

February 27, 1997

REPORT FOR THE SECRETARY ON CIVIL RIGHTS ISSUES - PHASE I

FROM: Roger C. Viadero
Inspector General

SUBJECT: Farm Loan Programs - Civil Rights Complaint System
Evaluation Report No. 50801-2-Hq(1)

On December 9, 1996, you informed me of your concern about the effectiveness of the Department's work with socially disadvantaged and minority farmers and ranchers. This concern was raised partly by recent allegations that the Department discriminates against these farmers in the delivery of farm loan programs, and partly by apprehensions about the adequacy of the Department's programmatic civil rights complaint system. You asked me to investigate the Department's efforts in responding to complaints of discrimination and provide you with a preliminary report as soon as possible. The purpose of this report is to provide you with our results to date.

SUMMARY:

We determined the number of outstanding complaints of discrimination made by farmers against the Farm Service Agency (FSA), as well as the number of FSA employees assigned to resolve these complaints. Our figures show that as of January 27, 1997, FSA had two people at the national office assigned to process program complaints and maintained a backlog of 241 complaints.

Although FSA temporarily detailed more staff to process complaints, we had difficulty in determining from FSA's records the number and status of all complaints. Staffing problems, obsolete procedures, and little direction from management have resulted in a climate of disorder within the civil rights staff at FSA. Little is accomplished to process complaints, and little is done to track their status. We subsequently developed our own data base to compile reliable figures. As of January 27, 1997, we identified 230 outstanding program complaints at FSA. We had similar problems determining the number of outstanding complaints at the Department because there was no reliable filing system and the data base of cases contained incomplete or inaccurate information. At the Office of Operations - Civil Rights Enforcement and Adjudication (CREA), we developed a data base of 198 complaints for FSA, some of which were on FSA's list and some of which were not. Between the two lists, we counted a total of 272 unduplicated cases and determined that 241 of these were open, of which at least 106 involve race, color, or national origin. (See attachment A.)

As is evident from the data we were able to collect, there is a large backlog of complaints in FSA as well as other departmental agencies. Many of these complaints are more than a year old. The backlog has grown in recent months largely because there is no accountability within the Department. No fewer than three staff groups in the Department are responsible for segments of the complaints process in FSA, but no group has exercised overall authority and no group is constrained by a deadline. The FSA staff assigned to review complaints operates from an obsolete handbook; the departmental staff (in the Office of Operations) that determines the validity of complaints does not follow up with FSA to ensure some action has been taken; and the departmental agency

(Policy Analysis and Coordination Center) that oversees civil rights compliance is not monitoring FSA's caseload adequately to report the backlog.

To deal with the backlog on an immediate basis and to help restore integrity and public confidence in the Department's complaint system, the Secretary should convene an ad hoc team and assign it the control of the complaint system within the Department. This team should be headed by an official appointed by the Secretary who will be acting on behalf of the Secretary. Team members should consist of program specialists detailed for a minimum of 60 days to process complaints until the backlog reaches a manageable level, as determined by the Secretary. To deal with complaints in the future, the Secretary should consider centralizing control over the complaints process by giving one staff authority to oversee all phases of a complaint.

In a response to this report, the Secretary stated that the immediate actions suggested in this report will be helpful as the implementation team designs a plan to reduce the backlog of civil rights program complaints within the Department. The Secretary's response is included as Attachment C to this report.

OBJECTIVES:

You asked that we address the following issues.

1. Determine the number of outstanding complaints which allege discrimination in farm loan programs, including the dates filed and status in complaint investigation and resolution process; determine the number of full-time equivalents committed to resolving these complaints; and recommend a plan of action for prompt resolution of these complaints.
2. Assess participation of minorities and socially disadvantaged persons in FSA's farm loan programs; determine whether the percentage of participation correlates to the total population, by nation, State, and county.
3. Determine if FSA offices provide sufficient technical assistance to help these farmers apply for and receive program benefits and if FSA processes minority farm loan applications and servicing requests in the same manner as loan applications and servicing requests from white farmers.

