

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD :  
2093 East Arcadia Road :  
Riegelwood, NC 28456 :

and :

LLOYD SHAFER :  
P.O. Box 382 :  
Benton, MS 39040 :

and :

GEORGE HALL :  
Route 2, Box 163-A :  
Boligee, AL 35443 :

Civil Action No.  
97-1978 (PLF)

and :

EDDIE L. ROSS :  
380 Spout Spring Road :  
Vicksburg, MS 39180 :

**SEVENTH AMENDED CLASS  
ACTION COMPLAINT**

and :

STROWN AND FANNIE MARTIN :  
19207 Cajalco Road :  
Perring, CA 92570 :

and :

LUCIOUS ABRAMS :  
2023 Gough Red Hill :  
Keysville, GA 30816 :

and :

GRIFFIN TODD, SR. :  
810 Pony Road :  
Zebulon, NC 27592 :

and :

BEN HILSMAN :  
300 Hunting Ridge Road :  
Roanoke Rapids, NC 27870 :

and :

FILED  
JUN 16 1998  
U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

98

CALVIN C. BROWN :  
3900 County Pond Road :  
Freeman, VA 23856 :

and :

JAMES B. BEVERLY :  
P.O. Box 522 :  
Burkeville, VA 23927 :

and :

EDDIE H. COTTON :  
Route 1, Box 120 :  
Pattison, MS 39144 :

and :

ALVIN STEPPES :  
Route 1, Box 82-B :  
Moro, AR 72368 :

ON BEHALF OF THEMSELVES AND :  
ALL OTHERS SIMILARLY SITUATED, :

Plaintiffs, :

vs. :

DAN GLICKMAN, Secretary :  
THE UNITED STATES DEPARTMENT :  
OF AGRICULTURE :  
14th and Independence Avenue, S.W. :  
Washington, D.C. 20250 :

Defendant. :

FILED

OCT 26 1998

NANCY BAYNE, ASSISTANT CLERK,  
U.S. DISTRICT COURT

SEVENTH AMENDED CLASS ACTION COMPLAINT  
(FOR DECLARATORY JUDGMENT, REVIEW OF AGENCY  
ACTION, VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT,  
AND OTHER RELIEF)

By Order of the Court dated October 9, 1998, this case was certified as a class action, the Class was divided into three subclasses, and inter alia, plaintiffs were ordered to file this Seventh Amended Complaint, detailing the claims of 12 Class representatives:

"For the reasons stated in the Opinion issued this same day, the Court finds that plaintiffs have established that they meet the prerequisites for class certification of Rule 23(a) of the Federal Rules of Civil Procedure and that Plaintiffs have established that the class properly is certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that plaintiffs' motion for class certification is GRANTED; it is

FURTHER ORDERED that a class is CERTIFIED for purposes of determining liability; it is

FURTHER ORDERED that the class is defined as follows:

All African-American farmers who (1) farmed between January 1, 1983, and February 21, 1997; and (2) applied, during that time period, for participation in a federal farm program with USDA, and as a direct result of a determination by USDA in response to said application, believed that they were discriminated against on the basis of race, and filed a written discrimination complaint with USDA in that time period.

FURTHER ORDERED that the above class is divided into three subclasses, defined as follows:

Subclass I: African-American farmers, who have a file with Defendant, but did not receive a written determination from Defendant, in response to their discrimination complaint;

Subclass II: African-American farmers, who have a file with Defendant, who received a written determination from Defendant in response to their discrimination complaint but who maintain that the written determination from Defendant was not reached in accordance with law; and

Subclass III: African-American farmers, who do not have a file with Defendant because their discrimination complaints were destroyed, lost or thrown away by Defendant.

it is

FURTHER ORDERED that by October 23, 1998, plaintiffs shall file a further amended complaint detailing the claims of four typical representatives of each subclass; and it is

FURTHER ORDERED that the parties shall jointly file a draft notice to Class members by October 30, 1998.

SO ORDERED."

The individual and representative plaintiffs (listed in the caption) ("plaintiffs"), on behalf of themselves and the Class members, complain of defendant as follows:

NATURE OF THE CASE

This case involves defendant's administration, during the period January, 1983 to January, 1997, of applications by African-American farmers for farm loans and credit and participation in federal farm programs, (referred to hereinafter as, generally, "farm programs"). Plaintiffs contend that defendant, when processing applications of African-American farmers for farm programs (1) willfully discriminated against them, and (2) when, in response, plaintiffs filed written discrimination complaints with defendant, defendant failed, although required by, inter alia, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act, to investigate the complaints. For example, when African-American farmers filed complaints of discrimination with defendant, defendant willfully either (1) avoided processing and

resolving the complaints by stretching the review process out over many years; (2) conducted a meaningless, or "ghost investigation", or (3) failed to do anything. These two acts: (1) the discrimination in denial of the application and (2) the failure to properly investigate the discrimination complaints, deprived the African-American farmers, inter alia, of equal and fair access to farm credit and farm programs, and due process, resulting in damages to them.

In May, 1997, defendant's officials admitted that in early 1983, the Reagan administration had quietly disbanded and dismantled the civil rights enforcement arm at United States Department of Agriculture ("USDA") and that discrimination complaints had not been properly investigated since that time. Two federal reports, issued in February, 1997, verified these facts.

In the original complaint, the proposed Class consisted of 641 African-American farmers who filed complaints of discrimination during the period January, 1983 to January, 1997. Their claim for damages was \$512,800,000.00.

Since the filing of the original complaint, USDA's Office of Inspector General released "Minority Participation in Farm Service Agency's Farm Loan Program - Phase II", which inter alia, stated that the backlog of unresolved discrimination complaint cases increased. This increased the proposed Class from 641 to 874, and increased the claim of damages to \$699,200,000.00, as so stated in plaintiffs' First Amended Complaint, filed on October 23, 1997, which also increased the number of plaintiffs to 14.

The Second Amended Complaint, filed December 5, 1997, increased the number of plaintiffs to 69.

Plaintiffs filed a Third Amended Complaint on December 17, 1997, increasing the number of plaintiffs to 220, increasing the proposed Class to 2,000, and the claim of damages to \$2,000,000,000.

On February 18, 1998 plaintiffs filed a Fourth Amended Complaint, increasing the number of plaintiffs to 349, increasing the proposed Class to 2,500, and the claim of damages to \$2,500,000,000.

On May 12, 1998, plaintiffs filed a Fifth Amended Complaint, increasing the number of plaintiffs to 400.

On October 2, 1998, plaintiffs filed a Sixth Amended Complaint, increasing the number of plaintiffs to 447.

This is the Seventh Amended Complaint.<sup>1</sup>

#### JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. §1691, et seq. 28 U.S.C. 1331, 28 U.S.C. §1343, 28 U.S.C. 2201, 42 U.S.C. 2000d and 5 U.S.C. 706.

#### VENUE

2. Venue lies in this judicial district because the claim arose in this judicial district, and pursuant to 28 U.S.C. 1391(e).

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<sup>1</sup> Because the Class has been certified, the individual plaintiffs have not been listed in the caption; they now approach 500 in number.

## PARTIES

There are 12 Class representatives, each of which falls under one of three subclasses.

3(a). Plaintiff and Class representative, Timothy C. Pigford ("Pigford"), (Subclass II), is an African-American farmer and resident of Riegelwood, North Carolina. Mr. Pigford (a) timely applied for various loan programs with defendant during the years 1976 to 1986 and was the subject of willful and continuous racial discrimination, including denial of his applications for farm ownership loans, and refusal to provide operating credit, and appropriate loan servicing, by reason of his race, causing him substantial damages and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were denied by defendant, although such denial was contrary to the facts and applicable law causing him substantial damages.

3(b). On a number of separate occasions beginning in 1976 and extending through 1987, Tim Pigford applied for farm ownership ("FO") loans from FmHA and was turned down by the Bladen County FmHA office. The denial of this credit was due to racial discrimination against Tim Pigford -- this was acknowledged at the highest level of the agency, and the Civil Rights Office at USDA also concluded there was discrimination in the handling of Pigford's appeal on one of the FO denials.

3(c). A draft analysis of the Pigford FO denials done by FmHA staff on May 23, 1986, noted that FmHA had "placed an unyielding burden on [Tim Pigford] in rejecting his FO loan application. . . The rejection of the FO by the County Committee

was directly counter to Agency regulations as well as to its own actions before and after the FO loan decision", and further noted that the County Supervisor failed to provide Pigford farm program servicing according to FmHA regulations "comparable to that provided white borrowers". It was suggested as a remedy then that Tim be given an inventory farm of which he could take ownership of.

3(d). A memorandum by the Administrator of FmHA, dated August 22, 1986, said that "Our review of the files of the white farmers mentioned indicates the county supervisor was more tolerant of the problems experienced by them. . . The two white farmers also received large loans in a timely manner despite irregularities noted in paying FmHA, and in not following their established Farm and Home Plans. It is our conclusion Mr. Pigford was treated differently than the two white farmers."

3(e). A later (July 7, 1987) memorandum from one member of USDA's civil rights staff to another person on that staff stated that "Mr. Pigford has again charged discrimination regarding his denial of a farm ownership loan in 1987. . . We believe the hearing officer erred when he declined to accept Mr. Pigford's allegations of discrimination during the appeal process."

3(f). In addition, the statistics on the award of Fos in Bladen County, North Carolina, show disparity of treatment between white and black applicants for these loans.

3(g). Pigford timely filed a civil rights complaint matter with USDA on the racially discriminatory denial of the farm ownership loans. However, the Civil Rights Office at USDA in a



December 19, 1986, determination chose to ignore the FmHA findings and held against Pigford on the issue of discrimination on the FO loan denials as well as on unrelated matters of FmHA's servicing of his operating loan debts. Pigford re-filed his complaints in 1987, and USDA's civil rights staff again rejected them, as reflected in a July 7, 1997, memorandum (which is quoted above). Pigford has continued to press his complaints since then, both at USDA and with members of Congress.

