

**HEARING TO REVIEW THE U.S. DEPARTMENT  
OF AGRICULTURE'S OFFICE OF THE  
ASSISTANT SECRETARY FOR CIVIL RIGHTS**

---

---

**HEARING**

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS,  
OVERSIGHT, NUTRITION, AND FORESTRY

OF THE

**COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

APRIL 29, 2009

**Serial No. 111-11**



Printed for the use of the Committee on Agriculture  
*agriculture.house.gov*

U.S. GOVERNMENT PRINTING OFFICE

52-596 PDF

WASHINGTON : 2009

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON AGRICULTURE

COLLIN C. PETERSON, Minnesota, *Chairman*

|   |  |
|---|--|
| TIM HOLDEN, Pennsylvania,<br><i>Vice Chairman</i> | FRANK D. LUCAS, Oklahoma, <i>Ranking<br/>Minority Member</i> |
| MIKE McINTYRE, North Carolina                     | BOB GOODLATTE, Virginia                                      |
| LEONARD L. BOSWELL, Iowa                          | JERRY MORAN, Kansas  |
| JOE BACA, California                              | TIMOTHY V. JOHNSON, Illinois                                 |
| DENNIS A. CARDOZA, California                     | SAM GRAVES, Missouri   |
| DAVID SCOTT, Georgia                              | MIKE ROGERS, Alabama   |
| JIM MARSHALL, Georgia                             | STEVE KING, Iowa   |
| STEPHANIE HERSETH SANDLIN, South<br>Dakota        | RANDY NEUGEBAUER, Texas                                      |
| HENRY CUELLAR, Texas                              | K. MICHAEL CONAWAY, Texas                                    |
| JIM COSTA, California                             | JEFF FORTENBERRY, Nebraska                                   |
| BRAD ELLSWORTH, Indiana                           | JEAN SCHMIDT, Ohio   |
| TIMOTHY J. WALZ, Minnesota                        | ADRIAN SMITH, Nebraska                                       |
| STEVE KAGEN, Wisconsin                            | ROBERT E. LATTA, Ohio  |
| KURT SCHRADER, Oregon                             | DAVID P. ROE, Tennessee                                      |
| DEBORAH L. HALVORSON, Illinois                    | BLAINE LUETKEMEYER, Missouri                                 |
| KATHLEEN A. DAHLKEMPER,<br>Pennsylvania           | GLENN THOMPSON, Pennsylvania                                 |
| ERIC J.J. MASSA, New York                         | BILL CASSIDY, Louisiana                                      |
| BOBBY BRIGHT, Alabama                             | CYNTHIA M. LUMMIS, Wyoming                                   |
| BETSY MARKEY, Colorado                            |  |
| FRANK KRATOVIL, JR., Maryland                     |  |
| MARK H. SCHAUER, Michigan                         |  |
| LARRY KISSELL, North Carolina                     |  |
| JOHN A. BOCCIERI, Ohio                            |  |
| EARL POMEROY, North Dakota                        |  |
| TRAVIS W. CHILDERS, Mississippi                   |  |
| WALT MINNICK, Idaho                               |  |

PROFESSIONAL STAFF

ROBERT L. LAREW, *Chief of Staff*  
ANDREW W. BAKER, *Chief Counsel*  
APRIL SLAYTON, *Communications Director*  
NICOLE SCOTT, *Minority Staff Director*

SUBCOMMITTEE ON DEPARTMENT OPERATIONS, OVERSIGHT, NUTRITION, AND FORESTRY

JOE BACA, California, *Chairman*

|   |  |
|---|--|
| HENRY CUELLAR, Texas                    | JEFF FORTENBERRY, Nebraska, <i>Ranking<br/>Minority Member</i> |
| STEVE KAGEN, Wisconsin                  | STEVE KING, Iowa   |
| KURT SCHRADER, Oregon                   | JEAN SCHMIDT, Ohio   |
| KATHLEEN A. DAHLKEMPER,<br>Pennsylvania | CYNTHIA M. LUMMIS, Wyoming                                     |
| TRAVIS W. CHILDERS, Mississippi         |  |

LISA SHELTON, *Subcommittee Staff Director*

## CONTENTS

---

|  | Page |
|--|------|
| Baca, Hon. Joe Baca, a Representative in Congress from California, opening statement .....   | 1    |
| Fortenberry, Hon. Jeff, a Representative in Congress from Nebraska, opening statement .....  | 2    |
| Prepared statement .....   | 3    |
| Kagen, Hon. Steve, a Representative in Congress from Wisconsin, opening statement .....  | 4    |
| Peterson, Hon. Collin C., a Representative in Congress from Minnesota, prepared statement .....                                    | 6    |
| Scott, Hon. David, a Representative in Congress from Georgia, opening statement .....  | 4    |
| WITNESSES  |      |
| Leonard, Jr., Ph.D., Hon. Joe, Assistant Secretary, Office for Civil Rights, U.S. Department of Agriculture, Washington, D.C. .... | 7    |
| Prepared statement .....   | 8    |
| Shames, Lisa, Director, Natural Resources and Environment, U.S. Government Accountability Office, Washington, D.C. ....            | 11   |
| Prepared statement .....   | 13   |



**HEARING TO REVIEW THE U.S. DEPARTMENT  
OF AGRICULTURE'S OFFICE OF THE  
ASSISTANT SECRETARY FOR CIVIL RIGHTS**

**WEDNESDAY, APRIL 29, 2009**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,  
OVERSIGHT, NUTRITION, AND FORESTRY  
COMMITTEE ON AGRICULTURE,  
*Washington, D.C.*

The Subcommittee met, pursuant to call, at 10:40 a.m., in Room 1300, Longworth House Office Building, Hon. Joe Baca [Chairman of the Subcommittee] presiding.

Members present: Representatives Baca, Kagen, Dahlkemper, Childers, Scott, and Fortenberry.

Staff present: Claiborn Crain, Adam Durand, Tyler Jameson, John Riley, Lisa Shelton, Anne Simmons, Rebekah Solem, Kristin Sosanie, Brent Blevins, and Jamie Mitchell.

**OPENING STATEMENT OF HON. JOE BACA, A  
REPRESENTATIVE IN CONGRESS FROM CALIFORNIA**

The CHAIRMAN. The Subcommittee on Department Operations, Oversight, Nutrition, and Forestry hearing to review the Office of the Assistant Secretary for Civil Rights will come to order.

Before we begin, I would like to welcome Mr. Scott, a Member of the full Committee, who has joined us.

Without any objection, Mr. Scott may participate in today's hearing. I welcome the gentleman from Georgia. Thank you very much for being here and being interested in the subject matter.

I would like to begin the hearing with opening statements. I will begin with my opening statement, and then I will call on the Ranking Member, Mr. Fortenberry, to give his statement and then allow the other individuals starting with the Members of the Committee and then the gentleman from Georgia.

I start off by saying, good morning, and thank all of you for being here before the Subcommittee today. I am pleased that, finally, we have the opportunity to conduct an oversight hearing of the USDA Office of Assistant Secretary for Civil Rights.

I congratulate and welcome our new Under Secretary, Dr. Leonard.

And I also welcome Ms. Shames from the GAO.

Thank you both for being here this morning.

I hoped when I first was elected to the Subcommittee chair that we would have this hearing. However, the farm bill and the gen-

eral election and the transition to a new Administration, plus waiting for the completion of the GAO investigation, have all delayed this hearing.

For too long, the reputation of the USDA has been marred by discrimination. Minority producers and employees alike have fought for equal consideration from the Department without full satisfaction. In spite of what I believe to be mostly good-faith efforts, there are decades of failed attempts to successfully establish and enforce equality within and without the Department.

In fact, of the 14,000 complaints that have been filed, since 2000, with the ASCR, only four were actively being investigated. This number is shockingly low. The Committee and others heard firsthand the account of the abuse suffered by African Americans, Hispanics, Native Americans and other minority farmers, and I remember that hearing we had. It was about a 7 to 8 hour hearing. Congresswoman Clayton and I were here at that point.

And last May, many African American farmers testified before Congress on this very issue. Their strong voices played a key role in the initiation of the GAO report that we will be reviewing today.

Let me be clear, discrimination is unacceptable. I repeat, discrimination is unacceptable.

It is long past time to get to work on fixing the problem. To that end, I recognize the commitment of President Obama and Secretary Vilsack, and I appreciate their desire to heal the deep wounds of the USDA's poor civil rights record through the new era of civil rights initiative.

But I believe today's review of the problem outlined in the October 2008 GAO report will be constructive to us all. I want to be very clear, I will conduct an active oversight of ASCR to make sure that the goals set out in the new initiative are fully met. And I state, fully met.

One final note: We made some important changes in the 2008 Farm Bill to help minority producers, including a provision that permits refileing of claims in the *Pigford* discrimination suit. I am proud of this action and await the decision of our court system to ensure that these claims are adjudicated fairly.

Again, I want to thank our witnesses for being here this morning. Today we will listen and learn about some of the problems that have plagued USDA in the past. I am hopeful that we will also learn some of the concrete steps that the Department plans to take, in the right direction, to ensure equitable treatment of all producers and the USDA employees moving forward.

I now yield to Ranking Member Congressman Fortenberry for his opening statement.

**OPENING STATEMENT OF HON. JEFF FORTENBERRY, A  
REPRESENTATIVE IN CONGRESS FROM NEBRASKA**

Mr. FORTENBERRY. Thank you, Mr. Chairman.

I appreciate your interest in calling this hearing today. And I would also like to take the opportunity to welcome our witnesses: Ms. Shames, who is the author of the Government Accountability Office report; and Dr. Joe Leonard, Assistant Secretary for Civil Rights at the Department of Agriculture.

Dr. Leonard, I congratulate you on your recent appointment and confirmation to this post. I look forward to working with you in the future.

Today we will hear testimony from the GAO regarding their October report on challenges facing the Office of Civil Rights at USDA. Specifically we will hear their recommendations and options available to Congress to address these ongoing issues.

I am also looking forward to hearing from you, Dr. Leonard, about what steps USDA will take to respond to the GAO recommendations.

Mr. Chairman, it is absolutely clear, and I agree with your statement, that all farmers deserve equal access to USDA programs regardless of race, ethnicity or gender. USDA has been the subject of extensive litigation regarding claims of discrimination over the last decade with the *Pigford* settlement resulting in payments of nearly a billion dollars. This Committee feels strongly about making sure that USDA is administering all of its programs in an equitable and just manner.

In last year's farm bill, as referenced, we included—we authorized funds to be spent on late filers to the *Pigford* settlement. We also mandated that USDA provide annual reports to our Committee on the number of civil rights complaints made to the Department and the length of time to resolve them, which allows us to better monitor this situation at USDA.

Again, I want to thank our witnesses for appearing before us. I look forward to the testimony.

