

Testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

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U.S. DEPARTMENT OF AGRICULTURE

This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

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

Statement of Lisa Shames, Director
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Highlights of [GAO-08-755T](#), a testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

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

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

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

To view the full product, including the scope and methodology, click on [GAO-08-755T](#). For more information, contact Lisa Shames at (202) 512-2649 or shamesl@gao.gov.

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

What GAO Found

ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of complaints. At a basic level, the credibility of USDA's efforts has been and continues to be undermined by ASCR's faulty reporting of data on discrimination complaints and disparities in ASCR's data. Even such basic information as the number of complaints is subject to wide variation in ASCR's reports to the public and the Congress. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels, drew a questionable portrait of progress. By July 2007, ASCR officials were well aware they had not succeeded in preventing future backlogs—they had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, ASCR officials were in the midst of planning to hire additional attorneys to address that backlog of complaints including some ASCR was holding dating from the early 2000s that it had not resolved. In addition, some steps ASCR had taken may have actually been counter-productive and affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. Importantly, ASCR does not have a plan to correct these many problems.

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

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

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the U.S. Department of Agriculture's (USDA) progress in addressing long-standing civil rights issues. My comments today are based on prior work as well as new work nearing completion resulting from a request from Senator Harkin, Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry; Senators Grassley and Lugar; and Chairman Baca of the Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, House Committee on Agriculture; as well as you, Chairman Towns.

USDA is responsible for enforcing statutes, regulations, and policies that prohibit discrimination in its programs and workplace. USDA's responsibilities extend to the programs that it delivers directly to customers through local offices throughout the country, such as the farm loan programs, as well as to programs that USDA and the states administer jointly, such as the Food Stamp Program. USDA's workplace civil rights responsibilities cover about 100,000 employees at headquarters and at USDA offices around the country.

For decades, USDA has been the focus of federal inquiries into allegations of discrimination against minorities and women both in the programs it administers and in its workforce. Numerous reports and congressional testimony by officials of the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, USDA, GAO, and others have described extensive concerns about discriminatory behavior in USDA's delivery of services to program customers—in particular, minority farmers—and its treatment of minority employees. Many of these reports and testimonies described serious weaknesses in USDA's management of its civil rights programs—in particular, weaknesses in providing minorities access to USDA programs and in resolving discrimination complaints.

Notable among these many reports was the 1997 report of the Secretary of Agriculture's Civil Rights Action Team.¹ The Secretary's team—composed of senior USDA officials—held a dozen “listening sessions” with USDA customers and employees throughout the country before issuing a report. The team's report discussed USDA's customers' and employees' concerns

¹*Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, U.S. Department of Agriculture (Washington, D.C.: February 1997).

about patterns of discrimination in USDA programs and operations, and minority farmers' concerns that USDA had played a part in the severe decline in minority farm ownership since the mid-1900s. Among other things, the report noted that USDA's civil rights program had been in a "persistent state of chaos" because of numerous changes since the 1980s and declared that USDA's process for resolving complaints about the delivery of program benefits and services was a "failure." The report made many recommendations in four major areas—organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices.

In addition to reports about USDA's civil rights shortcomings, individuals and groups claiming discriminatory behavior on the part of USDA have sought redress through the courts—USDA has been and continues to be involved in large class action civil rights lawsuits.² In 1997, three African-American farmers, on behalf of themselves and others similarly situated, filed a lawsuit—*Pigford v. Glickman*—that charged USDA with discrimination in the department's lending and other farm programs between 1983 and 1997, as well as with failure to properly investigate discrimination complaints.³ The case went forward as a class action, and in January 1999 a settlement agreement was announced. In approving the consent decree settling the case, the court stated that for decades USDA had discriminated against African-American farmers by denying or delaying their applications for farm loan and other credit and benefit programs. The court also noted that USDA had disbanded its Office of Civil Rights in 1983 and stopped responding to claims of discrimination. The consent decree established a mechanism for members of the class to file claims to obtain relief. Over 97,000 people have filed claims—more than five times the number of claims anticipated. However, only about 23,000 people met the filing deadline of October 12, 1999, and about 74,000 people requested permission from the court to file a claim after the deadline. Except for a relatively few extraordinary cases, the court denied the claims received after the filing deadline as not timely. Overall, as of April 7, 2008, more than 15,400 claims had been approved for payments and benefits totaling about \$972 million, and almost 7,000 claims had been

²A class action lawsuit is one in which a party sues on behalf of him or herself and a larger group similarly situated.

³*Pigford v. Schafer*, Civil Action No. 97-1978 (D.D.C. filed Oct. 23, 1997) (formerly *Pigford v. Glickman*).

denied.⁴ In addition, USDA is currently defending itself against similar lawsuits brought by other customers—Native American, Hispanic, and women farmers—alleging discrimination in the delivery of farm programs and lending.⁵

A congressional hearing during 2002 focused on the need for USDA to ensure that, among other things, farm programs are accessible to minority and socially disadvantaged farmers and ranchers, complaints of discrimination against USDA by customers and employees are resolved fairly and timely, and civil rights activities are conducted transparently so that public scrutiny is possible. That year, as you know, the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) authorized the Secretary of Agriculture to create the new position of Assistant Secretary for Civil Rights, elevating responsibility within USDA for carrying out USDA's civil rights efforts. Under the 2002 Farm Bill, the Secretary could delegate responsibility for ensuring that USDA complies with all civil rights-related laws and considers civil rights matters in all USDA strategic planning initiatives to the Assistant Secretary for Civil Rights. In 2003, the Assistant Secretary position was created with these and other delegated responsibilities, and the Office of the Assistant Secretary for Civil Rights (ASCR) was established. In addition, the 2002 Farm Bill requires USDA to report annually on minority participation in USDA programs.⁶

In 2002, we reported that USDA's Office of Civil Rights continued to face significant problems in processing discrimination complaints in a timely manner.⁷ We reported that the office had made only modest progress in processing complaints from customers and employees because (1) it had not established time frames for resolving complaints and (2) it had not addressed its severe human capital problems. For example, the office had long-standing problems in hiring and retaining staff with the right mix of skills, and severe morale problems were exacerbating problems with staff

⁴Legislation has been introduced in the Congress to allow further consideration of claims that were not filed timely.

⁵These cases include *Keepseagle v. Schafer*, Civil Action No. 99-03119 (D.D.C.); *Garcia v. Schafer*, Civil Action No. 00-02445 (D.D.C.); and *Love v. Schafer*, Civil Action No. 00-02502 (D.D.C.).

⁶Pub. L. No. 107-171, 116 Stat. 134 §10708, 522 (2002).

⁷GAO, *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).

productivity and retention. At that time, we recommended that USDA establish time frames for all stages of the complaint process and develop an action plan to address its staff turnover and morale problems. In commenting on the report, USDA stated that it had a long-term improvement plan that would address the human capital problems and agreed to formalize time frames for all phases of the process.

