIG audit recommendations that specifically related to settlement agreements from 3 past OIG audits to determine if the corrective actions taken by OASCR were adequate to address the conditions (see exhibit A).

¹¹ Audit Report 60801-01-Hq, *Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints*, dated September 1998.

¹² Audit Report 60801-2-Hq, *Evaluation of the Office of Civil Rights' Efforts to Implement Civil Rights Settlements*, dated March 1999.

¹³ Audit Report 60801-4-Hq, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, dated March 2000.

¹⁴ Audit Report 60016-01-Hy, *Followup on Prior Recommendations for Civil Rights Program and Employment Complaints*, dated September 2005.

Objectives

Our overall objective was to evaluate OASCR's decision-making process for settling with complainants who were found to have a high probability of experiencing discrimination in USDA programs. Specifically, we 1) assessed the adequacy of OASCR's procedures for determining whether settling with complainants was the appropriate course of action; 2) determined whether settlement amounts were appropriate and supported; and 3) assessed OASCR's controls to ensure USDA agencies met the terms agreed upon in program complaint settlement and conciliation agreements. In addition, we followed up on prior OIG audit recommendations relating to settlement agreements.

Section 1: Settlement Agreement Process

Finding 1: OASCR Needs to Improve Its Process for Documenting Settlement Agreements

We found that OASCR's official case files did not always contain the documentation needed to support the decisions made by its officials when reaching settlement agreements in civil rights cases. Although we found that the needed documentation did generally exist, its availability depended upon the personal knowledge and files of the officials who worked the cases. Of the eight settlement agreements we reviewed, we found that none had sufficient information in the case files to show how OASCR determined the settlement amounts that complainants would receive; and two of the eight case files had no documentation supporting the reasons why the Department chose to reach settlement agreements. This occurred because OASCR officials, who were recently hired by the agency, were not aware of existing standard operating procedures for documenting settlement agreements, and placed a higher priority on maintaining the confidentiality of information associated with these cases, rather than documenting their actions. After reviewing the existing procedures, OASCR officials were concerned that the procedures did not adequately address confidentiality of settlement agreement documentation in program complaint case files. As a result, OASCR could find itself unable to defend actions taken or amounts awarded in settlement agreements that were negotiated by officials who have left the Department or are otherwise no longer available. For the settlements we reviewed, this involved more than \$10 million in damages, with one settlement including over \$9 million in damages awarded.

OASCR procedures require settlement agreement files to contain, at a minimum, the investigation report and/or any documentation used in determining that settlement is in USDA's interest; the complainant's claims for damages or relief and any documentation supporting these claims; an economic analysis¹⁵ if the proposed settlement agreement includes economic damages; and a detailed computation of any proposed monetary relief, including compensatory damages, programmatic relief, and attorney fees.¹⁶ In addition, the Government Accountability Office (GAO) requires all transactions and significant events to be clearly documented.¹⁷ GAO requires this documentation to be readily available for examination.¹⁸

OIG reviewed all eight cases resolved through settlement agreements that were closed between January 1, 2008, and March 31, 2011. We found that two of the eight case files did not contain sufficient evidence to support OASCR's decision that settling was in the Department's best interest, as follows:

¹⁵ An economic analysis is a determination of estimated economic loss, such as loss of crop production, suffered by the complainant in connection with the alleged discrimination.

¹⁶ OASCR Standard Operating Procedures titled, *Negotiation of Settlement Agreements for Program Civil Rights Complaints*, September 15, 2004.

¹⁷ U.S. Government Accounting Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1, 15. Washington, DC: General Accounting Office, 1999.

¹⁸ *Ibid.*

- The first case involved a complaint filed by one complainant (primary complainant) alleging discrimination in Farm Service Agency (FSA) loan programs against both himself and an associated group of American Indians (secondary complainants) because of their race. The complainant elected to have a hearing before a USDA Administrative Law Judge (ALJ), who found that FSA discriminated against the complainant and awarded over \$5.2 million in damages. However, the previous Assistant Secretary disagreed with and overturned the ALJ’s recommended decision because she determined that: (1) the ALJ improperly allowed the complainant to amend the original March 1990 complaint; (2) the ALJ improperly used an unrelated civil suit against the Department of Interior’s Bureau of Indian Affairs to make the determination of discrimination; and (3) by regulation, the Assistant Secretary had the authority to make final determinations on such complaints.

The previous Assistant Secretary issued a final agency decision with a finding of “no discrimination,” and determined that there was no basis for awarding damages to either the primary complainant or to the 15 secondary complainants.¹⁹ The documents supporting this decision also indicated the complaint was not timely filed. The current Assistant Secretary, however, subsequently settled this complaint by entering into individual settlement agreements with both the primary and secondary complainants. However, our review of the case file disclosed no documentation showing OASCR’s basis for reaching a settlement in this case. OASCR officials told us they settled because they wanted to avoid future class action lawsuits and they disagreed with the prior Assistant Secretary’s conclusion finding no discrimination in the final agency decision. Current OASCR officials disagreed with the previous Assistant Secretary’s reversal of the ALJ’s recommended decision to award \$5.2 million to the primary complainant.