[The prepared statement of Mr. Fortenberry follows:]

PREPARED STATEMENT OF HON. JEFF FORTENBERRY, A REPRESENTATIVE IN  
CONGRESS FROM NEBRASKA

Thank you Mr. Chairman for calling this hearing. I would like to take this opportunity to welcome our witnesses: Lisa Shames, author of the GAO report, and Dr. Joe Leonard, Assistant Secretary for Civil Rights at USDA. Dr. Leonard, I want to take this opportunity to congratulate you on your recent confirmation to this important post. I look forward to working with you in the future.

We will hear testimony today from GAO regarding their October report on challenges facing the Office of Civil Rights at USDA. Specifically, we will hear their recommendations and options available to the Congress to address these ongoing issues. I am anxious to hear from Dr. Leonard about what steps USDA will take to respond to GAO's recommendations.

Mr. Chairman, I speak for everyone when I say that all farmers deserve equal access to USDA programs regardless of race, ethnicity or gender. As we all know, USDA has been the subject of extensive litigation regarding claims of discrimination over the last decade, with the *Pigford* settlement resulting in payments of nearly a billion dollars.

This Committee feels strongly about making sure that USDA is administering all of its programs in an equitable and just manner. In last year's farm bill, we included an authorization for \$100 million to be spent on payments to late-filers as part of the *Pigford* settlement. We also mandated that USDA provide annual reports to our Committee on the number of Civil Rights complaints made to the Department and the length of time to resolve them, which allows us to better monitor the situation at USDA.

I want to thank our witnesses for appearing before us today and I look forward to their testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Fortenberry.  
Votes are expected by 11:00, so I just wanted to warn us.  
I recognize Mr. Kagen for an opening statement.

**OPENING STATEMENT OF HON. STEVE KAGEN, A  
REPRESENTATIVE IN CONGRESS FROM WISCONSIN**

Mr. KAGEN. Thank you, Mr. Chairman.

I want to thank you for holding this hearing on this very important subject. It matters not just to me; it matters to everybody in Wisconsin and in the country.

The history of the USDA with regard to the lack of enforcement of our civil rights is a long history of failure—failure to comply. I will just report some of the numbers that I am sure you are already familiar with.

In 1969, of the 4,100 employees with the ASCS, the Agriculture Stabilization Conservation Service, of 4,100 people working there, there were two people of African American descent. In 1920, there were 925,000 farms owned by people of darker skin than Caucasians; and in 2000, 18,000. So let the numbers speak for themselves.

But, look not just at the numbers, take a look at the record. When President Nixon was in office, he had Earl Butz working at the Department of Agriculture, and it was under the direction of Earl Butz that he secretly helped seven states avoid decreasing funding that would have come to those states because of violations of Title VI of the Civil Rights Act.

It didn't stop there. President Reagan with John Block idled the Civil Rights Office and stopped investigations of complaints coming from black farmers.

So the history of our civil rights being applied to the institution of the USDA is a sorry one, and I think you all have a lot of work to do.

It is not just about applying all of the laws. It is making sure that the people who are in positions of power apply them equally, and develop a process wherein we can feel reassured that the funding that we provide to the USDA gets to the people on the lands who need it the most and in an equitable fashion.

It is not about reorganization. It shouldn't be about forming another commission or an ombudsman. It is not about forming another committee to oversee someone else. It is just about getting the job done. It is about results. I echo the Chairman's view; there should be no discrimination anywhere along the line.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Georgia, Mr. Scott, for an opening statement.

**OPENING STATEMENT OF HON. DAVID SCOTT, A  
REPRESENTATIVE IN CONGRESS FROM GEORGIA**

Mr. SCOTT. I thank you, Mr. Chairman, for your longstanding advocacy of civil rights and equal treatment for all American citizens. Your record speaks to that during your long distinguished career, and I wanted to recognize you for your leadership in the civil rights area.

Nowhere is this more significant now than with black farmers. As my colleague, Mr. Kagen, so very aptly described, the history is there. It is replete with discrimination.

As one who grew up on a black farm in rural South Carolina, one who comes from a long line of black farmers, as many of our people



do, we know and have witnessed firsthand the inequitable treatment.

Also, Mr. Chairman, as you and I served on the Conference Committee for the farm bill, we were very, very adamant in strengthening the Civil Rights Department in the United States Department of Agriculture. At that time, we pointed out the absolute need for it. Also, as part of that bill, farm bill, Mr. Chairman, you and I both made sure that the *Pigford* situation was addressed and that we put in funding of \$100 million as a start, not an end, as we move forward to address that situation.

We are making progress. First of all, I want to commend Dr. Joe Leonard who is now the Assistant Secretary of Civil Rights for the Department of Agriculture. What a stirring appointment that is. Your tenure as Executive Director of the Congressional Black Caucus is an extraordinary one, and I am sure if you just match that service as the Director of the Congressional Black Caucus, you are going to do an excellent job in here. And you have the full support of this Congress in carrying out your very challenging and important piece of work.

I also feel compelled to say that, thus far, in the short period of time that he has been in office, Secretary Vilsack has done a tremendous job, especially in his outreach to the minority farmer community, and understanding and having a full grasp of the dimensions of the past vestiges of prejudice and discrimination that have been applied to black farmers. So I want to commend Secretary Vilsack for his aggressive efforts to reverse course at the United States Department of Agriculture and correct its shameful civil rights legacy. We all applaud the direction that Secretary Vilsack is taking, and his commitment to civil rights, as far as black farmers are concerned.

In fact, within days of his confirmation, one of Secretary Vilsack's first official actions was to travel to my own State of Georgia. Certainly, we have our share of black farmers. He traveled to Georgia to address civil rights concerns at a conference of the Federation of Southern Cooperatives in Albany, Georgia. That is a sign of his commitment in this area. One of the first trips he took was into the deep South to grab a firsthand impression of the challenges facing black farmers. And we are so grateful to the Secretary for doing that.

By now, I am sure we have all seen the Department-wide memo that Secretary Vilsack has recently sent to all United States Department of Agriculture employees laying out his vision for, as he called it, a "new civil rights era" at the United States Department of Agriculture. That is an example of the commitment of this new Secretary of the Department of Agriculture.

Make no mistake about it, challenges remain. We have to do everything we can to make sure that all available Federal funds can get to these black farmers. However, given that President Obama has been in office only 100 days, Secretary Vilsack even less, and Dr. Leonard barely having had time to unpack his bags, I am comfortable with the direction of the new leadership of the United States Department of Agriculture is headed in with respect to civil rights.

I greatly look forward to working with Secretary Vilsack on this, certainly with your Subcommittee, Mr. Chairman.

Dr. Leonard, as we look to these issues in the future, I look forward to a very informative and productive hearing.

Thank you, Mr. Chairman, for having me.

The CHAIRMAN. Thank you, Mr. Scott, for your statement. The chair requests that other Members submit their opening statements for the record.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN  
CONGRESS FROM MINNESOTA

I thank the Chairman and the Ranking Member for their leadership on this issue.

For the past few decades, there have been civil rights violations and concerns in the U.S. Department of Agriculture. Whether it be violations against Department employees or clients of USDA programs, the complaints are troublesome and minority producers deserve better.

The farm bill has been a vehicle to try and correct some of these problems in the past. The 2002 Farm Bill first established the Office of the Assistance Secretary for Civil Rights at the U.S. Department of Agriculture, and the most recent farm bill included a provision (under the jurisdiction of the Judiciary Committee) to permit re-filing of claims in the *Pigford* discrimination suit.

Both of these actions were important steps in assisting and encouraging opportunity for minority farmers and ranchers, just as the oversight hearing this Subcommittee is conducting today is an important step to increase awareness and ensure that the ASCR is doing what it is supposed to. I have spoken to the new Assistant Secretary, Dr. Leonard, and it's clear to me that he is committed to ensuring that minority farmers and ranchers get the fair and equal treatment that they've been waiting for all these years.

USDA's difficulties in resolving discrimination complaints have been the focus of investigative reports from USDA's Office of the Inspector General and the Government Accountability Office (GAO)—the most recent of which was published in October last year and will be an integral part of today's discussion.

The findings are dramatic:

- As of July 2007, more than 850 complaints still had not been addressed, and there is not enough staff to tackle the backlog;
- the efforts made to resolve complaints have consistently been hindered by disparities in data and reporting;
- many of the steps ASCR has taken to address these problems were actually counterproductive;
- and currently, there is no plan on how to correct the problems in the future.

It is important to get these problems resolved in order to restore public and producer confidence in USDA's ability to uphold civil rights. I thank the witnesses for coming today and look forward to hearing the testimony.

The CHAIRMAN. Again, I would like to introduce both of them. Each of you will have 5 minutes, and then we will proceed with questions from the Members here.

I would like to introduce the Honorable Joe Leonard, Jr., Assistant Secretary for Civil Rights, U.S. Department of Agriculture, from Washington, D.C.

After him will be Lisa Shames, Director, Natural Resources and Environment, U.S. Government Accountability Office, Washington, D.C.

Dr. Leonard, please begin when you are ready.

**STATEMENT OF THE HON. JOE LEONARD, JR., PH.D.,  
ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S.  
DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.**

Dr. LEONARD. Mr. Chairman, Members of the Subcommittee, and my former boss, Representative Scott, thank you for the opportunity to appear before this Subcommittee today.

I want to thank President Obama for his confidence in nominating me to this esteemed position, and also Members of Congress and Secretary Vilsack for their support.

I am honored to be able to discuss with you my initial review of the Office of the Assistant Secretary for Civil Rights. As of today, I have been in the position of Assistant Secretary for Civil Rights at USDA for a total of 23 days. In those 23 days, I have met several times with Secretary Vilsack and other senior leadership and Office of Civil Rights employees.

My initial assessment of the Civil Rights Department has been wide and varied. After several sessions with the Secretary, I can assure you he is committed and is the driving force to turn around civil rights at USDA. Secretary Vilsack expressed his commitment to civil rights in his first meeting with USDA employees when he told them that civil rights is one of his top three priorities.

In addition, Secretary Vilsack has charged me with being the conduit for making sure that the civil rights priority is met and that we forever close the chapter of USDA as the last plantation. I am confident that, under Secretary Vilsack's leadership, we will achieve this goal.

I sincerely believe my career experiences in social justice and civil rights, and my background in American history, have prepared me to handle the challenges and mitigate the barriers facing the Office of the Assistant Secretary for Civil Rights. History only repeats itself if we are not vigilant, and we will be vigilant.

USDA has a documented chaotic history in civil rights for which we plan to address. Frequent changes in leadership and reorganizations and lack of resources, human and fiscal, have contributed much to the chaos. To address this situation and elevate civil rights within USDA, the 2002 Farm Bill authorized the establishment of the position of Assistant Secretary for Civil Rights. Clearly, this was a step in the right direction, to move civil rights forward, but the full intent for the office is yet to be realized. There still remains the challenge of addressing a ballooning inventory of complaints in a timely manner and in efficient complaint processing.

