

Civil Rights at USDA:

A Backgrounder on Efforts by the Obama Administration

For decades, the United States Department of Agriculture has had an unfortunate and checkered history with regards to civil rights. Reports going as far back as the 1960's have found discrimination at USDA in both program delivery and the treatment of employees, and we are the subject of a number of lawsuits brought by minority farmers and ranchers alleging discrimination. This reputation is so pervasive that USDA has been called "the last plantation." The bottom of this document addresses this history in more detail in a section entitled "*A Brief History of Discrimination at USDA.*"

Both President Obama and Secretary Vilsack want to close this sad chapter in USDA's history once and for all. Under Secretary Vilsack's leadership, the USDA has made civil rights a top priority and worked to move USDA into a new era for civil rights. We are correcting past errors, learning from mistakes, and taking definitive action to ensure that there is no disparity in program benefits based on race, color, sex, age, sexual orientation or disability. It is Secretary Vilsack's goal that the USDA achieves Abraham Lincoln's vision of "the people's department" where each employee and customer is treated fairly and equitably.

Secretary Vilsack's Efforts to Address Discrimination at USDA

Civil Rights Actions

In April 2009, Secretary Vilsack sent a memo to all USDA employees calling for "a new era of civil rights" for the Department. He made it clear that USDA would have zero tolerance for any form of discrimination. And he directed the Office of the Assistant Secretary for Civil Rights (ASCR) to lead a comprehensive program to improve USDA's record on civil rights and move us into a new era as a model employer and premier service provider.

- On Secretary Vilsack's first day at USDA, he hosted a live webcast with employees and communicated his commitment to improving the Department's record on civil rights.
- In April 2009, Vilsack suspended all foreclosures in the Farm Service Agency's loan program for 90 days to provide an opportunity to review loans that could have been related to discriminatory conduct.
- Early on in his time at USDA, Secretary Vilsack learned that of the 14,000+ civil rights program complaints filed at USDA between 2001 and 2008, the Bush Administration ASCR found merit to only one complaint of program discrimination. Further, the 2-year statute of limitations had expired for the vast majority of the complaints. In more than 7,000 of the cases the review conducted by the civil rights division was no more than cursory: although they were assigned a case number, no one had even taken the time to determine which USDA agency the complaint concerned. We have taken the following action to address complaints made between 2001 and 2008, to correct past errors, and to ensure a more effective process to address program complaints in the future:

- Secretary Vilsack created a Program Complaints Task Force, managed by a former Director of USDA's Civil Rights program from 1997-1998. In May 2009, Secretary Vilsack called for a review of 11,000+ of the 14,000+ cases. The Program Complaints Task Force completed a review and determined that 3,800 could have merit. The multi-agency Task Force that worked on this at one point was comprised of 50 USDA employees and legal interns.
- Unfortunately, the statute of limitations had expired in 80% of the 3,800 cases and it will take an act of Congress to extend the statute of limitations for these cases to be resolved. To this end, we have provided technical assistance to Congress including background information, data, and draft language. And we have worked actively with congressional leadership to include relevant provisions in a legislation passed by the U.S. House of Representatives in December 2009.
- Among the 3,800 cases that may have merit, the Task Force is working to prepare for closure on those for which they have sufficient information, and to coordinate fact finding in those cases where they do not, once the statute of limitations is passed by Congress.
- And to ensure that a backlog like the one he encountered will not occur under his watch, Secretary Vilsack set a policy to resolve all complaints either in formal closure and/or a settlement before the expiration of the statute of limitations. To meet this standard, we restored ASCR's travel budget of \$2.5 million for those investigating the complaints (the budget had been eliminated) and Vilsack's USDA has doubled the number of employees working to process program discrimination complaints. It took some time for the updated ASCR program complaint process to get up and running, but under our enhanced process, USDA is consistently completing the processing of complaints within the statute of limitations.
- After a competitive bidding process, USDA hired a firm to do an independent external analysis of our service delivery programs to identify problem areas and fixes. Jackson Lewis LLP Corporate Diversity Counseling Group is working to review services delivery. Jackson Lewis has completed more than 1,500 interviews of state and local USDA employees in the 14 states where the majority of program complaints originate and is currently planning interviews in 2 more. They are tentatively planning focus groups, pending OMB approval, to get feedback from our customers.
- Since Vilsack became Secretary, the Office of the Assistant Secretary for Civil Rights has closed all but one of the 47 management challenges recommended by USDA's Office of Inspector General (OIG). This is the first time that the backlog of pending OIG recommendations has been eliminated since they began in 1999.
- The Department upgraded its communication and reporting database (the Civil Rights Enterprise System) which uses information technology advances and resources to improve the quality, timeliness and cost-effectiveness of ASCR services. This system allows us to process, track, and manage civil rights complaints from customers regarding USDA