This Phase I report addresses Issue No. 1. We are currently gathering data that will assist us in addressing Issues Nos. 2 and 3. After we gather this information, we plan to visit selected FSA field locations. Therefore, our evaluation is continuing, and further issues will be reported in later documents.

SCOPE:

The primary focus of our evaluation to date has been on farm loan program complaints involving minority and socially disadvantaged farmers and on the Department's civil rights program complaint system. We emphasized compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin. As part of our review, we gathered information on complaints in other FSA programs as well as complaints involving other categories of discrimination such as age, sex, handicap, and religion. We also gathered general information on the civil rights program complaint system in other major departmental agencies

to help us assess how well the Department, at large, was processing these complaints.

To determine the number of outstanding farm program discrimination complaints, we gathered data from FSA's Civil Rights and Small Business Utilization Staff (CR&SBUS) and interviewed CR&SBUS staff responsible for processing the complaints. We examined data at the Office of Operations, Civil Rights Enforcement and Adjudication (CREA) division and interviewed staff to reconcile the outstanding farm program complaints we found at CR&SBUS with those we found listed at CREA. In addition, we obtained information on the number of closed farm program complaints since 1993. We also examined departmental regulations, policy, guidance, and procedures for processing complaints.

Our evaluation makes a distinction between federally assisted programs and federally conducted programs. Federally assisted programs are programs for which Federal financial assistance is rendered to an organization that is required to provide specified benefits to producers (farmers or program participants). Federally conducted programs are programs administered directly to participants through agency offices. All of the complaints we reviewed were program complaints from individuals that allege discrimination under federally conducted programs. Although our evaluation is focusing on federally conducted programs, we consulted the June 1996 report of the U.S. Commission on Civil Rights, titled Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, in conducting our review and preparing this report.

Our review of outstanding program complaints is continuing. We drafted a letter which was signed by the Secretary on February 11, 1997, requesting each FSA State Executive Director to provide OIG with the status of outstanding program discrimination complaints in process in his/her State.

BACKGROUND:

There are several statutes prohibiting discrimination in Federal programs because of race, color, national origin, sex, age, religion, and so forth. For purposes of our evaluation, we emphasized Title VI of the Civil Rights Act of 1964, which provides that: *No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.* To implement the Title VI enforcement, Congress vested the President with the authority to approve all rules, regulations, and orders issued by Federal agencies. The President has delegated his Title VI coordination functions to the Attorney General in a series of Executive orders.

To enforce Title VI requirements within the Farm Service Agency, several agencies and staffs are involved.

- Department of Justice (DOJ). The DOJ has been given the responsibility for ensuring that Federal agencies meet their Title VI implementation, compliance, and enforcement obligations. Specifically, Executive Order No. 12250, issued in 1980, gives the DOJ the authority to direct the Federal agencies in their Title VI implementation, compliance, and enforcement activities.

- Policy Analysis and Coordination Center (PACC). PACC, a USDA agency under the Assistant Secretary for Administration, is responsible for civil rights policy, compliance, and evaluation. This includes developing departmental regulations for processing program discrimination complaints to ensure uniformity among the agencies within the Department.

- Office of Operations, Civil Rights Enforcement and Adjudication (CREA). CREA, in the Department's Office of Operations, is responsible for processing program discrimination complaints received by the Department. All discrimination complaints for federally conducted programs are forwarded to CREA. CREA reviews the complaint initially to ensure it contains sufficient information to lead to a determination of alleged discrimination under Title VI. If the information is found to be insufficient, a letter is sent to the complainant requesting more. The complainant has 20 days to respond and if no response is received within 20 days, the complaint is closed.