We determined that the current Assistant Secretary had the authority to settle this case, even after the prior Assistant Secretary’s final determination finding of no discrimination.²⁰ However, no documentation existed to show that this settlement, which totaled over \$1 million to the primary complainant and an additional \$8 million to 15 secondary complainants, was in the best interests of all the parties involved, or to explain OASCR’s reversal on this settlement.

- In the second case, OASCR and FSA officials made the determination to settle with the complainant during the intake stage, before an investigation had even been completed to determine whether or not the complaint had merit. However, the case file did not contain any documentation to show why OASCR decided to settle this case. However, an OASCR official documented his recollection regarding the case, and provided this information to us.

The complainant alleged that FSA did not provide her with loan servicing or restructuring options on her delinquent farm operating loans and stated that other farmers of different

¹⁹ OASCR settled with the secondary complainants in July 2011, based on the investigation of the primary complainant. Since these settlements with the secondary complainants were based on a complaint within the scope of our audit, we determined that these settlements also should be included as part of our review.

²⁰ 7 CFR § 15(f) and 7 CFR § 2.88(18).

ethnicity were offered these options. The e-mail provided to us by the OASCR official explained that, based on various occurrences that took place during the intake process, OASCR determined that settling with the complainant during intake was in the best interest of all parties involved, and forgave the complainant's remaining debt of over \$93,000 in exchange for receiving the proceeds from the sale of her property, totaling \$72,000. Although we considered this explanation to be reasonable, had the officials involved in the settlement no longer worked for OASCR, we would not have been able to determine why the agency settled.

In both of these cases, OASCR officials provided plausible verbal explanations of why these actions were taken, and stated their belief that it was in the Department's best interest to settle the cases. Our audit objective did not include assessing the validity of OASCR's judgment regarding the merits of these cases. However, without written documentation in the case file, OASCR may have difficulty in defending its decisions to settle these cases if called upon to do so in the future.

Similarly, we found that none of the eight case files contained sufficient documentary support for OASCR's decisions to award damages to complainants. For example, although OASCR awarded one complainant approximately \$500,000 in damages, the case file did not contain any support to show how this amount was determined, nor did it contain an economic analysis that OASCR's economist performed when calculating the proposed financial settlement. Instead, this information had to be obtained from officials' personal files.

Initially, when we asked OASCR officials about the settlement amounts, they could not provide us with support for all eight settlements. Officials subsequently provided documents to support all eight settlement amounts after researching their personal files; however, OASCR could not provide the documentation expeditiously because it was not in the official case files, but, rather, had to be located in the individual computer files of the officials who worked the cases. After reviewing the documents, we determined that the settlement amounts were appropriate and supported. However, the information was only obtainable because the OASCR officials who directly participated in the negotiations of the settlement amounts were still available to provide this documentation. Since certain documents were kept only on the computers of individual officials, as opposed to the agency's system of record for all program complaints, the documents were not accessible to other OASCR officials. We noted that without the personal knowledge of officials who worked on settling these cases, OASCR may have been unable to explain why it awarded these amounts to complainants.

In March 2000, OIG reported on issues regarding the lack of documentation to support damages awarded to complainants.²¹ In this report, we found little or no support for the amounts awarded for compensatory damages or debt relief. We previously recommended that the agency 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 response to those recommendations, OASCR implemented standard operating procedures for documenting

²¹ Audit Report 60801-04-Hq, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints – Phase VII*, dated March 10, 2000.

settlement agreements in 2004. However, the OASCR officials we interviewed stated that they were not aware that these procedures existed. We attributed this to the fact that significant changes have occurred in OASCR's organizational structure in recent years, and the standard operating procedures were never distributed to incoming management officials. As a result, OASCR's practices for maintaining documentation supporting settlement agreements had not changed markedly since we reported the issue in 2000.

OASCR officials agreed that information to support settlement agreements needs to be readily accessible to officials, and that they need to improve documentation procedures to ensure that all decisions are supported. However, they were concerned about the confidentiality of storing support for settlement agreement determinations in the official case files. OASCR officials believed that the existing standard operating procedures would not adequately address this concern; we did note, however, that the existing procedures had rules in place to prepare a file that identified supporting documents for damages or relief, as well as documentation to support that settling was in the Department's interest. In June 2010, OASCR created draft standard operating procedures for the Program Adjudication Division that included procedures for negotiating settlement agreements. However, these procedures did not require supporting documentation to be included in the case file or readily accessible. OIG recognizes the sensitivity of documentation used to determine amounts awarded; however, this information should be accessible to designated OASCR staff, if needed. Officials agreed that they need to update procedures to ensure sensitive information is adequately protected, and also to ensure that this information can be accessed by designated OASCR staff, if needed.

