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Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

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August 29, 2012

The Honorable Joe Baca  
Ranking Member  
Subcommittee on Nutrition and Horticulture  
Committee on Agriculture  
House of Representatives

The Honorable Marcia L. Fudge  
Ranking Member  
Subcommittee on Department Operations,  
Oversight, and Credit  
Committee on Agriculture  
House of Representatives

*Subject: U.S. Department of Agriculture: Progress toward Implementing GAO's Civil Rights Recommendations*

For decades, the U.S. Department of Agriculture (USDA) has been the focus of federal inquiries into allegations of discrimination against minorities and women both in the programs it administers and in its workforce. In addition, USDA has been and continues to be involved in large civil rights lawsuits claiming discriminatory behavior on the part of USDA, including lawsuits brought by African-American, Native American, Hispanic, and women farmers. In 2002, Congress authorized the position of the Assistant Secretary for Civil Rights to, among other things, provide leadership to ensure USDA's compliance with all civil rights and related laws under all its programs.

In October 2008, we reported on management deficiencies in the Office of the Assistant Secretary for Civil Rights (OASCR), and included six recommendations.<sup>1</sup> These recommendations call for plans to resolve discrimination complaints, ensure the quality of OASCR databases, and develop a department-level strategic plan for unifying USDA civil rights activities. The recommendations also call for USDA to obtain an independent legal examination of some prior civil rights decisions, obtain approval from the Office of Management and Budget to collect demographic data, and explore the potential for an ombudsman office to contribute to addressing civil rights concerns.

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<sup>1</sup>GAO, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62 (Washington, D.C.: Oct. 22, 2008).

This report formally transmits the enclosed briefing that was given to your offices on July 27, 2012, in response to your request for information on the progress USDA has made toward implementing the recommendations in our October 2008 report (encl. I).<sup>2</sup> To obtain information on USDA's efforts to address these recommendations, we interviewed officials from OASCR, the Office of Advocacy and Outreach, the Office of the Chief Financial Officer, the Office of Inspector General, and the Office of the Secretary, and reviewed documents they provided. We also discussed a draft of the briefing slides with OASCR officials before the briefing, and we incorporated their suggested technical corrections, as appropriate. In addition, subsequent to the briefing, OASCR provided us updated information on its actions to address the recommendations pertaining to the development of a department-level strategic plan for unifying civil rights activities and exploration of an ombudsman office. We incorporated this new information, as appropriate, into the related slides in the enclosure.

We conducted this performance audit from November 2011 to August 2012 in accordance with generally accepted government auditing standards. Those 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 based on our audit objectives.

In summary, as of August 2012, USDA had fully addressed three of our recommendations, made significant progress toward addressing two, and made some progress toward addressing one, as shown in table 1.

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<sup>2</sup>To describe the status of USDA's progress in responding to the recommendations, we developed four categories based on the following criteria: "fully addressed" means USDA completed all needed actions to address a recommendation, "significant progress" means USDA completed more than half but not all needed actions, "some progress" means USDA completed less than half the needed actions, and "no progress" means USDA completed no needed actions.

**Table 1: Status of USDA’s Progress to Address Our 2008 Recommendations**

Recommendation	Status			
	Fully addressed	Significant progress	Some progress	No progress
1. Prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints from beginning to end.		√		
2. Develop and implement a plan to ensure the accuracy, completeness, and reliability of OASCR’s databases on customer and employee complaints, and that provides for independent validation of OASCR’s data quality.		√		
3. Obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of a sample of USDA’s prior investigations and decisions on civil rights complaints, along with suggestions for improvement.	√			
4. Work expeditiously to obtain the Office of Management and Budget’s approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.	√			
5. Develop a results-oriented, department-level strategic plan for civil rights at USDA that unifies USDA’s departmental approach with that of OASCR and the newly created Office of Advocacy and Outreach and that is transparent about USDA’s efforts to address the concerns of stakeholders.			√	
6. Further explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees, including seeking legislative authority, as appropriate, to establish such an office and to ensure its effectiveness, and advise USDA’s congressional oversight committees of the results.	√			

Source: GAO analysis of USDA information.

