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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)

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1999  
1999

## USDA'S CIVIL RIGHTS PROGRAMS AND RESPONSIBILITIES

HEARING

**This 1999 report describes problems with USDA's Civil Rights program. One of the conclusions (stated on page 60) is that "The USDA's Office of Civil Rights is utterly dysfunctional and must be fixed".**

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS,  
OVERSIGHT, NUTRITION, AND FORESTRY

OF THE  
COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

As the USDA Agricultural Research Service women scientists from Alaska can attest, the USDA's Civil Rights program is still broken (a decade later) and has obviously never been fixed.

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

OCTOBER 14, 1999

**Serial No. 106-37**

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## USDA'S CIVIL RIGHTS PROGRAMS AND RESPONSIBILITIES

THURSDAY, OCTOBER 14, 1999

House of Representatives,  
 Subcommittee on Department Operations,  
 Oversight, Nutrition, and Forestry,  
 Committee on Agriculture,  
 Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 1300, Longworth House Office Building, Hon. Bob Goodlatte (chairman of the subcommittee) presiding.

Present: Representatives Canady, Moran, Cooksey, Clayton, Berry, Thompson, Goode, Phelps, Hill, Thompson of California, and Stenholm [ex officio].

Also present: Representatives Hilliard and Bishop.

Staff present: Dave Ebersole, senior professional staff; Kevin Kramp, subcommittee staff director; Callista Bisek, Wanda Worsham, clerk; Anne Simmons, and Quinton Robinson.

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## OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. **GOODLATTE**. Good morning. This hearing of the Subcommittee in Department Operations, Oversight, Nutrition and Forestry to review the USDA Civil Rights Program and responsibilities will now come to order.

I have an opening statement, and before I give that, I would like to express my deepest concern and condolences to the people of the first district of North Carolina and the adjoining congressional districts, who, as a result of hurricane and flooding have suffered enormously. I hope that, Mrs. Clayton, you will not hesitate to let us know of any way that we can be of assistance.

The purpose of this hearing is to receive testimony and written statements reviewing the USDA's civil rights programs and responsibilities. Civil rights at the U.S. Department of Agriculture has long been a problem. It is my hope that today's witnesses will report the improvement we have been seeking since this committee first held hearings on this issue over 2 years ago. I fear, however, this hope will not be realized today.

I have called this hearing because I am deeply concerned by public allegations of continued discrimination concerning producers. It is my intention for this hearing to create a record detailing allegations against the Department. Before we can attempt to answer the allegations through our oversight capacity, we need to first hear of the treatment experienced by some producers. That is the purpose of this hearing.

Another purpose is to review the functions of the consent decree the U.S. District Court for the District of Columbia has fashioned to resolve the complaints between USDA and the class of farmers that brought the suit. All eligible farmers should get the relief the consent decree affords them post-haste. As stewards of the taxpayers' money, however, we must assure that only those eligible are indeed the recipients of the relief under the consent decree.

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It is unbelievable that we still find it necessary to talk about discrimination of any form in this day and age. I want to make one thing absolutely clear: racism in any department of the Government, any agency or program, is abhorrent and will not be tolerated.

It is equally disturbing that we still find the need to use our oversight authority to learn why farmers are still complaining about the treatment they receive at the hands of the Department. We still regularly hear about discriminatory treatment or delay in resolving complaints. From my view, very little has changed in the last 2 years, despite a growing bureaucracy whose top priority is to address these issues.

We have assembled a broad spectrum of panelists that will tell us the difficulties that they personally experienced with USDA. I look forward to hearing their testimony. And at this time it is my pleasure to recognize the ranking member of the subcommittee, Congresswoman Clayton of North Carolina.  
OPENING STATEMENT OF HON. EVA M. CLAYTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mrs. **CLAYTON**. Thank you, Mr. Chairman.

First, Mr. Chairman, thank you for your expression of sympathy and support for the people of the First Congressional District in eastern North Carolina who have been ravaged by Hurricane Floyd. All acts of empathy and support obviously bring them a sense of hope and they are appreciative of that.

Mr. Chairman, I thank you for holding this hearing today on the all too familiar issue of racial discrimination within the Department of Agriculture. The various agricultural programs are intended to assist all farmers in their efforts to provide an abundant supply of food and fiber for the entire world.

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When minorities and limited resource producers are not given timely access to these programs and benefits, we jeopardize our national goals of providing safe and affordable food to everyone. The fate of

farmers and the fate of urban dwellers is inextricably tied together. Discriminatory practices in extending loans, technical assistance and resources of whatever kind will cost those in New York as surely as it will cost those in Halifax County, NC. Fading numbers of small farmers, black farmers, necessarily impacts the quality, quality and cost of food and fiber.

Equally as important, Mr. Chairman, a serious breach of faith and confidence takes place when those who are hired to implement these programs cannot be trusted to evenhandedly administer the program benefits in the manner that Congress intended.

We cannot afford to continue to accept the status quo when African American farmers continue to disappear due to the discriminatory treatment handed down by the local USDA employees.

In fiscal year 2000, our Government will spend some \$69.3 billion on agricultural related programs and a record \$8.7 billion on emergency spending targeted to all farmers. Mr. Chairman, it is unfortunate that racial classification will play a part in the intentional and illegal denying of USDA program access to women and minority farmers and ranchers.

As the subcommittee with oversight responsibility over USDA programs, we have a duty to do all that we can to bring a speedy end to this type of unacceptable behavior. I believe, Mr. Chairman, that the message we have conveyed in previous hearings is being ignored. Today, the USDA Office of Civil Rights receives about 40 civil rights complaints each week. Further, Mr. Chairman, there is reported to be a \$20,000 cost to the Federal Government for each complaint investigated. I am sure everyone will agree that our tax dollars could be better spent.

The focus of this hearing is to examine the manner in which USDA handles a complaint from the beginning to the final resolution. Also, Mr. Chairman, this hearing will shed some light on the difficulties that the Office of Civil Rights confronts in its duty to expeditiously close cases.

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Mr. Chairman, I want to commend the USDA Office of Civil Rights for its diligence in trying to expeditiously settle these complaints. We look forward to hearing the status of the settlement of complaints filed. Although we focus today on how cases are being settled, we need also to take a serious look at the disciplinary actions that USDA is taking against employees who knowingly and willfully engage in discriminatory acts to the detriment of minority and limited resource farmers.

As of March 29, 1999, the Office of Civil Rights was not tracking the implementation of the individual settlement agreements, and it had offered no formal guidance on cases that had been referred for disciplinary action. In fact, I believe that no disciplinary actions had been taken in any case where there was a finding of probable discrimination.

I want to welcome all of the witnesses and I look forward to hearing your testimony.

Mr. Chairman, I ask for unanimous consent to offer the testimony of Senator Robb into the hearing and also Senator Burns, with your permission.

Mr. **GOODLATTE**. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mrs. **CLAYTON**. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you, Mrs. Clayton.