My testimony today focuses on (1) ASCR's continuing problems in resolving discrimination complaints, (2) USDA's reporting on minority participation in USDA programs, and (3) ASCR's strategic planning for ensuring USDA's services and benefits are provided fairly and equitably.

In summary, I would like to make three observations. First, ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of discrimination complaints. At a basic level, the credibility of USDA's efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data. Even such basic information as the number of discrimination complaints is subject to wide variation in ASCR's reports to the public and the Congress. For example, fiscal year 2005 data that ASCR reported to the public and to this congressional subcommittee varied by hundreds of complaint cases, and data reported to GAO on its complaint cases varied from one report to another. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels drew a questionable portrait of progress. By July 2007, ASCR officials were well aware the plan to prevent future backlogs had not succeeded. ASCR had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, before ASCR made its report to the public in 2007, ASCR officials were in the midst of planning to hire additional attorneys to address the backlog of complaints, including some complaints that ASCR was holding dating from the early 2000s that it had not resolved. In addition, steps that ASCR had taken to speed up its investigations and decisions on complaints may actually have been counter-productive and affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. Importantly, ASCR does not have a plan to correct these many problems.

Second, the data that USDA reported to the Congress and the public on the participation of minority farmers in USDA programs are unreliable,

according to USDA. USDA has published three annual reports on the participation of socially disadvantaged farmers and ranchers in USDA programs for fiscal years 2003, 2004, and 2005. However, much of the data that USDA reports are unreliable, according to the statements in USDA's reports, because USDA's data on racial identity and gender are, for the most part, based on visual observation of program applicants. Data gathered in this manner are considered unreliable because individual traits such as race and ethnicity may not be readily apparent to an observer, especially ethnicity. To address this inherent shortcoming, according to USDA's report, the agency needs standardized data collection directly from program participants, which requires the approval of the Office of Management and Budget (OMB). ASCR began the process of seeking OMB's approval to collect these data in 2004, but did not follow through and has not obtained final approval. ASCR staff will meet again on this matter in May 2008. In addition, we found the data in ASCR's reports to be of limited usefulness because, for example, ASCR did not include basic reference data such as the numbers of farmers in each county. Moreover, the data do not facilitate analysis because they are published in about 1,370 separate tables and 146 maps that are not searchable files. If the data were searchable, it could be possible to more easily compare minority participation by program, location, and year.

Finally, ASCR's strategic planning is limited and does not address key steps needed to achieve its mission. While ASCR has articulated a compelling strategic goal—to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees—its implementation will require further development. For example, a key step in strategic planning is to discuss the perspectives of stakeholders. Yet, ASCR's plans vary from ASCR's stakeholders' interests which include such things as improving USDA's methods of delivering farm programs to facilitate access by under-served producers. Also, while ASCR's stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR's strategic planning does not address the diversity of USDA's field staff. In addition, ASCR could better measure performance to gauge its progress, and ASCR has not started to use performance information for identifying USDA performance gaps.

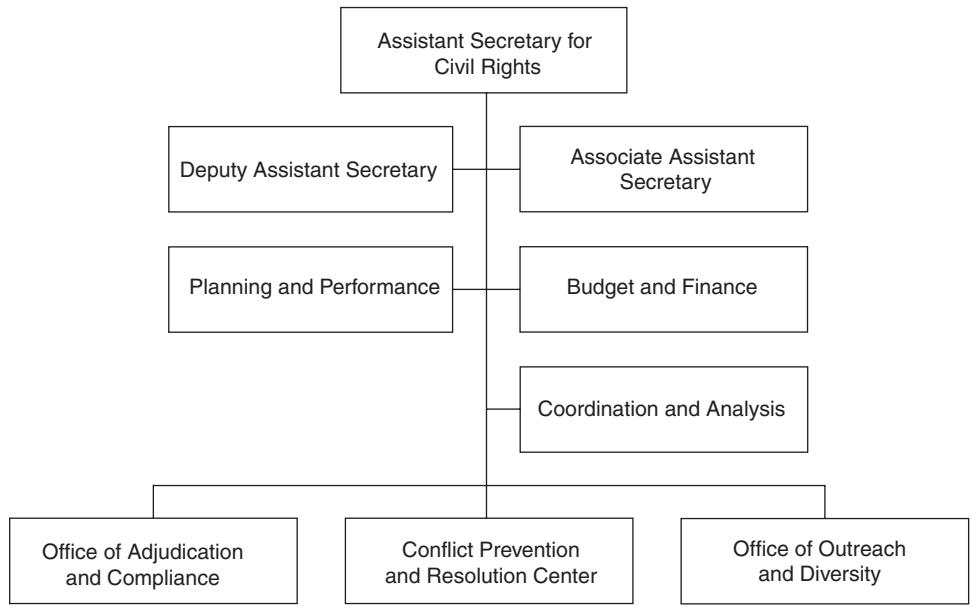
We provided USDA officials with an opportunity to comment on a statement of facts which was the basis for my statement today. We incorporated their additions and clarifications as appropriate. We plan to issue a final report later in 2008 that will include recommendations to address the matters that I discuss in my testimony today.

This testimony is based on new and previously issued work. To assess ASCR's efforts to resolve USDA's persistent problems in handling discrimination complaints, we conducted interviews with officials of ASCR, USDA's Office of Inspector General (OIG), USDA's agency-level civil rights offices, and the Equal Employment Opportunity Commission; examined USDA documents about efforts to resolve discrimination complaints, and analyzed data provided by ASCR. To evaluate USDA's reporting on minority participation in USDA's programs, we reviewed USDA reports and interviewed officials of USDA, community-based organizations, and minority groups. To analyze ASCR's strategic planning, we examined ASCR's strategic plan and other relevant planning documents, and interviewed USDA officials and representatives of community-based organizations and minority groups, among others. In addition, we considered GAO's guidance for results-oriented management. We conducted our work from December 2006 through May 2008, in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. While our efforts were impeded by delays in gaining access to documents, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additional details on our scope, methodology, and access to USDA records is included in appendix I.

Background

The Office of the Assistant Secretary for Civil Rights (ASCR) was created in 2003. For fiscal year 2007, ASCR had 129 staff and an annual budget of about \$24 million. ASCR is composed of multiple offices, some of which were in existence within USDA prior to the creation of ASCR.

Figure 1: Organization of USDA's Office of the Assistant Secretary for Civil Rights



Source: USDA.