Without documentary assurance that its actions are supported, OASCR could be unable to explain its decisions if the agreements are later questioned, particularly if questions arise after the officials involved in a particular settlement leave OASCR. OASCR needs to develop procedures to ensure that adequate supporting documentation for its settlement agreement determinations is collected and maintained in the official case files.

Recommendation 1

Develop and implement procedures for maintaining the confidentiality of settlement agreement documentation in the official case file, while ensuring this documentation is readily accessible by appropriate OASCR officials. These procedures should include requirements to document, in the official case file, the support for the decision to settle, as well as the damages awarded to the complainants.

Agency Response

OASCR agreed with this recommendation, stating that the Assistant Secretary for Civil Rights had issued a new policy for documenting settlements on July 30, 2012. This policy requires that documentation in the official case file includes the decision to settle, as well as the award of any damages to complainants. In addition, this policy requires that an electronic copy of these documents be stored in a single, secure location on OASCR's shared hard drive.

OIG Position

We accept OASCR's management decision.

Recommendation 2

For the eight cited complaints resolved through settlement, include documentation in the permanent case files to support the damages awarded. In addition, ensure there is documentation to support the decision to settle in the two settlements mentioned in this finding.

Agency Response

OASCR agreed with this recommendation. The response noted that the audit found that the settlement amounts were appropriate and supported by documentation, which included detailed economic analyses by OASCR's staff economists as well as evidence supporting the analyses. OASCR has added this documentation to the permanent case files to support the damages awarded in the eight cited cases, and to support the decisions to settle in the two cases cited by OIG.

OIG Position

We accept OASCR's management decision.

Finding 2: OASCR Needs to Improve Its Procedures for Processing Equal Credit Opportunity Act Complaints

In order to support monetary damages awarded administratively for violations of the Equal Credit Opportunity Act (ECOA), administrative settlements must take place within ECOA's limitations period of 2 years from the date the violation occurred.²² However, OASCR did not have standard operating procedures in place for prioritizing cases brought under ECOA, and also did not meet its own 120-day limit for investigating program complaints. OASCR therefore applied the "continuing violations theory" to extend the limitations period in four of the seven credit-related settlements we reviewed. Although OASCR was within its legal authority to use this means of extending the time available to reach administrative settlements, the continuing violations theory is not fully settled in the courts, and may therefore not always be available for this purpose. As a result, we believe that OASCR needs to develop operating procedures that will allow it to complete cases in a timely manner.

Participants of USDA programs may file a complaint with OASCR when they believe discrimination has occurred. These complainants must include the date the discriminatory event

²² ECOA had required that actions be brought within 2 years of the violation. 15 U.S.C. § 1691(f). *The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Pub. L. No. 111-203 (July 21, 2010), extended ECOA's limitations period to five years from the violation date for incidents occurring after July 21, 2009. All the administrative settlements within the scope of this audit were subject to the prior 2 year limitations period.

occurred in their complaints to OASCR.²³ Based on the complainant's allegations, OASCR's Program Intake Division identifies and accepts an issue for investigation. In order to support an administrative award for money damages related to ECOA, the administrative settlement must fall within the period defined by ECOA's statute of limitations. For claims based on incidents before July 11, 2009, the ECOA statute of limitations would expire 2 years from the incident date.²⁴ For claims based on incidents occurring after July 11, 2009, *the Dodd-Frank Act* extended ECOA's statute of limitations to 5 years.²⁵ However, Section 741 of *the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1999*²⁶ waived the statute of limitations for complaints filed before July 1, 1997, for certain allegations of discrimination occurring between January 1, 1981, and December 31, 1996.²⁷ The Departmental Manual requires program complaint investigations to be completed within 120 days from the date the complaint is accepted for investigation by Program Intake Division officials.²⁸

Prior to the current administration, ECOA cases filed administratively had a history of not being resolved within the applicable 2 year statute of limitations period. The current Secretary of Agriculture has emphasized the need to timely close ECOA-related complaints and implemented steps to improve the timeliness of completing ECOA complaints, including hiring 13 additional employees to process program discrimination complaints. However, due to the length of time it took for these cases to move through the process, OASCR officials used the continuing violations legal theory to re-calculate the statute of limitations period.

Based on data OIG extracted from PCMS, OASCR closed 206 ECOA-related complaints between January 1, 2008, and March 31, 2011.²⁹ Of these, we reviewed all eight of the cases that were closed through settlement agreements and determined that seven of them were subject to ECOA's limitations period.³⁰ We found that in four of these settlement cases, OASCR used the continuing violations theory to extend the period during which they could complete the settlement agreements.