programs, to disseminate reliable data, fulfill time-sensitive reporting requirements and to help the Department identify any emerging trends or problem areas. Prior to this upgrade there was no comprehensive system for tracking civil rights complaints at USDA internally or externally.

- Compliance reviews are a primary tool by which USDA polices itself with regards to civil rights. They are used – both proactively and reactively – to evaluate the civil rights and equal opportunity policies, procedures, practices of an agency within USDA. In the 14 months from June 2009 to August 2010, Secretary Vilsack’s ASCR completed six compliance reviews to evaluate the effectiveness of selected agencies regarding compliance with civil rights regulations and policies. This is the same number of reviews that were completed in the 3 prior years.
- Civil Rights Impact Analysis (CRIA) is another tool by which USDA polices itself with regards to civil rights. Before implementing a policy, action, rule, or decision that affects USDA employees, customers or its programs activities, an individual agency within USDA must complete a CRIA and submit it to ASCR for approval. Agencies must receive approval of a CRIA on every advisory committee, commission or board appointed at or by USDA, and also when they wish to conduct reorganizations. The CRIA process is designed to ensure that the civil rights impact of any of these changes is considered, and to offer recommendations of how these might be mitigated.
In 2008, the final year of the prior administration, ASCR gave a rubber stamp to every CRIA that was submitted: none of the many dozens of CRIs completed were rejected or even flagged for additional recommendations. But in 2009, Secretary Vilsack’s ASCR took issue with more than 1 in 5 CRIA’s – either to ‘non-concur’ and reject the action, or to offer ‘contingent concurrence’ – to accept the proposed action contingent on following their recommend changes.

Training

Secretary Vilsack knows that moving USDA past its history of Civil Rights issues will also require a cultural transformation within the Department. That is why he has worked to communicate with all USDA employees about this goal – and to offer Civil Rights training to improve our program delivery and make USDA a model employer.

- At Secretary Vilsack’s direction, every Washington, DC-based political appointee in the Department has attended civil rights trainings and USDA has offered civil rights training to Farm Service Agency, Natural Resources Conservation Service, and Rural Development leadership and staff at state offices in more than a dozen select states that have a history of problems in this area. The 5 states selected for civil rights training for the Farm Service Agency state leadership accounted for a total of 40% of FSA program complaints in FY 2008, and the 5 states selected for Rural Development trainings represented 42% of RD program complaints in the same period. These two agencies account for the bulk of USDA program complaints.

This is the first time such trainings have been conducted with state leadership at USDA. We are also working to arrange civil rights training for Forest Service regional leadership.

ASCR plans to hold civil rights training for all political appointees in the states and all Senior Executive Service employees during FY 2011.

- To improve our internal civil rights record and decrease the number of Equal Employment Opportunity (EEO) complaints filed, Secretary Vilsack's USDA is a strong proponent for addressing and resolving conflicts as early as possible. The Office of the Assistant Secretary for Civil Rights', Early Resolution and Conciliation Division conducts monthly Alternative Dispute Resolution (ADR) training workshops and other activities to increase the awareness of ADR through creative methods for resolving conflict and strengthening relationships. These workshops have been presented to live audiences, webinar, and teleconferences to include employees located outside the Washington, DC metropolitan area.
- USDA continues to be a leader in gay, lesbian, bisexual and transgender (GLBT) diversity in the Federal government. In June 2009, while honoring GLBT Pride Month, Vilsack signed a Departmental regulation to officially recognize GLBT employees by creating a special emphasis program for that group of employees which is similar to special emphasis programs for constituency groups. We are one of few Federal agencies to have such a program in place and other Federal agencies have contacted USDA about our GLBT diversity program and are interested in copying it.