CREA forwards written complaints that contain sufficient information to the appropriate agency, asking the agency to attempt conciliation of the complaint. If a conciliation agreement is reached between the agency and the complainant, the agreement is forwarded to CREA for final approval and closure. If conciliation is not successful, the agency is instructed to perform a preliminary inquiry and make recommendation of a finding of discrimination or no discrimination. CREA then performs its own analysis of the complaint and the preliminary inquiry and makes a recommendation to the Assistant Secretary for Administration on the finding of discrimination or no discrimination. After the final determination has been made, the agency is notified of CREA findings and informed of the corrective actions needed.

- Farm Service Agency, Civil Rights and Small Business Utilization Staff (CR&SBUS). The CR&SBUS staff, located at FSA's national office, is responsible for handling program discrimination complaints within FSA. Program discrimination complaints received by FSA are forwarded to CREA. When CREA returns the complaint to FSA with instructions to conciliate or perform a preliminary inquiry, CR&SBUS forwards the complaint to the appropriate State and requests that a conciliation agreement be reached with the complainant or that a preliminary inquiry be performed.

The applicable State Civil Rights Coordinator in FSA is responsible for obtaining the conciliation agreement or performing the preliminary inquiry. The conciliation agreement or the preliminary inquiry report is forwarded to CR&SBUS. If a conciliation agreement is reached with the complainant, CR&SBUS forwards the agreement to CREA and recommends the discrimination complaint be closed. If a preliminary inquiry is performed, CR&SBUS analyzes the information and determines if discrimination was found. CR&SBUS then forwards the preliminary inquiry and its analysis to CREA with its determination.

The Department has codified regulations, 7 CFR 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 could serve as a basis for civil rights compliance and enforcement. However, the regulations are outdated and do not reflect the current departmental agencies, programs, and laws.

The current Departmental Regulation 4330-1, dated June, 27, 1986, sets the departmental policy for program compliance reviews, but does not provide policy and guidance for processing program discrimination complaints.

On December 12, 1994, in a management alert to the then Office of Civil Rights Enforcement, we reported problems with how the Department received, processed, and resolved program discrimination complaints. We 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. In response, the Department revised its Departmental Regulation 4330-1 to include guidance on processing program discrimination complaints. However, the regulation is still in draft form and no timeframe has been set to publish it.

As mentioned earlier, 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 had several findings and recommendations applicable to the USDA complaints processing system. We are considering this report as our evaluation continues.

ISSUE AREAS

ISSUE NO. 1 - IMMEDIATE ACTIONS NEEDED TO CLEAR COMPLAINTS BACKLOG

We reviewed program complaints within the Farm Service Agency as well as 10 other agencies within the Department. We concluded that immediate action is needed to clear a backlog of complaints, particularly in the Farm Service Agency.

Farm Service Agency (FSA)

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.

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

We also noted that CR&SBUS employees have filed grievances with their union and that two employees have filed four EEO complaints with the Department alleging discrimination, sexual harassment, or retaliation by management or members of the staff. In the past couple of years, OIG has received several whistleblower complaints on employees of CR&SBUS alleging employee misconduct. The whistleblower complaints are pending. As a result of the lack of current position descriptions, accountability, lax supervision, and employees' complaints, morale is low and may be a contributing factor to the massive backlog of unprocessed complaints.

FSA also has State Civil Rights Coordinators who work complaints as a collateral duty. In addition, FSA, in January brought in a six member "Jump" team to help address its backlog of complaints but this team was suspended after 2 weeks. The agency plans to bring additional teams in later. To date, the team has spent limited

time with CR&SBUS. To improve the effectiveness of teams like these, the agency should assign them for periods of at least 60 days. This would allow the team more time to review and address the complaints. In addition, the team should have members experienced in farm loan programs since farm loans constitute the majority of the complaints that are backlogged.

Despite the recent emphasis by FSA on program complaints, 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.