Many farmers and ranchers have not received adequate due process in the handling of their complaints. Complaints were held beyond the expiration of the statute of limitations under the Equal Credit Opportunity Act, resulting in complainants being ineligible to receive compensatory damages for the findings of discrimination.

Our initial assessment has disclosed that complaints were closed without a proper investigation, resulting in the foreclosure moratorium being lifted and complainants' farms being foreclosed on without proper determination on their complaint.

This matter raised a serious concern for Secretary Vilsack. And to ensure that it does not occur in the future on his watch, and in response to economic challenges facing farmers, he has temporarily suspended all foreclosures on farm loans for approximately 90 days.

And I assure you that I will not allow improper closures of civil rights complaints to occur on my watch.

Along with the assistance of Lloyd Wright, Adviser to the Secretary of Civil Rights Programs Complaint, we have developed a plan of action to ensure that those individuals whose complaints were closed in error are reviewed and fairly investigated.

I am aware of the initial response to the GAO report recommendations. I have revised the original response to comport with GAO's recommendations and to address many of the root causes of the deficiencies in the management of civil rights at USDA.

My written testimony includes a more in-depth discussion on how I plan to address the recommendations, including the creation of an ombudsman office.

On April 21, 2009, Secretary Vilsack issued a memorandum to all USDA employees outlining his initial steps to change the direction of equal employment opportunity, civil rights, and program delivery in the Department. I am confident that under Secretary Vilsack's leadership, civil rights at the Department will be improved in a transparent and ethical manner, which will lead the way in making USDA a model organization.

We will implement, in an expeditious manner, GAO's recommendations and the results of my initial assessment of civil rights matters at the Department. It is Secretary Vilsack's and my top priority to ensure that all USDA constituents, customers, stakeholders, employees and applicants are provided equal access to the opportunities, programs and services available through the people's Department.

We would like to acknowledge our constituents, customers, stakeholders and Congress in supporting the Secretary's actions to address civil rights challenges at USDA.

Again, I would like to thank you for the opportunity to share the Department's plans to address the challenges and barriers facing civil rights at USDA.

Thank you for your time.

[The prepared statement of Dr. Leonard follows:]

PREPARED STATEMENT OF HON. JOE LEONARD, JR., PH.D., ASSISTANT SECRETARY,  
OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to submit this statement on the review of the United States Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR).

I have been in the position of the Assistant Secretary for Civil Rights at USDA for 23 days. During this time, I have met several times with Secretary Vilsack and other senior leadership, OASCR employees, and begun my initial assessment of civil rights in the Department. After several sessions with the Secretary, I can assure you he is committed and is the driving force to turn around civil rights at USDA. Secretary Vilsack expressed his commitment to improving civil rights in his first meeting with USDA employees when he told them civil rights is one of his top priorities.

I share Secretary Vilsack's dedication and commitment to civil rights. My career in social justice and civil rights is a testament to that end and I foresee that commitment playing a vital role in overseeing civil rights at USDA. I am confident that I, along with the staff that Secretary Vilsack has put together at USDA, will be able to tackle the barriers and challenges facing civil rights at the Department.

The recent Government Accountability Office (GAO) report on the "Management Deficiencies in the Office of the Assistant Secretary for Civil Rights" lists six recommendations that I plan to begin implementing immediately. During its review,

GAO assessed USDA's efforts to (1) resolve discrimination complaints, (2) report on minority participation in farm programs, and (3) strategically plan its efforts. The report is based on new and prior reports, including an analysis of OASCR's discrimination complaint management and strategic planning, and interviews with officials of USDA and other agencies, as well as 20 USDA stakeholder groups. GAO made recommendations for executive action to USDA to resolve discrimination complaints; improve data reliability; develop a civil rights strategic plan; obtain an independent review of USDA processes; obtain approval for data collection; and explore establishing an ombudsman.

Below is how I plan to address the recommendations made specifically to USDA:

**GAO Recommendation:** Prepare and implement an improvement plan for resolving discrimination complaints that sets timeframe goals and provides management controls for resolving complaints from beginning to end.

**USDA Response:** USDA's improvement plan includes:

1. Evaluate and adjust staffing levels to ensure resolution of discrimination complaints in a timely manner.
  - Continue the interagency agreement with the National Equal Employment Opportunity Investigative Services in the U.S. Postal Service to assist with the overflow of employment complaint cases that cannot be timely processed by OASCR staff, and continue to utilize contract attorneys to prepare final agency decisions (FADs). By June 30, 2009, conduct an internal workload analysis to determine if additional contract attorneys are needed.
  - OASCR has procured the services of a special advisor, Lloyd Wright, to conduct a workload analysis and to develop a plan for required staffing to review program complaints that have been processed since Fiscal Year 2000 and those currently being processed. The staffing plan includes staff needed to conduct the quality assurance review of complaints processed since the Fiscal Year 2000, as well as permanent staff to conduct investigations and adjudication of complaints. A task force will be immediately created to begin to carry out the plan developed by Mr. Wright.
2. Improve the quality control procedures.
  - By October 1, 2009, review and revise performance standards based on the results of the workload analysis for all employees who process complaints to ensure reasonable quantity is achieved while not sacrificing quality.
  - Continue quality control reviews of complaint FADs, and monitor case inventory and workload productivity. Every FAD is currently reviewed by OASCR for quality control.
  - Implement Lloyd Wright's task force plan recommendations, which include quality assurance for program complaints processed since Fiscal Year 2000.
  - Design and implement management controls to ensure complaints are received, stored and processed in a consistent manner, within specific timeframes. The first phase of this process has been implemented by a contract to review and design a state of the art electronic records system.
  - Create and institute a correspondence management policy and plan for all OASCR correspondence.
  - In response to the economic challenges, the Secretary will continue to use his existing authority to temporarily suspend all current foreclosures within the Farm Service Agency's farm loan program for approximately 90 days. This time also affords the Department the opportunity to review the loans for any problems associated with possible discriminatory conduct. USDA is also in discussions with the Department of Justice regarding their exercising their authority to review existing litigation over these loans, so that such a review might be conducted.
  - OASCR will review the organization and roles of the OASCR and ensure that appropriate emphasis and staffing is being placed on enforcement of EEO and Civil Rights laws regarding employment and program delivery by July 1, 2009.
3. Establish a state-of-the-art records management system.
  - OASCR has hired a trained Records Manager and is implementing procedures to ensure that the records management program is in compliance with applicable departmental regulations.

- OASCR will design and implement management controls to ensure complaints are received, stored and processed in a consistent manner, within specific timeframes. The first phase of this process has been implemented by a contract to review and design a state of the art electronic records system.
- 4. Hold agency heads accountable for their performance in program and employment complaint processing.
  - Each year OASCR evaluates agency heads using the Agency Head Civil Rights Performance Assessment Plan. USDA agency heads will be held accountable for their timely submission of counselor reports, agency position statements and employment reports of investigation.
- 5. Strengthen Alternative Dispute Resolution (ADR) across the Department.
  - By December 30, 2009, develop a plan for the organizational structure of ADR and best practices based on the results of the ombudsman study.

**GAO Recommendation:** 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.

**USDA Response:** USDA will take immediate action to migrate all program complaint data to one data system; add additional data elements to ensure usefulness of the system; and develop departmental policy and training for agency Civil Rights directors to ensure consistent use of the system. Quality assurance will be an integral part of this process.

**GAO Recommendation:** 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.

**USDA Response:** Through the creation of the earlier mentioned task force, USDA will immediately create a Task Force to conduct a review of program civil rights complaints that have been processed since the year 2000 or that are currently being processed. The efforts of the task force will be supported with assistance from an independent legal counsel with additional resources to conduct the review, investigations, and complaint adjudication. Agencies will be asked to contribute detailees for both short- and long-term phases of the task.

**GAO Recommendation:** To improve USDA efforts to address civil rights issues and the participation of minority farmers and ranchers in USDA programs, work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.

**USDA Response:** OASCR will, in collaboration with OMB and other relevant agencies, fully implement automated corporate race, ethnicity, and sex, national origin, disability, and age data collection for NRCS, FSA, and RD at the field office level. The second phase will be the development of a corporate proposal across USDA. OASCR, in collaboration with the service center agencies, will implement all provisions of the 2008 Farm Bill related to tracking and monitoring of client services, including "Receipt for Services" by October 1, 2009.

**GAO Recommendation:** 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.

**USDA Response:** USDA will ensure that its strategic plan incorporates a comprehensive, results-oriented, Department-wide strategy for civil rights, including outreach, and addresses the concerns of constituents and stakeholders. USDA will:

- Publish a Request for Proposals (RFP) to obtain an independent external analysis of program delivery in our field offices of Natural Resources Conservation Service, Farm Service Agency and Rural Development which will provide specific recommendations and methodologies that will ensure that programs are delivered equitably and that access is afforded to all constituents, with particular emphasis on socially disadvantaged farmers, ranchers, and other constituents. While this study will apply to these three agencies, the results may be implemented in all USDA agencies to ensure that all USDA programs are accessible.
- Establish separate outreach, advocacy and diversity functions and the completion of the study of the field office delivery system.
- Draft a final report summarizing the information gleaned from the previous partners' meetings to be published by June 30, 2009 and to be considered in the field office delivery system study.

**GAO Recommendation:** 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.

**USDA Response:** USDA has convened a team to study the creation of an ombudsman office, including Alternative Dispute Resolution (ADR) services in the Department, and to make recommendations for establishing the office and strengthening the ADR function by September 30, 2009.

I am confident that under Secretary Vilsack's leadership, civil rights at the Department will be improved in a transparent and ethical manner which will lead the way in making USDA a model organization. We will implement in an expeditious manner, GAO's recommendations and initiatives that result from my final assessment of civil rights matters at the Department. It is Secretary Vilsack's and my top priority to ensure that all USDA applicants, customers, constituents and stakeholders, as well as all USDA employees, are provided equal access to the opportunities, programs and services available through "the People's Department."

Again, I would like to thank you for the opportunity to share the Department's plan on how to address challenges and barriers facing civil rights at USDA.

The CHAIRMAN. Thank you very much, Dr. Leonard.  
Ms. Shames.

**STATEMENT OF LISA SHAMES, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.**

Ms. SHAMES. Thank you, Chairman Baca, and Members of the Subcommittee. I am pleased to be here today to discuss USDA's management of civil rights issues.

Today's hearing is especially timely. It provides an opportunity for the new Administration to discuss solutions to these issues.

This morning I would like to make two observations. First, while GAO found numerous deficiencies in USDA's management of civil rights, we have also made constructive recommendations.

On a positive note, as Dr. Leonard just mentioned, USDA is beginning to take steps on all of our recommendations.

Second, we have identified additional options that are relevant for USDA. These options, a statutory performance agreement, and oversight board, and an ombudsman have held other Federal agencies accountable and helped them improve their performance.