ASCR's Office of Adjudication and Compliance (formerly the Office of Civil Rights) is to resolve customers' and employees' complaints of discrimination and to conduct civil rights compliance reviews of USDA's agencies. The Conflict Prevention and Resolution Center is to provide guidance to USDA agencies on using Alternative Dispute Resolution methods to resolve conflicts. The Office of Outreach and Diversity is to develop ASCR's diversity initiatives, and oversee the *1890* and *1994 Programs*. The *1890 Program* offers educational scholarships to people seeking degrees at one of the 18 historically black land-grant institutions and requires one year of USDA service for each year of financial support. Similarly, through the *1994 Program*, there is a comparable program operated with the 33 tribal colleges and universities designated as 1994 land-grant institutions. Within the Office of Outreach and Diversity, the Office of Outreach is to provide coordination for USDA agencies on outreach efforts and produce a required annual report on the rates at which minorities participate in USDA programs.

The first USDA Assistant Secretary for Civil Rights—Mr. Vernon Parker—was sworn in on April 1, 2003, and served about 3 years until resigning in January 2006. At the outset of Mr. Parker's tenure, over a 4 month period, a

few ASCR staff developed 13 initiatives to guide ASCR's actions through fiscal year 2004 and beyond. These initiatives were intended to address the most immediate problems occurring at the time and concentrated on eliminating backlogs of unresolved discrimination complaints and taking certain steps to reduce complaints in the future. Most notably, ASCR established annual "Partners Meetings" to create, for the first time, a substantive and ongoing dialogue between USDA and representatives of community-based organizations as a basis for improving the delivery of USDA benefits and services. A list of ASCR's initiatives for fiscal year 2004 is included in appendix II. The second and current Assistant Secretary for Civil Rights—Ms. Margo McKay—was sworn in on August 21, 2006. A list of Assistant Secretary McKay's priorities and initiatives are also included in appendix II.

Problems Resolving Discrimination Complaints Persist

The credibility of USDA's efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data.⁸ For example, fiscal year 2005 data that ASCR reported to the public and to this congressional subcommittee varied by hundreds of complaint cases, and data reported to GAO on its complaint cases varied from one report to another. Moreover, ASCR's public claim in July 2007 that it successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels through fiscal year 2005 drew a questionable portrait of progress. By July 2007, ASCR officials were well aware that the plan to prevent future backlogs had not succeeded. ASCR had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, before ASCR made its report to the public in 2007, ASCR officials were in the midst of planning to hire attorneys to address the backlog of complaints, including some complaints that ASCR was holding dating from the early 2000s that it had not resolved. In addition, some steps that ASCR had taken to speed up its investigations and decisions on complaints appear to have affected the quality of its work. These on-going problems are a continuation of the inadequate conditions that we and USDA's OIG have reported for over a decade.

⁸ ASCR's backlogs of discrimination complaints generally consist of numbers of complaints for which ASCR has insufficient capacity to adjudicate promptly.

ASCR reporting on backlogs of discrimination complaints has been faulty and contains disparities. When ASCR was created, there was an existing backlog of complaints. In recognition of this problem, USDA's Assistant Secretary for Civil Rights made discrimination complaint inventory reduction ASCR's highest priority initiative. This initiative called for ASCR's senior managers and employees to make a concerted 12-month, \$1.5 million effort to reduce the backlog of complaints that they had inherited. Moreover, according to a briefing book ASCR prepared for the Senate Committee on Agriculture, Nutrition, and Forestry, this complaint inventory reduction initiative was to put lasting improvements in place to prevent future complaint backlogs. It also stated that USDA's Office of Civil Rights would focus substantial resources on fair, equitable, and legally supportable resolution of cases.

About 4 years later, in July 2007, ASCR released a report to the public stating that its fiscal year 2004 backlog reduction initiative was a success.⁹ The report stated that the backlog of 573 complaints from employees and 120 complaints from customers had been resolved, and that ASCR had held the complaint inventory to manageable levels through fiscal year 2005. However, the data ASCR reported lack credibility because a month earlier the Office had reported different data to this congressional subcommittee (see Table 1). Specifically, according to the June report, the numbers of complaints at the beginning of fiscal year 2005 was 552; according to the July report, the number was 363. Moreover, the June report cited the number of complaints at the end of fiscal year 2005 as 1,275, and the July report said it was 404. The lower numbers reported to the public were not qualified and provided a more favorable impression than the data reported to this subcommittee. However, the Assistant Secretary's letter transmitting data to the subcommittee contained a footnote qualification stating that USDA's statistics on customers' complaints were the best available, although they were incomplete and unreliable. Before that letter was sent, ASCR's former Director, Office of Adjudication and Compliance¹⁰ (former Office of Civil Rights), who had responsibility for the data, cautioned the Assistant Secretary about the poor data quality and stated that, if questioned, USDA would not be able to explain its data.

⁹USDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

¹⁰We conducted our interviews with the former Director, Office of Adjudication and Compliance, prior to her resignation at about the end of August 2007.

Table 1: Fiscal Year 2005 Customer Complaint Inventory as Reported by ASCR in June and July 2007

	Report to congressional subcommittee, June 2007^a	USDA's 1,000 Days Report, July 2007^b
Number of complaints		
At the beginning of FY 2005	552	363
At the end of FY 2005	1,275	404
Resolved during FY 2005	N/A ^c	120

^aLetter of Margo M. McKay, Assistant Secretary for Civil Rights, USDA, to the Chairman, Subcommittee on Government Management, Organization, and Procurement, House Committee on Oversight and Government Reform, June 29, 2007.

^bUSDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

^cAs reported by USDA, without explanation.

Moreover, ASCR's July 2007 report claiming success in addressing the backlog of complaints is questionable because at least 2 months earlier, officials of ASCR and USDA's Office of General Counsel (USDA OGC) had started discussing a plan of "triage" to address a backlog of complaints by hiring additional attorneys to draft final decisions on those cases. Also, in July 2007, the Assistant Secretary for Civil Rights informed us that she was to brief the Secretary on her plan to reduce that backlog, but was not comfortable sharing the plan with GAO. We later learned that ASCR had identified a backlog of 885 customer and employee discrimination complaints, according to ASCR data. Furthermore, while claiming success, ASCR was holding old complaints from customers that it had not resolved. ASCR data show, for example, that it had 46 complaints dating from 2002 and before, which remained open at least until August 2007.¹¹

Based on our interviews, we attribute the growth of the latest backlog to the lack of adequate management controls and vigilance. In December 2006, we asked ASCR's former Director, Office of Adjudication and Compliance, to provide us with management reports on the status of discrimination complaint cases. The former Director stated that she had no such management reports; that management reports on customer complaints were not required by law; and that since a backlog had been addressed in 2004, she was confident that the handling of complaints since

¹¹In addition, during this time period ASCR held in abeyance complaints associated with pending and potential class action litigation.

then had been timely. However, according to a briefing document that ASCR used within USDA:

- The inventory of customer complaints had grown from 552 cases to 1,356 cases from the end of fiscal year 2004 to the end of fiscal year 2007. ASCR identified 395 customer complaints as backlogged.
- The inventory of employee complaints stood at 1,444 cases and 1,306 cases at the end of fiscal years 2004 and 2007, respectively. ASCR identified 490 employee complaints as backlogged.