For additional information on a summary of the results of our work, see enclosure I, slides 7 through 18. We are making no recommendations in this report.

We provided a draft of this report to USDA for review and comment. In written comments, which are reproduced in enclosure II, USDA said it concurred with GAO’s findings regarding the status of USDA’s progress toward implementing recommendations 2 through 6. However, with regard to recommendation 1, that USDA prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints from beginning to end, USDA stated that it believes OASCR has been fully successful in improving the complaint process and included additional information related to recommendation 1 that it asked us to consider. As support, USDA noted that (1) since fiscal year 2009, employee discrimination complaints have been at the lowest levels since USDA began keeping records, reflecting better outreach, counseling, and complaint processing procedures agency wide, and (2) OASCR has revamped the program complaint division since

2010 to improve processing time and work product quality, and, as a result, the statute of limitations has not expired on any program complaints filed with USDA since those improvements were implemented. While these developments are laudable, we note, as reflected in enclosure I (slides 8 through 10), that there is more to be done, including continued work on (1) establishing an electronic records management system; (2) implementing the Lean Six Sigma process; (3) conducting pilot efforts to explore establishing new time frame goals for intake, investigation, and adjudication activities to resolve employee and program complaints; and (4) providing documentation of new policies, procedures, guidance, and training needed to determine if new management controls cover the entire process for resolving complaints. Therefore, we continue to believe that “significant progress” accurately describes USDA’s progress toward implementing recommendation 1.

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We are sending copies of this report to the Secretary of Agriculture, appropriate congressional committees, and other interested parties. This report also is available at no charge on our website at <http://www.gao.gov>.

If you or your staff members have questions concerning this report, please contact me at (202) 512-3841 or [shamesl@gao.gov](mailto:shamesl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were James R. Jones, Jr., Assistant Director; Kevin Bray; Stephen Cleary; Diana C. Goody; Kelly Rubin; and Carol Herrnstadt Shulman.



Lisa Shames  
Director, Natural  
Resources and Environment

Enclosures (2)



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# USDA's Progress toward Implementing GAO's Civil Rights Recommendations

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**Briefing  
Committee on Agriculture  
House of Representatives**

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Note: Slides updated to include more recent information.

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## Background

- For decades, the U.S. Department of Agriculture (USDA) has been the focus of federal inquiries into allegations of discrimination against minorities and women, both in the programs it administers and in its workforce. We and others have reported numerous times on serious weaknesses in USDA's civil rights programs.<sup>1</sup>
- USDA has worked to resolve large civil rights lawsuits alleging discrimination in the delivery of farm programs and loans brought by farmers who are African American (*Pigford v. Glickman*), Native American (*Keepseagle v. Vilsack*), Hispanic (*Garcia v. Vilsack*), and women (*Love v. Vilsack*).
- In 2003, the position of Assistant Secretary for Civil Rights was created, and the Office of the Assistant Secretary for Civil Rights (OASCR) was established.

<sup>1</sup>See related GAO products at the end of this briefing.

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## Background (cont.)

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- In our October 2008 report, we made six recommendations to improve USDA's progress in resolving discrimination complaints, reporting on minority participation in USDA programs, and improving strategic planning efforts.
- On April 21, 2009, the Secretary of Agriculture issued a memorandum, *A New Civil Rights Era for USDA*, outlining 14 actions to change the direction of equal employment opportunity, civil rights, and program delivery to ensure fair treatment of all employees and customers and improve USDA's program delivery.
- In its May 27, 2009, Statement of Action, USDA stated that, overall, it agreed with the recommendations in our October 2008 report and provided its responses to address them. Many of the actions presented in USDA's responses were listed in the Secretary's April 21, 2009, memorandum.