First, let me recap our findings. We found that backlogs and discrimination complaints persist, and steps to speed up investigations may have adversely affected quality. In response to our recommendation, USDA told us they are beginning to develop an improvement plan with timeframes for resolving complaints. USDA also plans to obtain an independent, legal review of a sample of USDA's prior decisions. We believe this last step in particular will help build confidence in USDA's management.

We also reported that much of the data on minority participation in USDA programs are unreliable. These data are unreliable because they are mostly based on visual observation, so traits such as race and ethnicity may not be apparent. USDA needs approval from OMB to collect data directly from program participants, and published a notice in the *Federal Register* in 2004 to obtain this approval. However, USDA did not follow through. Accordingly, we made the recommendation in our recent report. USDA officials indicated a new notice is under review.

Last, we found that USDA's strategic planning was limited. A key element is to involve stakeholders, but the interest of USDA stakeholders are not explicitly reflected in its strategic plan. For example, our interviews with community-based organizations and minority interest groups show they would like better access to farm programs, more diversity among USDA employees who work with minority producers and better access to farm programs. USDA told us it will develop a results-oriented Department level strategic plan in the next planning cycle.

Moving forward, our work on high-risk, underperforming Federal agencies has identified options that could benefit USDA. These options include making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement, establishing an oversight board, and creating an ombudsman for USDA civil rights matters.

Congress has required performance agreements in other Federal offices, and the results have been positive. For example, the Education Department's Office of Student Aid had experienced long-standing financial and management weaknesses. Congress required its Chief Operating Officer to have a performance agreement with the Secretary of Education that was to be transmitted to Congress and made publicly available. In addition, the office was required to report to Congress annually on its performance. Subsequently, GAO removed this program from our high-risk list because of the improvements.

More recently, Congress has required statutory performance agreements for the Commissioners at the Patent and Trademark Office and the Under Secretary for Management at the Department of Homeland Security.

Congress could also authorize an oversight board, as it has for other Federal activities, including public accounting and drug safety. Oversight boards can provide assurance that activities are well done, identify weaknesses that may need to be addressed, and provide for transparency. For example, Congress established the IRS Oversight Board to oversee the fair administration of tax collections. At that time, IRS was considered to be an agency that was not effectively serving the public or meeting taxpayer needs.

Finally, establishing an ombudsman for USDA civil rights matters could help address the concerns of USDA employees and customers. There are currently 43 ombudsmen in Federal agencies. External ombudsmen can help agencies be more responsive to the public through impartial and independent investigation of complaints. For example, we reported that the EPA ombudsmen are points of contact for those who have concerns about hazardous waste cleanups. We also identified that the Transportation Security Administration ombudsman is one who can recommend changes to improve customer service.

USDA officials indicated that a team was convened to study the ombudsman concept and will make recommendations by September 30, 2009.

In summary, USDA has been addressing allegations of discrimination for decades without achieving fundamental improvements. GAO and others have offered recommendations for improving civil rights management. It appears that USDA is taking steps to imple-



ment them. Nevertheless, the options GAO has identified can make it clear that Congress and the public hold USDA accountable for improving its longstanding deficiencies in civil rights.

Mr. Chairman, this concludes my prepared statement, and I am pleased to answer any questions you or Members of the Subcommittee may have.

[The prepared statement of Ms. Shames follows:]

PREPARED STATEMENT OF LISA SHAMES, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.

### **Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues**

#### **Highlights**

Highlights of GAO-09-650T (<http://www.gao.gov/new.items/d09650t.pdf>), a testimony before the Subcommittee on Department Operations, Oversight, Nutrition and Forestry, Committee on Agriculture, House of Representatives.

#### **Why GAO Did This Study**

For decades, there have been allegations of discrimination in the U.S. Department of Agriculture's (USDA) programs and workforce. Numerous Federal reports have described serious weaknesses in USDA's civil rights program—in particular, in resolving discrimination complaints and providing minority farmers with access to programs. In 2002, Congress authorized the position of Assistant Secretary for Civil Rights (ASCR) at USDA to provide leadership for resolving these long-standing problems.

This testimony focuses on ASCR's efforts to (1) resolve discrimination complaints, (2) report on minority participation in farm programs, and (3) strategically plan its efforts. GAO also reviewed the experiences of other Federal agencies to develop options for addressing management deficiencies within ASCR. This testimony is based primarily on GAO's May 2008 testimony (GAO-08-755T) on ASCR management deficiencies and October 2008 report (GAO-09-62) that made a number of recommendations to the Secretary of Agriculture and suggested certain matters for Congressional consideration. At the time, USDA agreed with most of the recommendations but not with the matters for Congressional consideration. In April 2009, ASCR officials said USDA accepts all of the recommendations and is beginning steps to implement them; these officials also said they hope doing so will preclude the need for the Congressional actions GAO suggested.

View GAO-09-650T (<http://www.gao.gov/products/GAO-09-650T>) or key components.

For more information, contact Lisa Shames at [Redacted] or [Redacted].

#### **What GAO Found**

ASCR's difficulties in resolving discrimination complaints persist. ASCR has not achieved its goal of preventing backlogs of complaints, and this effort has been undermined by ASCR's faulty reporting and disparities in ASCR data. Also, some steps ASCR took to speed up its work may have adversely affected the quality of its work. Consequently, we recommended that the Secretary of Agriculture implement plans to (1) improve how USDA resolves discrimination complaints and (2) ensure the reliability of ASCR's databases on customer and employee complaints. We also recommended that USDA obtain an independent legal examination of a sample of USDA's prior investigations and decisions on civil rights complaints.

USDA considers much of its data on minority farmers' participation in farm programs to be unreliable because they are based on employees' visual observations about participants' race and ethnicity that may not be correct. USDA stated that it needs the Office of Management and Budget's (OMB) approval to collect more reliable data. Consequently, in October 2008, we recommended that the Secretary of Agriculture work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.

ASCR's strategic planning does not address key steps needed to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. In October 2008, we recommended that the Secretary of Agriculture develop a strategic plan for civil rights at USDA that unifies USDA's departmental approach with that of ASCR and that is transparent about USDA's efforts to address the concerns of stakeholders.

Three options that have been used at other agencies dealing with significant performance issues are relevant to addressing certain long-standing ASCR issues: statutory performance agreements, which could help ASCR achieve specific expectations by providing additional incentives and mandatory public reporting; an oversight board, which could improve USDA's administration of civil rights activities and provide transparency; and an ombudsman office, which could assist in resolving civil rights concerns at USDA. In October 2008, we suggested that Congress consider (1) making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement and (2) establishing a USDA civil rights oversight board. In addition, we recommended that the Secretary of Agriculture explore the potential for an ombudsman office to help address the civil rights concerns of USDA customers and employees.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the U.S. Department of Agriculture's (USDA) progress in addressing long-standing civil rights issues. For decades, 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. Numerous reports and Congressional testimony by officials of the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, USDA's Office of Inspector General (OIG), GAO, and others have described extensive concerns about discriminatory behavior in USDA's delivery of services to program customers—in particular, minority farmers—and its treatment of minority employees. Many of these reports and testimonies described serious weaknesses in USDA's management of its civil rights programs—in particular, weaknesses in providing minorities with access to USDA programs and in resolving discrimination complaints. In addition, USDA has been the subject of several large class-action lawsuits claiming discriminatory behavior on the part of the Department. For example, the *Pigford v. Glickman* case has resulted in the payment of about \$1 billion in claims to African American farmers.

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) authorized the Secretary of Agriculture to create the new position of Assistant Secretary for Civil Rights, elevating responsibility within USDA for carrying out USDA's civil rights efforts. Under the 2002 Farm Bill, the Secretary may delegate responsibility to the Assistant Secretary for Civil Rights for ensuring that USDA complies with all civil rights-related laws and considers civil rights matters in all USDA strategic planning initiatives. In 2003, the position of Assistant Secretary for Civil Rights was created with these and other delegated responsibilities, and these responsibilities are carried out through the Office of the Assistant Secretary for Civil Rights (ASCR). In addition, the 2002 Farm Bill and subsequent legislation require USDA to report annually on minority participation in USDA programs.

The new Administration has indicated its commitment to improve the management of civil rights at USDA. For example, the new Secretary of Agriculture testified in March 2009 that improving this management is one of his top priorities and he will dedicate the resources necessary to achieve this improvement. And earlier this month, USDA's new Assistant Secretary for Civil Rights was confirmed. This official, who brings to the position prior civil rights experience, also has pledged to improve this management. Furthermore, on April 21, 2009, the Secretary issued a memorandum to all USDA employees reiterating that civil rights is one of his top priorities and stating that he intends to take definitive action to improve USDA's record on civil rights and move USDA to a new era as a model employer and premier service provider. Thus, this oversight hearing is particularly timely: it provides an opportunity to briefly restate the scope of civil rights problems at USDA, but more importantly it offers an opportunity to discuss possible solutions to these problems for the benefit of these new officials.

I will focus my testimony today on three primary issues: ASCR's (1) resolution of discrimination complaints, (2) reporting on minority participation in USDA programs, and (3) strategic planning for ensuring USDA's services and benefits are provided fairly and equitably. I will also discuss lessons learned from the experiences of other Federal agencies to develop options for addressing USDA's long-standing problems. My statement is based primarily on our May 2008 testimony on management deficiencies in ASCR and our October 2008 report on recommendations and options to address these deficiencies.<sup>1</sup> To perform that work, we interviewed officials

<sup>1</sup>GAO, *U.S. Department of Agriculture: Management of Civil Rights Continues to Be Deficient Despite Years of Attention*, GAO-08-755T (<http://www.gao.gov/new.items/d08755t.pdf>) (Washington, D.C.: May 14, 2008) and *U.S. Department of Agriculture: Recommendations and Options*

representing ASCR, USDA's OIG, USDA's agency-level civil rights offices, the Equal Employment Opportunity Commission, community-based organizations, and minority groups. We examined ASCR's strategic plan and other relevant planning documents, USDA documents about efforts to resolve discrimination complaints, and USDA's reporting on minority participation in its programs. In addition, we analyzed data provided by ASCR and found it to be unreliable; we made recommendations accordingly. We also considered our own guidance and reporting on results-oriented management<sup>2</sup> and reviewed our experience in addressing the problems of high-risk, underperforming agencies.<sup>3</sup> We conducted this work 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 the evidence obtained provides this reasonable basis.