For example, a long-time recipient of USDA farm loans filed a complaint on July 23, 2007, alleging discrimination by a county FSA office on July 20, 2007, when the office denied the complainant primary loan servicing. FSA based this denial on a finding that the complainant did not act in good faith when he failed to report all real estate and chattel and also did not account

²³ *Departmental Manual* 4330-001 (Procedures for Processing Discrimination Complaints), Part I, Section 6.e.5, October 18, 2000.

²⁴ 15 U.S.C. § 1691e(f).

²⁵ *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, § 1085, Pub. L. No. 111-203 (July 21, 2010).

²⁶ *Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1999*, Title VII, § 741, Pub. L. No. 105-277 (October 21, 1998).

²⁷ One of the eight settlement agreements we reviewed was settled under this provision, and was not subject to a statute of limitations.

²⁸ *Departmental Manual* 4330-001, Section 3-15, October 18, 2000.

²⁹ However, there may be more ECOA cases based on the inaccurate data we identified during our analysis of PCMS (see Finding 3).

³⁰ The eighth settlement agreement resolved a Section 741 case and was therefore not subject to a statute of limitations.

for all income from oil and gas leases. Based on the incident date alleged in the incoming complaint, the ECOA statute of limitations would have expired on July 20, 2009. On May 16, 2008, the complainant received a notice stating that FSA was about to accelerate the complainant's outstanding farm loans. In applying the continuing violations theory, OASCR used May 16, 2008, as the alleged discrimination date, as opposed to July 20, 2007, the violation date alleged by the complainant in the incoming complaint. This allowed OASCR to settle with the complainant on May 17, 2010.³¹ We attributed the need to extend the limitations period to the length of time it took OASCR officials to investigate and settle the case. The initial investigation took 261 days to complete, while the adjudication process lasted an additional 416 days, due to the need for a second investigation to obtain additional information regarding the case.

OASCR applied the continuing violations theory, based on court rulings involving complaints under Title VII (employment discrimination) of *the Civil Rights Act of 1964*,³² *the Fair Housing Act*,³³ and ECOA.³⁴ These rulings allowed cases to remain viable if, after the initial violation, further violations occurred before the statute of limitations period lapsed. Therefore, they used the continuing violations theory to extend the limitations period by running the time period beginning from the last possible violation. OASCR officials consulted with the Office of the General Counsel (OGC) regarding use of the continuing violations theory. OGC voiced concerns over its use, but also concluded that applying the theory was within OASCR's discretion and did not identify any legal bar to the application of the theory. We believe that the courts are not settled on whether the continuing violations theory can be used to calculate the statute of limitations date in ECOA cases. Certain courts recognize the use of the theory for ECOA cases,³⁵ while others do not.³⁶ Because of these questions, OASCR needs to ensure ECOA-based complaints timely move through the program complaints process.

We believe that OASCR's need for additional time to settle these cases can be attributed to the length of time spent on completing the investigations. For the four cases in which OASCR used the continuing violations theory to re-determine the violation date, the investigations took an average of 649 days to complete. The program complaint process for six of the seven ECOA complaints started before the current USDA administration took office. Upon taking office, the current Secretary of Agriculture has made civil rights a top priority. With the 13 additional staff, OASCR closed six of the seven ECOA cases between May 2010 and February 2011.³⁷ OASCR officials took action to investigate and close ECOA cases timely, and have stated that their current goal is to finish an investigation no more than 180 days after intake is complete. However, we found that the procedures OASCR implemented in October 2000 and used in closing these cases did not prioritize ECOA cases to ensure that they could be completed before the statute of limitations was reached.³⁸ OASCR needs to assess program complaint

³¹ We note that May 16, 2010, was a Sunday; OASCR felt that settling on Monday May 17, 2010, was allowable.

³² *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

³³ *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-381 (1982).

³⁴ *Miller v. Countrywide Bank, N.A.*, 571 F. Supp. 2d 251 (D. Mass. 2008).

³⁵ *Miller v. Countrywide Bank, N.A.*, 571 F. Supp. 2d 251 (D. Mass. 2008).

³⁶ *Haynie v. Veneman*, 272 F. Supp. 2d 10, 16 (D.D.C. July 23, 2003).

³⁷ The remaining ECOA case we reviewed was closed in January 2010.

³⁸ Departmental Manual 4330-001, October 18, 2000.

performance, and establish new procedures that ensure the timely completion of ECOA-related complaints.

OASCR felt compelled to settle these four ECOA cases because filing complaints with USDA is the least expensive avenue to resolve complaints. Also, they felt that by settling these cases, they could prevent future class-action lawsuits. OASCR officials stated that the *Dodd-Frank Act* reduced the urgency to settle these cases by extending the statute of limitations to 5 years from the violation. Without written procedures to prioritize ECOA cases, future Assistant Secretaries may make inconsistent determinations regarding violation dates for ECOA statute of limitations purposes. Therefore, OASCR needs to develop and implement a policy to prioritize and timely complete investigations involving ECOA cases.