USDA has a training component that addresses sexual orientation and gender identity diversity. This training component has been part of the overall civil rights training program for several years.

Improved Outreach Efforts

- USDA established the Office of Advocacy and Outreach to improve access to USDA programs and enhance the viability and profitability of small farms and ranches, beginning farmers and ranchers, and socially disadvantaged farmers and ranchers. Congress provided funding for this office in the 2008 Farm bill, and this Office will help ensure that access is provided to all USDA customers in an equal and fair manner and enable USDA employees to be increasingly responsive to the American people they serve.
- Secretary Vilsack and other senior leaders have taken an active role in reaching out to traditionally underserved groups in personal meetings, speeches, visits to conferences, and other methods. We hosted our first-ever 'USDA Academies' where leaders in the Hispanic and African-American advocacy communities spent a day at USDA to learn about our programs and interact with top USDA officials. Secretary Vilsack himself has met with the Congressional Black Caucus, addressed the National Conference of Black Mayors and attended the Rainbow PUSH Coalition Annual Conference and NAACP Centennial Convention.
- Secretary Vilsack has made improving relations with Native American Tribes a priority. He has directed all USDA agencies to engage in and be thoughtful about tribal issues and to comply with requirements of Tribal consultation and collaboration as directed by the Presidential Memorandum of November 5, 2009.

Vilsack has named a Senior Advisor on Tribal Relations for the first time. In the past there was a Native American Program Director, but the new position now directly reports to the Secretary. In addition, the Secretary has launched an Office of Tribal Relations within the Office of the Secretary with an annual budget of \$1 million. The Office is now working across all 17 agencies to implement an action plan, to ensure tribes have greater access to the full breadth of USDA programs, and that the Department regularly engages in Tribal consultation.

A More Diverse USDA

- Under Secretary Vilsack, USDA's politically appointed workforce represents the full diversity of America with self-identified African-Americans, Hispanics, Asian Americans and Pacific Islanders, Native Americans, Veterans, Americans with Disabilities, and Gay and Lesbian Americans.

Program and Contracting Successes

- Of the total 2,875 Recovery Act direct loans issued by the Farm Service Agency to help struggling farmers pay for 2009 planting and other farming expenses, 624 – or 21% - were issued to socially disadvantaged farmers. For standard program funding, 16% of loans went to socially disadvantaged farmers.
- In FY 2010, USDA will award grants worth \$19 million to tribes, educational institutions, and non-profit organizations throughout the country to conduct training, outreach and technical assistance for socially disadvantaged farmers, ranchers and forest landowners.
- In FY 2010, USDA provided more than \$145 million to help support minority-service institutions of higher educations. These schools – the 1890 Historically Black Land-Grant Universities, the 1994 Land Grant Native American tribally-controlled colleges and universities, and the Hispanic Serving Institutions – play a major role in putting young adults on a path to success in their careers and lives.
- USDA spends more than 50% of contracting dollars with small business, exceeding the 23% federal small business procurement standard. We have ongoing outreach and technical assistance initiatives with small farmer cooperatives and Service Disabled Veteran Owned Small Business specifically in the area of processed foods and commodities.

Work to Address Civil Rights Cases Pending at USDA

USDA has made it a priority to resolve all of the civil rights cases facing the Department, including cases inherited by this Administration brought by black, Hispanic, Native American, and women farmers. Secretary Vilsack has repeatedly stated his commitment to resolving cases involving allegations of past discrimination by farmers and ranchers as well as ensuring that every farmer and rancher is treated equally and fairly.