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## Background (cont.)

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- The 2008 Farm Bill directed the Secretary of Agriculture to establish the Office of Advocacy and Outreach (OAO) and transferred advocacy and outreach functions from OASCR to OAO. USDA established OAO on November 3, 2009. The functions transferred include administering a USDA outreach program in collaboration with USDA agencies, and the 1994 Land-Grant Institutions Program to fund education and outreach and provide services to assist Native Americans.
- Since 2009, OASCR has focused on resolving employee and program discrimination complaints, implementing alternative dispute resolution, and reviewing civil rights compliance and providing training at USDA agencies and offices.
- For information on the resolution options and status of employee and program discrimination complaints, see attachment I, and for OASCR's resources for resolving these complaints, see attachment II.

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## Objective and Methodology

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- This briefing is in response to your request for information on the progress USDA has made toward implementing the following six recommendations in our October 2008 report:
  1. Prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints from beginning to end.
  2. Develop and implement a plan to ensure the accuracy, completeness, and reliability of OASCR's databases on customer and employee complaints, and that provides for independent validation of OASCR's data quality.
  3. Obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of a sample of USDA's prior investigations and decisions on civil rights complaints, along with suggestions for improvement.
  4. Work expeditiously to obtain Office of Management and Budget's (OMB) approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.

## Objective and Methodology (cont.)

5. Develop a results-oriented, department-level strategic plan for civil rights at USDA that unifies USDA's departmental approach with that of OASCR and the newly created OAO and that is transparent about USDA's efforts to address the concerns of stakeholders.
  6. Further explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees, including seeking legislative authority, as appropriate, to establish such an office and to ensure its effectiveness, and advise USDA's congressional oversight committees of the results.
- To describe the status of USDA's progress in responding to our prior recommendations, we developed four categories based on the following criteria: "fully addressed" means USDA completed all needed actions to address a recommendation, "significant progress" means USDA completed more than half but not all needed actions, "some progress" means USDA completed less than half the actions, and "no progress" means USDA completed no actions.
  - To obtain information on USDA's efforts to address each of the six recommendations, we interviewed officials from OASCR, OAO, Office of the Chief Financial Officer, Office of Inspector General, and Office of the Secretary, and reviewed documents they provided.
  - We provided OASCR with a draft of these slides for its review and comment. We then met with OASCR officials, who provided suggested technical corrections and updates, which we incorporated as appropriate.

# In Summary

## Status of USDA's Progress to Address GAO's Recommendations

Recommendation	Fully addressed	Significant progress	Some progress	No progress
1. Implement a plan to improve resolution of discrimination complaints that sets time frame goals and provides management controls.		√		
2. Develop a plan to ensure reliability of complaints data.		√		
3. Conduct a legal examination of prior investigations and decisions.	√			
4. Obtain OMB's approval to collect necessary demographic data.	√			
5. Develop a department-level strategic plan for civil rights.			√	
6. Explore potential for ombudsman office.	√			

Source: GAO analysis of USDA information.

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## Recommendation 1: Implement a Plan to Improve Resolution of Discrimination Complaints That Sets Time Frame Goals and Provides Management Controls

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- USDA has made significant progress toward addressing this recommendation.

### Plan

- USDA developed a plan with actions to evaluate and adjust staffing levels to ensure timely resolution of employee and program complaints, improve quality control procedures, establish an electronic records management system, hold agency heads accountable for complaint processing, and strengthen alternative dispute resolution.
- OASCR has implemented many of the plan's actions, such as placing priority on processing program complaints facing the statute of limitations under the Equal Credit Opportunity Act and reviewing the quality of every final agency decision, and continues work on others, such as establishing a records management system.