Recommendation 3

Assess the program complaints process and, based on this analysis, develop and implement standard operating procedures for the Program Investigations and Adjudication Divisions to prioritize and timely complete investigations involving ECOA cases. If necessary, revise the Departmental Manual to be consistent with other guidance.

Agency Response

OASCR agreed with the intent of this recommendation. Officials stated that in 2009, OASCR had several hundred uncategorized complaints, many filed under ECOA, where the statute of limitations had expired or was nearing the expiration date. Since that time, they stated that OASCR has worked diligently to identify and prioritize ECOA cases. Beginning in 2010, OASCR undertook an office-wide effort to catalogue its inventory and flag all open ECOA cases for expedited processing. OASCR established a committee consisting of representatives from the Program Intake, Investigations, and Adjudication Divisions to flag new cases and coordinate complaint processing. The committee created and maintains a list of all ECOA cases in inventory, noting the date that the statute of limitations expires. OASCR managers meet regularly to review the status of complaints on the ECOA list and ensure they receive expedited processing.

They stated that OASCR has been engaged in process improvement and the development of standard operating procedures consistent with those improvements for the Program Intake, Investigations, and Adjudications Divisions for over a year. Those improvements aim to decrease processing time and errors so that all complainants, including those with ECOA claims, receive a timely, fair, and accurate response from OASCR. Some of the process improvements include: a standard complaint form that can be used by customers across the agency to file a complaint; the elimination of duplicative reviews of documents and correspondence; and the creation of standard checklists that staff can use to assess jurisdiction. Currently, OASCR has in place new standard operating procedures for all three program complaint processing divisions that incorporate these improvements and prioritize timely completion of ECOA cases.

OIG Position

We accept OASCR's management decision.

Section 2: Program Complaints Management System

Finding 3: Data in OASCR's Program Complaints Management System Was Not Always Accurate

We found that data contained in OASCR's PCMS system did not accurately depict the Department's activities regarding complaints that resulted in settlement agreements. Specifically, 15 of 20 cases coded in PCMS as closed settlement agreements were in fact closed for other reasons that did not involve settlement agreements. In addition, we found that three previously-closed settlement agreements and one conciliation agreement continued to be reflected as "open" in PCMS. This occurred because OASCR did not develop and implement second-party review procedures to identify data entry errors. OASCR managers felt that spot checking closed cases to verify accuracy was sufficient. In addition, OASCR did not develop and implement procedures to ensure that closure actions were timely entered into PCMS and PCMS was not designed with the option to close cases at any stage of the process. As a result, PCMS' usefulness as a management and reporting tool is diminished. Without accurate and complete data in OASCR's system of record, OASCR could potentially provide inaccurate reports to Departmental and Congressional officials who rely on the data as part of their decision-making process.

OMB requires Federal managers to implement controls to safeguard the accuracy of transactions, including processing them accurately and ensuring the data are valid and complete.³⁹ OASCR implemented PCMS in 2007 to process, track, and manage civil rights complaints from USDA program participants.⁴⁰ PCMS allows OASCR officials to create a case number for program complaints submitted to the agency, identify statutes applicable to a complaint, upload complaint documentation, and update complaint events – such as acceptance of the complaint by the Program Intake Division.

To analyze its usefulness as the recordkeeping system for settlement agreements, we obtained read-only access to PCMS. Of the 1,235 cases closed in PCMS between January 1, 2008, and March 31, 2011, we reviewed the 20 cases that OASCR personnel coded as settlement agreements in PCMS.⁴¹ We identified that 15 of the cases were not closed as the result of settlement agreements, but due to other reasons.⁴² We determined that these were the result of data input errors, and noted that OASCR did not have a second level of review to validate the information being reflected in PCMS. We believe that with the implementation of a procedure for a second level of review, OASCR could reduce the number of data entry errors and provide greater assurance that PCMS contains accurate data.

³⁹ OMB Circular A-123, Section II.C, December 21, 2004.

⁴⁰ *Requirement Specifications Procedures*, March 11, 2010.

⁴¹ The scope of our audit did not provide for an overall assessment of PCMS' performance.

⁴² These 15 cases should have been closed as: (1) 4 for not being in the jurisdiction of USDA; (2) 7 for no finding of discrimination; (3) 2 for administrative closure, due to a failure by the complainant to provide further information; and (4) 2 for withdrawal.