- In May 2009, President Obama announced his plans to include an additional \$1.15 billion in settlement funds for black farmers in the FY 2010 budget to bring closure to their long-standing litigation against the U.S. Department of Agriculture once and for all. On February 18, 2010, USDA entered into a settlement with black farmers for \$1.25 billion, known as

Pigford II. Legislation is required to fund this settlement agreement beyond the \$100 million provided for in the 2008 Farm Bill. The House passed legislation, and the Senate still needs to act on legislation that would include the funding.

Currently, USDA is working with the Department of Justice to establish a plan that would turn the page on the discrimination claims of Hispanic and women farmers:

- Under the plan, the United States would make available \$1.33 billion from the Judgment Fund to implement a unified claims resolution process for Hispanic and women farmers. Hispanic and women farmers who submit claims of discrimination in farm loan programs would go through a streamlined process to have their claims resolved. As with black farmers in Pigford II, payments may be up to \$50,000, but actual award amounts may vary depending on the number of successful claimants.
- We are also currently engaged in settlement discussions with a class of Native American farmers.

Recognition and Evidence of USDA Efforts

The success of USDA's recent efforts to confront a history of civil rights abuses has been recognized and verified by a host of internal and external parties and metrics.

- The Government Accountability Office (GAO) has recognized the progress made by the Vilsack USDA on civil rights. In April 2010, the Government Accountability Office reviewed USDA responses to an October 2008 audit of ASCR and found no need for additional follow-up. Previously GAO had produced a string of reports and testimony that took issue with USDA's handling of civil rights issues:
 - The October 2008 report and previous GAO reports issued in 1999 and 2002 had included recommendations for improving civil rights problems within the Department.
 - 2001 and 2003 GAO reports which addressed USDA management more broadly noted discrimination complaints as management challenges for the Department.
 - In 2008, a GAO official provided testimony before the U.S House Committee on Oversight and Government entitled, "Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention."
 - A complete list of GAO filings on USDA related to civil rights is at bottom.
- Since Vilsack became Secretary, the Office of the Assistant Secretary for Civil Rights has closed all but one of the 47 management challenges recommended by USDA's Office of Inspector General (OIG). This is the first time that the backlog of pending OIG recommendations has been eliminated since they began in 1999.

- A host of national organizations – including the Federation of Southern Cooperatives/Land Assistance Fund, the Land Loss Prevention Project, the NAACP and the National Black Farmers Association praised USDA’s efforts to settle the Pigford lawsuit.
- The USDA has made progress on employee discrimination complaints as well. The Equal Employment Opportunity Commission (EEOC) reported in its *Federal Work Force for Fiscal Year 2009* report that out of a total of 6,905 complaints closed on the merits, about 3% resulted in findings of discrimination. At USDA, from 2004 to 2008, out of 1,677 EEO complaints closed on the merits, only 20 (1.19%) resulted in findings of discrimination. At Secretary Vilsack’s USDA, ASCR is in line with the Federal Government-wide average in finding merit in complaints of unlawful employment discriminatory practices. In FY 2009, we reported that out of 466 EEO complaints closed on the merits, 11 (3.13%) resulted in findings of discrimination. And to date in FY 2010, 3.6% of complaints have been found to have merit.

Even more significantly – the total number of EEO complaints filed by USDA employees has dropped. Through the third quarter of FY 2010, we are on pace to have 13% fewer complaints than the average over the past 4 years, and 10% fewer than the year of the past 4 with the fewest complaints.

Cultural Transformation at USDA

Our efforts to tackle our history of civil rights are part of a broader effort towards cultural transformation at USDA. Secretary Vilsack appointed a Transformation Task Force, comprised of a diverse group of USDA leadership who put together a draft plan to make USDA a premier organization and model employer. In creating the plan, the Task Force sponsored seven listening sessions for employees across the country and Secretary Vilsack hosted a phone-in Tele Town Hall meeting where more than 2,000 employees dialed in to ask questions about the cultural transformation process.