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## **Recommendation 1: Implement a Plan to Improve Resolution of Discrimination Complaints That Sets Time Frame Goals and Provides Management Controls (cont.)**

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### Time Frame Goals

- For employee complaints, OASCR's goal is to adhere to time frame requirements established by Equal Employment Opportunity Commission (EEOC) regulations, and for program complaints, OASCR adheres to USDA goals established in 2000, according to OASCR officials.
- OASCR is implementing the Lean Six Sigma process to identify efficiencies to reduce time frames for employee and program complaint resolution processes.
- OASCR has begun pilot efforts to explore establishing new time frame goals for completing intake, investigation, and adjudication activities to resolve employee and program complaints.

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## Recommendation 1: Implement a Plan to Improve Resolution of Discrimination Complaints That Sets Time Frame Goals and Provides Management Controls (cont.)

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### Management Controls

- OASCR has implemented new management controls for resolving program complaints. For example, OASCR has
  - developed a “stop-light” sheet to help management identify program complaints requiring priority processing.
  - created a single form that USDA program participants can use to file a civil rights complaint. With a single form, OASCR anticipates that it will standardize the collection of information and reduce processing time.
- OASCR has not provided complete documentation of new policies, procedures, guidance, or training that we need to determine if new management controls cover the entire process for resolving complaints. New time frame goals for processing complaints would have to be final before management controls can be made final.

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## Recommendation 2: Develop a Plan to Ensure Reliability of Complaints Data

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- USDA has made significant progress toward addressing this recommendation.
- **Employee complaint data:** OASCR's efforts to ensure data reliability of the iComplaints database include a comprehensive set of business rules, a data integrity tool, and a quality review management module.
  - OASCR staff conduct two quality reviews each month and revise data, as needed. According to OASCR officials, the iComplaints software checks whether all of the data are complete before OASCR staff can generate a report on employee complaints to meet the EEOC's reporting requirements.

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## Recommendation 2: Develop a Plan to Ensure Reliability of Complaints Data (cont.)

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- **Program complaint data:** OASCR developed and is implementing a plan to check the accuracy of the data entered for every program complaint in the Program Complaints Management System (PCMS).
  - OASCR plans to review the accuracy and completeness of PCMS data prior to moving the complaint to the next stage of the resolution process, review PCMS system and data integrity through quarterly users group meetings, and test the accuracy of PCMS data on a bimonthly and quarterly basis.

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## Recommendation 2: Develop a Plan to Ensure Reliability of Complaints Data (cont.)

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- According to OASCR officials, the office uses contractor-provided formal training to ensure consistent use of iComplaints, and conducts additional training, as needed.
- OASCR has not provided all of the documentation needed for us to assess whether OASCR's planned efforts contain key elements to ensure the accuracy, completeness, and reliability of the iComplaints and PCMS databases. For example, OASCR officials have neither provided documentation showing that the office developed departmental policy to ensure the consistent use of iComplaints and PCMS nor training to ensure the completeness of data in PCMS.

## Recommendation 3: Conduct a Legal Examination of Prior Investigations and Decisions

- USDA has fully addressed this recommendation.
- In 2009, USDA created a task force that reviewed more than 17,000 program discrimination complaints filed with OASCR in fiscal years 2000 through 2008.
- The task force determined that about 3,800 complaints warranted further processing and estimated that about 600 complaints would be eligible for settlement.
- USDA has determined that it cannot further process these complaints under the Equal Credit Opportunity Act because most have exceeded the then applicable 2-year statute of limitations. According to USDA officials, to overcome the statute of limitations, USDA would need legislative relief and about \$60 million to process the complaints and pay the estimated settlement costs, which it is seeking.
- In 2009, the task force made 12 recommendations to OASCR to improve its complaint resolution process. OASCR agreed with most of the recommendations and has taken actions to address them, according to OASCR officials.