We also compared data in PCMS with information on a monitoring report that OASCR's Compliance Division produces based on hard copies of case files provided by the Program Adjudication Division.⁴³ We found that three settlement agreements and one conciliation agreement that OASCR closed between January 2010 and March 2011 were not reflected as having been closed in PCMS. We found that this was the result of an issue related to the system logic in PCMS. Although OASCR officials can reach settlement agreements at any stage of the process, PCMS' design does not allow personnel to code these as closed until after the investigation stage has been completed. Three of the four settlement agreements we identified were closed during the investigation process, but PCMS would not allow closure because their investigations were still coded as ongoing. We attributed the fourth case to human error, and believe that this could be addressed through a second-party review procedure as described above. However, we believe that OASCR should also identify a way that cases, such as those identified here, can be timely reflected as closed in PCMS.

OASCR agreed that these problems exist, but officials stated that a data integrity report recently created by OASCR's Data Records Management Division will help eliminate some of the input errors. The report, which was designed to identify data integrity issues within PCMS, was supplied to all the division chiefs within OASCR so that any issues could be corrected. The OASCR division chiefs stated that they did not use these reports, however, and instead depended upon randomly selected reviews of their staffs' data input operations. OASCR officials could not provide any evidence of these randomly selected reviews being performed. If spot checks were performed, they do not appear to have been effective, based on the conditions we noted. We believe that permanent corrective action is needed. When we discussed these issues with officials from the Program Adjudication Division, they stated that OASCR is in the process of developing a handbook which will include standard operating procedures for data entry into PCMS. This handbook was not available for our review during fieldwork.

Overall, we concluded that PCMS, OASCR's recordkeeping system, lacked controls to ensure accuracy of data relating to cases resolved through settlement agreements. To ensure the completeness and accuracy of the system, OASCR needs to develop and implement procedures to routinely verify data and correct any data determined to be inaccurate. Additionally, OASCR needs to incorporate enhanced rules in PCMS so that cases can be coded as closed during the investigation stage so that PCMS can allow program complaints to be processed more accurately.

Recommendation 4

Develop and implement procedures to routinely verify the accuracy of data in PCMS and correct any inaccurate data in the system. These procedures should include specific processes for the Program Intake Division, Investigations Division, and Adjudication Division officials to conduct and document a second level of review for program complaint data input into PCMS.

⁴³ Compliance division officials used this report to track the status of settlement agreements for tracking purposes, and do not use PCMS to produce it.

Agency Response

OASCR agreed with the intent of this recommendation, noting that PCMS is a legacy system which OASCR has worked continuously to improve since 2009. The response stated that OASCR continues to overhaul PCMS to improve data accuracy and integrity.

To address existing data errors, OASCR undertook an office-wide data clean-up project in the second quarter of 2012. The clean-up is ongoing and staff from each program complaints division as well as from the Data and Records Management team are contributing to the effort.

To improve data input, OASCR developed a checklist of critical data inputs including jurisdiction, issue, basis, relevant USDA program, and all necessary dates. Copies of the PCMS print screen are placed in the intake case file to verify input into the system. OASCR adopted new standard operating procedures for each division that require the team lead to document a second level review of data input. OASCR also designed and tested a “single event screen” for PCMS that will facilitate more efficient, open review of PCMS data. OASCR plans a full scale roll out of the single event screen by September 30, 2012.

OIG Position

We accept OASCR’s management decision.

Recommendation 5

Develop and implement procedures for data records managers to routinely meet with division chiefs to incorporate rules in PCMS that allow for accurate processing of program complaints. These procedures should include designing an option in PCMS to close out cases during the investigation phase.

Agency Response

OASCR officials agreed with this recommendation, noting that they have established a weekly meeting involving data records managers and division chiefs to discuss program complaint processing. Based on suggestions from OASCR staff and division chiefs, officials reviewed PCMS and prioritized changes intended to improve accurate complaint processing. A PCMS option allowing cases to be closed out during the investigation phase has been designed and tested, and OASCR officials plan a full scale roll-out of this option by September 30, 2012.

OIG Position

We accept OASCR’s management decision.

Scope and Methodology

To accomplish our objectives, we performed fieldwork at OASCR's offices in Washington, D.C. Based on information in PCMS and in OASCR-supplied reports about cases closed between January 1, 2008, and March 31, 2011, we determined that OASCR officials closed 1,235 cases during this time. Of the 1,235 closures, we identified 8 settlement agreements, totaling over \$10 million in damages. Over \$9 million of the amount awarded stemmed from a single case involving 1 primary complainant and 15 secondary complainants. Awards in the remaining 7 cases totaled less than \$2 million. In addition, we identified 7 conciliation agreements, totaling over \$26,000 in monetary damages and program relief. We reviewed all 15 of these agreements to assess OASCR's decision-making process for settling with complainants, and also to determine if award amounts were adequately supported. We also reviewed two complaints that we initially believed were settled with OASCR, but were subsequently settled in court, therefore falling outside the scope of our audit.