3(h). As a result of these actions of USDA, Pigford has suffered frustration, humiliation, anxiety, and other mental distress at his inability to obtain redress from USDA for the racial discrimination committed against him; and members of his family have been subjected to mental and emotional stress after Pigford's loss of his farm and his homestead due to his inability to obtain such redress for the racial discrimination. Further, by being denied the farm ownership loan due to racial discrimination, Pigford additionally has suffered the loss of the ability to purchase a farm, the loss of the opportunity to continue farming, the loss of profits from a farming operation, and related pain and suffering on his part and that of his family.

4 (a). Plaintiff and proposed Class representative, Lloyd Shafer ("Shafer"), (Subclass I), is an African-American farmer and resident of Yazoo County, Mississippi. Mr. Shafer is a farmer who (a) timely applied for various loan programs with defendant's agency, FmHA, for the years 1992 and 1993 and was the subject of willful and continuous racial discrimination, including refusal to provide full operating credit and appropriate loan servicing, by

reason of his race, causing him substantial damages, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

4(b). Shafer began farming in 1992, and as a beginning farmer sought operating loan credit from FmHA. The Yazoo County, Mississippi, FmHA office initially denied him credit, but was later forced to retract the denial as baseless. However, the operational credit provided by FmHA was delayed and inadequate to allow Shafer to harvest crops.

4(c). This pattern of FmHA only grudgingly providing Shafer operational credit, at times with onerous restrictions on the use of the funds, continued through 1994. Shafer, however, was making every effort to succeed as a farmer. For example, in 1993, Shafer enrolled in classes in agricultural science at Alcorn State University (an USDA designated minority farmer outreach grantee), and the Alcorn staff assisted him in preparing his farm plan in 1993 (although Yazoo County FmHA office refused to use it).

4(d). Again in 1994, Shafer was initially denied operative credit, but the denial was reversed. However, FmHA retaliated against Shafer by delaying and restricting operating loan funds. In 1995, Shafer's crops were adversely affected by natural disasters and he applied to FSA for a disaster loan. Again, his application was initially denied, but an appeal over the head of the Yazoo County FSA office was approved. However, the payment to Shafer of the disaster loan funds was delayed for a substantial period of time, to August 1995.

4(e). Over time, Shafer concluded that as an African-American farmer he was being discriminated against by FmHA and FSA in Yazoo County, Mississippi. He had been the President of the Yazoo County Chapter of the National Association for the Advancement of Colored People (NAACP), and there has been for some time an atmosphere of hostility toward the NAACP and its work in Yazoo County. Shafer believes the Yazoo County FSA office is part of the oppressive white establishment of Yazoo County.

4(f). A report in the Jackson, Mississippi, Clarion-Ledger, dated January 12, 1997, included a table showing the disparate treatment given white farmers, on the one hand, and minority and women farmers on the other than, in the award of farm loans by FSA in Mississippi:

Sunday, January 12, 1997 *The Jackson, Mississippi Clarion-Ledger*-9A

**FEDERAL FARM LOANS**

**FISCAL YEAR 1996**

Loan type	No.	Amount	Minority	Amount	Female	Amount
Direct Operating Guaranteed	285	\$16,800,410	77	\$3,097,040	0	\$0
Operating Direct Farm Ownership	217	40,136,405	10	1,168,320	0	0
Guaranteed Farm Ownership	3	365,150	3	247,700	1	76,650
	37	5,277,570	0	0	1	40,200

**FISCAL YEAR 1995**

Loan type	No.	Amount	Minority	Amount	Female	Amount
Direct Operating Guaranteed	243	\$13,871,300	100	\$4,949,030	0	\$0
Operating Direct Farm Ownership	273	54,533,980	26	2,657,525	0	0
Guaranteed Farm Ownership	2	199,000	4	400,800	0	0
	69	9,034,820	2	300,000	4	430,000

4(g). Shafer timely filed his civil rights complaint in early 1997. Because of numerous financial set-backs he has suffered as a farmer, due in no small part to the Yazoo County FSA office's racially discriminatory actions, Shafer is on the verge of financial ruin and cannot wait for a flawed civil rights administrative review process to slowly wind its way to a conclusion. He seeks a fair resolution of his complaint, and for that reason joins as a plaintiff in this law suit.

5 (a). Plaintiff and proposed Class representative, George Hall ("Hall"), (Subclass II), is an African-American farmer and resident of Greene County, Alabama who (a) timely applied for disaster payments with defendant for 1994 and was the subject of willful and continuous racial discrimination, including initial refusal by defendant to provide disaster payments and then acts of reprisal when Hall appealed the initial denial, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

5 (b). Hall suffered racially-based disparate treatment in being denied disaster payments in 1994. Disaster payments have been made available to U.S. farmers in most years since 1987, to compensate farmers for losses to their production because of natural disasters.

5 (c). In 1994, Hall's county, Greene County, Alabama, was declared eligible for the disaster payment program on 1994 crop losses. All applications for disaster payments were approved by the Greene County ASC committee except for Hall's application on

four of his crops. Further, when Hall appealed these denials, the Green County, ASC office retaliated against him by reducing his payment yield on the crops. He appealed the denials and reprisals to the state office and his benefits were restored.

5(d). Hall filed a timely complaint of racial discrimination with USDA on August 9, 1996. USDA found that the Green County ASC committee discriminated against Hall on the basis of race, in denying his application for disaster payments. However, two years later, no corrective action based on this finding has been made, the discrimination against Hall has never been compensated, and the racially discriminatory situation in the Green County FSA office still exists.

6 (a). Plaintiff and proposed Class representative, Eddie Ross ("Ross"), (Subclass II), is an African-American farmer and resident of Vicksburg, Mississippi. Mr. Ross (a) timely applied for various loan programs with defendant during the period 1991-1994 and was the subject of willful and continuous racial discrimination, including failure to process his loan applications in a timely manner, and (b) timely filed complaints with defendant of these acts of discrimination. These complaints twice resulted in a finding of discrimination by defendant but did not adequately compensate Ross. On a third occasion, the complaint was never acted upon pursuant to applicable law. In each case, defendant's illegal conduct has caused Ross substantial damages.

6 (b). The Eddie Ross case is several cases of racial discrimination committed by the Farmers Home Administration (FmHA), beginning in 1991. They involve—

(1) FmHA's discriminatory deprivation of timely operating credit for Eddie Ross for his 1991 crops;

(2) FmHA's discriminatory deprivation of timely operating credit for Eddie Ross for his 1992 crops;

(3) FmHA's discriminatory delays, denials, and harassment of Eddie Ross regarding his operating credit for his 1993 crops, including—

(A) delay in the consideration by the FmHA county committee of Eddie Ross's December 9, 1992, loan application until February 23, 1993;

(B) delays and refusals of Eddie Ross's application for 1993 operating credit after county committee review;

(C) the freeze of Eddie Ross's 1993 FmHA operating loan funds in July 1993; and

(D) FmHA's call to one of Eddie Ross's creditors about the fund freeze on July 2, 1993; and

(4) FmHA's reprisal against Eddie Ross in 1993 and 1994 (including specific refusals by the county FmHA director to conduct business with Eddie Ross) for filing civil rights complaints on the 1991, 1992, and 1993 operating loan matters.

6 (c). In each of these cases, Eddie Ross timely filed civil rights complaints with USDA, and the matters have been given various degrees of review by USDA after having been filed.

6 (d). With respect to the 1991 discrimination, USDA already has found that in fact Eddie Ross was the victim of racial discrimination in the initial denial of operating credit (based, inter alia, on statistical analysis showing disparate treatment of whites and blacks by FmHA in Warren County, Mississippi). The question became whether he has been compensated for that act of

discrimination. Eddie believed that what USDA offered in 1991—access to operating credit when such credit was offered too late to allow him to plant his planned crops in 1991—was not truly compensation and declined it. He has continued to seek appropriate compensation since then.

6 (e). As to the 1992 acts of discrimination, USDA has already found prima facie evidence of discrimination in the initial denial of Eddie's OL application (based, inter alia, on statistical analysis showing disparate treatment of whites and blacks by FmHA in Warren County, Mississippi).

6 (f). As to the 1993-94 acts of discrimination, the delays, denials and harassment to which Eddie was subject by FmHA have never been reviewed as USDA indicated inter alia that these complaints were made outside of the Statute of Limitations timeframe.

7 (a). Plaintiff and proposed Class representatives, Strown and Fannie Martin ("The Martins"), (Subclass I), are African-American farmers and residents of Riverside County, California. The Martins (a) timely applied for an operating loan from 1994 to 1996 and were the subject of willful and continuous racial discrimination, including failure to process their loan applications in a timely manner, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to applicable law, causing them substantial damages.

7 (b). Plaintiffs Strown and Fannie Martin are African-American farmers in Perris, Riverside County, California, who

began farming in 1994. The Martins went to the local Farmers Home Administration (FmHA) to find out how they could apply for funds to refinance their 80 acres of farm land. The Martins were given an application for a Farm Ownership Loan. Shortly thereafter the Martins returned to the FmHA office with their completed application.

7 (c). The Martins received a letter from Mr. Christopher Ketner (FmHA County Supervisor for Riverside County) dated March 25, 1994, which listed items needed to complete their Farm Ownership Loan application. Mr. Ketner also explained in his letter that the Martins could apply for an operating loan of up to \$200,000. Within a few days, the Martins had obtained the items listed in Mr. Ketner's letter and returned them to him sometime during the first week in April 1994. After many telephone calls, the Martins finally received a letter from Mr. Ketner dated May 24, 1994, stating the local county committee had found them eligible for a loan and that FmHA would work their loan up as quickly as possible.