In summary, I would like to make two observations. First, we found numerous deficiencies in ASCR's management of civil rights, and we offered a number of recommendations to address them. In April 2009, ASCR officials said that USDA has begun to take steps to implement each of these recommendations. Specifically:

- Regarding discrimination complaint resolution, we reported that ASCR had not achieved its goal of preventing backlogs of complaints and that this effort was undermined by ASCR's faulty reporting and disparities in ASCR data. Also, some steps ASCR took to speed up its work may have adversely affected the quality of its work. Consequently, we recommended that USDA prepare and implement an improvement plan for resolving discrimination complaints; develop and implement a plan to ensure the accuracy, completeness, and reliability of ASCR's databases on complaints; and obtain an independent legal examination of a sample of USDA's prior investigations and decisions on civil rights complaints. ASCR officials said that the Department is taking steps to set time-frame goals and establish proper management controls; move data from ASCR's three complaint databases into one; and obtain independent legal advice on its program complaints.
- Regarding minority participation in USDA programs, we reported that much of the data that USDA provided to Congress and the public on minority farmers' participation in farm programs are unreliable because they are, for the most part, based on visual observation of program applicants. Data gathered in this manner are considered unreliable because individual traits, such as race and ethnicity, may not be readily apparent to an observer. To address this inherent shortcoming, USDA said it needs to collect standardized data directly from program participants, which requires approval from the Office of Management and Budget (OMB). Accordingly, we recommended that USDA work expeditiously to obtain such approval from OMB. ASCR officials indicated that a draft *Federal Register* notice requesting OMB's approval to collect these data is being reviewed within the Department.
- Regarding strategic planning, we reported that ASCR's planning was limited and did not reflect the views of relevant stakeholders, such as community-based organizations and minority interest groups; did not link to the plans of other USDA agencies or the Department; could better measure performance to gauge its progress; did not discuss the potential for using performance information for identifying USDA's performance gaps; and did not link funding with anticipated results. Consequently, we recommended that USDA develop a results-oriented Department-level strategic plan for civil rights that unifies USDA's departmental approach with that of ASCR and the newly created Office of Advocacy and Outreach and that is transparent about USDA's efforts to address stakeholder concerns. ASCR officials said they plan to implement this recommendation during the next Department-wide strategic planning process.

to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights, GAO-09-62 (<http://www.gao.gov/new.items/d0962.pdf>) (Washington, D.C.: October 22, 2008).

<sup>2</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (<http://www.gao.gov/archive/1996/gg96118.pdf>) (Washington, D.C.: June 1996); *Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review*, GAO/GGD-10.1.16 (<http://www.gao.gov/archive/1997/gg1016.pdf>) (Washington, D.C.: May 1997); *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, GAO/GGD-10.1.20 (<http://www.gao.gov/special.pubs/gg10120.pdf>) (Washington, D.C.: April 1998); and *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO-04-38 (<http://www.gao.gov/new.items/d0438.pdf>) (Washington, D.C.: Mar. 10, 2004).

<sup>3</sup>For example, see most recently GAO, *High-Risk Series: An Update*, GAO-09-271 (<http://www.gao.gov/new.items/d09271.pdf>) (Washington, D.C.: January 2009).

Moving forward, my second observation is that the experience of other agencies in addressing significant performance issues provides options that are relevant for addressing certain long-standing ASCR issues. We identified three options that are relevant for consideration.

- Option 1: Congress could require USDA’s Assistant Secretary for Civil Rights to be subject to a statutory performance agreement. Congress previously required executives at several other Federal agencies to be subject to these agreements. Such an agreement can be transmitted to Congressional Committees and made public, and the office in question can be required to report to Congress annually on its performance, including the extent to which it met its performance goals. Such an agreement for ASCR could assist in achieving specific expectations by providing additional incentives and mandatory public reporting.
- Option 2: Congress could authorize an oversight board for USDA civil rights activities. Oversight boards have been used for a wide variety of purposes by the Federal Government, including oversight of public accounting, intelligence matters, civil liberties, and drug safety. A USDA civil rights oversight board could be authorized to independently monitor, evaluate, approve, and report on USDA’s administration of civil rights activities, thereby identifying weaknesses that need to be addressed and providing transparency.
- Option 3: USDA could explore establishing an ombudsman office to address customer and employee concerns about civil rights, including determining whether legislation is a prerequisite for an ombudsman to be effective at USDA. Many other agencies have created ombudsman offices for addressing employees’ concerns. A USDA ombudsman who is independent, impartial, fully capable of conducting meaningful investigations and who can maintain confidentiality could assist in resolving civil rights concerns at USDA.

In October 2008, we suggested that Congress consider (1) making USDA’s Assistant Secretary for Civil Rights subject to a statutory performance agreement and (2) establishing a USDA civil rights oversight board. USDA initially disagreed with these suggestions; in April 2009, however, ASCR officials said that, while the Department no longer disagrees with these suggestions, they hope that the actions they are taking or planning to improve the management of civil rights at USDA will preclude the need for these mechanisms. In addition, we recommended that USDA explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees. In April 2009, ASCR officials indicated that the Assistant Secretary for Civil Rights has convened a team to study the ombudsman concept and to make recommendations by September 30, 2009, to the Secretary of Agriculture for establishing an ombudsman office.

#### **Problems in Resolving Discrimination Complaints Persist**

The credibility of USDA’s efforts to correct long-standing problems in resolving customer and employee discrimination complaints has been undermined by faulty reporting of complaint data, including disparities we found when comparing various ASCR sources of data. When ASCR was created in 2003, there was an existing backlog of complaints that had not been adjudicated. In response, the Assistant Secretary for Civil Rights at that time called for a concerted 12 month effort to reduce this backlog and to put lasting improvements in place to prevent future complaint backlogs. In July 2007, ASCR reported that it had reduced its backlog of 690 complaints and held the complaint inventory to manageable levels through Fiscal Year 2005.<sup>4</sup> However, the data ASCR reported lack credibility because they were inconsistent with other complaint data it reported a month earlier to a Congressional subcommittee. The backlog later surged to 885 complaints, according to ASCR data. Furthermore, the Assistant Secretary’s letter transmitting these data stated that while they were the best available, they were incomplete and unreliable. In addition, GAO and USDA’s OIG have identified other problems with ASCR’s data, including the need for better management controls over the entry and validation of these data.

In addition, some steps that ASCR took to speed up its investigations and decisions on complaints in 2004 may have adversely affected the quality of its work. ASCR’s plan called for USDA’s investigators and adjudicators, who prepare agency decisions, to nearly double their normal pace of casework for about 12 months. ASCR’s former Director, Office of Adjudication and Compliance, stated that this increased pace led to many “summary” decisions on employees’ complaints that did not resolve questions of fact, with the result that many decisions were appealed to

<sup>4</sup>USDA, *First 1,000 Days, 2003–2006* (Washington, D.C.: July 2007).

the Equal Employment Opportunity Commission. This official also said these summary decisions “could call into question the integrity of the process because important issues were being overlooked.” In addition, inadequate working relationships and communications within ASCR, as well as fear of retaliation for reporting management-related problems, complicated ASCR’s efforts to produce quality work products. In August 2008, ASCR officials stated they would develop standard operating procedures for the Office of Adjudication and Compliance and had provided USDA staff training on communication and conflict management, among other things. While these are positive steps, they do not directly respond to whether USDA is adequately investigating complaints, developing thorough complaint decisions, and addressing the problems that gave rise to discrimination complaints within ASCR.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), enacted in June 2008, states that it is the sense of Congress that all pending claims and class actions brought against USDA by socially disadvantaged farmers and ranchers should be resolved in an expeditious and just manner. In addition, the 2008 Farm Bill requires USDA to report annually on, among other things, the number of customer and employee discrimination complaints filed against each USDA agency, and the length of time the agency took to process each complaint.

In October 2008, we recommended that the Secretary of Agriculture take the following actions related to resolving discrimination complaints:

- Prepare and implement an improvement plan for resolving discrimination complaints that sets timeframe goals and provides management controls for resolving complaints from beginning to end.
- Develop and implement a plan to ensure the accuracy, completeness and reliability of ASCR’s databases on customer and employee complaints, and that provides for independent validation of ASCR’s data quality.
- 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.

USDA agreed with the first two recommendations, but initially disagreed with the third, asserting that its internal system of legal sufficiency addresses our concerns, works well, and is timely and effective. Given the substantial evidence of civil rights case delays and questions about the integrity of USDA’s civil rights casework, we believe this recommendation remains valid and necessary to restore confidence in USDA’s civil rights decisions. In April 2009, ASCR officials said that USDA now agrees with all three of the recommendations and that the Department is taking steps to implement them. These steps include hiring a consultant to assist ASCR with setting timeframe goals and establishing proper management controls; a contractor to help move data from ASCR’s three complaint databases into one; and a firm to provide ASCR with independent legal advice on developing standards on what constitutes a program complaint and actions needed to adjudicate those complaints.

#### **Reports on Minority Participation Are Unreliable and of Limited Usefulness**

As required by the 2002 Farm Bill, ASCR has published three annual reports on the participation rate of socially disadvantaged farmers and ranchers in USDA programs. The reports are to provide statistical data on program participants by race and ethnicity, among other things. However, much of these data are unreliable because USDA lacks a uniform method of reporting and tabulating race and ethnicity data among its component agencies. According to USDA, to collect standardized demographic data directly from participants in many of its programs, it must first obtain OMB’s approval. In the meantime, most of USDA’s demographic data are gathered by visual observation of program applicants, a method that is inherently unreliable and subjective, especially for determining ethnicity. To address this problem, ASCR published a notice in the *Federal Register* in 2004 seeking public comment on its plan to collect standardized data on race, ethnicity, gender, national origin, and age for all its programs. However, while it received some comments, ASCR has not moved forward to finalize this rulemaking and obtain OMB’s approval to collect these data.

The 2008 Farm Bill contains several provisions related to reporting on minority farmers’ participation in USDA programs. First, it requires USDA to annually compile program application and participation rate data for each program serving those farmers. These reports are to include the raw numbers and participation rates for the entire United States and for each state and county. Second, it requires USDA to ensure, to the maximum extent practicable, that the Census of Agriculture and

studies by USDA's Economic Research Service accurately document the number, location, and economic contributions of minority farmers in agricultural production.

In October 2008, to address underlying data reliability issues, as discussed, and potential steps USDA could take to facilitate data analysis by users, we recommended that the Secretary of Agriculture work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program. USDA agreed with the recommendation. In April 2009, ASCR officials indicated that a draft *Federal Register* notice requesting OMB's approval to collect these data for Farm Service Agency, Natural Resources Conservation Service, and Rural Development programs is being reviewed within USDA. These officials said they hoped this notice, which they considered an initial step toward implementing our recommendation, would be published and implemented in time for USDA's field offices to begin collecting these data by October 1, 2009. According to these officials, USDA also plans to seek, at a later time, authority to collect such data on participants in all USDA programs.

### **Strategic Planning Is Limited and Lacks Needed Components**

In light of USDA's history of civil rights problems, better strategic planning is vital. Results-oriented strategic planning provides a road map that clearly describes what an organization is attempting to achieve and, over time, it can serve as a focal point for communication with Congress and the public about what has been accomplished. Results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and making program improvements.