To address the customers' complaints, in August 2007 USDA contracted for six attorneys to draft final agency decisions and expected that this effort would be completed by the end of 2007. To address the employees' complaints, USDA anticipated using these attorneys and to contract with the U.S. Postal Service as well, expecting that these cases would be completed by the end of fiscal year 2008.

ASCR's tardy case processing of certain customer complaints may prevent USDA from compensating a farmer even though USDA may find sufficient evidence of discrimination. This is because USDA believes it cannot settle certain claims filed with USDA once a 2-year period for filing in federal court has expired if the individual did not also file their claim in federal court, and regardless of whether the individual timely filed their claim with USDA.¹² We are aware of one such case in which USDA found discrimination in 2005, but the farmer has not received a compensatory damage payment from USDA because the 2-year period for filing in federal court had expired. In addition, even though USDA's final decision on the case stated that the farmer's 1997 farm loan debt would be forgiven, a USDA official informed us that has not yet occurred.

In addition, an ASCR document identified 92 cases that were being held in abeyance—that is, ASCR had set these cases aside from receiving a final decision on the merits because the complainant is, or could be, a member of a class action lawsuit. If these cases are not certified as class actions,

¹²A customer may file a complaint (1) with the agency, (2) in federal court, or (3) both. He or she need not file a claim with the agency before filing in federal court. Following a January 29, 1998 legal memorandum from the Department of Justice's Office of Legal Counsel, USDA will not award administrative settlements for Equal Credit Opportunity Act claims once the 2-year statute of limitations for filing such a claim in federal court has passed, unless the farmer has timely filed a complaint in federal court.

then ASCR will consider each complaint individually. Of the 92 cases, 58 appear to be complaints involving farm program litigation.

- 31 cases were classified as *Keepseagle*-related cases filed with USDA between November 1996 and January 2003. The *Keepseagle* case was filed in November 1999 and is certified as a class action case.
- 25 cases were classified as *Garcia*-related cases filed with USDA between March 1991 and January 2006. The *Garcia* case was filed in October 2000.
- 2 cases were classified as *Love*-related cases filed with USDA in 1997. The *Love* case was filed in October 2000.

We also identified one active discrimination complaint filed in 1990, 18 years ago. This complaint involves the American Indians of the Fort Berthold Reservation in North Dakota.¹³ USDA investigated this case of alleged discrimination in farm lending in 1999. The lead complainant has requested USDA action many times, and in March 2008, a USDA administrative law judge approved this case for a decision. The judge has scheduled a June 2008 hearing on compensation, should he find in favor of the complainants.

Data ASCR provided contains additional disparities. In addition to its reporting to the Congress and the public, we identified other instances of disparities in the data reported by ASCR on its inventories of customer complaints, as illustrated in the following two tables. Table 2 shows that ASCR reported case resolution data differently to us than it did in an internal departmental briefing document 5 months later. Specifically, for fiscal year 2006, data we were given showed 290 complaints were resolved, while an internal briefing showed 991. Disparities were evident in the earlier fiscal years as well. Table 3 shows disparities in the dates of 10 discrimination complaint cases that ASCR provided us on two occasions. For example, in case number 7, data we were given first indicated that the case was open in May 2003, and subsequent data indicated 1998 or 1999, a 4- or 5-year variance.

¹³A second and separate case involving American Indians of the Fort Berthold Reservation has been incorporated within the *Keepseagle* class action case.

Table 2: USDA Customers' Complaints of Discrimination Resolved by ASCR, Fiscal Years 2004 through 2006

	Data provided to GAO August 2007	USDA briefing document January 2008
FY 2004	953	1,561
FY 2005	258	N/A ^a
FY 2006	290	991

Sources: ASCR data provided to GAO in August 2007 and an ASCR briefing document of January 2008.

^aAs reported by USDA, without explanation.

Table 3: Examples of Variations in Opening Dates of Customers' Discrimination Complaint Cases Provided by ASCR to GAO

Case number assigned by GAO	Opening date reported to GAO in August 2007	Opening date reported to GAO in January 2008	Variance	Case age based on January 2008 data
1	December 2005	March 1991	14 years	17 years
2	a	November 1996	a	11 years
3	a	February 1998	a	10 years
4	a	October 1998	a	10 years
5	a	October 1998	a	10 years
6	a	October 1998	a	10 years
7	May 2003	1998-1999	4-5 years	9 years
8	September 2001	October 2000	11 months	7 years
9	June 2003	June 2001	2 years	6 years
10	April 2003	July 2002	11 months	5 years

Source: Data provided by USDA.

Note: These cases are being held in abeyance by USDA (not being resolved at this time) because they have been associated with a class action lawsuit, or a potential class action lawsuit.

^aNo data on this case were provided in August 2007.

ASCR officials and staff recognize that the data they use are unreliable. They provided us with examples of known data inaccuracies, including (1) data that are being transferred into the new ASCR database, which is intended to address the existing data management problems, and (2) data that USDA reports to the Equal Employment Opportunity Commission on employees' complaints. Other ASCR officials and staff told us that erroneous data had been migrated to the new database, and start-up problems with the new system have further contributed to data inaccuracies. Furthermore, ASCR staff reported that occasionally

customers' case files cannot be readily found, the files are missing documents, and sometimes the files contain documents that pertain to other cases. Nevertheless, while correspondence from the former Director, Office of Adjudication and Compliance, to USDA's OIG said that only verified data were entered into the new system to prevent "garbage in, garbage out," USDA's OIG reported that ASCR had not implemented a process to validate the accuracy of its data and did not have sufficient controls over the entry and validation of data into its new system.

Steps ASCR took to speed up its work affected quality. We found that as ASCR accelerated the pace of its work to reduce its backlog of discrimination complaints in 2004, it took steps may have affected the quality of its work. First, ASCR's plan to accelerate its work did not address how the quality of its work would be maintained.

- ASCR's plan called for USDA's investigators and adjudicators, who prepare agency decisions, to nearly double their normal pace of casework for about 12 months. For example, ASCR's investigators were expected to increase their productivity from about 16 to 30 cases per year.
- One technique that ASCR adopted was to have its investigators conduct interviews and interrogatories by phone and email whenever possible. Civil rights investigative standards indicate that interviews by telephone are acceptable under certain circumstances, such as when there is good reason to conclude that the complainant is the only person affected by the allegations of discrimination.¹⁴ ASCR employees told us that it is now usual for ASCR investigations to be conducted by phone.
- Another feature called for one employee to respond to about 3,000 "claims and inquiries" submitted as a result of a letter writing campaign. However, the plan did not make clear what procedures ASCR staff were to use for reviewing and responding to these cases or the quality controls that were to be applied. ASCR employees reported to us that an unknown portion of these claims and inquiries were either lost or disregarded.

¹⁴Department of Justice, Civil Rights Division, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (Washington, D.C.: September 1998). In addition, the President's Council on Integrity and Efficiency, *Quality Standards for Investigations* (December 2003) calls for due professional care in performing investigations by, among other things, achieving thoroughness through the application of appropriate techniques.

Second, ASCR's former Director, Office of Adjudication and Compliance, commented in writing on the quality of USDA's work on employees' complaints in fiscal year 2004. The former Director stated that contractors' work in preparing draft decisions was fair to average and required much revision. In addition, the former Director related that USDA issued many "summary" decisions on employees' complaints that did not resolve questions of fact, leading to the appeal of many USDA decisions to the Equal Employment Opportunity Commission. The former Director expressed concern that such summary decisions by USDA "could call into question the integrity of the process because important issues were being overlooked."

Finally, as in the past, inadequate working relationships and communications within ASCR have complicated its efforts to produce quality work products, and adversely affected employees. According to ASCR documents and our interviews, instability in ASCR's civil rights offices resulting from reorganizations, management and staff turnover, low morale, and concerns about the treatment of staff in ASCR's civil rights offices have been a serious obstacle to improving the management of these programs. Over the past 5 years, many complaints of discrimination have been filed against ASCR program managers and officials. In addition, some staff have feared retaliation for reporting program and management related problems, or for raising questions about management actions.

USDA's OIG and GAO have long reported on problems in resolving discrimination complaints. USDA's stated policy is to efficiently respond to discrimination complaints, but over the past years it has not done so. USDA's OIG and GAO have together invested heavily in reporting on and developing recommendations to overcome USDA's untimely handling of discrimination complaints. In 1999, for example, while we reported that USDA had exceeded four target dates for closing backlogs of customers' complaints and three for employees' complaints, we made recommendations to address USDA's continual management turnover in civil rights offices, frequent reorganizations, inadequate staff and managerial expertise, and poor working relationships and communication within the Office of Civil Rights.¹⁵ USDA management agreed with these reports and committed to implement our recommendations.

¹⁵GAO, *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints*, GAO/RCED-99-38 (Washington, D.C.: Jan. 29, 1999).

However, by 2000, USDA's OIG stated that it was making its seventh attempt to provide USDA's Office of Civil Rights with constructive ways to overcome its case processing inefficiencies.¹⁶ The OIG also stated that officials of the Office of Civil Rights had agreed to a major transformation of the system for processing complaints, but, in fact, the office did not make any significant changes. The OIG stated that unless the Office of Civil Rights provided effective leadership, changed the organizational culture, and addressed its customer focus and process engineering, it would be questionable whether further complaints of discrimination would receive due care. In 2002, USDA officials again committed to setting and meeting time frames for processing discrimination complaints. In 2003, we identified the processing of discrimination complaints as a significant management challenge for USDA.¹⁷ Four years later, in August 2007, USDA's OIG designated civil rights as a major management challenge at USDA.¹⁸ The OIG commented that because of the conditions it had found, public confidence in USDA's upholding of civil rights might be lost.

In addition, in 2007, USDA's OIG reported that material weaknesses persisted in ASCR's civil rights control structure and environment for processing employees' discrimination complaints.¹⁹ The OIG found that although USDA's Office of Civil Rights had reduced the average time for processing employees' complaints, the average exceeded the Equal Employment Opportunity Commission's standard of 270 days. According to the OIG, 67 cases took, on average, over 500 days, which the OIG considered to be representative of cases in which ASCR had to issue a decision on the merits of the complaint. In addition, the OIG reported that:

- 13 of the 64 case files that the OIG selected to review could not be located for a month; one required 6 months to locate; and one had to be recreated;

¹⁶USDA Office of Inspector General, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, Audit Report No. 60801-4-Hq (Washington, D.C.: Mar. 10, 2007).

¹⁷GAO, *Major Management Challenges and Program Risks: Department of Agriculture*, GAO-03-96 (Washington, D.C.: January 2003).

¹⁸USDA Office of Inspector General, *Management Challenges* (Washington, D.C.: Aug. 1, 2007). USDA's OIG previously identified civil rights as a major management challenge for USDA in August 2004.

¹⁹USDA Office of Inspector General, *Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints*, Audit Report No. 60601-04-Hy (Washington, D.C.: May 14, 2007).

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- 21 of the 64 case files had missing documentation; and
 - 11 of the 64 cases had incorrect data recorded in ASCR's database, including one case in which the complainant was incorrectly identified as white rather than African-American.

ASCR's former Director, Office of Adjudication and Compliance, responded that there were several causes for these conditions: the Equal Employment Opportunity Commission standards were unrealistic, there was a substantial backlog of cases, there had been an influx of new cases, there were staffing and resource shortages, and individual USDA agencies were not meeting their responsibilities. ASCR's former Director also claimed that these weaknesses in resolving employees' discrimination complaints would be addressed in 5 years. However, the OIG observed that ASCR did not have an effective plan to get this done.

ASCR's Reports on Minority Participation in Programs Are Unreliable and of Limited Usefulness

ASCR has published three annual reports on the participation rate of socially disadvantaged farmers and ranchers in USDA programs, which are required by section 10708 of the 2002 Farm Bill.²⁰ Over time, these reports could help make more transparent the progress made by socially disadvantaged farmers and ranchers in accessing USDA programs. However, as USDA discloses in these reports, the data USDA has reported are statistically unreliable. In addition, our analysis of the USDA reports shows that they do not include basic reference data needed for understanding the reports and examining trends.

The reports are to provide statistical data on the participation of farmers and ranchers in USDA programs by race, ethnicity, and gender, and in addition, USDA has included descriptions of its success stories in providing outreach and assistance to socially disadvantaged farmers and ranchers. USDA has stated that through these reports, it intends to make clear that it is committed to and accountable for fair and equitable service to all customers. However, the statistical data USDA reports on program

²⁰USDA, *Bridges to the Future: 2003 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: December 2004); *Bridges to the Future: 2004 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: December 2005); and, *Bridges to the Future: 2005 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C.: June 2007).

participation are unreliable. USDA stated that it does not have a uniform method of reporting and tabulating race and ethnicity data among its component agencies. More specifically, according to USDA, it does not have approval from OMB to implement standardized data collection of demographic information directly from program participants. For example, according to USDA, the Cooperative State Research, Education, and Extension Service; the Rural Business and Cooperative Service; and the Risk Management Agency are not authorized to collect race and ethnicity data for 18 programs. USDA reported that only the Farm Service Agencies' farm loan program collects reliable and complete information on socially disadvantaged farmers and ranchers. Except for the data of the Farm Service Agency, most of USDA's demographic data are gathered by visual observation of the applicants, and USDA states in its reports that it considers visual observation to be unreliable, especially for ethnicity. Individual traits, such as ethnicity, may not be readily evident to an observer. In addition, for some Farm Service Agency programs, applicants who chose not to identify their race were, until 2004, designated as "white male." When taken together, according to USDA, the mixture of data available for reporting is statistically unreliable.