7 (d). The Martins did not receive anything else from FmHA until the latter part of July 1994. They finally received a letter from Mr. Ketner which stated their loan application was completed on July 18, 1994. After receiving Mr. Ketner's letter, the Martins called his office and spoke with Mr. Brooks Whitlock. Mr. Whitlock gave them an appointment to come into the office on August 9, 1994.

7 (e). At the August 9<sup>th</sup> meeting, Mr. Whitlock told the Martins that FmHA could put them on an 18-month plan, with an



operating loan of \$31,240 to get them started. The Martins had already missed the planting season for some of the crops they had hoped to plant, so they felt the operating loan would allow them to be able to plant some cabbages, turnips, and mustards. However, prior to telling Mr. Whitlock they would accept the operating loan, the Martins asked Mr. Whitlock if they would have to reapply for a loan to refinance their land. Mr. Whitlock said that they would not have to, because they had already been approved for the loan. Mr. Whitlock stated that FmHA just had not had time to work up the loan to refinance the land, but that the loan would be worked up by the first of the year. The Martins accepted Mr. Whitlock's word that the loan to refinance their land would be completed by the first of the year. Mr. Whitlock also told the Martins that they would have to put up all of their assets (including their home) for the loan. They thought what Mr. Whitlock meant was that these assets would collateralize the loan to refinance their land and the operating loan. The Martins' land was appraised at \$2.6 million dollars. The Martins felt they had no other choice but to do as Mr. Whitlock said if they were to get the loan to start their farm operation.

7 (f). Due to heavy flooding starting in January and lasting through March, 1995, the Martins had a total crop loss. They applied for an emergency loan with FmHA. While the Martins were waiting on the status of the emergency loan application, on March 8, 1995, they received a Notice of Loan Servicing and Debt Settlement from Mr. Whitlock. Upon receiving Mr. Whitlock's March

8<sup>th</sup> letter, the Martins called Mr. Whitlock for an explanation of his letter. He gave them an appointment to come into the office.

7 (g). The Martins met with Mr. Whitlock on April 11, 1995, at which time Mr. Whitlock showed them a farm and home plan he had prepared for them. They told Mr. Whitlock they disagreed with the plan. Mr. Whitlock said that he would not approve the Martins' plan and that they could meet with Mr. Ketner to discuss the situation.

7 (h). The Martins met with Mr. Ketner and Mr. Whitlock on April 12, 1995. In the meeting the Martins tried to explain to Mr. Ketner why they disagreed with the farm and home plan prepared by Mr. Whitlock. Mr. Ketner told Mr. Whitlock to prepare some questions for the Martins to answer and get back to him. Mr. Whitlock prepared a list of questions for the Martins and, within a couple of days, they submitted their answers to Mr. Ketner. After a few more days, the Martins called Mr. Ketner to get his answer on their loan request. It was then that Mr. Ketner told the Martins that FmHA was out of money. On May 13, 1995, the Martins filed their discrimination complaint.

7 (i). In June 1995, the Martins received two letters from Mr. Ketner, both of which were dated June 22, 1995. One letter stated that FmHA would not be able to approve the Martins' application for primary loan servicing and their applications for an emergency loan and a farm ownership loan to refinance their land. The second letter was a notice of intent to accelerate or to continue acceleration and notice of borrower's rights. The Martins filed an appeal.

7 (j). At the National Appeal Division (NAD) hearing, Mr. Whitlock admitted that the Martins' 1994 farm ownership application to refinance their land and their 1995 emergency loan application were never processed. The hearing officer reversed FmHA's decision and instructed FmHA to continue processing the Martins' 1994 and 1995 loan applications.

7 (k). FmHA, however, flatly refused to implement NAD's decision. In 1996, to further delay the Martins and lull them into believing their loans were going to be processed, Mr. Ketner sent the Martins a letter telling that updated information was needed to process their 1994 and 1995 loan applications. Yet, the Martins had already provided FmHA with the information needed to process their loan applications.

8 (a). Plaintiff and proposed Class representative, Lucious Abrams ("Abrams"), (Subclass III), is an African-American farmer and resident of Burke County, Alabama who (a) timely applied for various loan programs with defendant during the period 1981-1994 and was the subject of willful and continuous racial discrimination, including failure to process his loan applications in a timely manner, and (b) timely filed four complaints of these acts of discrimination with defendant in 1989, 1993 and twice in 1997, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

8 (b). The four discrimination complaints were:

(i) in 1989, official testimony before the Agriculture Committee of the House of Representatives by the Office of Rep. Lindsay Thomas on behalf of Mr. Abrams;

(ii) in 1993, testimony before defendant's agency by the Office of Rep. Cynthia McKinney on behalf of Mr. Abrams;

(iii) in 1997, Mr. Abrams complained before defendant USDA listening session in Albany, Georgia;

(iv) in 1997, Mr. Abrams filed a written complaint of discrimination with USDA.

8 (c). Abrams suffered race-based disparate treatment in being denied timely consideration by FmHA of his operating loan applications, which in turn caused him damaging delays in the planting of his crops. These failures to provide timely consideration happened on a on-going basis over the years 1981 through 1994. In each year, the local county FmHA supervisor would precipitate the delay by unnecessarily submitting and resubmitting several farm financial plans for Abrams to the District and State Offices of the FmHA. For example, with respect to Abrams's 1994 crops, he submitted his financial plan for the crop to the FmHA county supervisor on September 1, 1993, but the plan was not finally approved until March 16, 1994, after field preparation should have been completed for timely planting of crops. As a result, Abrams suffered substantial loss of farm income in 1994.

8 (d). Abrams suffered further discrimination in the form of harassment when in 1994, in establishing conditions for Abrams's purchases of a farm from FSA inventory with several partners (a farm previously owned by a white farmer), FSA unnecessarily required his two partners to pledge their individual homes as

collateral. This action was administratively appealed and was overturned by the National Appeals Division.

8 (e). Also, Abrams's case file was selected for "review" by the State FmHA Office in 1993, and an issue was raised as to whether a previous debt write-down by FmHA was excessive and required a repayment. After much gathering and presentation of documentation, the repayment required was only \$2,800. The result of the discriminatory actions is that Mr. Abrams has lost his reputation for creditworthiness in his community and has no credit standing with local financial institutions, and has suffered other related losses.

9 (a). Plaintiff and proposed Class representative, Griffin Todd, Sr. ("Todd"), (Subclass I), is an African-American farmer and resident of Wake County, North Carolina who (a) timely applied for loan programs with defendant in the 1980s and was the subject of willful and continuous racial discrimination, including refusal by defendant to discuss the rescheduling of outstanding loans or to accept an application for a farm loan, and (b) timely filed complaints with defendant of these acts of discrimination, which complaints were never acted upon pursuant to the applicable law, causing him substantial damages.

9 (b). Todd suffered racially-based disparate treatment at the hands of FmHA in being denied access to the full range of FmHA farmer lending program alternatives, especially those with respect to debt rescheduling, that were offered to white farmers in Wake County. When Todd suffered severe financial reversals in the early 1980s after two consecutive drought years and then

petitioned the county FmHA office for assistance in servicing his FmHA debt, the county supervisor for FmHA refused to discuss the various alternative financial options suggested by Todd, while at the same time providing financial relief to white farmers in similar situations. When Todd later sought information from the FmHA county supervisor as to the amount Todd would have to pay annually to retire all of the FmHA debt owed, the supervisor took two years to reply. During this time additional debt had accumulated to the unpaid interest. Also, at one point, the county FmHA committee refused to accept an application form from Todd for farm operating loan financing. Provision of the operating loan would have allowed Todd to continue farming and provided an opportunity for him to retire the outstanding debt. The result of the discriminatory actions is that Mr. Todd has had to pare back his farming operations considerably and, as a result, has lost substantial amounts of farm income and suffered related losses.

10 (a). Plaintiff and proposed class representatives, Ben & Zelma Hilsman ("the Hilsmans"), (Subclass III), are husband and wife African-American farmers and residents of Halifax County, North Carolina. In January of 1988, Mr. And Mrs. Hilsman (a) timely applied for a farm ownership loan to purchase additional farm land and were subjected to willful discrimination by their local FmHA office, including denial of appropriate loan servicing, by reason of their race, causing substantial financial losses in farm income earning potential, and they (b) timely filed a discrimination complaint with defendant's investigator in

1991, but were never informed of any action on their complaint contrary to the facts and applicable law, causing them further damages.

10 (b). In January of 1988, the Hilsmans obtained a 90-day option on a farm acreage. They then timely applied for a farm ownership loan at their local FmHA office. Their loan application, however, was not processed until two weeks before the option expired. As a result, their loan was denied. The Hilsmans appealed to the State and the local FmHA county office supervisor's decision was overturned. However, they had lost the opportunity to purchase the farm because the option had expired. Nevertheless, this same FmHA county supervisor was able to timely process a loan for David Johnson (a white farmer) to purchase the same property.

10 (c). In 1991, the county supervisor attempted to accelerate their farm loans because he claimed they had purchased a house without his permission. The State office overturned his decision. This initial action by the FmHA supervisor, however, caused them to receive their operating loan late in that year. In 1993, the Hilsmans applied for an operating loan and were denied three times before receiving the funds. It was only after repeated appeals of the FmHA supervisor's decision that they were able to get funding. In the final appeal, they were able to prove that the information entered into the DARLS program was incorrect.

10 (d). In 1996, the Hilsmans did not get their operating loan until September. Because of the late planting, they lost their entire crop to a freeze. The reason for them not getting their loan until September was again due to incorrect information being entered into the DARLS program.

10 (e). This case has four key issues: (1) persistent negative action by the county supervisor, (2) the denial of the Hilsman's farm ownership loan at the county level, a deliberate act to make sure the white farmer was able to purchase the farm, (3) the attempt to accelerate the farm loans as retaliation, (4) the lack of a finding by USDA with respect to the 1988 complaint.