ASCR has started to develop a results-oriented approach as illustrated in its first strategic plan, *Assistant Secretary for Civil Rights: Strategic Plan, Fiscal Years 2005-2010*, and its *ASCR Priorities for Fiscal Years 2007 and 2008*. However, ASCR's plans do not include fundamental elements required for effective strategic planning. In particular, we found that the interests of ASCR's stakeholders—including representatives of community-based organizations and minority interest groups—are not explicitly reflected in its strategic plan. For example, we found that ASCR's stakeholders are interested in improvements in (1) USDA's methods of delivering farm programs to facilitate access by underserved producers; (2) the county committee system, so that stakeholders are better represented in local decisions; and (3) the diversity of USDA employees who work with minority producers. A more complete list of these interests is included in the appendix.

In addition, ASCR's strategic plan does not link to the plans of other USDA agencies or the Department and does not discuss the potential for linkages to be developed. ASCR could also better measure performance to gauge progress, and it has not yet started to use performance information for identifying USDA performance gaps. For example, ASCR measures USDA efforts to ensure USDA customers have equal and timely access to programs by reporting on the numbers of participants at USDA workshops rather than measuring the results of its outreach efforts on access to benefits and services. Moreover, the strategic plan does not make linkages between levels of funding and ASCR's anticipated results; without such a discussion, it is not possible to determine whether ASCR has the resources needed to achieve its strategic goal of, for example, strengthening partnerships with historically black land-grant universities through scholarships provided by USDA.

To help ensure access to and equitable participation in USDA's programs and services, the 2008 Farm Bill provided for establishing the Office of Advocacy and Outreach and charged it with, among other things, establishing and monitoring USDA's goals and objectives to increase participation in USDA programs by small, beginning, and socially disadvantaged farmers and ranchers. As of April 2009, ASCR officials indicated that the Secretary of Agriculture plans to establish this office, but has not yet done so.

In October 2008, we recommended that USDA develop a results-oriented Department-level strategic plan for civil rights that unifies USDA's departmental approach with that of ASCR and the newly created Office of Advocacy and Outreach and that is transparent about USDA's efforts to address stakeholder concerns. USDA agreed with this recommendation. In April 2009, ASCR officials said they plan to implement this recommendation during the next Department-wide strategic planning process, which occurs every 5 years. Noting that the current plan runs through 2010, these officials speculated that work on the new plan will start in the next few months.

### Lessons Learned That Could Benefit USDA's Civil Rights Performance

Our past work in addressing the problems of high-risk, underperforming Federal agencies, as well as our reporting on results-oriented management, suggests three options that could benefit USDA's civil rights performance. These options were selected based on our judgment that they (1) can help address recognized and long-standing problems in USDA's performance, (2) have been used previously by Congress to improve aspects of agency performance, (3) have contributed to improved agency performance, and (4) will result in greater transparency over USDA's civil rights performance. These options include (1) making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement, (2) establishing an agriculture civil rights oversight board, and (3) creating an ombudsman for agriculture civil rights matters.

#### *A Statutory Performance Agreement Could Help Define Accountability for Results*

Our prior assessment of performance agreements used at several agencies has shown that these agreements have potential benefits that could help improve the performance of ASCR.<sup>5</sup> Potential benefits that performance agreements could provide USDA include (1) helping to define accountability for specific goals and align daily operations with results-oriented programmatic goals, (2) fostering collaboration across organizational boundaries, (3) enhancing use of performance information to make program improvements, (4) providing a results-oriented basis for individual accountability, and (5) helping to maintain continuity of program goals during leadership transitions.

Congress has required performance agreements in other Federal offices and the results have been positive. For example, in 1998, Congress established the Department of Education's Office of Federal Student Aid as the government's first performance-based organization.<sup>6</sup> This office had experienced long-standing financial and management weaknesses and we had listed the Student Aid program as high-risk since 1990. Congress required the office's Chief Operating Officer to have a performance agreement with the Secretary of Education that was transmitted to Congressional Committees and made publicly available. In addition, the office was required to report to Congress annually on its performance, including the extent to which it met its performance goals. In 2005, because of the sustained improvements made by the office in its financial management and internal controls, we removed this program from our high-risk list. More recently, Congress has required statutory performance agreements for other Federal executives, including for the Commissioners of the U.S. Patent and Trademark Office and the Under Secretary for Management of the Department of Homeland Security.<sup>7</sup>

A statutory performance agreement could benefit ASCR. The responsibilities assigned to USDA's Assistant Secretary for Civil Rights were stated in general terms in both the 2002 Farm Bill and the Secretary's memorandum establishing this position within USDA. The Secretary's memorandum stated that the Assistant Secretary reports directly to the Secretary and is responsible for (1) ensuring USDA's compliance with all civil rights laws and related laws, (2) coordinating administration of civil rights laws within USDA, and (3) ensuring that civil rights components are incorporated in USDA strategic planning initiatives. This set of responsibilities is broad in scope, and it does not identify specific performance expectations for the Assistant Secretary. A statutory performance agreement could assist in achieving specific expectations by providing additional incentives and mandatory public reporting.

In October 2008, we suggested that Congress consider the option of making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement. USDA initially disagreed with this suggestion, in part stating that the Assistant Secretary's responsibilities are spelled out in the 2002 and 2008 Farm Bills. In response, we noted, in part, that a statutory performance agreement would go beyond the existing legislation by requiring measurable organizational and individual goals in key performance areas. In April 2009, ASCR officials indicated that the Department no longer disagrees with this suggestion. However, these officials expressed the hope that the actions they are taking or planning to improve the man-

<sup>5</sup> GAO, *Managing for Results: Emerging Benefits from Selected Agencies' Use of Performance Agreements*, GAO-01-115 (<http://www.gao.gov/new.items/d01115.pdf>) (Washington, D.C.: Oct. 30, 2000).

<sup>6</sup> Higher Education Amendments of 1998, Pub. L. No. 105-244 § 101(a), 112 Stat. 1581 (amending 20 U.S.C. § 1018).

<sup>7</sup> Pub. L. No. 106-113, § 1000(a)(9) (§ 4713), 113 Stat. 1501, 1536, 1501A-21, 1501A-575 (1999) (amending 35 U.S.C. § 3); Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 § 2405(b), 121 Stat. 266, 548 (amending 6 U.S.C. § 341(c)).

agement of civil rights at USDA, such as obtaining an independent external analysis of program delivery, will preclude the need for this mechanism.

*An Oversight Board Could Improve ASCR Management*

Congress could also authorize a USDA civil rights oversight board to independently monitor, evaluate, approve, and report on USDA's administration of civil rights activities, as it has for other Federal activities. Oversight boards have often been used by the Federal Government—such as for oversight of public accounting, intelligence matters, civil liberties, and drug safety—to provide assurance that important activities are well done, to identify weaknesses that may need to be addressed, and to provide for transparency.

For example, Congress established the Internal Revenue Service (IRS) Oversight Board in 1998 to oversee IRS's administration of internal revenue laws and ensure that its organization and operation allow it to carry out its mission. At that time, IRS was considered to be an agency that was not effectively serving the public or meeting taxpayer needs. The board operates much like a corporate board of directors, tailored to fit the public sector. The board provides independent oversight of IRS administration, management, conduct, and the direction and supervision of the application of the internal revenue code. We have previously noted the work of the Internal Revenue Service Oversight Board—including, for example, the board's independent analysis of IRS business systems modernization.<sup>8</sup> Currently, there is no comparable independent oversight of USDA civil rights activities.

In October 2008, we suggested that Congress consider the option of establishing a USDA civil rights oversight board to independently monitor, evaluate, approve, and report on USDA's administration of civil rights activities. Such a board could provide additional assurance that ASCR management functions effectively and efficiently. USDA initially disagreed with this suggestion, stating that it would be unnecessarily bureaucratic and delay progress. In response, we noted that a well-operated oversight board could be the source of timely and wise counsel to help raise USDA's civil rights performance. In April 2009, ASCR officials said that the Department no longer disagrees with this suggestion. However, these officials expressed the hope that the actions they are taking or planning to address our recommendations to improve the management of civil rights at USDA will preclude the need for this mechanism.

*An Ombudsman Could Address Concerns of USDA Customers and Employees*

An ombudsman for USDA civil rights matters could be created to address the concerns of USDA customers and employees. Many other agencies have created ombudsman offices for addressing employees' concerns, as authorized by the Administrative Dispute Resolution Act. However, an ombudsman is not merely an alternative means of resolving employees' disputes; rather, the ombudsman is a neutral party who uses a variety of procedures, including alternative dispute resolution techniques, to deal with complaints, concerns, and questions.

Ombudsmen who handle concerns and inquiries from the public—external ombudsmen—help agencies be more responsive to the public through impartial and independent investigation of citizens' complaints, including those of people who believe their concerns have not been dealt with fairly and fully through normal channels. For example, we reported that ombudsmen at the Environmental Protection Agency serve as points of contact for members of the public who have concerns about certain hazardous waste cleanup activities. We also identified the Transportation Security Administration ombudsman as one who serves external customers and is responsible for recommending and influencing systemic change where necessary to improve administration operations and customer service.<sup>9</sup>

Within the Federal workplace, ombudsmen provide an informal alternative to existing and more formal processes to deal with employees' workplace conflicts and other organizational climate issues. USDA faces concerns of fairness and equity from both customers and employees—a range of issues that an ombudsman could potentially assist in addressing. A USDA ombudsman who is independent, impartial, fully capable of conducting meaningful investigations and who can maintain confidentiality could assist in resolving these civil rights concerns. As of April 2007, 12 Federal departments and nine independent agencies reported having 43 ombudsmen.

<sup>8</sup> GAO, *Business Systems Modernization: Internal Revenue Service Needs to Further Strengthen Program Management*, GAO-04-438T (<http://www.gao.gov/new.items/d04438t.pdf>) (Washington, D.C.: Feb. 12, 2004).

<sup>9</sup> GAO, *Transportation Security Administration: Actions and Plans to Develop a Results-Oriented Culture*, GAO-03-190 (<http://www.gao.gov/new.items/d03190.pdf>) (Washington, D.C.: Jan. 17, 2003).



In October 2008, we recommended that USDA 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. USDA agreed with this recommendation. In April 2009, ASCR officials indicated that the Assistant Secretary for Civil Rights has convened a team to study the ombudsman concept and to make recommendations by September 30, 2009, to the Secretary of Agriculture for establishing an ombudsman office.

#### **Concluding Observations**

USDA has been addressing allegations of discrimination for decades and receiving recommendations for improving its civil rights functions without achieving fundamental improvements. One lawsuit has cost taxpayers about a billion dollars in payouts to date, and several other groups are seeking redress for similar alleged discrimination. While ASCR's established policy is to fairly and efficiently respond to complaints of discrimination, its efforts to establish the management system necessary to implement the policy have fallen short, and significant deficiencies remain.