To determine the number of outstanding complaints for farm programs, we first reviewed a CR&SBUS report of complaints. We found that it contained errors and inaccurate information. Therefore, we reviewed each discrimination case file to develop our own data base to determine the number of outstanding complaints and their status. Second, we reviewed a list of outstanding farm program complaints at CREA. This list also contained inaccurate and outdated information, and we were once again forced to review each file to obtain current information. Third, we reconciled our CR&SBUS list with the list we developed at CREA. To present an overall picture of the backlog, we combined the two listings to show the status of the cases as found at each agency. (See attachment A.) Our data base included complaints filed for discrimination in the farm loan programs as well as complaints filed for other programs in FSA and the Commodity Credit Corporation.

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. We initially believed that this case had not been processed by CR&SBUS; however, our review at CREA found that the complaint had been closed since 1994. The case file maintained by CR&SBUS did not contain correspondence to disclose that the case was officially closed. 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.

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.

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 241 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.

We found that FSA improperly closed and forwarded 30 complaints to program managers without notifying the Department (26 of these 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 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 mixup 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.

The following table summarizes the average age of the 241 cases we consider open because they were not officially closed by the Department.

No. of Cases	Program Ag. Credit	Average Age
151	(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.

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.

CR&SBUS also needs to incorporate procedures for processing discrimination complaints for farm loan programs into its internal procedures. Staff is currently using a handbook developed by the former Agricultural Stabilization and Conservation Service for Commodity Credit Corporation programs. It has supplemented this obsolete material with draft procedures for farm loan programs. None of these procedures established timeframes for conducting the analysis of the preliminary inquiry. The lack of a reliable tracking system or timeframes for all phases of the process within FSA contributes to the continuation of the backlog.

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.

Ninety-six farm loan program discrimination complaints were closed since 1993. We considered the case closed if the case file contained a letter from the Department which stated it was closed. Of these 96 cases, 48 had been closed by the Department after the agency had performed a preliminary inquiry. The Department found that 47 complainants had not been discriminated against and that one had. (This case has not been resolved because according to the Department, the complainant has filed suit in Federal court.) FSA conciliated 3 by negotiating a settlement agreement directly with the complainant; closed 15 because the complainant failed to provide information when requested; closed another 9 because the complaint was not filed within 180 days of the alleged

discrimination; and closed 21 because the complainant failed to disclose the basis of the complaint, withdrew the complaint, or died.

Office of Operations - Civil Rights Enforcement and Adjudication (CREA)

We reconciled our generated data base of FSA discrimination complaints with the cases at CREA to verify or, in some cases, determine the status of FSA's outstanding complaints.

As stated previously, we found 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.

Also during our review at CREA we were informed that there is some duplication of effort between CREA and FSA. For example, in cases where FSA performs the preliminary inquiry and analysis, CREA re-analyzes the preliminary inquiry and makes its own determination. In some instances, CREA requires FSA to redo the preliminary inquiry or obtain additional documents to support the agency conclusions. The seven program specialists at CREA process discrimination complaints for the entire Department. A farm program discrimination complaint could be assigned to any one of the seven program specialists, regardless of that specialist's familiarity with the program.

In addition, we were informed that the complainant is left out of the process and generally does not hear anything until the final decision is made by CREA, which in some cases has taken years.

Other Departmental Agencies with Program Complaints

In addition to reviewing FSA and CREA, we surveyed 10 other USDA program agencies to determine the procedures used for processing program discrimination complaints. We also wanted to determine the number, status, and time elapsed since the complaints were filed.

Information provided in response to our survey further supports the need for Departmentwide policy and guidance on complaints processing. We found that agencies generally lacked established timeframes for completing the various stages in the process or did not adhere to them. Furthermore, agencies generally did not have effective systems for tracking and ensuring that complaints were processed in an efficient and proper manner.

Regarding the number, status, and time elapsed since the filing of complaints, we determined that the Rural Housing Service/Rural Business Cooperative Service (one staff handles complaints for both Services) had a backlog of 233 complaints. Of these, 139 (60 percent) had been filed by complainants more than 1 year ago. As of January 6, 1997, the time elapsed for complaints in the system ranged from 38 days to 2,600 days (7 years and 3 months). The staff was not able to provide information about the status of the complaints.