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## Recommendation 4: Obtain OMB's Approval to Collect Necessary Demographic Data

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- USDA has fully addressed this recommendation.
- In March 2011, USDA obtained OMB's approval to collect race, ethnicity, and gender (REG) data for the USDA programs that serve agricultural producers and landowners.
- In October 2011, USDA published a departmental regulation to implement the use of a new form it later issued in January 2012 to collect REG data.
- REG data from the Farm Service Agency, Natural Resources Conservation Service, Rural Development, and Risk Management Agency should cover most of the programs that serve agricultural producers and landowners, according to a USDA official.
- USDA is developing an outreach plan to identify additional programs that serve socially disadvantaged farmers and ranchers, and will propose plans to collect demographic data at the USDA agencies responsible for these programs, as needed.

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## Recommendation 5: Develop a Department-level Strategic Plan for Civil Rights

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- USDA has made some progress toward addressing this recommendation.
- USDA does not have a department-level strategic plan specifically for civil rights activities.
- In its departmentwide strategic plan for fiscal years 2010-2015, under a section describing management initiatives, USDA includes some planned civil rights activities, such as reducing the inventory of program complaints and increasing the use of alternative dispute resolution in the employee and program complaints resolution processes.
- USDA officials identified OASCR's strategic plan as the strategic plan for USDA's civil rights activities.
- OASCR has not updated its strategic plan since our report. From October 1, 2009, to November 20, 2011, OASCR was placed under Departmental Management and during that time was not required to develop or update its own strategic plan, according to OASCR officials. Since November 20, 2011, OASCR has reported directly to the Secretary and has been working to develop its own strategic plan.

## Recommendation 5: Develop a Department-level Strategic Plan for Civil Rights (cont.)

- On July 31, 2012, we obtained a revised draft of OASCR's strategic plan that covers fiscal years 2011-2015. OASCR officials estimate that this plan will be final by September 2012.
- OASCR's revised draft strategic plan:
  - Focuses primarily on the activities OASCR plans. The plan does not unify OASCR's approach with OAO, other USDA agencies, or the department as a whole.
  - Does not describe the viewpoints and interests of USDA's external stakeholders, such as community-based organizations. However, according to USDA officials, the department has implemented many recommendations made in two reports: (1) a contractor report (Jackson-Lewis) assessing USDA's delivery of its programs at the state and local level and (2) a Rural Coalition report summarizing five meetings between USDA and community-based organizations.
  - Does not fully address other key issues identified in our October 2008 report, such as measuring performance to gauge progress, using performance information for identifying performance gaps and making program improvements, and identifying external and internal factors that can influence the achievement of its long-term goals.

## Recommendation 6: Explore Potential for Ombudsman Office, Seek Legislative Authority, as Appropriate, and Advise Congressional Oversight Committees of Results

- USDA has fully addressed this recommendation.
- In 2009, OASCR completed efforts to explore the potential for an ombudsman office. It reached out to the Ombudsman Association and ombudsman programs at the Department of Housing and Urban Development, Transportation Security Administration, and National Institutes of Health.
- OASCR concluded an ombudsman would be helpful.
- During our discussion on July 25, 2012, the Assistant Secretary for Civil Rights said he no longer supports the need for an ombudsman because of more recent improvements made by OASCR, including its increased staffing, use of Lean Six Sigma, development of standard operating procedures, and timely processing of complaints.
- On July 26, 2012, the Assistant Secretary for Civil Rights signed a decision memorandum recommending that USDA not establish an ombudsman office.
- The memorandum stated that, by not establishing an ombudsman office, the Secretary and OASCR remain free to take necessary corrective actions to address departmental issues without deference to an independent ombudsman and the costs of an ombudsman office will be saved.
- On July 26, 2012, the Secretary also signed the decision memorandum, concurring with the Assistant Secretary's recommendation.