Unless USDA addresses several fundamental concerns about resolving discrimination complaints—including the lack of credible data on the numbers, status, and management of complaints; the lack of specified timeframes and management controls for resolving complaints; questions about the quality of complaint investigations; and concerns about the integrity of final decision preparation—the credibility of USDA efforts to resolve discrimination complaints will be in doubt. In addition, unless USDA obtains accurate data on minority participation in USDA programs, its reports on improving minority participation in USDA programs will not be reliable or useful. Furthermore, without better strategic planning and meaningful performance measures, it appears unlikely that USDA management will be fully effective in achieving its civil rights mission.

Given the new Administration's commitment to giving priority attention to USDA's civil rights problems, various options may provide a road map to correcting long-standing management deficiencies that have given rise to these problems. Specifically, raising the public profile for transparency and accountability through means such as a statutory performance agreement between the Secretary of Agriculture and the Assistant Secretary for Civil Rights, a civil rights oversight board, and an ombudsman for addressing customers' and employees' civil rights concerns would appear to be helpful steps because they have proven to be effective in raising the performance of other Federal agencies. These options could lay a foundation for clarity about the expectations USDA must meet to restore confidence in its civil rights performance.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

#### **Contacts and Staff Acknowledgments**

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. For further information about this testimony, please contact Lisa Shames, Director, Natural Resources and Environment, [Redacted] or [Redacted]. Key contributors to this statement were James R. Jones, Jr., Assistant Director; Kevin S. Bray; Nancy Crothers; Nico Sloss; and Alex M. Winograd.

APPENDIX: INTERESTS OF SELECTED USDA STAKEHOLDERS IN CIVIL RIGHTS-RELATED  
MATTERS AS IDENTIFIED BY GAO IN 2007 AND 2008

| Category of interest          | Stakeholder interests  |
|-------------------------------|--|
| <b>Outreach programs</b>      | USDA outreach programs for underserved producers could be much better. Systematic data on minority participation in USDA programs are not available. The 10708 Report and Minority Farm Register have been ineffective. Partnerships with community-based organizations could be better used.  |
| <b>Program delivery</b>       | Methods of USDA program delivery need to better facilitate the participation of underserved producers and address their needs.<br>USDA could do more to provide assistance in accessing markets and programs. USDA could better address cultural and language differences for providing services.<br>Some USDA program rules and features hinder participation by underserved producers.<br>Some USDA employees have little incentive to work with small and minority producers.<br>County offices working with underserved producers continue to lack diversity, and some have poor customer service or display discriminatory behaviors toward underserved producers.<br>USDA lacks a program that addresses farmworker needs.<br>There continue to be reports of cases where USDA has not processed loans for underserved producers.<br>Some Hmong poultry farmers with guaranteed loans facilitated by USDA are experiencing foreclosures. |
| <b>County system</b>          | The county committee system does not represent minority producers well. Minority advisers are ineffective because they have no voting power. USDA has not done enough to make underserved producers fully aware of county committee elections, and underserved producers have difficulties winning elections.  |
| <b>Investment</b>             | There is a lack of USDA investment in research and extension services that would determine the extent of minority needs.   |
| <b>Census of Agriculture</b>  | The Census of Agriculture needs to better count minority producers.  |
| <b>Foreclosure</b>            | USDA may continue to be foreclosing on farms belonging to producers who are awaiting decisions on discrimination complaints.   |
| <b>Authority</b>              | ASCR needs authority to exercise leadership for making changes at USDA.  |
| <b>Resources</b>              | USDA and ASCR need additional resources to carry out civil rights functions.   |
| <b>Diversity</b>              | Greater diversity among USDA employees would facilitate USDA's work with minority producers.   |
| <b>Access</b>                 | Producers must still access services through some USDA employees who discriminated against them.   |
| <b>Management structure</b>   | The Office of Adjudication and Compliance needs better management structure and function.<br>Backlogs of discrimination complaints need to be addressed.<br>Alternative dispute resolution techniques to resolve informal employee complaints should be used consistently and documented.<br>Civil rights compliance reviews of USDA agencies are behind schedule and should be conducted.   |
| <b>General Counsel Review</b> | USDA's Office of General Counsel continues to be involved in complaint cases.  |

Source: GAO analysis of documents and interviews.

**Related GAO Products**

*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 (<http://www.gao.gov/new.items/d0962.pdf>). Washington, D.C.: October 22, 2008.

*U.S. Department of Agriculture: Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention.* GAO-08-755T (<http://www.gao.gov/new.items/d08755t.pdf>). Washington, D.C.: May 14, 2008.

**Pigford Settlement: The Role of the Court-Appointed Monitor.** GAO-06-469R (<http://www.gao.gov/new.items/d06469r.pdf>). Washington, D.C.: 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 (<http://www.gao.gov/new.items/d021124t.pdf>). Washington, D.C.: September 25, 2002.

*Department of Agriculture: Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers.* GAO-02-942 (<http://www.gao.gov/new.items/d02942.pdf>). Washington, D.C.: September 20, 2002.

*U.S. Department of Agriculture: Resolution of Discrimination Complaints Involving Farm Credit and Payment Programs.* GAO-01-521R (<http://www.gao.gov/new.items/d01521r.pdf>). Washington, D.C.: April 12, 2001.

*U.S. Department of Agriculture: Problems in Processing Discrimination Complaints.* T-RCED-00-286 (<http://www.gao.gov/archive/2000/rc00286t.pdf>). Washington, D.C.: September 12, 2000.

#### ATTACHMENT

### U.S. Department of Agriculture

#### Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention

May 14, 2008

#### Highlights

Highlights of GAO-08-755T (<http://www.gao.gov/new.items/d08755t.pdf>), a testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives.

#### Why GAO Did This Study

For decades, there have been allegations of discrimination in the U.S. Department of Agriculture (USDA) programs and workforce. Reports and Congressional testimony by the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, a former Secretary of Agriculture, USDA's Office of Inspector General, GAO, and others have described weaknesses in USDA's programs—in particular, in resolving complaints of discrimination and in providing minorities access to programs. The Farm Security and Rural Investment Act of 2002 authorized the creation of the position of Assistant Secretary for Civil Rights (ASCR), giving USDA an executive that could provide leadership for resolving these long-standing problems.

This testimony focuses on USDA's efforts to (1) resolve discrimination complaints, (2) report on minority participation in USDA programs, and (3) strategically plan its efforts. This testimony is based on new and prior work, including analysis of ASCR's strategic plan; discrimination complaint management; and about 120 interviews with officials of USDA and other Federal agencies, as well as 20 USDA stakeholder groups.

USDA officials reviewed the facts upon which this statement is based, and we incorporated their additions and clarifications as appropriate. GAO plans a future report with recommendations.

To view the full product, including the scope and methodology, click on GAO-08-755T (<http://www.gao.gov/new.items/d08755t.pdf>). For more information, contact Lisa Shames at [Redacted] or [Redacted].

#### What GAO Found

ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of complaints. At a basic level, the credibility of USDA's efforts has been and continues to be undermined by ASCR's faulty reporting of data on discrimination complaints and disparities in ASCR's data. Even such basic information as the number of complaints is subject to wide variation in ASCR's reports to the public and the Congress. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in Fiscal Year 2004 and held its caseload to manageable levels, drew a questionable portrait of progress. By July 2007, ASCR officials were well aware they had not succeeded in preventing future backlogs—they had another

backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, ASCR officials were in the midst of planning to hire additional attorneys to address that backlog of complaints including some ASCR was holding dating from the early 2000s that it had not resolved. In addition, some steps ASCR had taken may have actually been counter-productive and affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. Importantly, ASCR does not have a plan to correct these many problems.

USDA has published three annual reports—for Fiscal Years 2003, 2004, and 2005—on the participation of minority farmers and ranchers in USDA programs, as required by law. USDA's reports are intended to reveal the gains or losses that these farmers have experienced in their participation in USDA programs. However, USDA considers the data it has reported to be unreliable because they are based on USDA employees' visual observations about participant's race and ethnicity, which may or may not be correct, especially for ethnicity. USDA needs the approval of the Office of Management and Budget (OMB) to collect more reliable data. ASCR started to seek OMB's approval in 2004, but as of May 2008 had not followed through to obtain approval. ASCR staff will meet again on this matter in May 2008.

GAO found that ASCR's strategic planning is limited and does not address key steps needed to achieve the Office's mission of ensuring USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. For example, a key step in strategic planning is to discuss the perspectives of stakeholders. ASCR's strategic planning does not address the diversity of USDA's field staff even though ASCR's stakeholders told GAO that such diversity would facilitate interaction with minority and underserved farmers. Also, ASCR could better measure performance to gauge its progress in achieving its mission. For example, it counts the number of participants in training workshops as part of its outreach efforts rather than access to farm program benefits and services. Finally, ASCR's strategic planning does not link levels of funding with anticipated results or discuss the potential for using performance information for identifying USDA's performance gaps.

The CHAIRMAN. I thank both of you for your statements.

My first question to Dr. Leonard, in your opinion, to what degree are the problems at ASCR a matter of culture among career personnel, and can political appointees really fix the problems?

Dr. LEONARD. Mr. Chairman, I believe it is a little too early to say. In the 23 days that I have been there, I have met with every director in the office. I had long discussions with them, and I am still trying to go through my initial review.

I do believe the culture can change. I believe, with Secretary Vilsack's statement and actions, that the culture will change.

When I came here yesterday, I came on the Hill yesterday, in our office, every Subcabinet position was meeting and getting civil rights training, including deputy chief of staff, chief of staffs and Subcabinet positions. Receiving civil rights training, it will trickle down to county-level personnel. I believe with his dedication to civil rights, the culture will change.

The CHAIRMAN. By that statement, you mean attitudes and behaviors will change, is that correct?

Dr. LEONARD. That is correct.

The CHAIRMAN. That seems to have been the problem with 14,000 complaints and only four being heard. When you look at cultural change, that means attitudes and behavior of handling the discrimination complaints to ensure there is equity and fairness by individuals who have filed the complaint, because there is not only past discrimination but current discrimination as well.

My next question, and I know that it was said a little bit by Ms. Shames, the GAO report makes it clear there must be hard timeframes—and I think that is very important—timeframes for resolv-

ing discrimination complaints. What will you do to enforce, enforce these timeframes, both in resolving complaints and carrying out the new civil rights era for USDA you propose, in a timely manner. That becomes very important, as time is money, and time also affects the lives of many individuals in terms of their attitudes and their behaviors.

Dr. LEONARD. Mr. Chairman, before I even came on board, Secretary Vilsack went and got Mr. Lloyd Wright as Assistant to the Secretary on Program Complaints. Mr. Wright is a former Director of the Office of Civil Rights during the Clinton Administration in 1998. Mr. Wright and I will look at the policies and procedures in order to do a better job of maintaining the procedures and the current timeframes, and being able to meet the 180 day guidelines regarding EEO complaints and program complaints in the field.