Any other member of the subcommittee have an opening statement they wish to offer? The gentleman from Alabama.

OPENING STATEMENT OF HON. EARL F. HILLIARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. **HILLIARD**. Thank you very much.

Mr. Chairman, I want to first of all commend you and the ranking member, Mrs. Clayton, for organizing this hearing. I also want to acknowledge the many other members of the Agriculture Committee who have



worked on civil rights enforcement by the Department of Agriculture. I hope that this review of the Agriculture Department civil rights problem and its responsibility to effectively enforce them produce results.

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I look forward to a frank and sincere dialog from the witnesses on their perspective on what the Department is doing right and where it can improve. For too long, we have had continuously too many complaints. And these complaints are extremely costly. The struggle to reach an acceptable resolution for the black farmer has been long and difficult. And whether this settlement proves to be the turning point for the treatment of black farmers by this Department has yet to be realized.

However, I am encouraged that the Department head has at least acknowledged that there is in fact a problem. It took the Department too many years to acknowledge the problem. And before changes could be made in policies, there must be a recognition of the problem. But there also must be a recognition that there are persons who are employed who continue to cause problems, and continuously make the solution of these problems costly to the Agriculture Department, and of course to the country and the taxpayer.

This is inconsistent with the Department policies. It should be. And if it is not, then the Department itself must make radical changes. And it also must terminate those employees who consistently have complaints lodged against them.

It is sad that it has taken us so long to get to this position. But as we turn to the new millennium, I hope that this Department is ready to move forward and terminate those employees who consistently cause problems. It is my hope that as we assemble here today, the curtains can be pulled back on problems that persist at the Department. I realize that together, we all must make efforts to ensure that all people which form the agricultural community are treated not just fairly, but equally.

Thank you very much.

Mr. **GOODLATTE**. Thank you.

Does the gentleman from Texas, the ranking member of the full committee, have a statement?

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## OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. **STENHOLM**. Thank you, Mr. Chairman.

Thank you for holding this hearing today. And much of what has already been stated I firmly agree with.

Since the March and July 1997 hearings on this issue, black farmers and the USDA have reached a long-awaited settlement that hopefully provides a remedy for past occurrences of discrimination. The settlement of this discrimination class action lawsuit is expected to cost the Federal Government approximately \$2 billion.

I want to make it clear, I support redress for the damage caused by discrimination and the implementation of these programs. But we must now take this opportunity to send a powerful messages that this is unacceptable behavior and will no longer be tolerated inside or outside of the Federal work place. Those who are responsible must be held accountable.

It is not enough to merely redress these wrongs. We must also send a very clear message that this type of behavior will not go unpunished. People should not enjoy the privilege of Federal employment if they deny some American citizens their right to participate in Federal programs. Most importantly, this settlement must be implemented in such a way that this type of disenfranchisement will never occur again.

I look forward to hearing about USDA's outreach efforts and the work that will be done to ensure that all farmers and ranchers have the opportunity to participate in any available USDA program. The work of

USDA agencies and private sector non-profit groups should ensure that all eligible producers participate in county committee elections, receive marketing assistance and have access to USDA field offices, among other things.

The laws of this country require that the Government evenhandedly administer program services and benefits to all citizens. Shamefully, some individuals in the Department of Agriculture have not lived up to this requirement. Because some employees of the Federal Government disregarded the fundamental rights of some of our Nation's farmers, the American taxpayers will be paying out a large settlement.

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The bottom line is this: we cannot tolerate a system that fosters discrimination. I look forward to hearing from the witnesses and I look forward to working with you, Mr. Chairman and Mrs. Clayton, as we work with the Department to resolve this very unfortunate situation that we have.

Mr. **GOODLATTE**. I thank the gentleman.

We are now pleased to welcome our first panel and our first witness is Ms. Rosalind Gray, Director of the Office of Civil Rights, at the U.S. Department of Agriculture.

Ms. Gray, we are pleased to have you with us. Your written statement will be made a part of the record, and we will be pleased to receive your testimony at this time.

STATEMENT OF ROSALIND D. GRAY, DIRECTOR, OFFICE OF CIVIL RIGHTS, U.S.

DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY DAVID HARRIS, ASSOCIATE GENERAL COUNSEL FOR CIVIL RIGHTS

Ms. **GRAY**. Thank you.

Mr. Chairman, Ranking Member Clayton, members of the subcommittee, thank you for the opportunity to appear before you today to review the Department of Agriculture's civil rights programs and responsibilities.

On February 28, 1997, Secretary Glickman accepted the Civil Rights Action Team report and committed to implementing its 92 recommendations. Of the 75 recommendations that could be implemented administratively, all but three have been or are well on their way to being implemented. Of the remaining 17 recommendations that require congressional action for their implementation, or additional appropriations, five of these recommendations are enacted.

The CRAT report has not gathered dust. As the Secretary said at the 89th annual NAACP conference last year, it is now a condition of employment that every employee treat every customer and co-worker fairly and equitably. If you cannot live with that creed, then you cannot work at USDA. We have put systems in place to monitor work place conditions to ensure that customers and employees are treated fairly and equitably and that all customers have access to all USDA programs, and that our work force becomes more diverse to reflect the people who live in this country.

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We have streamlined the organizational structure in the Office of Civil Rights. We have installed new management, developed more than three dozen new policies and procedures, and are now reviewing our efforts to ensure that appropriate legislation is enacted so that all the CRAT recommendations may be implemented.

On our program discrimination complaints, on August 22, 1999, we launched our new procedures for processing program complaints within 180 days. All complaints received since then are unscheduled. Last year, and it took more than a year to develop a full implementation for our tracking system that will register a complaint or letter once it is received and track it through complete processing, investigation, adjudication, final decision and notice to complainant.

Of the 1,088 program complaints that were in the backlog on November 1, 1997, all except 29 have been



resolved or referred for resolution to the *Pigford v. Glickman* consent decree. Since November 1, 1997, we have accepted 502 new program complaints. Of these, 260 have been closed and 242 are active or being investigated or adjudicated, and we will reach resolution on those.

In March of this year, a consent decree was signed to settle the African American farmers class action, known as *Pigford v. Glickman*. As of September 30, 1999, USDA had received 11,301 claim filed by members of the class under Track A where the person is eligible for a \$50,000 payment, as well as \$12,500 to cover taxes, and to have their Government debts forgiven, and 20 claims under Track B, where more evidence is required to prove the claim and the farmer is entitled to whatever relief he or she is able to establish in that process.

As of that same date, 246 farmers had opted out of the class action. Of those 246 farmers who had opted out of the class action, 30 of those farmers have complaints pending at the Department of Agriculture, and those complaints will be processed administratively. A number of them are already settled, and the others are being processed.

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Equal Employment Opportunity Complaints, we now have a total of 1,679 active EEO cases. Of these 261 are being investigated, 394 are pending hearing, 749 are pending acceptance. During fiscal year 1999, there were 800 new EEO cases filed and 751 closed.

For the last 2 years, we have been holding agency heads accountable for civil rights performance through our annual performance appraisals processes. That process involves each agency developing and implementing civil rights plans that includes increase diversity and reducing the number of complaints. We have just last week completed the analysis of our reports for fiscal year 1999, and I am now scheduling meetings with each agency head to review their progress or lack thereof, and their rating will be part of their annual performance evaluation. The agency heads then in turn are expected to evaluate their employees as it relates to these civil rights elements.

We are strengthening all of our policies and procedures for taking corrective action. During fiscal year 1998 and 1999, disciplinary or corrective actions were taken against 46 employees for discrimination or misconduct related to civil rights. Five of those actions resulted in removal, one in reduction in grade, 20 in suspension without pay, and 20 letters of reprimand.

My written statement will include other remarks and reports of progress that has been made at the Department during the last couple of years. I would just like to mention that nearly all of the Department employees now take civil rights and diversity training, compliance review of agency programs are conducted, State outreach councils have been formed, a conflict prevention and resolution center has been established, a small farm policy and commission are in place, FSA has implemented a short form application for guaranteed loans of \$50,000 or less, and increased the number of farm ownership and operating loans to socially disadvantaged borrowers by 21 percent.

During the next fiscal year, we do plan to improve the diversity in our employment at the Department. We plan to resolve complaints in a timely manner, to resolve the number of class action suits pending against the Department in the employment area, and there are a number of them, to improve the accountability of our administrators to conduct program and EEO compliance reviews, and to achieve equity in program delivery.

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I am convinced that we are making solid progress toward improving civil rights at USDA. It has taken us long than we had intended, and longer than we ever thought that it would. But the administrative changes, the systems, the procedures necessary to continue the progress that we need to make, are in place. And as we proceed to implement these policies, to monitor not only agencies by our own behavior, we are sure that

will achieve our goals.

I have with me David Harris, who is the Associate General Counsel for Civil Rights in the Office of General Counsel, and has had a very direct responsibility relative to the implementation of the *Pigford* consent decree. And we will be happy to answer any of your questions. Thank you.

[The prepared statement of Ms. Gray appears at the conclusion of the hearing.]

Mr. **GOODLATTE**. Thank you, Ms. Gray.

I would like to start by asking for some information that might help to give us a better overview of the current settlement process. My first question is, how does your office interact with the adjudicators?

Ms. **GRAY**. The adjudicators now are a division within the Office of Civil Rights. During this fiscal year, and as a result of recommendations made in the IG report, we created a new and separate division in the Office of the Civil Rights of adjudicators, where there are about 10 employees, once it is fully staffed. There are now seven there. They have no responsibility other than to write decisions. And all of the employees in that office are attorneys.

Mr. **GOODLATTE**. Is the FSA field staff used to review potential cases?

Ms. **GRAY**. No. Once a formal complaint is filed, that complaint is completely processed in our office. Our new procedures require that we ask FSA for an agency response, and then the investigation is conducted by employees in our office.

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Mr. **GOODLATTE**. Does the short-term nature of the field staff assignment affect the time it reflects to review a complaint? They are not involved at all, or are you utilizing them to gather information for you?

Ms. **GRAY**. We ask FSA to respond managerially to the complaint to provide any records that they have, and to obtain statement from any of their employees who were directly involved in a complaint. No, we do not use any field staff in FSA to conduct investigations for our office.

Mr. **GOODLATTE**. Let me interrupt you. It is our understanding that the FSA employees are used to review the earlier complaints filed, not the new ones that you are referring to now.

Ms. **GRAY**. In the past, FSA employees had an investigative unit, and their responsibility was to develop information for FSA and that had been the practice. Because of the many complaints that we received about FSA employees coercing complainants, we eliminated that in our new procedures. Now they no longer serve that role.

Mr. **GOODLATTE**. Could you provide to the committee an organizational chart of exactly how your office is organized, so we can see how these different functions interact with each other and with outside agencies that you have to rely on for information and so on?

Ms. **GRAY**. Yes, we would be happy to.

Mr. **GOODLATTE**. We would appreciate that. And let me ask you, are there procedures in place to block settlements awarded to those being investigated for fraud?

Ms. **GRAY**. No. No, there are no such procedures. We certainly clear our final agency decision for legal sufficiency through the Office of General Counsel and we certainly send them to FSA for processing. But there are no such procedures to block.

Mr. **GOODLATTE**. If information comes to your office that an individual may not have a valid claim, that they may be attempting to receive Federal funds based upon inaccurate or false information, what do you do about that?

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Ms. **GRAY**. I process the civil rights complaint. It is not the responsibility of the Office of Civil Rights to do fraud reviews. So I would process the civil rights complaint, and if the person wanted action on the information, I would refer them to the Office of Inspector General if they wanted to discuss fraud matters.

But I would process the civil rights complaint.

Mr. **GOODLATTE**. Well, that splits my question into two more questions, then. With regard to that matter, have you referred any matters to the Office of Inspector General?

Ms. **GRAY**. I have referred a number of matters to the Office of Inspector General, particularly as it related to certain farmers who complained during their spring that their disaster payment checks were not received or were taken by county employees, or that they were required to sign over their checks.

We had a number of complaints out of Arkansas and Alabama around the time of the consent decree last fall. And when we looked into those complaints, we found that basically the essence of the complaints was that someone was taking black farmers' money that they needed to farm for the year.

Mr. **GOODLATTE**. And the second question prompted by that is this. If during the course of your investigation an attempt to resolve a particular complainant comes to your attention, that there is evidence that the complaint may not be valid, what do you do with that information? Do you use that as a part of your decision making process? Or do you send that to the Inspector General? And if you do send it to the Inspector General, do you still nonetheless continue to process the claim, even if it is under investigation?

Ms. **GRAY**. If I find that a complaint is not valid and that it is a civil rights complaint, then I make a determination that there has not been a violation of civil rights or that we do not have jurisdiction and I close the case.

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Mr. **GOODLATTE**. So that in those cases you simply deny the claim?

Ms. **GRAY**. That is correct.

Mr. **GOODLATTE**. Good. And one last question, are farmers still eligible to become part of the class of plaintiffs participating in the consent decree?

Ms. **GRAY**. October 12 was the deadline that I am aware of. I understand that a request has been made to extend that deadline. But as of this moment, I think that request has not been granted. So October 12 was the final day to file.

Mr. **GOODLATTE**. Well, my light still has not gone out. I am going to ask you one more, then. How far behind are you in resolving the incredible backlog of cases that your office has? And it is my understanding that you are considerably behind in the number of claims.

Ms. **GRAY**. Actually, I am not considerably behind. I will respond to that in two parts. The backlog was considered those cases filed before November 1, 1997. Of those 1,088 cases that were accumulated up to that date, only 23 of those remain. The rest of them have been closed.

Cases filed since that time, approximately 500, we have 234 active complaints. I think with the support and resources that we have received from this committee, I think we have staff to do both the investigations and the adjudications. We are not considerably behind.

Mr. **GOODLATTE**. Thank you. And what is the average settlement of these cases?

Ms. **GRAY**. I do not know. I do not know the average settlement. It all depends on whether there is debt or not. But I do not know. I certainly can provide you that information.

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Mr. **GOODLATTE**. We would very much like to have that. Does Mr. Harris know the answer to that?

Mr. **HARRIS**. I do not.

Mr. **GOODLATTE**. OK, well, I thank you very much. And we may come back to some other questions, depending on what is elicited from the other members of the panel.

So we will now recognize the gentlewoman from North Carolina.

Mrs. **CLAYTON**. Thank you. I am going to follow up on the line of questioning that the Chair had proceeded in terms of the alleged practice of some in different parts of the country holding up other

technical assistance or grants or emergency funds because they were in litigation with the Department. Do you know, or have you received any report from the Inspector General as to where that is in those cases?

Ms. **GRAY**. The report that we received from the Inspector General indicated that the persons whose names we had provided them did not want to talk to the Inspector General. And they closed the referral. And those were primarily in Arkansas and Alabama.

Mrs. **CLAYTON**. If I wanted to pursue your line of reasoning that if they were being denied other technical assistance fraudulently that that perhaps was not a civil rights case. Help me understand the distinction.

Ms. **GRAY**. Well, certainly the information came to us in the context of meetings with black farmers in Arkansas. I was in Arkansas, and the farmers reported that their disaster payments were not received and that in some instances, only the partial amount that they had been determined eligible for was received, or that they were required to sign over their check and did not get any of the money.

They also indicated that in Alabama and Georgia, employees at the post office notified county employees when their packages came from Porman Douglas relative to filling out or filing for Track A or Track B, and that after that, they were not given any service in the county office. Because the Postal Service was also possibly involved in those allegations, I also referred those to the IG office.

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As it relates to the payments, if there were fraud, and basically the taking of the money or not given my check boiled down to a fraud complaint, not a civil rights complaint, the appropriate office to do that investigation was the Inspector General's office.

Mrs. **CLAYTON**. I probably have a little different opinion on that, but at any rate, let me just get to —

Ms. **GRAY**. Let me just say that in addition to referring to the Inspector General's office, we did do civil rights compliance reviews in the county offices in four or five counties in Alabama.

Mrs. **CLAYTON**. Where those cases were?

Ms. **GRAY**. Where those cases were.

Mrs. **CLAYTON**. Well, I would hope so, because obviously there were implications. But my time is going swiftly.

Of the 1,800 complaints you received in November, no, I am sorry, I guess prior to November 1997, of those, you have closed all but 29, is that right?

Ms. **GRAY**. Yes, I think that is the number.

Mrs. **CLAYTON**. OK. Now, those would be the ones that have gone to the *Pigford v. USDA*, too, right? Are those independent?

Ms. **GRAY**. Approximately 250 of those 1,088 cases were members of the *Pigford* class and were closed because they were referred to *Pigford*, yes.

Mrs. **CLAYTON**. OK. So should I understand that most or the majority of those are actually the administrative complaints, not the ones that are part of the judicial system?

Ms. **GRAY**. That is correct. They are housing cases, they are food stamp cases, they are every kind of other case that is part of the business at USDA.

Mrs. **CLAYTON**. How many of those would be part of the farmers loan program?

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Ms. **GRAY**. Of the 1,088?

Mrs. **CLAYTON**. Yes.

Ms. **GRAY**. Approximately half of them were probably farm, FSA related.

Mrs. **CLAYTON**. And again, would the 29 that have not been resolved involve farmers or food stamp or other kinds of civil rights cases?

Ms. **GRAY**. They are mostly housing, the ones that are remaining.

Mrs. **CLAYTON**. How many of the original farm complaints that were administratively filed prior to November 1 remain to be solved or to be settled?

Ms. **GRAY**. To be precise, I would like to give you that number. I do think it is less than 10. That is just to be safe. I do not know the exact number, quite frankly. But I certainly can get that information for you.

Mrs. **CLAYTON**. In your testimony on page 4, you say, and I am glad to see that there is some action which is hopeful, you say in 1999, disciplinary and corrective actions have been taken in 46 employees for discrimination, of misconduct related to civil rights. Of these, five actions resulted in removal. Is that the same thing as dismissal?

Ms. **GRAY**. Yes, that is termination.

Mrs. **CLAYTON**. OK. Then you say that one reduction of grade. Do you know if either of these cases involved the situation where the person used the gun?

Ms. **GRAY**. I know that those first two categories would not involve the person who used the gun, because it is my understanding the person who used the gun received a day's suspension.

Mrs. **CLAYTON**. A 1-day suspension, OK. My final question, if I may, Mr. Chairman. We may have another round, so I will not violate this.

Mr. **GOODLATTE**. Thank you. The gentleman from Arkansas.

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Mr. **BERRY**. I will yield at this time, Mr. Chairman. Thank you.

Mr. **GOODLATTE**. The gentleman from Texas, Mr. Stenholm.

Mr. **STENHOLM**. Of all of the cases that you have testified to today, how many of these cases are attributable to old Farmers Home FmHA actions, and how many are attributable to old ASCS-FSA actions?

Ms. **GRAY**. You know, I do not know the exact number, but with our new tracking system, we can certainly give you a printout.

Mr. **STENHOLM**. If you would furnish that for the record and to me personally, I would be appreciative.

Regarding Mrs. Clayton's question in regard to your testimony, the first I have seen that there has actually been terminations of employees who have been responsible, when you say terminate, does that mean that the individuals are no longer employed by the U.S. Government?

Ms. **GRAY**. By the U.S. Department of Agriculture.

Mr. **STENHOLM**. They are terminated?

Ms. **GRAY**. That is what removal means, yes.

Mr. **STENHOLM**. In regard to, as your examination of past discrimination and then settlement, for USDA employees that have retired, where there is a finding of past discrimination on their part, is there a way to hold them responsible and try to recoup some of the expense of the settlement?

Ms. **GRAY**. Is it the opinion of our personnel department that it is not, or we do not have a system to do that. There certainly has been some discussion about it, but to my knowledge, nothing has ever been developed.

Mr. **STENHOLM**. We will hear from a later witness today a statement that states flatly, FSA as an agency has done absolutely nothing to identify and/or correct the discrimination patterns, policies and practices toward black farmers. You have pretty well contradicted that statement in your testimony today, based on what you have told us that you are doing and USDA is doing. Is that not correct?

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Ms. **GRAY**. Well, yes, and let me just say this. Certainly our office is in departmental administration. And FSA has its own civil rights office that is responsible for civil rights programs in that agency.

I do know from having received from FSA their reports and accomplishments that some things have been



done. So I do not agree with the statement that FSA has done absolutely nothing, because FSA has done some things, and it has not done as much as a number of the other agencies.

Mr. **STENHOLM**. Did I just hear you say that FSA has a different part of its agency dealing with discrimination that is separate and apart from what you are doing?

Ms. **GRAY**. Each agency at the Department of Agriculture has an office of civil rights, yes. And FSA has an office of civil rights with a civil rights director.

Mr. **STENHOLM**. Is that bureaucracy hindering your effort to do your job?

Ms. **GRAY**. I meet frequently with the civil rights directors from each agency and in fact, I met with them for a couple of hours yesterday. I usually get their, certainly get their cooperation, and I develop the procedures that they have to follow in processing program and employment complaints.

And I know I did not answer your question. Sometimes it is difficult and sometimes it works.

Mr. **STENHOLM**. Well, time will not permit today to go in in-depth to my concern, what I heard you say. We will pursue that a little further. But it has to do with my personal frustration with our inability to get team USDA working together. I am afraid that what I heard you say, that we have another example now of not being able to adequately do our job, because we still have too many agencies, too many individuals working in too many areas in which nobody is in charge or capable of getting in charge. And that is true in other areas, very strongly.

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I am going to pursue this one a little more privately before I make any other statements.

One last question. In your statement you state since November 1, 1997, we have accepted 502 new program complaints. Of these, 260 have been closed. Of those 260, how many were dismissed because there was a finding that there was no reason for the complaint to have been given, and how many were resolved in ways in which there was a finding and then was satisfactorily closed?

Ms. **GRAY**. In the printout that I will get you, it will have exact numbers. But let me say that most of those cases that have been closed since that time were closed either because we did not have jurisdiction and that they should have gone to some other department, or because they were totally untimely. We get a number of complaints going back to the 1940's and 1950's, and not even the statute of limitations will allow us to process those.

Mr. **STENHOLM**. But you will have a printout that will be available to the committee to answer the question that I have asked?

Ms. **GRAY**. Yes.

Mr. **STENHOLM**. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you. The gentleman from Mississippi, Mr. Thompson.

Mr. **THOMPSON**. Thank you, Mr. Chairman.

Some of my comments were, I guess, in Mr. Stenholm's. But explain very briefly the difference between the responsibilities of your office and the responsibilities of those other agency civil rights offices. And do you supervise those agencies or individuals?

Ms. **GRAY**. I have the responsibility for final resolution on program and employment complaints at the Department. It is easier on the employment side, because all of those agencies have employee complaints, but not all of those agencies have program complaints, because some of them do not run programs.

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So I will talk about them in the context of an employee complaint. There would be an informal complaint filed, the civil rights office in the agency is responsible for counseling and doing a preliminary investigation to see if that case can be resolved in the informal stage.

If the case is not resolved at that stage, then a formal complaint is filed. That formal complaint comes to



our office, to the Departmental Office of Civil Rights, where it is investigated, a determination, a finding made. The civil rights directors in the agencies report to the administrators in the agencies. They do not report to me, I do not do their evaluations, I do not do their hiring.

I do coordinate with them and monitor civil rights in the agencies through them.

Mr. **THOMPSON**. So those people they report to, do they have any special training in civil rights or anything like that?

Ms. **GRAY**. No. For example, the civil rights director in FSA reports to the FSA administrator.

Mr. **THOMPSON**. Really? OK. Informal or formal. How many people in the general public are aware of this informal and formal procedure?

Ms. **GRAY**. I know most USDA employees are. I do not know how many people in the general public are aware of that.

Mr. **THOMPSON**. Now, the numbers that you raised on the list of complaints, do they include the complaints filed with the individual agencies?

Ms. **GRAY**. On employment, no. And I am going to tell you why. If it is not resolved in the agency, then it becomes a formal complaint and is no longer in the agency, it is in our office. But the number is there. It is not a dual system, it is the same complaint. If it is in our office, the number is there.

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I do not know and do not keep track of, for example, I can certainly get the numbers, of the number of complaints in the informal process at each of the agencies. On the program side, the agencies are not able to process the program complaints, only the office of civil rights can process program complaints, which is why I respond to that question differently.

Mr. **THOMPSON**. OK, now, is your testimony that you have the authority to recommend disciplinary action or do you under the statute executive disciplinary action?

Ms. **GRAY**. Neither one. I make, in my office, I make findings of discrimination. I refer those findings and the files to the administrator of the agency where the misconduct or discrimination occurred. And it is the responsibility of that administrator to recommend or to take appropriate disciplinary action.

Mr. **THOMPSON**. OK. Can you provide this committee with the findings of discrimination and, well, my point is, if you found discrimination and the agency did nothing, then we need to know that. Because the information we have is that 20 people were dismissed. Is that 20 of 100 who should have been dismissed? Do you understand where I am going?

Ms. **GRAY**. I understand. Yes, we can provide you those numbers.

Mr. **THOMPSON**. And that is for each agency.

Ms. **GRAY**. Yes.

Mr. **THOMPSON**. OK, now, Congressman Hilliard, Mr. Chairman, would also like to have the counties in Alabama identified for this committee where the complaints were filed and the resolution. He has another appointment.

Mr. **GOODLATTE**. If the gentleman will yield, if I might ask Ms. Gray, when can you provide this information to us by?

Ms. **GRAY**. By the beginning of next week.

Mr. **GOODLATTE**. That will be fine. Let's say by Tuesday.

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Ms. **GRAY**. Tuesday will be fine.

Mr. **THOMPSON**. Are you classified an independent agency or department within Agriculture, or do you report to the Secretary of Agriculture?

Ms. **GRAY**. Officially, our office is part of Departmental Administration. That is where our budget goes,

that is where we function, within Departmental Administration. And then the Assistant Secretary for Departmental administration reports to the Secretary.

But structurally, and as of now, I report to the, officially, within that context. And that is what our organizational chart will reflect.

However, the Department has requested from OMB authority to make the Civil Rights Director's position and Assistant Secretary for Civil Rights position, that paperwork is pending over in OMB, and pending its acceptance, unofficially, I report to the Secretary. [Laughter.]

Mr. **THOMPSON**. If I may, Mr. Chairman, one last question.

Can you provide me the tabulation between your recommendation and whether or not they were overruled or upheld?

Ms. **GRAY**. Relative to disciplinary action?

Mr. **THOMPSON**. And program complaints, too.

Ms. **GRAY**. Yes.

Mr. **THOMPSON**. Thank you. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you, Mr. Thompson.

The gentleman from Illinois, Mr. Phelps.

Mr. **PHELPS**. Thank you, Mr. Chairman.

I want to thank you for providing the opportunity for this hearing. Although it does look like a Democratic caucus at this point in time. [Laughter.]

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Mr. **GOODLATTE**. I have not joined yet.

Mr. **THOMPSON**. There is room. [Laughter.]

Mr. **PHELPS**. Just very briefly, in the process of looking at complaints, who actually determines the legitimacy of the complaint? Is it a team of attorneys that screens these and recommends to you? Is it OIG's office?

Ms. **GRAY**. They are screening at two different levels. The first screening is when the complaint comes in or letter comes in, and there are EEO specialists who determine whether it is a civil rights complaint, and we have jurisdiction under title VI or title VII. If we accept a complaint, it is then investigated and a team of attorneys, now in the Division of Adjudication, will write a finding of discrimination or not.

And I am the only person in the Office of Civil Rights who has the authority to issue the finding of discrimination. Once the adjudication unit drafts the decision, the decision is forwarded to the Office of General Counsel for legal sufficiency review. If they concur or not, they refer it back, and sometimes we send it back and sometimes they send it back again. Ultimately, I issue a finding from the Office of Civil Rights.

Mr. **PHELPS**. Of the recommendations that were handed down for implementation, 75 out of the 92 have been handled administratively. That sounds like a pretty good response at first glance. And then I think whatever remains, 17 or so, that we might be looking at some other action, whether it be Congressional or I guess court action.

Do you feel like these recommendations were pretty much on target, got to the heart of the matter and the problem?

Ms. **GRAY**. That is a very interesting question. Yes and no. I think that they certainly addressed the systems or absence of systems necessary to enforce civil rights at the Department. Do I think that they have gotten to the root of the problem? No. I think that we certainly carry out our accountability responsibilities and evaluations in the Department here at headquarters. And I do not think that same spirit of enforcement has reached around the country to our offices.

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Mr. **PHELPS**. Can you cast an opinion on whether—it just seems to me like I do not know, just through the things I have read, my only exposure so far other than staff questions I have asked, but do you feel like that the situation could be improved with maybe similar to other agencies that I believe utilize these resources in looking at mediation and arbitration more? It seems as though just what I have examined, that is not a big resource that is being utilized. I do not know why. If it is lack of people or the way the structure is set up or what.

Ms. **GRAY**. Certainly we have lots of room for improvement, and I do think we have made a lot of accomplishments. For alternative dispute resolution, there are programs in most of the agencies that are run through the agency civil rights offices that I talked about earlier. The new employment regulations that EEOC issued back in July that become effective November 9, 1999, will require the Department to establish within its formal processing system alternative dispute resolution.

So we are in the process of putting in place alternative dispute resolution in our formal EEO processing.

We also use and have available mediation for certain work conflict and for other work place conditions within the Department. But certainly we are well on our way in the formal process for implementing the new EEOC requirements. They have been doing that in the agencies for a couple of years.

Mr. **PHELPS**. Thank you for your answers. I certainly hope that we see an improvement and recognize the diversity in your agency. Thank you.

Mr. **GOODLATTE**. Thank you.

The gentleman from Virginia, Mr. Goode.

Mr. **GOODE**. Thank you, Mr. Chairman.

Let me ask you, Ms. Gray, as of October 12, how many claims were made in Virginia?

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Ms. **GRAY**. Sir, if you would, I would like to send you that information with a printout. We can do a State by State breakout of the number of complaints, date filed. I do not know off the top of my head.

Mr. **GOODE**. Do you have it by county, too?

Ms. **GRAY**. Yes, we have it by county, too, and by zip code.

Mr. **GOODE**. OK, if you could send it to me, I would just like it State by State and then county in Virginia.

Ms. **GRAY**. I would be happy to.

Mr. **GOODE**. You mentioned, or someone did, the decision on allowing additional claims past the cut-off date is up to the judge. Is that not correct?

Ms. **GRAY**. That is correct. And I think a motion to that effect has been filed. I understand that the new request is through October 29 for an extension of the Department, certainly not opposed to the time being extended to October 29 for those persons who have suffered from various conditions or for whatever reason, were unable to file by October 12. The court certainly has the authority to consider that.

But we certainly are not opposed to that October 29 extension.

Mr. **GOODE**. Let me ask you this. Of those people that have filed claims, do you know how many have attorney representatives or non-attorney? You know, in Social Security, you can get the American Legion to represent you, or if you have a BA claim, you can get another entity. How many of them have representatives, would you ball park guess?

Ms. **GRAY**. All of them will have an attorney's signature on their claim form, because it is required under the consent decree. Now, whether the representation is active or passive, certainly the farmers will be able to tell you more about those. But all the claims require an attorney's signature. So there will be the name of a representative on each of those forms.

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Mr. **GOODE**. Are they allowed non-attorney representatives?

Ms. **GRAY**. Not to my knowledge. Maybe David could shed some light on that. I do not know.

Mr. **HARRIS**. By the terms of the consent decree, only an attorney, licensed attorney, can sign off on the claim form.

Mr. **GOODE**. OK. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you. The gentleman from Indiana, Mr. Hill.

Mr. **HILL**. Thank you, Mr. Chairman.

Ms. Gray, you mentioned an incident involving a gun. Could you elaborate on that somewhat? I would like to know more about it.

Ms. **GRAY**. There was a situation in one of the Virginia offices, I think it was a county office, where during the process of investigating a complaint, it came to, it was established and not controverted by the employee, the USDA employee, that he had a weapon in his desk or in his office during the business day.

Mr. **HILL**. And he just had it in his desk?

Ms. **GRAY**. He admitted to having it in his desk. And I said that because that is the part that is not controverted. How it was handled, whether it was put in the air or taken out of the desk drawer, those things are controverted. It is not controverted that the gun was in the desk during business hours.

Mr. **HILL**. Was this employee terminated?

Ms. **GRAY**. No, he was not terminated. The employee was given a 1-day suspension.

Mr. **HILL**. For just having the gun?

Ms. **GRAY**. Yes.

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Mr. **HILL**. But he did not actually do anything with the gun? It was just in his desk?

Ms. **GRAY**. It was on Federal property.

Mr. **HILL**. OK. Let me switch to another subject matter, then. You testified that of 75 recommendations made by the Civil Rights Action Team, all but three are in the process of being implemented. Could you tell me what these three are?

Ms. **GRAY**. Yes, I can. The three recommendations that are not implemented, 13, Department of Justice should investigate allegations of abuse of authority by the Office of Inspector General and Forest Service Law Enforcement. Recommendation No. 84 has not been implemented, to change the designation of Director of Civil Rights from general to career reserve, but do not allow the process to impede the appointment of a permanent Director of Civil Rights. And the third is recommendation 19, which would consolidate all administration and management functions under the ASA with full authority.

And those being Chief Financial Officer, Chief Information Officer, Office of Small and Disadvantaged Business Utilization and Service Center Implementation.

Mr. **HILL**. Why has USDA decided not to implement these three?

Ms. **GRAY**. I do not know. They are certainly not recommendations that are within the auspices or under the authority of the Civil Rights Office to implement. And I do not know why these have not been implemented.

Mr. **HILL**. Do you think they should be implemented?

Ms. **GRAY**. I do not know whether I think 84 should be implemented to Civil Rights from general to career reserve, because at this point, we have recommended to OMB that the Civil Rights Directors become a political appointee as Assistant Secretary for Civil Rights, and that is probably why that recommendation is not implemented. Because we are trying to make that office report directly to the Secretary. And in fact, in that instance, it would not be part of ASA.

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I do not have any particular opinion on whether all of these administrative functions should be consolidated under the ASA. And I do think that No. 13 relative to the investigation of allegations of abuse by OIG and Forest Service should be implemented.

Mr. **HILL**. OK. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you. The gentleman from Arkansas, Mr. Berry.

Mr. **BERRY**. Thank you, Mr. Chairman.

Ms. Gray, I know that you and your staff are working hard to try to resolve these things. I liked in your opening statement where you said USDA treats all its customers and employees fairly and equitably with dignity and respect. But as I have sat here this morning, I have been going in FSA offices taking care of my own and my family's business since 1967. One of the nicest things that happened to me when I came to Washington, DC was that I did not have to do that any more. [Laughter, applause.]

And I think that this problem goes much deeper than anything we have talked about today, much, much deeper than numbers. Much deeper than how many people have been fired or disciplined or settled with or any of those things. My experience has been that it just was the luck of the draw, you might get a good one, you might get a bad one when you went in the FSA office. And if you got a bad one, you had hell to pay.

And it continues to this day to frustrate me. I have counties in the district that I am fortunate enough to represent that they just aggravate the living daylights out of everybody that comes in the door. And then we have counties where we never hear a complaint, they get treated nice. People are treated with dignity and respect, just like your statement says.

And I continue to be frustrated that the Department, with all of its power and money and everything that it has at its disposal does not have a plan for trying to deal with this. And even when we try to deal with it at our level, basically we are told, well, you just have to live with it. Those people are just going to get mistreated because that particular employee in that particular FSA office, we are not going to do anything about them.

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So I would just be interested if you think that there is any way to deal with that, and if anyone has any plan to try to deal with it at the Department of Agriculture. I realize I am laying a question on you that is more than I should ask of you, but I felt at this moment that I was compelled to raise that issue.

Ms. **GRAY**. What I think is that USDA and this Congress needs to give very serious consideration to how the county offices are staffed. Some of the employees are county employees, they are not Federal employees. And we have to create a way to manage their behavior where they do not behave appropriately. Right now, that is very difficult to do, because they are controlled by the county system that is created by legislation that comes from this body.

So we ask for your help on that. Now, we have tried and have taken away from county employees the authority to do credit transactions, because the Department was totally vulnerable on these credit transactions. But for the rest, we need your help.

And David certainly has a lot of experience in this area. He has also drafted the legislative piece as it relates to these concerns. So I am going to pass the microphone to him and let him talk about the structure in more detail that we had proposed.

Mr. **HARRIS**. In further answer to your question, about a year ago, the Secretary appeared before the full committee and urged adoption of various structural changes. Many if not most, actually most of particularly the heads of the county offices are hired by and fired by the local county committees.

Now, it is true those committees no longer have the ability to make decisions with respect to credit eligibility, but they still hire and fire the management of those offices, which means those managers do not



report to the Secretary. And that is inhibiting our ability, the Department's ability, to hold the local offices accountable for their behavior or misdeeds.

Mr. **BERRY**. Yes, sir, I am aware of how that is structured. Now, does the county committee have the authority to fire those people?

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Mr. **HARRIS**. The county committee has the ability to fire those people. And the county committees have not always done so. There have been one or two instances in which county committee members have been removed by the Department. And that matter is in litigation.

Mr. **BERRY**. I know of cases where these county employees I am talking about have been fired, and the Department made them reinstate them.

Mr. **HARRIS**. Not aware of any cases, sir.

Mr. **BERRY**. I am. The only other question I would have is, if you are a customer of one of these offices, you are a farmer and you have to do business with an FSA office and you get mistreated, how do you go about making the complaint to the Department of Agriculture?

Ms. **GRAY**. We certainly have forms that are provided that are also available at each of the county offices. We have outreach meetings where information is provided about how to file a complaint. And we have 800 numbers for both our regular civil rights complaint processing and for our statute of limitations project office that we have established.

Or you can send a letter. And if there is not all the information in the letter, we will call you and ask for more information. But you do eventually have to have a writing to our office on the complaint.

Mr. **BERRY**. If you would indulge me just a second, Mr. Chairman. Would you furnish me with all that information as to how they can do that so I can put it in a newsletter to all my farmers?

Ms. **GRAY**. I would be happy to.

Mr. **GOODLATTE**. If the gentleman would yield, the committee would be happy to receive that information, and we would be sure it would be available to the gentleman. And can you, with regard to the time table for that and the information that I asked earlier about the average amount of settlements and the organizational chart, can you provide all of that by next Tuesday?

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Ms. **GRAY**. Yes.

Mr. **GOODLATTE**. Thank you.

The Chair recognizes the gentleman from Louisiana, Mr. Cooksey.

Mr. **COOKSEY**. Ms. Gray, we appreciate your coming here. There are a lot of crises in the world. There are three of us on this subcommittee who have been over dealing with the problem of airline delays. I left that committee and darted into a committee where there is a problem in the world, believe it or not, with women and children being kidnapped and sold into prostitution and slavery in other parts of the world.

I used to work in East Africa at a church hospital off and on for 6 years, where I was in the minority. My friends really looked after me while I was over there, and my wife and my children. If there is anything that offends me, it is discrimination for whatever reason, wherever it occurs and whenever it occurs. And it offends me that this has occurred or has allegedly occurred in these programs.

But that said, I would like to just ask some questions to try to, and I have reviewed your testimony since I have been here. What is the process that has been set up for reviewing these complaints? And I assume this has been done since August of this year, of 1999, is that correct?

Ms. **GRAY**. The new procedures have been in effect as of that date, that is correct. The new procedures basically, once we accept a complaint, it is investigated. We have a team of investigators in our office. We usually now try to group the investigations by State.



For example, last week there was a team of four investigators, and they were investigating eight complaints in Texas, trying to control and manage our resources. When they return from their investigation, they write a report of investigation. The report of investigation goes to the adjudication unit, where the decision is written.

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Mr. **COOKSEY**. Have these procedures that you have developed, have they been published in the Federal Register?

Ms. **GRAY**. Our departmental regulations were published in the Federal Register the two required times. And the procedures that were developed to implement those regulations are not in the Register, but the regulations themselves were in the Federal Register.

Mr. **COOKSEY**. So they will be available?

Ms. **GRAY**. They are available, sir.

Mr. **COOKSEY**. Good. Do you feel comfortable with the process that is in place now to identify these problem areas, the people that have been responsible for making these decision?

Ms. **GRAY**. We do feel comfortable with the process we have in place for program complaints. And in addition to establishing that process, we also have our program compliance office fully operative. And we go out and review programs all around the country and including the program offices for the other civil rights office at the Department to make sure that they are following procedures. And we do this without a complaint, to ensure compliance with all of the rules.

Mr. **COOKSEY**. Let me ask you, do you feel that these complaints, these problems that have evolved, have been there for 20 years or 10 years or is it something that has just occurred recently? What time frame would you place this problem in?

Ms. **GRAY**. I think they have probably been there as long as the Department has been there.