## Attachment I: Resolution Options and Status of Employee and Program Discrimination Complaints

- The employee and program complaint resolution processes generally consist of three stages—intake (log in, acknowledge, and decide whether to accept or dismiss complaint); investigation; and adjudication.
- **Employee complaints:** Discrimination in hiring, promoting, or retaining employees.
  - May be resolved informally through an equal employment opportunity counselor or alternate dispute resolution. Complainant must contact counselor within 45 days from when the alleged discrimination occurred. Complainant and counselor have up to 90 days to resolve complaint informally.
  - If the complaint is not resolved informally, complainant may file a formal complaint with USDA within 15 days of receiving a written notice from the counselor of the right to file a formal complaint.
  - If USDA accepts the formal complaint, it generally has 180 days, from the date the complaint was filed, to investigate the complaint.
  - USDA's time frame for adjudicating the formal complaint will vary if the complainant requests a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge.
  - Complainant has 30 days to file an appeal of USDA's final decision with the EEOC.

## Attachment I: Resolution Options and Status of Employee and Program Discrimination Complaints (cont.)

- **Program complaints:** Discrimination in awarding or distributing federal program benefits.
  - Generally, complainant may file a program complaint within 180 days from when the alleged discrimination occurred.
  - USDA's procedures state that intake must be completed within 30 days of receiving the complaint, and its investigation must be completed within 120 days from the date intake is completed.
  - USDA has not established a time frame goal to adjudicate a program complaint.
  - If USDA and the complainant cannot agree on an acceptable settlement, the complainant can pursue a civil action.
  - Under the Equal Credit Opportunity Act, the right to pursue a civil action for credit-related claims was subject to a 2-year statute of limitations. The Dodd-Frank Wall Street Reform and Consumer Protection Act increased the statute of limitations to 5 years, effective July 21, 2011.

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## Attachment I: Resolution Options and Status of Employee and Program Discrimination Complaints (cont.)

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- From October 1, 2008, to September 30, 2011 (latest data available), OASCR decreased the inventory of open
  - **employee complaints** from 1,210 to 898, and
  - **program complaints** from 806 to 591.
- According to the Assistant Secretary for Civil Rights, since 2010,
  - OASCR has completed its activities to resolve **employee complaints** within the time frames required by EEOC regulations, and
  - no new **program complaints** have taken more than 2 years to resolve.

## Attachment II: OASCR’s Resources for Resolving Employee and Program Discrimination Complaints

- Available funding, fiscal years 2008 through 2013:

(Dollars in millions)

Fiscal year					
2008	2009	2010	2011	2012 (estimate)	2013 (estimate)
\$20.4	\$21.4	\$23.9	\$22.7	\$21.0	\$22.7

Source: USDA Budget Explanatory Notes, fiscal years 2010-2013.

- Staff resources, as of March 31, 2012:
  - Resolving employee complaints: 27 FTEs for intake and adjudication; OASCR uses contractors or employees of other federal agencies to investigate employee complaints filed against it or other USDA agencies.
  - Resolving program complaints: 33 FTEs for intake, investigations, and adjudications.

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## Related GAO Products

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- *U.S. Department of Agriculture: Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues.* GAO-09-650T. April 29, 2009.
  - *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights.* GAO-09-62. October 22, 2008.
  - *U.S. Department of Agriculture: Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention.* GAO-08-755T. May 14, 2008.
  - *Pigford Settlement: The Role of the Court-Appointed Monitor.* GAO-06-469R. March 17, 2006.
  - *Department of Agriculture: Hispanic and Other Minority Farmers Would Benefit from Improvements in the Operations of the Civil Rights Program.* GAO-02-1124T. September 25, 2002.

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## Related GAO Products (cont.)

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- *Department of Agriculture: Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers.* GAO-02-942. September 20, 2002.
- *U.S. Department of Agriculture: Resolution of Discrimination Complaints Involving Farm Credit and Payment Programs.* GAO-01-521R. April 12, 2001.
- *U.S. Department of Agriculture: Problems in Processing Discrimination Complaints.* GAO/T-RCED-00-286. September 12, 2000.