In 2004, to overcome these conditions, ASCR published a notice in the *Federal Register* seeking public comment on its plan to collect additional data on race, ethnicity, gender, national origin, and age. While ASCR received some public comments, it did not follow through and obtain OMB's approval to collect the data. In a January 2008 briefing document, an ASCR work group stated that ASCR does not have the staff or financial resources to proceed with this project. On May 8, 2008, ASCR officials said that they plan to meet again in the near future to further discuss this matter.

In addition, our analysis of these USDA reports shows that they are of limited usefulness because they do not include the basic reference data needed for understanding the reports and examining trends. USDA has published its demographic data as the percentage of program participants by county and state. While observers can track the percentage changes in program participation over time, the data are of limited usefulness without knowing the actual number of program participants and the census data for each county and state. For example, USDA would now report that in a particular county, 20 percent of the farm program participants were minority farmers and 80 percent were nonminority farmers. Greater insight would be provided if USDA also reported that there were 100 program participants in the county—the report reader would then know that 20 were minority program participants. Further insight would be

provided if USDA reported from census data that in this county, 125 of the 1,000 farmers were minority farmers. By including census data, USDA could also facilitate the observation of population shifts along with changes in program participation. Furthermore, USDA's Web-based tables that contain data on program participation do not facilitate analysis. USDA publishes its data in about 1,370 separate tables and 146 maps that are not searchable files. Because the underlying data are not searchable, readers cannot make simple comparisons that would enhance data interpretation. If the data were searchable, it could be possible to compare minority participation by program, geographic location, and year.

Finally, a section of the report includes highlights of 16 USDA agencies' efforts to reach out to minority and socially disadvantaged farmers. While these highlights provide useful perspective on agency activities to serve socially disadvantaged farmers and ranchers, the information is somewhat limited because the many positive agency activities are reported as anecdotes, which do not reveal the full extent of USDA agency outreach activities. The following examples illustrate USDA's reporting of its outreach efforts for fiscal year 2005.

- *Farm Bill Forums.* USDA reported that in anticipation of the 2007 Farm Bill, the Office of Outreach assisted with planning and conducting "listening sessions" in various locations with minority farmers and ranchers.
- *Partners Meetings.* USDA reported that a second annual partners meeting was held in August 2005. The meeting provided opportunities for more than 125 representatives of community-based organizations for farmers and ranchers to engage with USDA officials about issues that affect the continued well-being of the minority and small farm and ranch community.
- *The Tobacco Buyout Program.* USDA reported that a comprehensive multimedia campaign was conducted to inform tobacco quota holders and farmers of the buyout program, and to encourage them to sign up for the buyout program. The Office of Outreach participated in the design of communication strategies to help ensure that small and limited-resource producers received accurate information about the buyout in a timely manner and the office also called attention to the need to promote financial investment planning and transitioning to alternative crops.

ASCR's Strategic Planning Is Limited and Does Not Address Key Steps Needed to Achieve Its Mission

In light of USDA's history involving significantly controversial issues, including allegations of systemic discrimination against USDA customers carried out through the design and delivery of USDA programs as well as discriminatory treatment of USDA employees, strategic planning is vital for providing proactive ASCR leadership. Results-oriented strategic planning provides a roadmap that clearly describes what an organization is attempting to achieve, and over time, it can serve as a focal point for communication with the Congress and the public about what has been accomplished. Results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and decision making to hone the strategic plan. Taken together, ASCR has started to develop a results-oriented approach as illustrated in its first strategic plan entitled *Assistant Secretary for Civil Rights: Strategic Plan, Fiscal Years 2005-2010* and its *ASCR Priorities for Fiscal Years 2007 and 2008*. The elements of these plans are summarized in appendix II. However, ASCR has a long distance to go before its approach and plans can be effective.

ASCR has designed its missions and strategic goal. We found that ASCR has made progress by describing a compelling mission and strategic goal, but has not involved stakeholders, assessed the environment, and aligned its activities, core processes, and resources to achieve its mission and strategic goal.

- One of ASCR's missions is to ensure that USDA is in compliance with civil rights laws and regulations. This mission calls for ASCR to process employees' discrimination complaints as required by the Equal Employment Opportunity Commission, and to review USDA agencies' implementation of civil rights laws and regulations.
- ASCR's second mission is to provide leadership to promote equal opportunity, equal access, and fair treatment for all USDA employees and customers.

ASCR also has a strategic goal—to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. This two-part strategic goal was the basis for the development of ASCR's strategic plan.

Results-oriented organizations take several steps to effectively implement their mission and achieve their desired outcomes. They (1) involve

stakeholders, (2) assess the environment, and (3) align activities, core processes, and resources. However, we found that ASCR's planning has several shortcomings. First, while results-oriented organizations base their strategic planning, to a large extent, on the interests and expectations of their stakeholders, ASCR's strategic plan states that ASCR relied on input from a variety of internal and external customers in developing its strategic plan. However, the plans do not identify who provided input or contain a discussion of the interests and perspectives of ASCR's stakeholders. For example, while ASCR's stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR's strategic planning does not address the diversity of USDA's field staff. ASCR's external stakeholders said that they have a high degree of interest in ASCR's planning, and several discussed their involvement in ASCR's annual meetings. ASCR refers to its stakeholders as "partners"—which include representatives of community-based organizations and minority interest groups. These partners have attended ASCR's annual partners meetings and discussed their wide ranging interests in ASCR's mission. However, ASCR's partners' interests vary from ASCR's strategic plan. We developed a summary of ASCR's partners' interests based on interviews with the representatives of a selection of USDA's partners' groups, and we also considered issues identified in past studies of USDA. For example, ASCR's partners are interested in improvements in (1) USDA's methods of delivering farm programs to facilitate access by underserved producers, (2) the county committee system so that they are better represented in local decisions, and (3) the diversity of USDA employees who work with minority producers. A list of these interests is included in appendix III.

In response, ASCR's Director of Outreach stated that some of ASCR's fiscal year 2008 priorities for outreach respond to particular interests of ASCR's partners. The Director referred, for example, to ASCR's initiatives to coordinate and report on USDA-wide outreach activities, to help ensure that USDA agencies have formal outreach programs with full-time staff, to train outreach coordinators, and to improve ASCR's annual reporting on minority participation in USDA programs.

Second, by building an environmental assessment into the strategic planning process, results-oriented organizations identify external and internal factors that can influence the achievement of their long-term goals. For example, some information about the civil rights environment

as it affects farmers is described in a study of the Mississippi Delta area by the U.S. Civil Rights Commission, and in a report on minority and women farmers by USDA's Economic Research Service.²¹ ASCR's report does not discuss the development or use of such information. An assessment of the external environment is especially important because ASCR's Office of Outreach is to provide national leadership and coordination for USDA programs and services to ensure equal and timely access for all of USDA's constituents, especially the underserved. As for the internal environment, ASCR recognizes that the efforts of various USDA agencies and offices that perform critical functions are necessary for full implementation of ASCR's strategic goal. However, ASCR's planning does not identify the most critical agency functions that relate to ASCR's strategic goal including their culture, management practices, and business processes. While this is a significant endeavor, getting a good understanding of these facets of USDA operations could help contribute to determining what ASCR may need to accomplish and how ASCR could best work with other USDA agencies and offices. ASCR's Director of Outreach reported that her office is making some progress in developing relationships with USDA's agencies in their efforts to improve outreach to minority farmers.

Third, results-oriented organizations align their activities, core processes, and resources to support their mission and desired outcomes. Such organizations start by assessing the extent to which their programs and activities contribute to meeting their mission and make linkages between levels of funding and their anticipated results. ASCR used an organizational framework for developing its planning, according to an ASCR official, and developed objectives for each of ASCR's existing offices. However, these plans do not reflect consideration of the extent to which each of its office's activities is to contribute to ASCR's missions. For example, one ASCR strategic objective is to strengthen partnerships with historically black land-grant universities through scholarships provided by USDA, but it is not clear how scholarships bear significantly on ASCR's mission. Moreover, the plans do not make linkages between levels of funding and ASCR's anticipated results—without such a discussion it is not possible to determine whether ASCR has the resources needed to achieve its strategic goal.

²¹U.S. Civil Rights Commission, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume VII: The Mississippi Delta Report* (Washington, D.C.: February 2001) and U.S. Department of Agriculture, Economic Research Service, *Minority & Women Farmers in the U.S.* (Washington, D.C.: May 1998).

ASCR could better measure performance to gauge progress. Results-oriented organizations establish performance measures that demonstrate results, are limited to the vital few performance measures, respond to multiple priorities, and link to responsible programs. In addition, they pay special attention to issues relating to data collection. Moreover, they have to balance the cost of collecting data against the need for data that are complete, accurate and consistent enough to document performance and support decision making at various organizational levels. In this area, ASCR's plans leave room for many forward steps.

- While ASCR identified its Office of Outreach as having responsibility for providing national leadership and coordination for programs and services across USDA agencies to ensure customers have equal and timely access, the measures it adopted focus on counting participants at USDA training workshops, rather than on the outcome of its outreach efforts on access to benefits and services.
- ASCR's planning does not link to the plans of USDA agencies or department as a whole, and does not discuss the potential for linkages to be developed.
- To measure progress that USDA agencies make in compliance with relevant USDA government regulations and laws, ASCR states it will use a percentage of agencies in compliance, but had not established the baseline and targets.

ASCR's plans have an important gap in the area of performance measurement, especially in an era of limited resources. They do not discuss the kinds of data that USDA agencies collect or analyze that would demonstrate progress towards ASCR's strategic goal. To leverage resources, potential sources of data may be USDA's National Agricultural Statistics Service, which conducts the *Census of Agriculture*, and the Economic Research Service, which analyzes and reports on trends in agriculture, including social changes.²²

²²Measuring racial discrimination is important to understanding where it occurs, the extent of its impact, and what to do about it. Researchers have recommended that agencies explore the use of field studies, such as has been done since the 1970s to detect racially based discrimination in housing. See National Research Council, National Academy of Sciences, *Measuring Racial Discrimination* (Washington, D.C.: 2004).

ASCR's planning has not considered the use of performance information for identifying performance gaps. Results-oriented organizations—after building a performance measurement system—put performance data to work to identify gaps in their performance, report on that performance, and finally use that information to improve their performance to better support their missions. However, the data that ASCR now identifies in its plans, such as the number of persons who are aware of USDA programs, will contribute relatively little to an understanding of USDA's performance gaps in meeting ASCR's strategic goal. For example, such data will not provide any insight into how well USDA staff work with and assist minority and limited-resource customers, whether the programs provide for equitable treatment, and how well USDA upholds the civil rights of its employees. Also, ASCR will need to work closely with other USDA agencies, such as the Farm Service Agency, the Natural Resources Conservation Service, Cooperative State Research, Extension, and Education Service, and the Rural Development Mission Area, but the ASCR plans do not discuss how their data can be used to contribute to identifying gaps in USDA's performance. Nevertheless, ASCR officials said that they have taken steps in this direction through annual reviews of the performance of USDA agency heads. Through these reviews, ASCR officials said they are making some recommendations for agency change, although the USDA agencies are not required to follow those recommendations.

Concluding Observations

USDA has been addressing allegations of discrimination for decades. One lawsuit has cost taxpayers nearly a billion dollars in payouts to date, and several other groups are seeking redress for similar alleged discrimination. While ASCR's policy is to fairly and efficiently respond to complaints of discrimination, its efforts to establish the management system necessary to implement the policy have fallen far short. For example, both we and USDA's OIG have observed that ASCR does not have oversight and control over its inventory of discrimination complaints—controls that are vital to effective management. Despite the numerous past efforts to provide this office with constructive analysis, including recommendations to set timeframes for resolving complaints from beginning to end, significant management deficiencies remain. Such resistance to improve its management system calls into question USDA's commitment to more efficiently and effectively address discrimination complaints both within the department and in its programs.

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

Contact and Staff Acknowledgments

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. For further information about this testimony, please contact Lisa Shames, Director, Natural Resources and Environment at (202) 512-3841 or shamesl@gao.gov. Key contributors to this statement were Charles M. Adams, Kevin Bray, Robert Cramer, Nancy Crothers, Richard Egan, Ronald Fecso, Bart Fischer, Cardell Johnson, Elizabeth Johnston, Karen Keegan, Kerry Lipsitz, Nhi Nguyen, Andrew O'Connell, Terry Richardson, and Susan Sawtelle.

Appendix I: Scope and Methodology

During this performance audit, we reviewed relevant reports prepared by the U.S. Department of Agriculture (USDA), USDA's Office of Inspector General (OIG), the U.S. Civil Rights Commission, the U.S. Equal Employment Opportunity Commission, and GAO, among others. We also conducted over 50 interviews with officials and staff of USDA's Office of the Assistant Secretary for Civil Rights (ASCR); over 65 interviews with staff of USDA's Farm Service Agency, Natural Resources Conservation Service, Rural Development Mission Area, Cooperative State Research, Extension, and Education Service, the National Agricultural Statistical Service, and USDA field offices in California, Florida, North Carolina, Texas, and Washington; 20 interviews with USDA stakeholder groups, including The Rural Coalition, United Farmers USA, the Federation of Southern Cooperatives, South East Asian American Farmers Association, the Intertribal Agricultural Council, the National Tribal Development Association, the Hispanic Farmers and Ranchers of America, the National Black Farmers Association, National Hmong American Farmers, and the Coalition of USDA Minority Employees; and three interviews with officials of the U.S. Commission on Civil Rights and the U.S. Equal Employment Opportunity Commission. In addition, we considered GAO and the Office of Management and Budget's (OMB) guidance on strategic planning and performance.¹

Unlike our prior reviews of USDA civil rights activities when we readily obtained access to records that were necessary for our work, in this case our efforts were impeded by delays in obtaining records. We made repeated requests for USDA records—including requests directly to the Assistant Secretary for Civil Rights and the Deputy Secretary. These requests concerned records relating to ASCR's priorities, ASCR's strategic plan, ASCR civil rights related performance assessments of agency heads, correspondence between ASCR and USDA's Office of General Counsel, unresolved discrimination complaints, outreach, ASCR office budgets, and USDA's request for OMB approval to collect data needed for reporting on minority farmer participation in USDA programs, among others. In January 2008, we requested the Deputy Secretary's cooperation and assistance in arranging for access to USDA records, and we subsequently received many, but not all, of the records we sought. Nevertheless, the records we received were sufficient for our work to meet generally accepted government auditing standards. These standards require that we

¹GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Furthermore, starting in January 2008, several USDA employees contacted us with certain allegations pertinent to our work, such as the possible destruction of records and manipulation of discrimination complaint data related to GAO's engagement. Consequently, we and USDA's OIG conducted a number of additional interviews with agency staff. Based on the interviews we conducted, we learned of additional deficiencies in the handling of discrimination complaints, among other things, but did not find evidence that our work had been purposely undermined. Also, several allegations not directly related to our work came to our attention that we will refer to USDA's OIG and the Department of Justice for further investigation.

Appendix II: USDA ASCR Initiatives, and Strategic and Priority Plans

Table 4: ASCR Initiatives for Fiscal Year 2004

Challenges	Initiatives/Accomplishments	Status as of Dec. 2007
Organization	Consolidated USDA offices with civil rights focus into ASCR Staff were temporarily assigned to address discrimination complaints	Complete Complete
Systems	Develop a professional system for managing discrimination complaints	On-going
Procedural	Regulations are being drafted to address the relationship between USDA's Office of General Counsel and ASCR's Office of Adjudication and Compliance	On-going
Operational	Created a unit to handle incoming phone calls for ASCR Reduced backlogs of customer and employee discrimination complaints USDA's alternative dispute resolution policy was amended in April 2006 to enhance the use of alternative dispute resolution	Complete Complete Complete
	Conduct a public awareness campaign—several public forums and "listening sessions" have been held to discuss partnerships, the <i>Minority Farm Registry</i> , the <i>Notice of Farm Loan Application Receipts</i> , and the next Farm Bill	On-going
Accountability	Prevent program complaints—ASCR has convened three Partners Meetings with community based organizations and groups representing minority and limited resource farmers to address concerns about access to farm programs Prevent employee complaints—training for managers on equal employment opportunity is mandatory, and employee development programs are being implemented	On-going On-going
	Implement the "No Fear Act"—Public Law 107-174 requires federal agencies to be held accountable for violations of anti-discrimination laws—USDA's quarterly reports are being posted on time, and all employees have received training	Complete
	ASCR completed an accountability policy for USDA—USDA's Office of Human Resources will ensure that all USDA managers are held accountable for discriminatory actions	Complete
	An annual civil rights conference has been established	Complete

Source: USDA ASCR briefing document as of November 2007.

Table 5: ASCR Strategic Objectives for Fiscal Years 2005 through 2010

Objective	Selected Key Performance Indicator for 2010
Strengthen partnerships between USDA and 1890 Community (historically black land-grant institutions).	Increase student scholarships provided by USDA from 25 to 33.
Strengthen partnerships between USDA and 1994 land-grant institutions (Native American tribal colleges).	Increase student scholarships provided by USDA from 5 to 9 by 2010.
Enhance the Office of the Secretary and Departmental Office employees' knowledge of the fairness, neutrality, and confidentiality of alternative dispute resolution (ADR) usage.	Increase the knowledge of employees familiar with alternative dispute resolution from 100 to 950.
Ensure USDA agencies and offices are in compliance with USDA regulations and government-wide ADR laws and regulations.	Percentage of agencies in compliance—baseline and targets to be determined.
Achieve an efficient USDA-wide outreach program for all customers.	Numbers of socially and economically disadvantaged persons who received training for the first time—baseline and targets to be determined.
Create and strengthen partnerships with community and faith-based organizations, corporations, foundations, educational institutions and other targeted communities to build coalitions for USDA programs and opportunities.	Increase number of partnerships and coalitions from 10 to 50.
Increase the awareness of USDA programs and opportunities for the socially and economically disadvantaged persons and also under-represented persons.	Increase number of individuals aware of participation requirements from 100,000 to 160,000.
Develop and implement an efficient complaint process that adheres to civil rights laws and regulations.	Increase the number of cases processed within regulatory timeframe from 40 to 100 percent for employee complaints and from 16 to 100 percent for customer complaints.
Ensure USDA agencies and offices are in compliance with EEO laws.	Percentage of USDA agencies brought into compliance—baseline and targets to be determined.
Meet EEOC standards for a Model EEO Program.	Increase percentage of EEOC indicators that are met from 33 to 100 percent by 2009.

Source: USDA.

Table 6: List of Civil Rights Priorities and Selected Initiatives for Fiscal Years 2007 and 2008

Diversity	Fill senior executive position to lead ASCR's Outreach and Diversity Division Add workplace diversity as a core value Develop and conduct mandatory Diversity Awareness Training for all supervisors and employees Offer training, including a disability training conference and an AgLearn training module on sexual orientation Establish a diversity forum to foster communication between USDA senior management and internal customers of USDA
Outreach	Develop and implement a comprehensive USDA-wide outreach plan Provide oversight and coordination of minority participation data Conduct a joint review with USDA's Agricultural Research Service of the Hispanic Serving Institutions National Program
Conflict Prevention and Resolution	Create an Alternative Dispute Resolution (ADR) video on mediation Recommend establishing dedicated ADR Director positions in USDA agencies Conduct a USDA-wide ADR awareness survey
Continuing Civil Rights Initiatives	Comply with No FEAR Act requirements Update civil rights directives, regulations, and policies as needed Continue to strive to ensure that Final Agency Decisions meet legal sufficiency standards and time requirements Convene biennial USDA Civil Rights Conference in 2008
Communications and Public Awareness	Create a strategic marketing campaign focused on ASCR goals and civil rights accomplishments by USDA agencies Recognize and award internal and external stakeholders for civil rights best practices

Source: USDA.

Appendix III: Interests of Selected USDA Stakeholders in Civil Rights Related Matters as Identified by GAO in 2007 and 2008

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

Source: GAO Analysis of 18 interviews with USDA stakeholders and review of 16 reports related to civil rights at USDA.

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U.S. Government Accountability Office, 441 G Street NW, Room 7125
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