So the good thing about Secretary Vilsack's commitment, he began before I came on board, and I have been working with Mr. Wright in order to put these procedures in place.

The CHAIRMAN. Thank you. I know that all of us are very much concerned when we look at the growth of our population and our society, and so we are always looking at, do you look like some of us, or do you look a little bit different? My question is, what is the ethnic composition of the USDA employees in the 23 days that you have been there?

Dr. LEONARD. The African American population is 10.8 percent. The Hispanic population is six percent. The Asian American population is 2.8 percent. And that is of the around 108,000 employees at USDA across the country.

The CHAIRMAN. So it seems we have some work to do as it is not reflective of our population, especially as we look at the black population, which is approximately 12 percent nationwide, and we look at the Hispanic population that is about 16 to 17 percent of the total population. And then you look at the Asian population that is somewhere around four to six percent. So we still have some work.

Hopefully the composition will change in order to be reflective so when you have complaints, we know that they are going to be done within the culture, with the changes that are needed as well. Hopefully, you will work on improving that in the future. I know a lot of us like going into an office and seeing people who look like us because people are sometimes sensitive. Not that others are not sensitive, but it is important when it comes to civil rights and other actions. And I know women feel the same way. When they see it is predominantly males, they ask, are you sensitive to some of our issues? And we have a lot more women farmers as well now. So this is another area that we have to address.

In the 2008 Farm Bill, the farm bill created the Office of Advocacy and Outreach to better serve minorities and small farmers. When will it be up and running, and what will be the relationship between ASCR and OAO?

Dr. LEONARD. At present, that is still being discussed. I went back, and I saw one of the letters that you signed in September 2008, yourself, Representative Kilpatrick and Representative Honda, the Tri-Caucus letter, asking that the Office of Advocacy

and Outreach be put into the Secretary's Office because the Tri-Caucus felt it was that important.

I want to let you know, Mr. Chairman, it is being discussed. We are in receipt in your letter, and it is being discussed at the highest levels.

The CHAIRMAN. I know that my time has run out.

I will ask the Ranking Member, Mr. Fortenberry, for questions.

Mr. FORTENBERRY. Thank you, Mr. Chairman.

Dr. Leonard, you mentioned that the Secretary suspended foreclosures for the next 90 days. That is on all farms, not just minority-owned farms. What is the percentage of minority-owned farms that are in foreclosure *versus* the total percentage? Is it disproportionate? What would be expected across all farms, is there increased pressure there?

Dr. LEONARD. I don't have the exact number. I will get back to you. I don't want to give any casual numbers, as has been done in the past. I want to make sure that I have the proper number for you. I will follow up with your staff and let you know.

Mr. FORTENBERRY. All right. Let's go back to the issue of timeframes. Again I heard the time reference of 180 days to resolving a discrimination complaint. Given the backlog, what do you anticipate as your total timeframe in which we need to clear up past complaints so that these issues are resolved in the future, and that your office is on, I guess a normal basis instead of high alert, if you will, engaged in the normal activities which you are charged to do *versus* trying to clean up whatever past discrimination may have existed?

Dr. LEONARD. Representative Kagen mentioned in the past there have been reorganizations, and it has been time-consuming. We will have to undergo a reorganization, and one is underway right now. Past complaints, all EEO and program complaints, went through the same process. Now we are trying to divide the EEO complaints and have a more streamlined process, and the program complaints have a different process in which we can adequately address both matters. Also, we are currently trying to work within a year to get these things done properly.

The backlog of complaints that are not regarding cases are smaller, and we will need additional support.

Mr. FORTENBERRY. Does that mean programmatic, making that distinction?

Dr. LEONARD. Yes. The number that the Chairman gave was from 2000 to 2008, the 14,000 does not exist now. However, there is a backlog, and we are going to need additional staff and almost need to have a triage moment. You are right; it is going to be all hands on deck for about a year in which to begin to adequately investigate and adjudicate these cases. But we are in the process of creating the reorganization and the timeframe.

There are vastly different manners in which you work on a farmers' complaint and an EEO internal complaint. And those two had gone through the same way.

Mr. FORTENBERRY. You are developing special tracks now as part of your reorganization?

Dr. LEONARD. Absolutely.

Mr. FORTENBERRY. That is helpful to know. Hopefully, that will diminish the intensity of the issue for you and clear up what continues to be this lingering cloud over the Department and all of the many good people who work very hard to ensure that the Department of Agriculture has an extraordinary reputation in serving our nation's farmers and helping to feed the world, which is, of course, our fundamental mission, and keeping us safe in an abundant food supply. So the sooner we can clean this up and get beyond it, I think, is helpful in creating a new spirit, a new environment there. That is helpful information. That is all I have.

Thank you, Mr. Chairman.

The CHAIRMAN. Next I call on the gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Let me go back to the foreclosures for a moment, Dr. Leonard. How many black farms are in foreclosure now? Do you have any idea?

Dr. LEONARD. We don't have an exact number right now.

Mr. SCOTT. Let's review this for a second. The moratorium was requested last year during the Bush Administration. The Bush Administration refused. So at what point did the Obama Administration begin to react to this, from your knowledge? He has been in for 100 days. Was it right when he came into office, or was it after a period of time?

Dr. LEONARD. There have been ongoing discussions throughout his 100 days. With all of these processes, you have to work them out with OMB and other agencies. Secretary Vilsack felt it was important to move on this, as the President had requested as well. So both of them had been working to make this happen as soon as possible. But other agencies, you have to get clearance for everything. There is a Hill process where you have clearance, but the agency process is much more of a labyrinth than I anticipated.

Mr. SCOTT. So what has happened, and you mentioned in your statement that the Secretary now will temporarily suspend all current foreclosures and allow for approximately 90 days. So, my question is, given that, can we safely say then that no black farmers are in foreclosure as of this time; that they have been stayed temporarily and you are looking at them during this 90 day period? Or have there been any who have fallen through the cracks who have been foreclosed on?

Dr. LEONARD. Not that I know of.

Mr. SCOTT. Now, in this 90 days, what is taking place? You mentioned in your statement that this time affords the Department the opportunity to review the loans for any problems associated with possible discriminatory conduct. I guess what I am asking, is the criterion taking these 90 days just to find out if there is any discrimination that happened? And if the conclusion is no discrimination happened, these are set-aside here, and they are divided, and then what happens to those that you say, well, there was no discrimination here, they get no relief? Or have you come to the conclusion that basically all fall within some measure of having some discrimination, so that you would extend that help?

I am just trying to get our hands around the foreclosures, the characteristics of our foreclosure approach and how extensive it is?

Dr. LEONARD. Our office has received a large number of calls from farmers in foreclosure, and Secretary Vilsack began to act on that.

When I said there aren't any to my knowledge, since last Wednesday when the Secretary issued his memorandum, I believe we have only received two calls since then; whereas, before, we were probably receiving calls in the neighborhood of ten a day.

The Secretary could, in this interim 90 days, what we are trying to do is ascertain what types of foreclosures farmers are in, in an effort to better be able to serve them.

I don't think that the assumption is that all of the farmers in foreclosure, if they are African American, have been discriminated against. But we want to begin to investigate if they have been discriminated against. So I don't think that the assumption is an automatic assumption of discrimination, but we do need to take the time to give the proper due process to these farmers.

The CHAIRMAN. Mr. Scott, you probably have additional questions, but we will submit those, and they will have an opportunity to answer those.

Mr. Childers for questions.

Mr. CHILDERS. I thank both of you for being here this morning.

Very briefly, Dr. Leonard, Secretary Vilsack announced that USDA would be bringing in a consultant to take a look at programs and procedures at the agency to make sure that they are conducted properly from this day forward. Who is the Secretary bringing in as a consultant? Do you know that?

Dr. LEONARD. The RFP has been constructed and should go out. There is no one individual. It will be a bidding process for this individual firm. But the RFP should be out, if not this week, then next week.

Mr. CHILDERS. I would like to say in advance, thank you for making sure that the very people who feed America and the world, quite frankly, are not discriminated against. We are long past that day, and we need to be moving on. Thank you in advance.

The CHAIRMAN. We will have a second round, then adjourn, because we are voting right now.

Ms. Shames, could you please describe some of the difficulties you and your team have had in questioning USDA employees for the October 2008 report, if you've had any difficulty?

Ms. SHAMES. We did have some difficulties in accessing the documents that we wanted to undertake the review that you and others requested. We provided that list and, in the end, got sufficient documents to be able to make the recommendations that we did make. So, in the end, we feel that the audit was thorough and complete and documented according to our protocols.

The CHAIRMAN. Thank you.

What is the expression of culture at ASCR as you reviewed it, and could you offer your opinion as to whether political appointees can significantly alter the attitude and character of the staff at ASCR?

Ms. SHAMES. Certainly the tone starts at the top. It is clear that this is at a time with a new Administration, new Secretary and new Assistant Secretary, and so I think that bodes well, looking forward.



I do want to say that our work has shown that, for underperforming organizations, that it takes time to turn them around. What we have found is that the fundamental transformation that we are looking for in this office, based on other experiences, could take as long as 5 years, possibly 7 years. So it is going to be a long process that is going to require a sustained effort.

The CHAIRMAN. What was the interaction with OIG during your investigations?

Ms. SHAMES. We always coordinate with the USDA Inspector General's Office. We want to ensure that we are using our scarce resources carefully and that we are not duplicating any work. I am pleased to say that the IG also cooperated in this effort. As we heard different complaints and different allegations, we were able to rely on their expertise and incorporate that into our report as well.

The CHAIRMAN. Thank you.

Mr. Fortenberry for any questions.

Mr. FORTENBERRY. Very briefly, since we need to go vote, do you find that discrimination complaints about foreclosures against minority farmers are concentrated in a particular area? And if so, are there plans to increase oversight in particular locales?

Dr. LEONARD. With regard to African American farmers, 97 percent of the complaints are in 14 states. Since 1983, USDA has not had any investigators go in and investigate claims of discrimination. So one of the matters that we are considering is hiring investigators to be able to go in to these different states.

The CHAIRMAN. Thank you very much.

Before we adjourn, I want to thank both of you for coming before us.

The first step in the recovery process is admission of the mistakes of the past, and I am pleased that Secretary Vilsack has already taken steps in the right direction with the new era of civil rights initiative, but I want to repeat this point: The Subcommittee will conduct active oversight of ASCR to make sure that the goals in the new initiative are met, which is important. Again, I want to thank the witnesses and Members for being here today.

Before we adjourn, I would like to state that, under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional materials and supplemental written response by witnesses, and questions by Members may be submitted.

This hearing of the Subcommittee of Department Operations, Oversight, Nutrition, and Forestry is now adjourned.

[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]