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## **GAO on the Web**

Web site: <http://www.gao.gov/>

## **Contact**

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## Enclosure II: Comments from the U.S. Department of Agriculture



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

AUG 23 2012

Ms. Lisa Shames  
Director of Natural Resources  
and Environment Issues  
U.S. Government Accountability Office  
441 G Street, NW.  
Washington, D.C. 20548

Dear Ms. Shames:

Thank you for the opportunity to respond to the U.S. Government Accountability Office's (GAO) August 2012, Draft Audit Report titled "U.S. Department of Agriculture: Progress toward Implementing GAO's Civil Rights Recommendations (the "Draft"). Since I became Secretary of Agriculture in 2009, I have made civil rights a top priority for the Department, and we are working to turn the page to move 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 my goal that the USDA achieve Abraham Lincoln's vision of "the People's Department" where each employee and customer is treated fairly and equitably.

For decades, USDA had an unfortunate and checkered history with regards to civil rights. GAO reports going as far back as the 1960s 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.

USDA's Office of the Assistant Secretary for Civil Rights (OASCR) has worked hard to improve the way civil rights issues are handled, and I appreciate the work GAO has done to provide a fair picture of our process.

After reviewing the Draft, USDA concurs with GAO recommendations 2-6. On recommendation 1, USDA believes that OASCR has been fully successful in improving the complaint process. In this letter, I would like to bring to your attention some additional information and accomplishments relevant to GAO recommendation 1. We ask that GAO consider including these in its final report.

A review conducted in 2009 showed that USDA faced a growing backlog of both employment and program complaints, and had one of the lowest rates of findings of discrimination in the Federal government. Moreover, the statute of limitations had expired on many program complaints. The 2009 review showed that in more than 7,000 cases filed between 2001 and 2008, the work 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.

An Equal Opportunity Employer

Ms. Shames  
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In order to overcome these historical challenges, USDA has taken concrete steps to improve complaint processing, training, outreach, and has worked to address class complaints pending at USDA. Under my guidance, USDA has worked with Congress since 2009, and submitted formal budget requests for FY 2012 and FY 2013 to secure an additional \$40 million dollars to address these legacy problems. So far, Congress has not approved this additional funding.

In April 2009, USDA suspended all foreclosures in the Farm Service Agency's (FSA) loan program for 90 days to provide an opportunity to review loans that could have been related to alleged discriminatory conduct. To ensure that a backlog like the one I encountered will not occur under my watch, I 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, I restored OASCR's travel budget of \$2.5 million (which had been eliminated) for those investigating the complaints and doubled the number of employees working to process program discrimination complaints.

Also, in April 2009, as part of our comprehensive effort on civil rights, I called for an independent assessment of USDA's program delivery. In May 2011, we released the results of this Civil Rights Assessment, which took 18 months to complete and provides recommendations that will help USDA improve field-based service delivery to minority and socially disadvantaged farmers and ranchers. A significant number of the recommendations have been addressed by our efforts, and we are taking the others seriously in our effort to be a model service provider.

Since 2009, OASCR has closed all but one of the 47 pending 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 recent report by OIG agreed that USDA had made significant improvements in complaint handling. While OIG found that there is more work to be done to strengthen OASCR procedures for settlement agreements, it nonetheless noted that OASCR had:

. . . significantly improved its monitoring of settlement agreements and closure of program complaints. In addition . . . OASCR improved the organization of case files in its file room, and took steps to improve complaint processing by hiring a contractor to conduct a review of OASCR's management policies.

*USDA Management Challenges*, p. 9, Office of the Inspector General, August 2012.

USDA intends to fully address the five new recommendations made by OIG in its August 2012 report in the coming fiscal year.