We also analyzed program complaint data in PCMS to determine whether settlement data were accurately inputted into the system to allow for accurate reporting. In addition, OASCR provided OIG with read-only access to PCMS to assist us in gaining an understanding of this system. Using this access, we ran a report to extract all cases closed as settlement agreements in PCMS between January 1, 2008, and March 31, 2011. This report produced 20 cases closed through settlement agreements during this time. We reviewed documentation in PCMS for these 20 cases, and communicated with OASCR officials to determine whether these 20 cases were accurately coded as settlements.

Our review of settlements included obtaining and reviewing complete case files from OASCR, interviewing of USDA officials involved in these agreements, and reviewing data in PCMS. We interviewed OASCR officials and Civil Rights Directors for Farm Service Agency and Rural Development to determine their involvement in the settlement agreement process. We also interviewed officials with OASCR's Task Force to determine the status of their review of closed complaints between 2000 and 2008.

Our audit was conducted in accordance with Generally Accepted Government Auditing Standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. We interviewed officials in OASCR's Data Records Management Division to further obtain an understanding regarding how program complaint data are entered into the system and how the data are verified to ensure their accuracy. We evaluated general and application controls that related only to settlement agreements. However, we did not analyze all program complaint data in PCMS, and make no representation regarding the overall accuracy of that data.

Abbreviations

ALJ.....	Administrative Law Judge
CFR.....	Code of Federal Regulations
CR.....	Office of Civil Rights
ECOA.....	Equal Credit Opportunity Act of 1974
FSA.....	Farm Service Agency
OASCR.....	Office of the Assistant Secretary for Civil Rights
OGC.....	Office of the General Counsel
OIG.....	Office of Inspector General
OMB.....	Office of Management and Budget
PCMS.....	Program Complaints Management System
SNAP.....	Supplemental Nutrition Assistance Program
USDA.....	Department of Agriculture

Exhibit A: Followup on OIG's 11 Prior Recommendations

	Recommendation Number	Prior Recommendations	Was Recommendation Implemented? (Yes/No)
Audit Report 60801-01-Hq, dated September 1998			
1	4a	Require the Civil Rights (CR) Director to close cases only after all terms and conditions of settlement agreements and other required agency corrective actions are implemented.	Yes
2	4b	Direct CR to immediately establish a system to control and monitor implementation of settlement agreements.	Yes
Audit Report 60801-02-Hq, dated March 1999			
3	1a	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 completion.	Yes
4	1b	Direct CR to provide guidance to agencies, regarding the establishment of appropriate systems for monitoring and tracking conciliation agreements.	Yes
5	1c	Direct CR to report to the Secretary on a semiannual basis those terms which have not yet been implemented.	Yes
6	2a	Direct CR, in consultation with OGC and the Office of Human Resources Management 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	Yes

		disciplinary actions 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.	
7	2b	Direct CR to forward to the Office of Human Resources Management 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.	Yes
8	4b	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: (1) perform an expeditious review of the economic analysis and other information compiled as support for the terms proposed in the settlement agreement and (2) 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.	Yes
Audit Report 60801-04-Hq (Phase VII), dated March 2000			
9	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	Yes; however standard operating procedures were not followed (see Finding 1).

		August 30, 1999, memorandum.	
10	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.	Yes
11	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.	Yes

**USDA'S
OFFICE OF THE ASSISTANT SECRETARY
FOR CIVIL RIGHTS'
RESPONSE TO AUDIT REPORT**



TO: Gil Harden
Assistant Inspector General for Audit
Office of Inspector General

FROM: Joe Leonard, Jr., Ph.D. /s/- July 30, 2012
Assistant Secretary for Civil Rights

SUBJECT: OASCR's Response to OIG's June 28, 2012, Final Draft Report, "Review of the Office of the Assistant Secretary for Civil Right's Oversight of Agreements Reached in Program Complaints (60601-0001-23)"

Thank you for the opportunity to respond to this report. Over the past three and a half years, as part of Secretary Vilsack's efforts to build a new era for civil rights at the U.S. Department of Agriculture (USDA), the Office of the Assistant Secretary for Civil Rights (OASCR) has made significant improvements to the program discrimination complaint process. Complaint inventories have decreased and the average processing time for new civil rights program complaints has decreased from four years to 18 months. At the same time, we are getting better at rooting out discrimination through the complaint process. Since 2010, OASCR has issued the first findings of discrimination, providing relief to USDA customers who suffered discrimination, in more than nine years. OASCR is committed to build on those successes to further strengthen the program complaint process. We have addressed each of the Office of Inspector General (OIG) recommendations with the completed actions described below, and continue to strive to improve the quality and efficiency of the program complaint process.

Recommendation 1:

Develop and implement procedures for maintaining the confidentiality of settlement agreement documentation in the official case file, while ensuring this documentation is readily accessible by appropriate OASCR officials. These procedures should include requirements to document in the official case file, the support for the decision to settle, as well as the damages awarded to Complainants.