11 (a). Plaintiff and proposed class representative Calvin Brown ("Brown"), (Subclass III), is an African-American farmer and resident of Brunswick County, Virginia. Mr. Brown (a) timely filed his application for an operating loan in January, 1984, and was subjected to willful discrimination by forcing him to reapply for the loan, approving and subsequently releasing the funds late in the growing season, thus causing substantial financial losses in farm income, and Mr. Brown timely filed his discrimination complaint November 26, 1984, for which no response was ever received from the defendant, thus causing him further damages.

11 (b). In January, 1984, Mr. Brown filed his application for an operating loan. When Mr. Brown called the FmHA County Supervisor about the status of his loan application, toward the end of January, 1984, he was told his loan was being processed. In February, 1984, the same FmHA county supervisor told him he had no record of him ever applying for a loan. He was forced to



reapply for the operating loan. The loan was finally approved and Mr. Brown received the funds late in the planting season (May or June, 1984) causing substantial financial losses due to the shortened growing season.

11 (c). Furthermore, the funds received were placed in a supervised bank account (an account requiring the co-signature of FmHA county supervisor) for no apparent reason and without consultation with Mr. Brown. As a result, Mr. Brown often had problems getting his checks co-signed in a timely manner.

11 (d). Additional problems arose because Wednesday was the county supervisor's 'open door day,' i.e., farmers came in to see the county supervisor without an appointment. Since appointments were rarely given Black farmers, Wednesday was the only day Black farmers could visit the FmHA office. On many Wednesday visits, Mr. Brown and other Black farmers were belittled and disrespected. On one Wednesday when Mr. Brown and other Black farmers were waiting to see the county supervisor, and had been waiting for quiet some time, a white farmer came into the FmHA office from a side door and walked right into the county supervisor's office, conducted his business with the door closed (the door always remained open when the county supervisor was with Black farmers) and left. These incidents are examples of the disparate treatment received by the Black farmers compared to their white farmer neighbors.

11 (e). Shortly after this incident, the FmHA county supervisor refused to give Mr. Brown an application for loan funds to build a tobacco barn. Then, in the mid-eighties, the

FmHA county supervisor stopped granting operating loans to Mr. Brown because he considered Mr. Brown to be a "gentleman farmer."

11 (f). This case has, inter alia, three issues: (1) was the reason for placing Mr. Brown on a supervised bank account proper and within the regulation, (2) was setting a particular day for Black farmers to come into the office discriminatory, and (3) was the treatment by the county supervisor discriminatory.

12 (a). Plaintiff and proposed class representative, James Beverly ("Beverly"), (Subclass III), is a Black farmer and resident of Nottoway County, Virginia. Mr. Beverly sought financial counseling and advice, and timely applied for loan funds with the defendant during the years 1981 to 1984 on the expansion and modernization of his swine herd operation. Mr. Beverly was (a) subjected to willful and continuous racial discrimination from his local FmHA office, including denial of loan funding called for in his approved Farm and Home Plan, based upon the advice received from his local FmHA office. This denial of proper loan financing and loan servicing, caused Mr. Beverly to suffer sever financial losses, leading to the failure of his farming operation, and Mr. Beverly (b) timely filed a complaint with defendant in 1985 of these acts of discrimination, which complaint was ignored contrary to the requirements of law, causing substantial damages to Mr. Beverly.

12 (b). Mr. Beverly sought advise from his local FmHA office and made plans for expanding his farming operation based upon that advise and the approved Farm and Home Plan. He then timely applied for an operating loan to purchase breeding stock and

equipment as called for in his farm and home plan developed in association with his local FmHA office. Mr. Beverly received loan funds to purchase breeding swine and equipment, but he was denied funding for the farrowing houses as called for by his Farm and Home Plan. This denial came even though his local FmHA officials knew that he had accepted the loan for the breeding swine and equipment and had purchased same, and that without the farrowing houses, the other funding was basically useless. In addition, these denials came in spite of the fact that he had been told he would get funding for the farrowing houses. FmHA officials knew that without the farrowing houses, Mr. Beverly could not succeed with his farm operation. Indeed, he lost everything including his property, which he sold so he could settle his debt with FmHA.

12 (c). Prior to seeking assistance from FmHA, Mr. Beverly had a successful small farm operation. However, within a six year period after going to the FmHA office for assistance with the expansion of his farming operation, Mr. Beverly was forced out of farming. He filed a complaint of discrimination with the local office in February, 1985, but never heard anything from his complaint. An FmHA employee will verify that Mr. Beverly filed a discrimination complaint.

12 (d). Four issues, inter alia, arise in this case: (1) did FmHA deliberately mislead Mr. Beverly so he would accept the operating loan; (2) did he receive appropriate loan servicing; (3) was the denial of funding for the farrowing houses correct

according to regulations, and (4) the impact of defendant's unresponsiveness to Mr. Beverly's discrimination complaint.

13 (a). Plaintiff and proposed Class representative Eddie Cotton ("Cotton"), (Subclass I), an African-American farmer and resident of Claiborne County, Mississippi. Mr. Cotton received two loans from the Farmers Home Administration in February, 1982.

The first loan was for \$53,280 and the second was for \$10,850 for a total of \$64,130. The loans are secured by Mr. Cotton's home and 80 acres of land. When Mr. Cotton submitted his loan applications, he informed Mr. Miskelly, County Supervisor for FmHA, that he only wanted to put up 70 acres of his land to secure the debt. Mr. Miskelly told Mr. Cotton that this was acceptable. Mr. Cotton later learned, however, that his home and 80 acres of land had been taken as security on his debt with FmHA.

13 (b). On October 10, 1990, Mr. Cotton filed a completed application for primary loan servicing. The FmHA did not begin processing Mr. Cotton's application until January, 1996, at which time it requested updated information from Mr. Cotton, including an updated farm and home plan dated April 30, 1996. On July 9, 1996, Mr. Cotton was sent a Notice of Intent to Accelerate, which stated, "You can not get primary loan servicing because your farm and home plan does not show you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments." The FmHA notified Mr. Cotton that he could buy-out his security at a net recovery value of \$42,562. The FmHA never addressed the fact that FmHA's decision to deny Mr. Cotton's

application for primary loan servicing was based on updated information required by FmHA and not on information provided in 1990 when Mr. Cotton's application was submitted.

13 (c). In 1982 or 1983, Mr. Cotton went to FmHA and applied for a loan to purchase 132 acres of land adjacent to his property. FmHA held Mr. Cotton's application for over a year before notifying him that his application would be approved. By the time Mr. Cotton received notification from FmHA that he would get the loan, the landowner told him that the sales price had gone up from \$55,000 to \$75,000 and he had taken 12.5 acres from the land that was for sale.

13 (d). In 1987, the Veterans Administration was investigating Mr. Cotton's claim for improved pension benefits. The Veterans Administration's investigator went to the FmHA office and without Mr. Cotton's permission, obtained information from an FmHA employee. Mr. Cotton states some of the information provided to the investigator was incorrect. Mr. Cotton complained to FmHA about it providing information to the Veterans Administration without his permission, and he also questioned the accuracy of the information provided to the Veterans Administration's (Mr. Cotton told FmHA that Mr. Charles Johnson had not paid any loan for him and that he did not own any property other than his 80 acres and home). FmHA provided no explanation to Mr. Cotton regarding how it had the authority to release the information to the Veterans Administration, nor did FmHA attempt to correct any of the information it had provided the Veterans Administration.

13 (e). Mr. Cotton often went to his local FSA (formerly FmHA) office and inquired about participating in a tree planting program where FSA would pay \$45 per acre for 13 years. Mr. Cotton was repeatedly told he did not qualify, though it was never explained to him why he did not qualify or that he could even apply to participate in the program. Mr. Cotton states that the employees at the FSA office were abusive and treated him other than like a human being.

13 (f). The USDA, through its FSA (formerly FmHA) office in Port Gibson, Claiborne County, Mississippi, discriminated against Mr. Cotton on the basis of his race by the following acts:

(1) Excessive Collateral to secure FmHA loan.

Mr. Cotton was told that it would be acceptable for him to use only 70 acres of his land to secure the debt. Instead, without Mr. Cotton's knowledge, FmHA listed Mr. Cotton's home and 80 acres as collateral. The requirement of Mr. Cotton's home to secure the debt was excessive.

(2) Failure to issue a decision on Mr. Cotton's loan applications within the required timeframe. (*FmHA Instruction 1910-A, Section 1910(h)(i)(1) Farmer Program Applications. Each application must be approved or disapproved and notified in writing of the action taken, not later than 60 days after receipt of complete application*) Mr. Cotton did not receive a decision on his application for a loan to purchase land adjacent to his property for over a year after filing his application. Also, he did not receive a decision on his application for primary loan servicing for over six (6) years.

(3) FSA failed to give proper consideration to Mr. Cotton's application for primary loan servicing.

Mr. Cotton applied for primary loan servicing in October 1990 and did not receive a decision on his application until 1996. The FSA required Mr. Cotton to provide them with a 1996 farm and home plan in order for it to make a decision on his 1990 application for primary loan servicing. The FSA should not have required Mr. Cotton to provide a farm and home plan for a 1990 application. At the time Mr. Cotton filed his application, he did not have 1996 information.

(4) FmHA provided information to an outside source without Mr. Cotton's permission.

An employee of FmHA gave information to a Veterans Administration investigator without Mr. Cotton's permission. The FmHA failed to assist Mr. Cotton in making sure the Veterans Administration had obtained accurate information regarding Mr. Cotton. The FmHA never proved to Mr. Cotton that it had the authority to provide any information to the Veterans Administration without his permission.

(5) FSA failed to provide Mr. Cotton with program information and applications for participation.

The FSA employees did not provide Mr. Cotton information regarding why he did not qualify to participate in the tree-planting program, nor did FSA provide him with an application to participate in the program.

14 (a). Plaintiff and proposed Class representative, Alvin E. Steppes ("Steppes"), (Subclass II), an African-American farmer and

resident of Lee County, Arkansas, where he and many other African-American farmers had been farming for many years. Due to race-based disparate treatment by the Farmers Home Administration throughout the 1980s, Mr. Steppes and other black farmers were unable to gain access to FmHA loans and loan servicing to which they were otherwise entitled. This discrimination resulted in substantial losses in farm income. These losses led to Mr. Steppes losing his farm land and his ability to farm and to like damages to many other African-American farmers in the same county and state. Further, Mr. Steppes has incurred substantial farm debts as a direct result of FmHA's racial discrimination which he is unable to repay.

14 (b). The racially discriminatory treatment Mr. Steppes was subjected to includes, in 1986, the unfair denial by FmHA of operating credit, even though he should have qualified and complied with all loan application requirement. This denial of credit prevented him from putting in crops and applying fertilizer, pesticides, and other treatments to the crops he did plant. As a result, he suffered a substantial loss in production and farm income in 1986.

14 (c). Mr. Steppes also is representative of many, if not all, African-American farmers in Arkansas in those years. He and 17 other African-American farmers from Lee County filed a detailed complaint with USDA in 1986, stating that they had been mistreated and at that time were all still being mistreated by FmHA in the same manner on the basis of their race.



14 (d). After investigating the claims of the group of which Mr. Steppes is a representative, USDA's Office of Advocacy and Enterprise in 1987 found that the racial discrimination of which Mr. Steppes and others complained was in fact occurring in the form of disparate treatment, and that it was occurring not only at the Lee County level, but at the level of the entire State. The findings include the following acts of disparate treatment and other acts of racial animus:

1. African-American farmers' projected crop yields were calculated differently from White farmers.
2. African-American farmers' applications were not handled in a timely manner.
3. African-American farmers were not provided timely information on required documents for completion of their applications.
4. African-American farmers' Farm and Home Plans contained computation errors, which resulted in their applications being rejected.
5. Approved African-American farmers' title opinions were delayed for an unacceptable time period.
6. African-American farmers were not advised of all servicing options.
7. County office personnel were rude and insensitive to African-American farmers.

14 (e). Despite these findings, Defendant responded, but never properly ruled pursuant to ECOA, on the discrimination complaints filed by Mr. Steppes and the other black farmers.

15. Each of the remaining Class members, is an African-American farmer and resident of either Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Missouri, Mississippi, North Carolina,

Oklahoma, South Carolina, Tennessee, Texas or Virginia, who (a) timely applied for loans and/or program payments with defendant during the period 1983-1997 and was the subject of willful and continuous racial discrimination, and (b) timely filed a complaint or complaints with defendant of these acts of discrimination, which complaint(s) was/were never acted upon pursuant to the applicable law, causing the farmer substantial damages.

16. Defendant, Dan Glickman, is Secretary of the United States Department of Agriculture ("USDA"), and is the federal official responsible for the administration of the statutes, regulations and programs which are the focus of this action.

HOW DEFENDANT IS ORGANIZED AND,  
GENERALLY, THE GOVERNMENT PROGRAMS AT ISSUE

17. USDA's Farm Service Agency ("FSA") provides commodity program benefits (such as deficiency payments, price support loans, conservation reserve benefits), disaster payments, farm loans and other farm credit benefits to U.S. farmers. The agency was created in 1994, as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS", which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services) with the Farmers Home Administration ("FmHA", which previously had provided farm loans and other farm credit benefits).

18. The FmHA was created decades ago to provide loans, credit and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by private, commercial lenders. These loans included "farm

ownership", "operating", and "continuing assistance" loans, as well as loans that "restructure" existing loans and "emergency disaster" loans.

19. ASCS was an agency of USDA created to provide services to U.S. farmers under the price support, deficiency payment, CRP, and related programs to stabilize farm income and prices, and to assist in the conservation of land. It was consolidated into the Farm Service Agency in 1994.

20. Defendant, Glickman is responsible for the administration of the Farm Service Agency (FSA) and previously FmHA & ASCS. FSA, like FmHA and ASCS before it, administers the federal farm programs through a three-tiered review system consisting of (1) county offices and committees, (2) state offices and committees, and (3) a federal level of review in Washington, D.C., the National Appeals Division ("NAD"). The local county committees consist of producers from a county who have been elected by other producers in that county; they oversee the county offices. The state committees consist of producers from each state selected by the Secretary of USDA; they oversee the state offices. At the federal level NAD renders final determinations of administrative appeals. (Prior to the 1994 consolidation, FmHA had its own administrative appeal process).

HOW FARMERS (1) APPLIED FOR LOANS AND CREDIT WITH FmHA AND  
(2) APPLIED FOR PARTICIPATION IN OTHER FARM PROGRAMS WITH ASCS

21. Traditionally, when a farmer applied for any FmHA loan or program, he went to his county office (formerly the FmHA office), and filled out a Farm and Home Plan (FHP), which required

the assistance and guidance of defendant's officials to complete. Assistance and guidance was critical because of the complexity of the programs and forms. This application process was done pursuant to regulations found at 7 C.F.R. 1910, et seq. If the farmer needed an ASCS-type benefit or assistance, he worked with his County Executive Director ("CED") and county committee in applying for participation or benefits. The process was and is done pursuant to ASCS regulations (7 C.F.R. Part 700, et seq.) and Commodity Credit Corporation ("CCC") regulations (7 C.F.R. at 1400, et seq.).

22. When the FmHA loan application with its supporting documents was completed it was presented to the county committee. If approved, the loan was processed. The Equal Credit Opportunity Act ("ECOA") prohibits discrimination in credit based on sex, marital status, race, color, age, or national origin, religion, etc. (15 U.S.C. §1691(a)). If an FmHA loan was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA, the FmHA - Equal Opportunity ("EO") office or with the Office of Civil Rights Enforcement and Adjudication ("OCREA"), or both.

23. With respect to ASCS-type programs, the application was reviewed by the CED and then presented to the county committee. If approved, the ASCS benefits were awarded. Title VI of the Civil Rights Act of 1964 prohibits exclusion of participation in federal programs based on race, color or natural origin. With respect to ASCS-type applications, if a farm program application

was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA or OCREA.

HOW PLAINTIFFS AND MEMBERS OF THE CLASS WERE DAMAGED --  
WHAT DEFENDANT DID IN RESPONSE TO COMPLAINTS OF DISCRIMINATION

24. Unbeknownst to plaintiffs and members of the Class, defendant disbanded the enforcement ability of EO and OCREA in 1983, leaving defendant with no ability to investigate discrimination complaints. In a May 25, 1997 Richmond News Dispatch article and interview of Lloyd Wright, Director of USDA Office of Civil Rights, Mr. Wright stated that (1) no systematic probes or investigations had been taken since 1983, when the Reagan administration disbanded the Civil Rights investigative staff, and (2) that agency regulations and the provisions of the Civil Rights Act of 1964, et al. were violated. Further evidence of defendant's willful failure to investigate discrimination complaints is evident in the February 27, 1997, Office of Inspector General Report ("OIG Report"), and the February, 1997 Civil Rights Action Team Report ("CRAT Report"), both explained below.

25. The Department of Justice (DOJ) was required to ensure that Federal agencies met their Title VI enforcement obligations and provide civil rights protection to persons filing discrimination complaints in the FSA programs. DOJ failed to ensure that defendant met its Title VI obligations.

26. Within USDA, The Policy Analysis and Coordination Center (PACC), an agency under the Assistant Secretary for Administration, was responsible for civil rights compliance and developing regulations for processing program discrimination

complaints at USDA. [OIG Report, p. 4] OCREA was responsible for processing program discrimination complaints received by USDA from participants in FSA programs. [OIG Report, p. 4]

27. OCREA was required to forward written complaints from FSA program participants of discrimination to the appropriate agency within USDA asking the agency to attempt conciliation of the complaint. If conciliation was not successful, the agency was to be instructed to perform a preliminary inquiry and make a recommendation of a finding of "discrimination" or "no discrimination". OCREA was to perform its own analysis of the complaint and the preliminary inquiry and make a recommendation to the Assistant Secretary for Administration on the finding of "discrimination" or "no discrimination". This process never occurred during the relevant period covered by this lawsuit. [OIG Report, p. 4]

28. FSA's Civil Rights and Small Business Staff (CR&SBUS) was responsible for handling program discrimination complaints within FSA. CR&SBUS never followed proper procedure pursuant to the law during the relevant period covered by this lawsuit. [OIG Report, p. 5]

29. The applicable State Civil Rights Coordinator in FSA was responsible for obtaining a conciliation agreement or performing a preliminary inquiry and forward it to CR&SBUS. If a conciliation agreement was reached with the complainant, CR&SBUS was to forward the agreement to OCREA and recommend the discrimination complaint be closed. If a preliminary inquiry was performed, CR&SBUS would analyze the information and determine if

discrimination was found; CR&SBUS was to forward the preliminary inquiry and its analysis to OCREA with its determination. These procedures were never properly followed.

30. USDA has codified regulations, 7 C.F.R., Part 15 - "Nondiscrimination," which states USDA's policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs, however, defendant admits the regulations have long been and still are outdated and never reflected the departmental agencies, programs and laws. (Emphasis supplied.) [OIG Report, p. 5]

31. USDA Regulation 4330-1, which is over 11 years old, dated June 27, 1986, set the departmental policy for program civil rights compliance reviews, but does not provide policy and guidance for processing program discrimination complaints. [OIG Report, p. 5]

32. On December 12, 1994, in a management alert to the then Office of Civil Rights Enforcement, defendant's Office of Inspector General (OIG) reported problems with how USDA received, processed, and resolved program discrimination complaints. OIG recommended that "a departmental regulation be promulgated that sets forth the authorities of the Office of Civil Rights Enforcement and that written procedures and controls be established governing the receipt, processing, and resolution of program discrimination complaints within established timeframes". [OIG Report, p. 5]

33. The regulation was never published.<sup>2</sup>

34. After years of abuse and benign neglect of African American farmers, OIG finally undertook an investigation and review, the results of which were released on February 27, 1997, of defendant's program discrimination complaints within FSA as well as 10 other agencies within USDA. OIG found, inter alia, that the discrimination complaint process within USDA lacked "integrity," and "accountability" was without a tracking system, was in "disorder", did not resolve discrimination complaints, and had a massive backlog:

"The program discrimination complaint process at FSA lacks integrity, direction and accountability. The staff responsible for processing discrimination complaints receives little guidance from management, functions in the absence of any current position descriptions or internal procedures, and is beset with its own personnel EEO problems. The staff also processes discrimination complaints without a reliable tracking system to determine the status of the complaints and, apparently, without deadlines to resolve the complaints. The resulting climate of disorder has brought the complaint system within FSA to a near standstill. Little gets accomplished to resolve discrimination complaints or to make program managers aware of alleged problems within their programs. After developing our own data base of unresolved cases, we determined that as of January 27, 1997, FSA had an outstanding backlog of 241 complaints." (Emphasis supplied) [OIG Report, p. 6]

35. OIG found that the staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people:

"The FSA staff responsible for processing discrimination complaints, the Civil Rights and Small Business

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<sup>2</sup>The U.S. Commission on Civil Rights issued a report in June 1996, titled Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs. This report also had specific findings and recommendations critical of the USDA discrimination complaints processing system.



Utilization Staff (CR&SBUS)" has two full-time program specialists working to resolve program complaints. These program specialists are supplemented by an administrative assistant who provides secretarial support and two staff assistants who maintain case files and the tracking system. The two program specialists and the two staff assistants transferred to FSA from the civil rights staff of the former Farmer's Home Administration (FmHA) during the Department's reorganization in October 1995. The staff assistants have been performing analyses of the preliminary inquiries conducted on the complaints, although they are not trained or otherwise qualified to do so. None of the former FmHA employees with CR&SBUS have position descriptions to reflect their current duties and responsibilities, and none have received performance appraisals for fiscal year 1996." (Emphasis supplied) [OIG Report, p. 6]

36. OIG found a "massive backlog" of unprocessed FSA complaints. [OIG Report, p. 6)

37. OIG found the FSA files "disorganized" and unaccountable:

"...CR&SBUS was unable to provide us with an accurate number of outstanding complaints or their status. We reviewed the case files and found them generally disorganized. It was difficult for us to readily determine the date of the complaint, the reason it was brought, and the status of its resolution." (Emphasis supplied) [OIG Report, p. 7]

38. OIG found hundreds of FSA cases unresolved:

"Our review at the CR&SBUS and CREA disclosed that, between them, they had listed a total of 272 cases as being active. The oldest case listed dates back to 1986. \* \* \* After resolving all duplications and determining the actual status of the 272 cases, we found that FSA had 241 cases of program discrimination complaints that had not been resolved." (Emphasis supplied) [OIG Report, p. 7]

39. OIG found repeated unaccountability and missing files:

"During our reconciliation of the two agencies' lists, we noted that some cases were listed by one or

the other agency but could not be found in its filing system. CR&SBUS listed 32 cases that we could not find in its filing system, and CREA listed 28 cases that we could not find in its filing system. We also noted that CR&SBUS listed cases unknown to CREA. CR&SBUS listed 19 cases that CREA did not list." [OIG Report, p. 7]

40. OIG found there was no reliable method to the processing:

"CREA had officially closed 30 of the 272 cases with findings of no discrimination. CREA had also closed one case with a finding of discrimination, and the complainant was compensated. The case involved the FSA disaster program, and the complainant received the benefits which were at first denied by FSA. Four of the remaining 24 cases had findings of discrimination as determined by CREA and are pending resolution. One of the four complainants has not responded to the Department's written notice regarding filing a claim for compensation. Office of Operations officials are negotiating a settlement with the remaining three complainants." [OIG Report, pp. 7-8]

41. OIG found improperly closed files and improper reviews, and many files with no documentation:

"We found that FSA improperly closed and forwarded 30 complaints to program managers, without notifying the Department (26 of 30 cases were closed under the old FmHA agency management). The civil rights staff concluded without first receiving concurrence from the Department that these cases were the result of "programmatic discrepancies" (i.e., agency error rather than civil rights violations). Without departmental concurrence with its findings, the agency may not have addressed the legitimate cases of discrimination. CREA has the responsibility to make final determination of program discrimination. FSA may recommend to CREA that cases be closed, but it does not have the authority to close these cases without concurrence from CREA. For example, we noted that in one instance FSA (the former FmHA) incorrectly concluded that a case had only programmatic concerns and closed the case without forwarding it to the Department. Only after a civil rights staff member complained, did FSA process the case as a civil rights discrimination case. The civil rights

staff stated in a letter that the allegation of racial discrimination was overlooked. The mix-up was discussed with the Department, which determined that the case should be processed by the civil rights staff. For most of the remaining cases, we found no documentation in the case files at FSA that the Department has reviewed these cases." (Emphasis supplied) [OIG Report, p. 8]

42. OIG found 58% of the FSA civil rights complaint case files were over 1 year old and over 150 cases were almost two years old:

". . . the average age of the 241 cases we consider open because they were not officially closed by the Department.

<u>No. of Cases</u>	<u>Program</u>	<u>Average Age</u>
151	Ag. Credit (Farm Loans)	703 Days
40	Disaster	485 Days
50	Others	482 Days

Of the 241 open cases, 139 (58 percent) were known to be over 1 year old. Of the 241 cases, 129 (54 percent) are awaiting action in FSA; the remaining 112 cases (46 percent) are in the hands of the CREA staff in USDA's Office of Operations. Sixty-five of the cases at FSA (50 percent) need a preliminary inquiry. Some of these date back to 1993." [OIG Report, p. 8]

43. OIG found no system within FSA for reconciliation or tracking of civil rights complaint cases:

"CR&SBUS has no procedures in place to reconcile or track the status of complaints after they are forwarded to CREA. Therefore, CR&SBUS could not tell us the status of complaints at CREA. As noted above, both CR&SBUS and CREA had different numbers and were not aware of all the outstanding complaints." (Emphasis supplied) [OIG Report, p. 8]

44. OIG found no management oversight within FSA with respect to the handling of civil rights complaints:

"CR&SBUS also does not prepare management reports to inform FSA program managers of alleged problems of discrimination within their programs. Without this information, program managers may not be aware of potential discrimination in the programs they are responsible for administering." [OIG Report, p. 9]

45. With respect to defendant's Office of Operations, Civil Rights Enforcement and Adjudication (CREA), OIG found repeated inaccuracies and unaccountability:

"...that the listing of outstanding cases provided by CREA contained inaccurate information. In some instances we were unable to locate the case files at CREA that were on its outstanding case list. Without reviewing the case files, we were unable to verify the status of the complaints. Also, CREA and FSA had not reconciled their cases, and neither could inform us of the correct number of outstanding cases."

"CREA does not have controls in place to monitor and track discrimination complaints. When complaints are received they are logged in, given a case number, and after the agency forwards the preliminary inquiry to CREA, the case is assigned to one of its seven program specialists. There are no procedures to require the program specialists to follow up on overdue responses from the agency. We have found that CREA is not following up on discrimination cases it returned to FSA for conciliation or performance of a preliminary inquiry. CREA advises the agency that it has 90 days to complete its review, but it does not follow up with the agency to determine the status of the complaint." [OIG Report, p. 9]

46. OIG surveyed 10 other USDA program agencies in addition to FSA, to determine the procedures used for processing program discrimination complaints and found the same problems. [OIG Report, pp. 10-11]

47. OIG compiled a list of outstanding ("open") program discrimination complaints, as late as 1996, within the Department, totaling 271. [OIG Report, at Attachment A]

48. At the same time that OIG released its report, a USDA Civil Rights Action Team released a report, dated February 1997, condemning defendant's lack of civil rights enforcement and accountability which, inter alia, was a cause of the drastic decline in the number of African American farmers. (The Report is hereinafter referred to as "CRAT"):

"According to the most recent Census of Agriculture, the number of all minority farms has fallen -- from 950,000 in 1920 to around 60,000 in 1992. For African Americans, the number fell from 925,000, 14 percent of all farms in 1920 to only 18,000, 1 percent of all farms in 1992." [CRAT, p. 14]

49. CRAT found a common problem involved minority farmers applying to defendant for loans:

"The minority or limited-resource farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office might claim to have no applications available and ask the farmer to return later. Upon returning, the farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced." (Emphasis supplied) [CRAT, p. 15]

50. CRAT found systematic mistreatment of minority farmers:

"If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the

FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials." (Emphasis supplied) [CRAT, p. 16]

51. CRAT found insufficient oversight of farm credit to minorities:

"Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services." (Emphasis supplied) [CRAT, p. 16]

52. CRAT found a lack of diversity in FSA program delivery structure:

"Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversity in its program delivery structure. Federal EEO and Affirmative Employment laws and policies do not govern the FSA non-Federal workforce except by agency regulation." (Emphasis supplied) [CRAT, p. 18]

53. CRAT found a lack of minority employees in FSA county offices:

"A recent GAO study indicated that in the 101 counties with the largest concentration of minority farmers, one-quarter had no minority employees in their offices." [CRAT, p. 18]

54. CRAT found lower participation rates and lower approval rates for minorities in FSA programs:

"Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Service (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities. The GAO found that between October 1, 1994 and March 31, 1996, 33 percent of minority applications but only 27 percent of non-minority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of non-minority loans in the direct loan program were disapproved." (Emphasis supplied) [CRAT, p. 21]

55. For some states, the approval rates for farm loans were widely disparate:

"For example, only 67 percent of African-American loans were approved in Louisiana, compared to 83 percent of non-minority loans. Alabama showed a similar disparity -- only 78 percent of African-American loans approved, compared to 90 percent of non-minority loans." [CRAT, p. 21]

56. CRAT found minorities endured longer loan processing times:

"Again, however, some States showed consistently longer processing times for minorities. In the Southeast, for example, in several States it took three times as long on average to process African-American loan applications as it did non-minority applications. Similar disparities between non-minority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region." [CRAT, p. 21]

57. CRAT found discrimination complaints at USDA were often ignored:

"Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where, even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the

toll these ongoing battles with USDA has taken on their families, and on their health." [CRAT, pp. 22-23)

58. CRAT found decisions favoring farmers routinely not enforced by USDA:

"However, many farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply "not enforced"." [CRAT, p. 23]

59. CRAT found a lack of USDA regulations for discrimination complaint processing:

"Program discrimination complaints generally fall within two categories: (1) programs conducted directly by a USDA agency, such as USDA loan programs, and (2) federal assisted programs, where USDA does not directly offer services to customers, but recipients of USDA funds do. The recipients must obey civil rights laws, and USDA can be sued under such laws as Title VI, the Rehabilitation Act, IX, the Equal Credit Opportunity Act, and others. CRAT members were informed by OGC that USDA presently has no published regulations with clear guidance on the process or time lines involved in program discrimination complaints. When a farmer does allege discrimination, "preliminary investigations" are typically conducted by the agency that has been charged with violating her or his right." [CRAT, p. 24]

60. CRAT found discrimination complaints often are not responded to by USDA:

". . . USDA doesn't respond even when they do file complaints. In Tulsa, OK. an advocate representing black and American Indian farmers said, "we have filed 72 civil rights complaints. Not one complaint has even been answered." [CRAT, p. 24]

61. CRAT found record-keeping on discrimination complaints "non-existent" and that a backlog existed:

"The CRAT was unable to gather historical data on program discrimination complaints at USDA because record keeping on these matters has been virtually



nonexistent. Complaints filed with the agencies are not necessarily reported to USDA's Civil Rights office. Some figures are available however, for cases that were open as of December 31, 1996. The largest number of pending discrimination complaints, as comments at the listening sessions suggests, are concentrated in three agencies at USDA. There were 205 case pending, representing 42 percent of the total, against the FSS: 165, or 33.3 percent against the Rural Housing Service (RHS): and 62, or 12.5 percent against the Food and Consumer Services. Sixty-three cases, or 12.7 percent of the total, were pending against other agencies. The Department had a total of 495 pending program discrimination complaints. Approximately one-half of the pending cases are 2 years old or older, verifying farmers contention that complaints are being processed slowly, if at all. According to the Complaints Processing Division at the Office of Operation (OO), which processes complaints that make it to the Department level. USDA averages about 200 new program discrimination complaints each year. However, in fiscal year 1996, an average of only 9 cases were closed per month, or 108 during the year -- increasing a backlog of program complaints." (Emphasis supplied.) [CRAT, pp. 24-25]

62. CRAT uncovered neglect of and bias against minorities by USDA, resulting in a loss of farmers' land and income.

"The recent Civil Rights listening-sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK. observed that minority farmer are not sure which condition "was worse -- being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses. Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination of FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some kind of compensation for their loses." [CRAT, p. 30]

63. CRAT found USDA the fifth worst (of 56 government agencies) in hiring minorities:

"According to the US Department of Labor, between 1990 and 2000, women, minorities, and immigrants will account for 80 percent of the United States labor force growth. The "Framework for Change: Work Force Diversity and Delivery of Programs," a USDA report released in 1990, found that USDA had a need to remedy under-representation in its workforce by providing equal employment and promotion opportunities for all employees. When this statement was made, USDA ranked 52 out of 56 Federal agencies in the employment of minorities, women, and individuals with disabilities." [CRAT, p. 33]

64. CRAT found the lack of diversity at USDA adversely affects program delivery to minorities:

"USDA's workforce does not reflect the diversity of its customer base. The lack of diversity in field offices adversely affects program delivery to minority and women customers of USDA." [CRAT, p. 45]

65. CRAT found a lack of resources at USDA to ensure fair and equitable (non-discriminatory) program delivery to farmers:

"The Assistant Secretary for Administration is USDA's senior official responsible for civil rights. Although that position has the responsibility for civil rights policy and compliances, it does not have the authority or resources necessary to ensure that programs are delivered and employees are treated fairly and equitably." [CRAT, p. 46]

66. CRAT found enforcement of civil rights at USDA in program delivery lacking:

"Another problem with enforcing civil rights in program delivery is fragmentation. Agency civil rights directors have a number of responsibilities. For example, USDA agencies each perform some complaint processing functions. However, the Commission noted that the respective roles of OCRE and the agencies were not clearly defined. The Commission also found that OCRE was providing technical assistance to agencies on civil rights statutes, not proactively, but only when requested." [CRAT, p. 51]

67. CRAT found a lack of civil rights specialists and knowledge for program-related civil rights issues at USDA:

"The Civil Rights Commission's report on the lack of Title VI enforcement also pointed to USDA's lack of civil rights specialists in program-related civil rights issues. Many of the Department's civil rights resources are devoted to processing of employment discrimination complaints. Of the current staff in the Department's two civil rights offices, two-thirds work on EEO complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery. According to the Commission, the 1994 civil rights reorganization was deficient because OCRE did not separate internal and external civil rights issues into separate offices. The Commission predicted that "a probable consequence is that USDA's Title VI enforcement program may suffer as OCRE responds to pressures to improve USDA's internal civil rights program." It recommended that USDA establish "two separate units, with different supervisory staff," one for internal and one for external civil rights issues." [CRAT, p. 54]

68. CRAT found defendant's counsel hostile to civil rights,

if not racist:

"The perception that the Office of the General Counsel [at USDA] is hostile to civil rights has been discussed earlier in this report. OGC's legal positions on civil right issues are perceived as insensitive at the least, and racist at worst. Correcting this problem is critical to the success of USDA's civil rights program." [CRAT, p. 55]

69. CRAT found defendant's counsel often have no civil rights experience or education:

"However, the CRAT has found that attorneys who practice civil rights law at [USDA's] OGC are not required to have specialized experience or education in civil rights when they are hired. They acquire their civil rights experience on the job. In addition, most of OGC's lawyers working on civil rights issues work on non-civil-rights issues as well." [CRAT, p. 55]

70. In sum, CRAT concluded that defendant does not support or enforce civil rights:

"USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks. There has been instability and lack of skilled leadership at the position of USDA Director of Civil Rights. Dividing up the Department's Civil Rights office between policy and complaints has further exacerbated the problem. The division of responsibility for civil rights among different USDA offices and agencies has left confusion over enforcement responsibilities. Finally, OGC is perceived as unsupportive of civil rights." [CRAT, p. 56]

71. On September 29, 1997, USDA's Office of Inspector General issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs - Phase II" (hereinafter "OIG Report Phase II") which found, inter alia that (a) defendant has resolved only 32 of the 241 outstanding discrimination complaints reported in the OIG Report (back in February, 1997) and (b) that the backlog of discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

72. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues - Phase V" [hereinafter "OIG Report V"], which supplements plaintiffs claims and supporting materials in this lawsuit and in the above pending motions. In particular, OIG Report V states, inter alia:

a. "We found that the Department [USDA], through CR [Office of Civil Rights], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998." OIG Report V, cover letter to the Secretary.

b. "The backlog is not being resolved at a faster rate because CR itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past. We noted with considerable concern that after 20 months, CR has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations." OIG Report V at i (emphasis added).

c. "Most conspicuous among the uncorrected problems is the continuing disorder within CR. The data base CR uses to report the status of cases is unreliable and full of error, and the files it keeps to store needed documentation are slovenly and unmanaged. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications." OIG Report V at iii (emphasis added).

d. "Of equal significance is the absence of written policy

and procedures."  OIG Report V at iii.

e.  "The absence of formal procedures and accurate records raises questions about due care within the complaints resolution process.  We found critical quality control steps missing at every stage of the process.  Staff members with little training and less experience were put to judging matters that carry serious legal and moral implications.  Many of CR's adjudicators, who must determine whether discrimination occurred, were student interns.  Legal staff members with the Office of General Counsel (OGC), who review CR's decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis.  We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit."  OIG Report V at iii (emphasis added).

73.  In sum, defendant's willful disregard of, and failure to properly investigate, African-American discrimination complaints began with the disbanding of civil rights enforcement functions back in 1983, until February 1997 when the current administration reorganized and reestablished the enforcement staff of the civil rights office, and since February, 1987, has gotten worse, as evidenced by the massive increase of backlogged, unresolved cases and overall disarray in the USDA Office of Civil Rights as reported in the most recent OIG Report.

## EQUAL CREDIT OPPORTUNITY ACT

74. The Equal Credit Opportunity Act ("ECOA"), as amended in 1976, is a detailed and exhaustive legislative directive unequivocal in its statutory intent to stamp out discrimination by any lender, anywhere, whether they be a private, public, governmental or quasi-governmental entity.

ECOA states, inter alia:

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);... 15 U.S.C. §1691(a)(1).

ECOA provides for monetary relief to both individuals and class members who are damaged by creditors who violate the statute:

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class. 15 U.S.C. §1691e(a) (emphasis added).

Thirdly, district courts are invested with the authority to provide equitable and declaratory relief:

Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter. 15 U.S.C. §1691e(c) (emphasis added).

Fourthly, the prevailing party can recover costs and reasonable attorneys fees:

In the case of any successful action under subsection (a), (b), or (c) of this section, the cost of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages

awarded by the court under such subsection. 15 U.S.C. §1691e(d) (emphasis added).

75. In sum, this court has jurisdiction to grant actual damages, equitable and declaratory relief, costs and attorneys fees, and ECOA contains a waiver of United States sovereign immunity.<sup>3</sup>

76. When the class members filed discrimination complaints, they fell four-square under the umbrella of ECOA. It is plaintiffs' belief that ninety-five percent of class members filed complaints of discrimination with respect to the USDA loan application process. Only five percent have claims for denial of disaster applications.

77. Defendant does not dispute the waiver of sovereign immunity under ECOA. Plaintiffs assert that there is no just reason for denying the remaining five percent of plaintiffs' relief for complaints of discrimination involving disaster benefits. While ECOA covers farm "credit" programs, but not disaster programs, the APA provides an avenue of relief for Black farmers who have been denied equal access to disaster programs and, subsequently, due process of law in challenging the implementation of that program. The implementation of USDA's credit programs and other programs were closely intertwined and the violation of plaintiffs' rights equally egregious in both areas. Racial discrimination ran rampant under both programs, and neither offered Black farmers an opportunity to appeal to a civil rights enforcement body to obtain relief. Further, in many instances, the calculation of loans under the credit program and



payments or benefits under the other programs were interdependent. For example, the amount of program benefits or program allotments that a farmer could receive for the crop of a commodity (such as cotton, corn, wheat, rice, peanuts, or tobacco) in a year required a review of his or her farming history, which, in turn, was directly related to the yield per acre the farmer cultivated, which was dependent on the amount of operating credit made available to the farmer.

78. Class members are seeking redress for the denial of due process to the members of the class for the discriminatory implementation of these interconnected farm programs and for the defendant's failure regarding these programs to provide sufficient civil rights investigation and enforcement.

STATUTE OF LIMITATIONS IS WAIVED

79. On October 21, 1998, the President signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-\_\_\_. This legislation contains the following provisions:

Sec. [741]. Waiver of Statute of Limitations.

(a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by any statute of limitations.

(b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act. The Department of Agriculture shall—

(1) provide the complainant an opportunity

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<sup>3</sup> Moore v. USDA, 55 F.3d 991 (5<sup>th</sup> Cir. 1995).

for a hearing on the record before making that determination;

(2) award the complainant such relief as would be afforded under the applicable statute from which the eligible complaint arose notwithstanding any statute of limitations; and

(3) to the maximum extent practicable within 180 days after the date a determination of an eligible complaint is sought under this subsection conduct an investigation, issue a written determination and propose a resolution in accordance with this subsection.

(c) Notwithstanding subsections (a) and (b), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal Court of competent jurisdiction seeking a review of such denial.

(d) The United States Court of Federal Claims and the United States District Court shall have exclusive original jurisdiction over—

(1) any cause of action arising out of a complaint with respect to which this section waives the statute of limitations; and

(2) any civil action for judicial review of a determination in an administrative proceeding in the Department of Agriculture under this section.

(e) As used in this section, the term "eligible complaint" means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) in administering—

(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(B) a housing program established under title V of the Housing Act of 1949; or

(2) in the administration of a commodity

program or a disaster assistance program.

(f) This section shall apply in fiscal year 1999 and thereafter.

(g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. Chapter 5 of title 5 of the United States Code shall apply with respect to an agency action under this section with respect to an eligible complaint, without regard to section 554(a)(1) of that title.

#### CLASS ACTION ALLEGATIONS

80. On March 9, 1998, plaintiffs filed a Motion for Certification of Class. On April 8, 1998, Defendant filed its Response to Plaintiffs' Motion for Class Certification and its Opposition to Plaintiffs' Motion for Partial Summary Judgment. On October 9, 1998, this court certified plaintiffs' class, defined as "[a]ll African-American farmers who (1) farmed between January 1, 1983, and February 21, 1997; and (2) applied, during that time period, for participation in a federal farm program with USDA, and as a direct result of a determination by USDA in response to said application, believed that they were discriminated against on the basis of race, and filed a written discrimination complaint with USDA in that time period." The Class was further divided into three subclasses depending on what action, if any, that USDA has taken in responding to Class members' complaints of racial discrimination.

81. Notice to the "potential" Class members (estimated to be between 50-60,000) should result in somewhere between 2-8,000 Class members. With respect to the Class members, the allegations

are similar, if not identical, to the allegations and causes of actions of the 12 Class representatives. Simply put, each and every plaintiff was denied a loan or program benefit (such as a disaster loan) by defendant, or was granted a loan or program benefit on terms different than that of white farmers; said plaintiff complained on grounds of discrimination; said discrimination complaint was never resolved pursuant to the law; and all of these events occurred during the period 1983-1997.

82. The foregoing allegations are typical as to all Class Members. The Class Representatives, for themselves and members of the Class will present a prima facie case of discrimination showing (1) defendant's awarding of credit and farm program participation to whites was a pattern different than for the Class members and (2) a willful failure of defendant to properly investigate the discrimination complaints of plaintiffs and members of the Class.

#### COUNT I

(Declaratory Judgment)

83. The Class representatives, on behalf of themselves and all Class members, re-allege all paragraphs above as if fully set forth herein.

84. An actual controversy exists between Class representatives and Class members and defendant as to their rights with respect to defendant's farm programs.

85. The Class representatives and the Class members pray that this Court declare and determine, pursuant to 28 U.S.C. 2201, the rights of the Class members under defendant's farm programs

including their right to equal credit, participation in farm programs, and their right to full and timely enforcement of racial discrimination complaints.

COUNT II  
(Violation of Equal Credit Opportunity Act)

86. Class representatives, on behalf of themselves and all Class members similarly situated, re-allege all paragraphs above as if fully set forth herein.

87. Defendant's acts of denying Class members credit and other benefits and systematically failing to properly process their discrimination complaints was racially discriminatory and contrary to the requirements of ECOA.

88. Class representatives and the Class members pray defendant's actions be reversed as violative of and contrary to ECOA, 15 U.S.C. 1691 et seq.

89. Class members pray for equitable and declaratory relief, 16 U.S.C. §1691e(c); money damages, 16 U.S.C. §1691e(a), for the Class of not less than \$2,500,000,000; and costs and attorneys fees, 16 U.S.C. §1691e(d).

COUNT III  
(Agency Action That Is Arbitrary  
Capricious, An Abuse Of Discretion, Not In Accordance  
With Law, And In Excess of Statutory Jurisdiction)

90. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

91. Defendant's acts of denying Class members credit or other benefits (particularly disaster applications) and

systematically failing to properly process their discrimination complaints was racially discriminatory and not authorized nor justified by any statute, regulation, or reasonable interpretation of program procedures, and thus constitutes arbitrary, capricious and unlawful action.

92. Plaintiffs and the Class pray defendant's actions be reversed as arbitrary, capricious, an abuse of discretion, and not in accordance with law, pursuant to 5 U.S.C. 706(2) (A), and in excess of defendant's statutory jurisdiction, pursuant to 5 U.S.C. 706(2) (C).

93. WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, request this Court enter judgment against defendant as follows:

(1) An Order declaring, pursuant to 28 U.S.C. §2201, that the Class members were denied equal credit and other farm program benefits and full and timely enforcement of their civil rights discrimination complaints.

(2) An Order declaring defendant's actions to be a breach of the Class members' rights under the Equal Credit Opportunity Act and declare the Class members' eligible to receive equitable relief, declaratory relief, monetary damages of not less than \$2,500,000,000, and costs and reasonable attorneys fees.

(3) An Order declaring defendant's actions arbitrary, capricious, an abuse of discretion, not in accordance with the law, and in excess of defendant's statutory authority and jurisdiction;

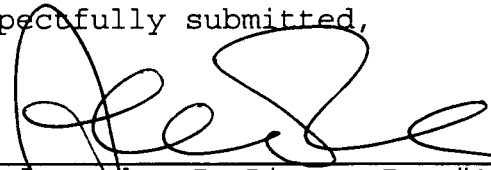
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(4) An Order granting the Class members and their counsel attorneys' fees and costs pursuant to the Equal Credit Opportunity Act, 15 U.S.C. §1691e(d) et seq., and the Equal Access to Justice Act, 28 U.S.C. §2412, costs of suit, and interest upon the judgment from date when the Class members should have been paid to actual date of payment, and all other relief that the Court determines proper and fair.

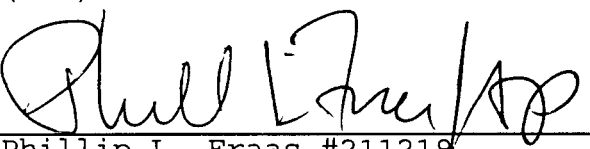
Respectfully submitted,

October 26, 1998

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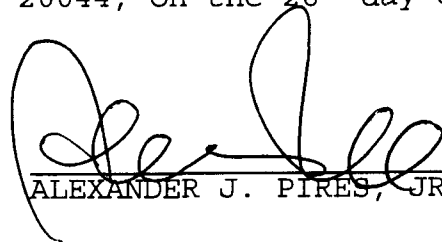
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Defendants' Seventh Amended Class Action Complaint was delivered by fax and hand to Michael Sitcov and Susan Hall Lennon, 901 E Street, N.W., U.S. Department of Justice, Civil Division, Federal Programs Branch, Room 920, Washington, D.C. 20044, on the 26<sup>th</sup> day of October, 1998.

  
\_\_\_\_\_  
ALEXANDER J. PIRES, JR.