The Rural Utilities Service, the Forest Service, and the Natural Resources Conservation Service had a combined total backlog of 40 cases. Thirty-one of these were filed by complainants more than a year ago. Two cases at the Animal and Plant Health Inspection Service have been in the system for over a year. On the other hand, the Food and Consumer Service had a backlog of only 14 complaints, all of which were filed by complainants less than a year ago. The Grain Inspection, Packers, and Stockyards Administration; the Agricultural Marketing Service, and the Food Safety and Inspection Service had no outstanding complaints.

Attachment B contains a list of outstanding program discrimination complaints within the Department.

We concluded that the Department should take immediate actions to address the current backlogs. Although a comprehensive plan is needed to address the causes of these backlogs for the long term (see Issue No. 2), we believe immediate actions are needed to help restore integrity and confidence in the Department's ability to effectively act on program complaints.

Efforts by agencies to reduce their backlogs of program complaints will result in an increase in the workload at CREA as preliminary inquiries are completed and forwarded to CREA. Therefore, the effort should be directed and controlled by an ad hoc team reporting to the Secretary or Deputy Secretary. This level of attention is needed to ensure that the complaints are effectively addressed in a fair and objective manner. The overall departmental action plan should assign specific tasks and timeframes for addressing the backlogs.

IMMEDIATE ACTIONS NEEDED

1. The Secretary should convene an ad hoc team headed by a high-ranking departmental official acting on behalf of the Secretary. The team should take control of the backlog of complaints at the agencies and at CREA. The team should consist of agency program specialists detailed for a minimum of 60 days to process complaints until the Secretary determines that the backlog is at a manageable level. The team should report directly to the Secretary on a weekly basis and should at a minimum do the following.

(a) Send a letter signed by the Secretary to all complainants whose cases have not yet been resolved assuring the complainants that action will be taken. The letter should include an assigned case file number and the name and phone number of a responsible person who knows the general status of the case.

(b) Immediately assume control of the FSA program complaint system and evaluate the adequacy of FSA's civil rights staffing to carry out its civil rights mandate.

(c) Reevaluate all discrimination complaints closed and forwarded to program managers by FSA without concurrence from CREA.

(d) Determine the number of outstanding program complaints at FSA and other departmental agencies with the assistance of the agencies and CREA.

(e) Develop a data base for the outstanding program complaints. The data base should contain the status of a complaint, the official responsible for processing the case, the actions taken to date, the actions needed to resolve the complaint, the days taken to complete specific tasks, and the age of the complaint.

(f) Process complaints still at the agency level. This would primarily involve performing preliminary inquiries and readying cases for the final analysis to determine if the complainants have been discriminated against.

(g) Help CREA reduce the backlog of complaints at the departmental level. This would include conducting analysis of preliminary inquiries and recommending findings of discrimination or nondiscrimination. Program specialists should not analyze their own preliminary inquiries. CREA management should make the final determination of discrimination or nondiscrimination.

(h) Evaluate each agency's civil rights staffing to determine if the agency has committed adequately trained staff and has adequate procedures to process complaints. The agency procedures should hold staff responsible for processing complaints within established timeframes. If agency staffing is not sufficient to process complaints within prescribed timeframes, the ad hoc team should recommend to the Secretary that the civil rights functions for processing complaints be transferred to the Department.

ISSUE NO. 2 - COMPREHENSIVE PLAN NEEDED TO ADDRESS FUTURE PROGRAM COMPLAINTS

The Department does not have adequate controls over the receipt, processing, and resolution of program complaints within its civil rights complaint processing system. Furthermore, the Department's civil rights policy and guidance is fragmented, and the complaint review process itself needs centralized control and direction. For FSA, as well as for other agencies within the Department, three USDA staffs share the functions related to the resolution of discrimination complaints, including those related to Title VI, discrimination on the basis of race, color, or national origin. Overall accountability for complaint resolution does not reside with any one staff.