OASCR Response:

OASCR agrees with this recommendation. The Assistant Secretary for Civil Rights has promulgated a new policy for documenting settlements. The documentation in the official case file includes the decision to settle, as well as the award of any damages to Complainants. In addition, under this policy an electronic copy of these documents will be stored in a single, secure location on OASCR's shared hard drive.

Recommendation 2:

For the eight cited settlement cases, include documentation in the permanent case files to support the damages awarded. In addition, ensure there is documentation to support the decision to settle in the two settlements mentioned in this finding.

OASCR Response:

OASCR agrees with this recommendation. The report found that all OASCR's settlement amounts were appropriate and supported by documentation. Documentation included detailed economic analyses by OASCR's staff economist as well as evidence supporting the analyses. OASCR has now added this documentation to the permanent case file to support the damages awarded in the eight cited cases and to support the decision to settle in the two settlements mentioned by OIG.

The settlements reviewed by OIG included seven settlements totaling approximately one million dollars in damages, and one settlement for claims of sixteen complainants for which approximately nine million dollars in damages was awarded. This latter settlement was entered into to resolve litigation risk that resulted when the decision of an independent Administrative Law Judge, finding discrimination and ordering monetary damages, was overturned by a former Assistant Secretary of Civil Rights on the eve the transition to the present Administration.

Recommendation 3:

Assess the program complaints process and, based on this analysis, develop and implement standard operating procedures for the Program Investigations Division to prioritize and timely complete investigations involving Equal Credit Opportunity Act of 1974 (ECOA) cases. If necessary, revise the Departmental Manual to be consistent with other guidance.

OASCR Response:

OASCR agrees with the intent of this recommendation. In 2009, OASCR had several hundred uncategorized complaints, many filed under ECOA, where the statute of limitations had expired or were nearing the expiration date. Since that time, OASCR has worked diligently to identify and prioritize ECOA cases. Beginning 2010, OASCR undertook an office-wide effort to catalogue its inventory and flag all open ECOA cases for expedited processing. OASCR established a committee consisting of representatives from the Program Intake, Investigations, and Adjudication Divisions to flag new cases and coordinate complaint processing. The committee created and maintains a list of all ECOA cases in inventory, noting the date that the statute of limitations expires. OASCR managers meet regularly to review the status of complaints on the ECOA list and ensure they receive expedited processing.

OASCR has been engaged in process improvement and the development of standard operating procedures consistent with those improvements for the Program Intake, Investigations, and Adjudications Divisions for over a year. Those improvements aim to decrease processing time and errors so all complainants, including those with ECOA claims, receive a timely, fair, and accurate response from OASCR. Some of the process improvements include: a standard complaint form that can be used by customers across the agency to file a complaint, the elimination of duplicative reviews of documents and correspondence, and the creation of standard checklists that staff can use to assess jurisdiction. Currently, OASCR has in place new standard operating procedures for all three program complaint processing divisions that incorporate these improvements and prioritize timely completion of ECOA cases.

Recommendation 4:

Develop and implement procedures to routinely verify the accuracy of data in PCMS and correct any inaccurate data in the system. These procedures should include specific processes for the Program Intake Division, Investigations Division, and Adjudication Division officials to conduct and document a second level review for program complaint data input into PCMS.

OASCR Response:

OASCR agrees with the intent of this recommendation. PCMS is a legacy system which OASCR has worked continuously to improve since 2009. OASCR continues to overhaul PCMS to improve data accuracy and integrity.

To address existing data errors, OASCR undertook an office-wide data clean-up project in the second quarter of 2012. The clean-up is ongoing and staff from each program complaints division as well as from the Data and Records Management team are contributing to the effort. To improve data input, OASCR developed a checklist of critical data inputs including jurisdiction, issue, basis, relevant USDA program, and all necessary dates. Copies of the PCMS print screen are placed in the intake case file to verify input into the system. OASCR adopted new standard operating procedures for each division that require the team lead to document a second level review of data input. OASCR also designed and tested a “single event screen” for PCMS that will facilitate more efficient, open review of PCMS data. OASCR plans a full scale roll out of the single event screen by September 30, 2012.

Recommendation 5:

Develop and implement procedures for data records managers to routinely meet with division chiefs to incorporate rules into PCMS that allow for accurate processing of program complaints. These procedures should include designing an option in PCMS to close out cases during the investigation phase.

OASCR Response:

OASCR agrees with this recommendation. OASCR has established a weekly meeting involving data records managers and division chiefs to discuss program complaint processing. Based on suggestions from OASCR staff and division chiefs, OASCR reviewed PCMS and prioritized changes that will improve accurate complaint processing. OASCR has designed and tested a PCMS option allowing cases to be closed out during the investigation phase. OASCR plans a full scale roll out of this option by September 30, 2012.

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