- The draft plan developed by the Task Force with employee input looks at a host of ways to ensure that USDA provides better services to our customers and for USDA employees to become more fulfilled by our jobs. As part of the transformation, the Department set goals: to be open, responsive, collaborative, transparent, and highly-effective in implementing its many missions; to ensure that employees are respectful of the diversity of its workforce and constituencies; and to encourage the workforce to be engaged and motivated, empowered to succeed, and trained to meet future challenges.
- To build a modern workforce, USDA created a streamlined summer internship program and increased the total number of interns hired in Washington DC and in the field by more than 10% to 8,600. The program developed a new recruitment strategy and worked to ensure that interns were provided with a meaningful experience. The simplified process made it easier to bring in a diverse and talented pool of interns for the summer.

A Brief History of Discrimination at USDA

The challenges USDA faces with regard to civil rights are not new. In fact, in 1965 the U.S. Commission on Civil Rights found discrimination at USDA in both program delivery and the

treatment of employees. Subsequent reports in 1982 and 1990 found that civil rights abuses at the USDA were actively contributing to the decline in minority farm ownership.

In 1997, the Clinton administration decided it was time for USDA to address its long history of civil rights problems by appointing a team of USDA leaders to develop a set of recommendations for moving forward. In addition to reviewing and auditing prior reports, in January 1997, the team hosted 12 listening sessions which were attended by 2,000 customers and 900 employees across the country. The Civil Rights Action Team (CRAT) listening sessions brought decades of civil rights issues facing the department to the forefront of USDA and the public eye.

Between 2001 and 2008, the Bush Administration changed USDA's approach to handling civil rights claims. In 2001, the new administration stopped doing field investigations and only investigated civil rights cases over the phone. During this period, the statute of limitations ran on most of these administrative claims while they were being considered by USDA.

USDA was also the target of a host of lawsuits seeking redress for discrimination in program delivery. In terms of claims filed in federal district court by black farmers, the USDA entered into a consent agreement in 1999 with black farmers, known as Pigford I, in which the agency agreed to pay farmers for alleged past discrimination in lending and other USDA programs as part of a claims resolution process. Thousands of claims had been adjudicated, and the government has provided a cumulative total of approximately \$1.03 billion in cash relief, estimated tax relief, and debt relief to successful claimants. But thousands of other claims were not considered on their merits because the affected farmers submitted their claims after the settlement claims deadline.

In 2008, to address claims that were not filed in timely manner in the original Pigford consent agreement, Congress provided these farmers another avenue for redress in the 2008 Farm Bill by providing a right to file a claim in federal court and appropriated a \$100 million "placeholder" in the legislation – but no settlement in the lawsuit would be reached until Secretary Vilsack was appointed to head the USDA (see *Civil Rights Cases Pending at USDA* below).

In addition to the lawsuits filed by black farmers, USDA is the target of lawsuits – some of which sought class-action status – brought by women, Hispanic, and Native Americans producers.

GAO Reports Related to Civil Rights at USDA

- GAO-09-650T (April 2009) – *Recommendation and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues*
- GAO-09-62 (October 2008) – *Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights,*
- GAO-08-755T (May 2008) – *Management of Civil Rights Efforts Continues to be Deficient Despite Years of Attention*
- GAO-03-96 (January 2003) – *Department of Agriculture Performance and Accountability Series*

- GAO-02-1124T (September 2002)– *Hispanic and Other Minority Farmers Would Benefit from Improvements in the Operations of the Civil Rights Program* (testimony but no report/audit conducted).
- GAO-02-942 (September 2002) *Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers*
- GAO-01-521R (April 2001) – *U.S. Department of Agriculture: Resolution of Discrimination Complaints Involving Farm Credit and Payment Programs*
- GAO-01-242 (January 2001) - *Major Management Challenges and Program Risks: Department of Agriculture*
- T-RCED-00-286 (September 2000) – *U.S. Department of Agriculture: Problems in Processing Discrimination Complaints*
- RCED-99-38 (January 1999) – *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints*