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DEPARTMENT OF
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Hispanic and Other
Minority Farmers Would
Benefit from
Improvements in the
Operations of the Civil
Rights Program

Statement of Lawrence J. Dyckman,
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Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to come before you today to discuss our work related to civil rights issues at the Department of Agriculture (USDA). As you know, for a number of years, some minority and women farmers have asserted that the USDA's Farm Service Agency (FSA) discriminates against them, treating them differently from other farmers during the loan approval or foreclosure process. Furthermore, USDA has faced charges that its Office of Civil Rights (OCR) has not conducted proper and timely investigations of complaints of discrimination.

In my testimony today, I will address (1) differences in the processing times and approval rates for direct loans for Hispanic farmers and non-Hispanic farmers, (2) USDA's policies for staying foreclosures and how these policies have been implemented, and (3) OCR's progress in addressing previously identified problems associated with untimely processing of discrimination complaints and human capital issues. Our statement is based on the report that we issued September 20, 2002, to Representatives Baca and Reyes.¹

In summary:

- During fiscal years 2000 and 2001, FSA took, on average, 4 days longer to process loan applications from Hispanic farmers than it did for non-Hispanic farmers: 20 days versus 16 days. We also found that the FSA's direct loan approval rate was somewhat lower for Hispanic farmers than for non-Hispanic farmers nationwide: 83 and 90 percent, respectively. Although FSA monitors variations in loan processing times and approval rates between minorities and non-minorities, it does not have established criteria for determining when variations are significant enough to warrant further inquiry. In addition, while FSA conducts periodic field reviews of state offices' performance in civil rights matters and suggests improvements, it does not require the state offices to implement the recommendations and does not monitor the offices' follow-up efforts.
- USDA's policies for staying foreclosures when discrimination has been alleged depend on the method used to lodge complaints. When an individual has a discrimination complaint accepted by OCR, FSA's policy

¹ Department of Agriculture: *Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers*, [GAO-02-942](#) (Washington, D.C.: Sept. 20, 2002).

is to automatically issue a stay of adverse action, such as foreclosure, until the complaint has been resolved. Although FSA followed this policy in most of the cases we reviewed, it did not always do so because of miscommunication with OCR in reconciling their respective lists of complainants. In contrast, USDA does not have a similar policy for staying foreclosures for members of discrimination class actions. Instead, USDA makes these stay of foreclosure decisions on a case-by-case basis, considering the merits of each class action. Since 1997, USDA has issued stays of foreclosure for two class actions—although the stay has expired for one of these groups—but has not issued stays for two other class actions, including the Hispanic farmers’ suit, because the agency believes that the circumstances did not warrant a stay.

- OCR has made modest progress in the length of time it takes to process discrimination complaints. USDA requires OCR to complete the investigative phase of processing a complaint within 180 days of accepting it. In fiscal year 2000, OCR took an average of 365 days to complete just the investigative phase. Although OCR slightly improved this average to 315 days in fiscal year 2001, this continues to far exceed the department’s internal 180-day requirement. More importantly, because USDA does not have a processing time requirement for all phases of complaint resolution, the department lacks a meaningful way to measure its overall performance. When all stages of complaint resolution are accounted for, average processing time decreased from 772 days in fiscal year 2000 to 676 days in fiscal year 2001. Although OCR has implemented many recommendations made in the past by USDA’s Inspector General and agency task forces, these actions have not resolved fundamental, underlying problems adversely affecting the office’s ability to process complaints in a timely manner. Of most significance, OCR continues to experience problems in obtaining and retaining staff with the requisite skills needed to process complaints. Severe morale problems and poor working relationships among staff have exacerbated these problems and hindered OCR’s ability to significantly improve its complaint processing times.

To help reduce problems and confusion surrounding stays of foreclosure in cases where discrimination has been alleged, we recommended in our report that FSA and OCR improve communication about the status of complaints; develop a policy statement that explains how USDA makes stay of foreclosure decisions when class action lawsuits have been filed; and retain historical information on foreclosures. To help improve the timeliness of processing discrimination complaints filed by farmers, we recommended that the Secretary of Agriculture establish time requirements for all stages of the complaint process and develop an action

plan to address ongoing staffing problems. In responding to a draft of our report, USDA generally agreed with these recommendations.

Background

Among other things, FSA is responsible for implementing USDA's direct and guaranteed loan programs. FSA's district office staff administer the direct loan program and have primary decision-making authority for approving loans. As of September 30, 2001, there were about 95,000 borrowers with direct loans outstanding, with an unpaid principal balance of about \$8.5 billion. FSA farm loan managers are responsible for approving and servicing these loans. The factors FSA staff consider in approving or denying a loan include the applicant's eligibility, (i.e., he or she must operate a family-size farm in the area), credit rating, cash flow, collateral, and farming experience. Once a farm loan application is complete, FSA officials have 60 days to approve or deny the application and notify the applicant in writing of the decision. Once FSA approves a direct loan, it helps borrowers develop financial plans; collects loan payments; and, when necessary, restructures delinquent debt. Direct loans are considered delinquent when a payment is 30 days past due. When a borrower's account is 90 days past due, FSA county staff formally notify him or her of the delinquency and provide an application for restructuring the loan. To be considered for loan restructuring, borrowers must complete and return an application within 60 days. FSA staff process the completed application and notify borrowers whether they are eligible for loan restructuring. If a borrower does not apply or is not eligible for loan restructuring, and the loan continues to be delinquent, FSA notifies the borrower that it will take legal action to collect all the money owed on the loan (called loan acceleration). If the borrower does not take action to settle their account within a certain period of time, FSA may start foreclosure proceedings.

When farmers believe that FSA has discriminated against them, they may file a discrimination complaint with USDA's OCR. For the complaint to be accepted, it must

- be filed in writing and signed by the complainant;
- be filed within 180 days of the discriminatory event; and
- describe the discriminatory conduct of a USDA employee or the discriminatory effect of a departmental policy, procedure, or regulation.

Farmers may also seek compensation for violations of their civil rights by filing individual or class action lawsuits. In 1997, African-American farmers filed a class action against USDA (*Pigford v. Glickman*). In 1999,

this suit resulted in a multimillion-dollar settlement agreement for the farmers. Since then, women and other minority farmers have also filed class actions against USDA. As you know, to elevate the attention of civil rights matters at USDA, the Congress created the position of Assistant Secretary of Agriculture for Civil Rights in the 2002 Farm Bill. In addition, in September of this year, the Secretary of Agriculture announced the creation of a new office within FSA to work with minority and socially disadvantaged farmers who have questions and concerns about loan applications filed with local offices.

Direct Farm Loan Application National Processing Times Were Longer for Hispanic Farmers than for Non-Hispanic Farmers but Were Shorter in Most States with Large Numbers of Hispanic Borrowers

During fiscal year 2000 and 2001, the national average processing time for direct loans for Hispanic farmers was 20 days—4 days longer than for non-Hispanic farmers—but well within FSA’s 60-day requirement. At the state level, loan processing time differences were more varied. For example, in the four states that account for over half of all Hispanic applications, processing times for Hispanic farmers were faster than for non-Hispanic farmers in three states and slower in the fourth state. However, all times fell well within FSA’s 60-day requirement. Table 1 shows the average processing times of non-Hispanic and Hispanic farmers’ applications nationwide and for the four states.

Table 1: Average Processing Times for Non-Hispanic and Hispanic Farmers for Fiscal Years 2000 and 2001 Combined

	Non-Hispanic farmers		Hispanic farmers	
	Number of applications	Average processing time	Number of applications	Average processing time
National	39,725	16	793	20
California	635	21	99	15
New Mexico	172	24	49	15
Texas	3,395	24	194	22
Washington	514	27	69	37

Source: FSA direct loan data.

The vast majority—91 percent—of all direct loan applications from Hispanic farmers were processed within FSA’s 60-day requirement. However, the loan approval rate for Hispanic farmers was lower than for non-Hispanic farmers during this 2-year period: 83 and 90 percent, respectively. FSA officials maintain that approval rate differences were not significant and attribute them to differences in the applicants’ ability to repay the loans they requested. Despite national differences, as shown in

table 2, in three of the four states that received the largest number of Hispanic applications in fiscal year 2001, direct loan approval rates were similar.

Table 2: Percentage of Direct Loan Applications Approved by FSA for Fiscal Years 2000 and 2001 Combined

	Non-Hispanic farmers		Hispanic farmers	
	Number of applications	Loan approval rate	Number of applications	Loan approval rate
National	35,685	90	678	83
California	530	89	82	88
New Mexico	156	93	48	92
Texas	2,099	87	142	85
Washington	491	80	76	61

Note: The numbers of applications are different from those shown in table 1 because some of the applications were not approved or denied in the year in which they were received.

Source: FSA direct loan data.

As part of FSA's assessment of its civil rights performance, the agency monitors differences between minority and nonminority loan processing times and approval rates at both the national and state levels. In addition, FSA sends teams to state offices to conduct civil rights reviews. The teams review loan files to verify compliance with FSA policies and procedures and, if warranted, provide written recommendations to remedy problems they find. Through fiscal year 2001, each state office was reviewed once every 3 years; beginning in fiscal year 2002, the offices will be reviewed every other year.

While FSA monitors variations in loan processing times and approval rates for minorities and nonminorities, it does not have established criteria for determining when observed variations are significant enough to warrant further inquiry. In addition, while FSA conducts periodic field reviews of state offices' performance in civil rights matters and suggests improvements, it does not require the offices to implement the recommendations and does not monitor state office follow-up efforts. FSA is currently considering requiring state offices to provide information on how they have addressed weaknesses noted during reviews.

USDA Only Has a Policy for Staying Foreclosures When Discrimination Complaints Are Filed with OCR

USDA has a policy for issuing stays of foreclosure in cases when discrimination has been alleged in individual complaints filed with OCR, but not in response to individual or class action lawsuits with similar allegations. When an individual files an administrative discrimination complaint with OCR, FSA's policy is to automatically issue a stay of adverse action—including foreclosure—until the complaint has been resolved. During fiscal years 2000 and 2001, this policy was followed in 24 of the 26 applicable cases involving Hispanic borrowers. The policy was not followed in the remaining two cases because of miscommunication between OCR and FSA in reconciling their respective lists of complainants. When FSA learned that complaints had been filed with OCR, it stayed its foreclosure actions, and, as of August 2002, no further collection actions had been taken against the two farmers. Although future data system improvements should alleviate this problem, OCR and FSA officials acknowledge that improvements could be made in the interim.

USDA does not have a similar policy for issuing stays related to discrimination claims raised in an individual or class action lawsuit. Instead, FSA makes decisions on whether to issue stays on a case-by-case basis based on the advice of USDA's General Counsel and the Department of Justice. Since 1997, USDA has issued stays of foreclosure related to African-American and Native American farmers' class action discrimination lawsuits involving FSA loan programs. In contrast, USDA did not issue stays of foreclosure for other class action discrimination lawsuits involving FSA loan programs because the department believed that the circumstances did not warrant a stay. These class action lawsuits and how USDA handled stays of foreclosure are discussed in greater detail below.

- In October 1997, African-American farmers filed a class action lawsuit against the Secretary of Agriculture (*Pigford v. Glickman*) alleging racial discrimination by USDA in its administration of federal farm programs. On October 9, 1998, the court certified the class—issued the criteria for class eligibility.² On January 5, 1999, USDA entered into a 5-year consent decree with the claimants of the suit to settle it. The federal district court

² The class is defined as African-Americans who: (1) farmed, or attempted to farm, between January 1, 1981, and December 31, 1996; (2) applied to USDA during that time for participation in a federal farm credit or benefit program and who believed they were discriminated against on the basis of race in USDA's response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of their credit or benefit application.

approved the consent decree and a framework for the settlement of individual claims in April of the same year. As of August 29, 2002, about 21,800 claims have been accepted for processing. As part of the consent decree, USDA agreed to refrain from foreclosing on real property owned by a claimant or accelerating their loan account.³

- In November 1999, Native American farmers filed a class action lawsuit against the Secretary of Agriculture (*Keepseagle v. Glickman*) alleging that USDA willfully discriminated against Native American farmers and ranchers when processing applications for farm credit and farm programs. Further, claimants alleged that some class members had previously filed discrimination complaints with USDA and that the department had failed to thoroughly investigate the complaints. In December 1999, USDA issued a notice to FSA offices directing them not to accelerate or foreclose on any direct loans held by Native American borrowers unless the national office, with the concurrence of the Office of General Counsel, specifically authorized such action against an individual. As scheduled, this directive expired at the end of 2000.
- In October 2000, Hispanic farmers (*Garcia v. Glickman*) and women farmers (*Love v. Glickman*) each filed class action lawsuits against USDA alleging similar claims that USDA willfully discriminated against them in processing applications for farm credit and farm programs. Specifically, they alleged that loans were denied, provided late, or provided with less money than needed to adequately farm. In addition, the plaintiffs alleged that when they filed discrimination complaints about the handling of their loan applications, USDA failed to investigate them. The department has not issued stays of foreclosure in either of these lawsuits.

In June 2001, USDA's Acting General Counsel wrote a memo that explained the department's reasoning for issuing stays of foreclosure in response to some class action lawsuits, but not others. According to the memo, the stay of foreclosure agreement included in the Pigford consent decree was reached only in the context of litigation and only to settle a lawsuit in which a class action had already been certified by the district court. The memo went on to say that the stay of foreclosure policy issued in response to the *Keepseagle* lawsuit was implemented during the infancy of the lawsuit while USDA and the Department of Justice were evaluating

³During the *Pigford* case, a general stay of foreclosure was in effect. On December 18, 1996—before the *Pigford* lawsuit was filed—the Secretary of Agriculture, in response to concerns about inconsistencies and discrimination in USDA programs, ordered FSA to stay foreclosures until it could be determined for each case whether there was evidence of discrimination in program lending.

how to proceed in defending it. In addition, the memo stated that USDA did not intend to continue a stay of foreclosure beyond the evaluation. Further, the Acting General Counsel wrote that in all three of the pending lawsuits—*Keepseagle*, *Garcia*, and *Love*—no adequate factual bases had been alleged to support the claims of discrimination made by most of the named plaintiffs. As a result, the department saw no reason to implement a policy to halt foreclosures and other similar actions affecting borrowers potentially involved in these lawsuits. As of September 2002, a class has been certified for the *Keepseagle* lawsuit, but not for the *Garcia* suit. USDA has not issued any further stays of adverse action for participants in any of these lawsuits.

Although USDA has not issued stays of foreclosure for potential class members in *Garcia*, relatively few Hispanic farmers have been affected by this decision. According to our survey of state offices, FSA accelerated the direct loans of almost 1,500 borrowers during fiscal years 2000 and 2001; only 41 of these borrowers were Hispanic. FSA also foreclosed on the loans of 6 of these 41 farmers during this period. In addition to these 41 borrowers, 10 other Hispanic borrowers who had their loans accelerated in prior years were foreclosed on during fiscal years 2000 and 2001. To put these figures into context, during this period, FSA foreclosed on the loans of approximately 600 borrowers⁴, 16 (or 3 percent) of whom were Hispanic. During this period, Hispanic farmers made up about 4 percent of the agency's direct loan portfolio.

FSA does not maintain historic information on accelerations or foreclosures in a manner for this information to be readily retrieved or analyzed. FSA officials acknowledged that such information is needed in light of the frequent charges of discrimination it faces.

⁴In responding to our survey about direct loan foreclosures, some states provided estimates of the total number of borrowers affected, instead of exact numbers.

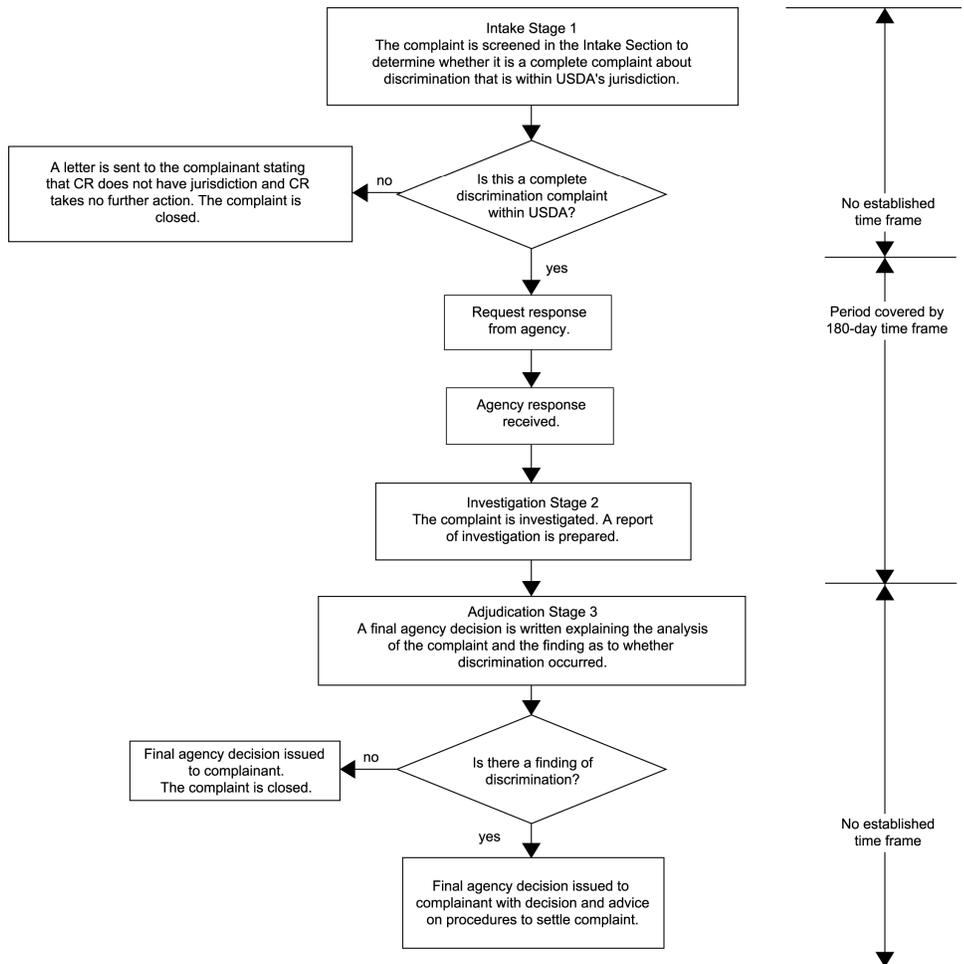
Office of Civil Rights' Problems with Processing Discrimination Complaints Persist

OCR has adopted many recommendations made in the past by USDA's Inspector General and agency task forces. For example, in 2000, a USDA task force identified 54 tasks to help address problems with OCR's organization and staffing, database management, and complaint processing. As of July 2002, the office had fully implemented 42, or nearly 80 percent, of these recommendations and plans to complete implementation of most of the others by October 2002. In addition, OCR has made some organizational modifications, such as creating separate employment and program directorates and adding three new divisions to the latter—Program Adjudication, Program Compliance, and Resource Management Staff. Further, from the beginning of fiscal year 2000 to the end of fiscal year 2001, OCR has made significant progress in reducing its inventory of complaints from 1,525 to 594.

Despite these actions, however, OCR continues to fail to meet USDA's requirement that program complaints be processed in a timely manner. Specifically, USDA directs OCR to complete its investigative reports within 180 days after accepting a discrimination complaint. However, during fiscal years 2000 and 2001, OCR took on average 365 days and 315 days, respectively, to complete its investigative reports. Furthermore, as shown in figure 1, the 180-day requirement covers only a portion of the three major stages of the entire processing cycle.⁵ Accordingly, even if the 180-day requirement were met, OCR still take 2 years or more to complete the processing of a complaint. In fact, when all phases of the complaint resolution are accounted for, OCR took an average of 772 and 676 days in fiscal years 2000 and 2001, respectively, to completely process complaints through the entire complaint cycle and issue the final agency decision.

⁵ According to OCR's Deputy Director of Programs, additional time requirements for complaint processing were developed in July 2002. However, the requirements will not go into effect until proposed OCR restructuring takes place. In addition, OCR has yet to establish time requirements that address all stages of complaint processing.

Figure 1: OCR Complaint Processing Cycle



Source: USDA Office of Civil Rights.

OCR has made only modest progress in improving its timely processing of complaints because it has yet to address severe, underlying human capital problems. According to USDA officials, OCR has long-standing problems in obtaining and retaining staff with the right mix of skills. The retention problem is evidenced by the fact that only about two-thirds of the staff engaged in complaint processing in fiscal year 2000 were still on board 2 years later. OCR officials also pointed out that this staffing problem has been exacerbated because management and staff have been intermittently diverted from their day-to-day activities by such tasks as responding to requests for information from the courts.

Furthermore, severe morale problems have exacerbated staff retention problems and have adversely affected the productivity of the remaining staff. Management officials told us that they spend an inordinate amount of time and resources addressing internal staff complaints. In fact, during fiscal years 2000 and 2001, OCR had one of the highest rates of employee-filed administrative complaints in the department. This atmosphere has led to frequent reassignments or resignations of OCR managers and staff. According to senior OCR officials, the problem has reached the point where some staff have even threatened fellow employees or sabotaged their work. Although OCR's Director believes that the situation has improved over the past few years, he acknowledges that some of the more serious morale problems have not been resolved.

In conclusion, Mr. Chairman, USDA has continuously faced allegations of discrimination in its making direct loans to farmers over the past decade. To help guard against such charges, FSA needs to improve its monitoring and accountability mechanisms and make its systems and decision processes more consistent and transparent. Although FSA monitors variations in loan processing times and approval rates, it lacks criteria for determining when discrepancies warrant further inquiry. Similarly, while FSA conducts periodic reviews of its state offices' civil rights conduct and makes suggestions for improvement, it cannot ensure that these suggestions have been effective—or even adopted—without a requirement that state offices implement its recommendations or, if not, explain their reasons for not doing so.

In addition, USDA has also been criticized for its handling of the allegations themselves—whether they were handled through litigation or the agency's complaint processes. In the case of class action lawsuits, USDA has been charged with treating different minority groups inequitably because it grants stays of foreclosures to some groups but not to others. Without a standard, transparent policy that lays out the factors USDA considers in deciding whether or not to issue stays, the department faces the continued problem of having its decisions viewed as unfair. Furthermore, if FSA and OCR do not improve their process for reconciling their respective lists of complainants, FSA runs the risk of violating its policy of not taking foreclosure actions against farmers with pending discrimination complaints. In addition, without maintaining historical information on foreclosures, USDA lacks an important tool to help it understand its equal opportunity performance.

In the case of USDA's processing of complaints, OCR continues to be untimely. Also, without a time requirement that covers all stages of

complaint processing, USDA lacks a meaningful way to measure performance or to identify and remedy problem areas and staffing needs. Furthermore, until USDA addresses long-standing human capital problems within OCR, it is unlikely that the timeliness of complaint processing will significantly improve. Our report contains a series of recommendations to the Secretary of Agriculture to resolve these issues

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

Contacts and Acknowledgments

For future contacts regarding this testimony, please contact Lawrence J. Dyckman at 202-512-3841. Individuals making key contributions to this testimony included Gregory A. Kosarin, Natalie H. Herzog, Jacqueline A. Cook, Lynn M. Musser, Robert G. Crystal, and George H. Quinn Jr.