Civil Rights Enforcement and Adjudication (CREA)

CREA, a unit in the Office of Operations, and the Policy Analysis and Coordination Center (PACC), a separate agency within the Department, performs functions that were once centralized at the former Office of Civil Rights and Enforcement. PACC is currently responsible for civil rights policy and oversight, while CREA is responsible for reviewing discrimination complaints and making determinations of program discrimination. We believe there is merit in having CREA merge with PACC, since PACC has the larger oversight responsibility and a merger would result in a more centralized operation. We also concluded that the Director of PACC should report directly to the Secretary or Deputy Secretary of Agriculture.

Because there is no centralized authority for discrimination complaints within the Department, there is also no centralized data base with which to monitor the status of discrimination complaints on a daily basis. Department agencies do not coordinate with CREA on the status of discrimination complaints, and they have not reconciled

the number of outstanding complaints.

Policy Analysis and Coordination Center (PACC)

PACC is responsible for monitoring and coordinating departmental agencies' enforcement of discrimination violations, including those related to Title VI. The Department has codified regulations which state its civil rights policy. USDA's Title VI regulations, 7 CFR part 15, have the necessary elements (for example, a list of prohibited forms of discrimination) to form a basis for the Department's Title VI enforcement program. However, the regulations do not reflect the current departmental agencies, programs, and laws. The regulations also give the former Office of Advocacy and Enterprise (now CREA) the responsibilities for investigating discrimination complaints and making initial determinations as to the merits of complaints, even though these functions have been currently delegated to the agencies.

Although agencies have been given the responsibility to investigate discrimination complaints made against their own programs, the Department has not provided procedural guidance to the agencies. The current Departmental Regulation 4330-1, dated June 27, 1986, does not provide policy and guidance for processing Title VI program discrimination complaints. As we noted earlier in this report, we brought this situation to the attention of the former Office of Civil Rights and Enforcement in a December 12, 1994, management alert, but corrective action has not yet been implemented.

PACC is the current agency responsible for providing guidance to departmental agencies and has drafted a revision of the Departmental Regulation for Civil Rights Compliance Reviews and Complaint Processing (Departmental Regulation 4330-1) that may serve as a basis for processing discrimination complaints. However, the draft regulation needs to be further modified to form a comprehensive solution to effectively deal with complaints.

PACC is also required to make systematic evaluations of agencies' civil rights programs. These evaluations, called compliance reviews, are monitoring tools to assess the agencies' civil rights activities and to review the effectiveness of their enforcement of civil rights laws. We found that PACC has not conducted compliance reviews of most agencies in the past several years. PACC (the former Office of Civil Rights Enforcement) conducted only six compliance reviews in fiscal years 1994 and 1995 and none in fiscal year 1996. A PACC official stated the shortage of staffing and lack of training as the reasons for not fulfilling this responsibility. We were also told that compliance reviews will not be conducted in fiscal year 1997 due to a lack of funding.

Finally, PACC is responsible for overseeing the agencies' training programs and developing training materials. A PACC official informed us that this function has not been given adequate attention due to the lack of staffing and resources. We concluded that more should be done in this area to ensure that all civil rights staffs are trained on civil rights requirements.

Farm Service Agency (FSA)

FSA monitors the effectiveness of its civil rights activities through management evaluation reviews of its county offices. A team consisting of program specialists from FSA's Civil Rights and Small Business Utilization Staff (CR&SBUS), EEO specialists, and personnel from the State offices are assigned to perform the management evaluation reviews. The team currently uses a review guide developed by the former Agricultural Stabilization and Conservation Service. The guide was developed for programs administered by the Commodity Credit Corporation and does not include guidance on farm loan programs inherited from the former FmHA. We

concluded that these reviews were useless for monitoring or enforcing civil rights requirements for farm loan programs.

Ten management evaluation reviews of States' compliance with civil rights laws were conducted in fiscal years 1995 and 1996 at a total cost of about \$87,000. The review teams, which consisted of county office employees and CR&SBUS and FSA State personnel, visited up to 31 counties in 9 days reviewing Title VI elements such as public notification and access to facilities by the disabled. Reports that were issued for these reviews included corrective actions for areas of noncompliance found during the reviews. The FSA State office is required to provide CR&SBUS with a corrective action plan in 60 days of receipt of the report. We found that only 2 of the 10 States reviewed responded and that CR&SBUS did not followup with the States to determine if corrective action was taken.

Before September 1996, FSA employees designated to serve as State Civil Rights Coordinators were not trained to conduct preliminary inquiries and could not perform them. In September 1996, the State coordinators received approximately 40 hours of civil rights training. Due to the magnitude of FSA's complaint backlog and the length of time some complaints have been pending, 40 hours of general training may not be enough. The State coordinators do not devote 100 percent of their time to civil rights issues; more preparation may be needed before they become proficient in conducting preliminary inquiries. Only 20 percent of their time is designated for conducting preliminary inquiries and attending to other civil rights issues. This may cause delays in reducing FSA's complaint backlog and contribute to the continuation of the backlog.

LONG-TERM ACTIONS NEEDED

1. A uniform system is needed within the Department that holds designated USDA officials responsible and accountable for the receipt, processing, and resolution of program complaints within established timeframes. This system needs to be monitored, controlled, and evaluated by a unit within the Department that reports directly to the Secretary or Deputy Secretary.
2. A master data base for program complaints should be maintained at the departmental level. The data base should include the type of complaint, program involved, key dates associated with the complaint process, status of the complaint, age of complaint, location of complainant, and other key data elements. Each complaint should be assigned a unique case number which would also be recorded in the data base and used to monitor the case from receipt to resolution. This data base should be shared with agencies on a periodic basis to ensure its accuracy.
3. A weekly distribution of an aging report of complaints should be sent to responsible officials. This report should be used as a management tool to identify trends or situations in need of attention.
4. Case files need to be standardized. For example, correspondence should be kept together and arranged chronologically, running records should act as indices, etc. The case files also need to be secured and a record maintained showing who has logged out any files for official use.
5. Federal and departmental regulations on processing program discrimination complaints need to be updated and published.
6. Agencies should develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.

Copies of attachments A and B are available by calling Dianne Smith on (202) 720-6915.

ATTACHMENT C

February 26, 1997

Roger C. Viadero
Inspector General
U.S. Department of Agriculture
Washington, DC 20250

Dear Roger:

Thank you for your evaluation report no. 50801-2-Hq(1). I also appreciated the briefing you provided on the contents of the report. This report provides extremely valuable information as we move forward with what is likely to be the most aggressive civil rights agenda in Government. I find that your report substantially supports the findings and recommendations of the Civil Rights Action Team (CRAT) report.

As you know, I am deeply concern about allegations that USDA is not delivering its programs in ways that live up to the spirit and letter of the relevant civil rights laws, regulations, and policies of the United States. While your report does not address the merits of these allegations, it does confirm that the program discrimination complaint process at the Farm Service Agency lacks integrity, direction, and accountability. After reviewing your report, it is clear that Department wide policy and guidance is needed on many aspects of the complaints processing system.

I am asking that Pearlie Reed, who will direct the implementation of the recommendations of the CRAT, work closely with you and the Office of Inspector General staff to assure that your concerns and recommendations are addressed fully. The immediate actions you suggest will be helpful as the implementation team designs a plan to reduce the backlog of civil rights program complaints within the Department. The long term actions included in your report fully conform with the CRAT findings and recommendations.

Again, thank you for the expeditious action you took to address the issues which I asked you to review. The task at hand is great, if not monumental. We can all look forward to a better USDA as a result of the actions which will begin with release of your report, and the CRAT report.

Sincerely,

/s/

DAN GLICKMAN
Secretary of Agriculture

cc: Pearlie Reed
Team Leader, Civil Rights Action Team