USDA has undertaken unprecedented training measures, including training initiatives focused on select states that have a history of civil rights complaints. USDA targeted more than a dozen states for special training measures. The five states selected for training for FSA state leadership accounted for 40 percent of the program complaints against FSA in 2008, and the five states selected for training for Rural Development (RD) state leadership accounted for 42 percent of the program complaints against Rural Development (RD) in the same period.

Ms. Shames

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USDA has worked to address the legacy of large-scale class action lawsuits involving allegations of past discrimination brought by Black and Native American farmers and ranchers and provided a path to justice for women and Hispanic farmers and ranchers who allege discrimination inherited by this administration. On February 18, 2010, USDA worked with the Department of Justice to enter into a settlement with Black farmers for \$1.25 billion, known as *Pigford II*. On October 19, 2010, USDA and the Department of Justice announced the settlement of a class action lawsuit filed against USDA by Native American farmers (*Keepseagle*) alleging discrimination by USDA. On February 25, 2011, USDA and the Department of Justice announced a unified claims process for Hispanic and women farmers and ranchers who allege discrimination between 1981 and 2000. In each of these cases, USDA has worked to achieve a just resolution of past complaints.

In June 2011, the USDA Civil Rights Policy Statement was updated to include gender identity and gender expression. This significant change ensures that our vision for a “New Era in Civil Rights” and a culturally transformed Department is welcoming to all USDA employees, including those who are lesbian, gay, bisexual, or transgender. The revised policy statement is consistent with the Equal Employment Opportunity Commission’s push for Federal agencies to include gender identity in civil rights policies.

USDA’s efforts have produced measurable improvements in results. OASCR has revamped the Program Complaint Division since 2010 to improve processing time and work product quality. By careful stewardship, OASCR was able to add 12 new investigators and 9 new adjudicators in an era of stark budget realities (\$24 million in FY 2007 compared to \$21 million in FY 2012). The statute of limitations has not expired on any program complaints filed with USDA since those improvements were implemented. This hard won change has long-term implications for civil rights at USDA. Timely processing of claims was the focal point of GAO’s 2008 report and will dramatically reduce the likelihood of future class action complaints such as *Pigford*, *Pigford II*, *Keepseagle*, *Garcia*, and *Love*.

USDA has reduced the backlog of both employment and program complaints by improving the speed at which complaints are processed. Since FY 2009, employment complaints have been at the lowest levels since USDA began keeping records. Based on early fourth quarter numbers, we project that this trend will continue in FY 2012. This reflects better outreach, counseling, and complaint processing procedures across the Department.

We believe that OASCR has been fully successful in responding to GAO recommendation 1. We ask that GAO consider including these points and accomplishments in its final report. Responses to specific recommendations are included in Exhibit A.

Sincerely,



Thomas J. Vilsack  
Secretary

Enclosure

**RESPONSE TO GAO's AUGUST 2012 DRAFT REPORT**

**EXHIBIT A**

*GAO, p. 26: Attachment I: Resolution Options and Status of Employee and Program Discrimination Complaints (cont.)*

- *According to the Assistant Secretary for Civil Rights, since 2010,*
  - *OASCR has completed its activities to resolve **employee complaints** within the time frames required by EEOC regulations, and*
  - *No new **program complaints** have taken more than 2 years to resolve.*

**OASCR Response:** OASCR's efforts have produced measurable indicators of progress that we believe merit attention in GAO's report.

- Since FY 2009, EEO complaints have been at the lowest levels since USDA began keeping records. Based on early fourth quarter numbers, we project that this trend will continue in FY 2012. This reflects better outreach, counseling and complaint processing procedures Agency wide.
- OASCR has revamped the program complaint division since 2010 to improve processing time and work product quality. The statute of limitations has not expired on any program complaints filed with USDA since those improvements were implemented. This change has long term implications for civil rights at USDA. Timely processing was the focal point of GAO's 2008 report and will dramatically reduce the likelihood of future class action complaints such as *Pigford, Pigford II, Keepseagle, Garcia, and Love*.

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