Mr. **COOKSEY**. As long as USDA has been there?

Ms. **GRAY**. Yes.

Mr. **COOKSEY**. Well, it is a concern and it something that I think we really need to address, and find those areas where there are problems and do something about it. One of my concerns, and you know, I just joined the Agriculture Committee, this is my second term, and I had some background as a physician to prepare me for some of my other committees. But once I got into the Agriculture Committee, I found that there are more programs with more abbreviations than any other Department here. I have had to be a quick study, it has been a 3-year study to learn all these programs.

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This year we have dealt with the fact that there have been problems in the insurance program, because there have been some things that have been done wrong there in the past where farmers basically commit fraud to get these funds. And as far as I am concerned, what you are telling me makes it sounds as though fraud has been committed to make sure that one group gets it at the expense of another group. Is that a correct assumption?

Ms. **GRAY**. What I am telling you is that discrimination brings that about. I do not know that there is fraud, I know that there is discrimination.

Mr. **COOKSEY**. Right. Good. Thank you, Mr. Chairman.

I have a couple of other questions I will get on the second round.

Mr. **GOODLATTE**. Thank you. We have been joined by a member of the full committee, who is not a member of the subcommittee. Mr. Bishop, do you have any questions you would like to ask this witness?

Mr. **BISHOP**. Thank you very much, Mr. Chairman.

I apologize for my delinquency. I had to attend another hearing. But let me just thank the witnesses for

coming and thank you for your testimony. I had a chance to review some of it.

Ms. Gray, based on your testimony, you sound pretty confident that you have everything in place to administratively settle the cases. Are you experiencing any political pressure at the final stages of the settlements from within the agency or elsewhere?

Ms. **GRAY**. One never knows where political pressure is coming from, that is the nature of it.

Mr. **BISHOP**. Will you then explain to us the distinction between a discrimination complaint that is resolved through settlement and a complaint that is resolved through program conciliation? And how is it determined whether a case will be adjudicated or not?

Ms. **GRAY**. So conciliation, settlement and adjudication are basically the three terms you talked about. Conciliation is the term we use to refer to a case that is settled before a formal complaint is filed, which means that conciliation is a resolution of the matter before it comes to my office. That is the term that is used for the program side which is similar to informal resolution on the employment side.

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Settlement occurs where there has been a finding of discrimination, where the complainant has been notified that there is a finding of discrimination, complainant submits a claim for monetary damages, and a settlement occurs when we negotiate the final amount for that settlement.

An adjudication would have occurred prior to the settlement, that is because the settlement itself is based on a finding of discrimination within our process.

Mr. **BISHOP**. At what point in the overall process, whether it is settlement or conciliation, is a case considered closed?

Ms. **GRAY**. Since we have a monitoring system since March 1999 for both settlement and conciliation agreements, settlement or conciliation agreements are not considered closed and are not closed until all terms of the settlement or conciliation agreement are implemented. And in a number of instances, since that requires certain things to happen and services to be provided 2 or 3 years down the line, most of our settlement agreements, the cases are not closed, because we have to keep them open because farmers have an opportunity to do certain things for a certain period of years.

Mr. **BISHOP**. And finally, once a settlement or a conciliation has been reached, how have you found the actual payment process to be played out? Is it timely? Is it prompt? Are there delays? Are those delays a result of legalities? Are they a result of administrative delays? What is the cause of any delays that may, any time lag between the time that there is a conciliation or settlement or case closure, move to the point of monitoring and the actual delivery of the settlement funds to the complainant?

Ms. **GRAY**. Generally, the payments are not timely. What happens is we send a finding or settlement over to the agency and in most instances, it is FSA. And even though we will have cleared it, they submit the settlement agreement back through another review, through a whole different process in their office. Very often, the payments are not made on time.

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Mr. **BISHOP**. Is there something that we need to know or that we can on the legislative side do to try to help expedite within the agency or are there resources that we need to make available or appropriate sanctions we need to make available through this process to try to get FSA to work through that disbursement process a little more expeditiously? Are there some layers of bureaucracy that could be eliminated that could expedite it?

Ms. **GRAY**. It is certainly something we would like to explore with you and to consider. There is nothing in the procedures that calls for the kind of delay that we experience. So it is very difficult to say that we need to change it, because there is nothing theoretically that exists that creates the delay, other than the fact that there is a delay.

Mr. **BISHOP**. Well, you are talking about reviews or recommendations, well, the forwarding on after the adjudication has been made and after the settlement has been reached, then it has to be reviewed and re-reviewed. Are those layers of review necessary? Are they called for by the existing process?

Ms. **GRAY**. I certainly do not think so. There would have already been a legal sufficiency review and involvement by the Office of General Counsel before those documents are forwarded over there for payment.

Mr. **BISHOP**. Would you then consider that to be foot-dragging on the part of the respondent in being reluctant to really give relief to the people who have been filing the complaints, and this is just another effort to subvert their attempts at redress?

Ms. **GRAY**. Mr. Bishop, the older I have gotten, the less I characterize, but just describe what happens.

Mr. **BISHOP**. I accept that. I yield back.

Mr. **GOODLATTE**. Thank you.

I would like to followup on a line of questioning by the gentleman from Arkansas, Mr. Berry, regarding the efforts to clean up the Department and assure this does not occur in the future.

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The gentleman from Texas, Mr. Stenholm, in his opening statement, said that it was estimated that \$2 billion may be paid out in claims as a result of the Department's actions. Is that an accurate estimate?

Ms. **GRAY**. I do not know what the ultimate payout would be. We certainly are still receiving complaints, and I will let David describe to you where we are in the processing.

Mr. **GOODLATTE**. Let me just ask him to briefly tell us. Have we paid out hundreds of millions of dollars in claims here?

Mr. **HARRIS**. With respect to the *Pigford* consent decree, nothing has been paid out yet.

Mr. **GOODLATTE**. How much do you expect is going to be paid out?

Mr. **HARRIS**. It is hard to guess. As far as we can tell, 15,000 claims have been filed. Of those, we know of 11,000 that the Department has received. And as testimony indicates, we have responded to 6,000 of them, and another 5,000 will be responded to before the end of the year.

And of course, the Department is meeting its deadline with respect to responding within 60 days.

Mr. **GOODLATTE**. How many of those have been approved for a settlement?

Mr. **HARRIS**. Of the decisions that we have received back to date, which is approximately 400, 60 percent — —

Mr. **GOODLATTE**. That you have received back? I thought you said you had 15,000 claims.

Mr. **HARRIS**. We have 15,000 claims that we know of, 11,000 we have actually received, 5,000 that we have responded to. There is an outside entity known as the Porman Douglas Corporation, referred to as the facilitator or adjudicator, which actually makes the adjudications, makes the decisions as to whether discrimination has occurred.

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Mr. **GOODLATTE**. How many have they adjudicated thus far?

Mr. **HARRIS**. They have decided 493. Of that number, 60 percent have been in favor of the claimants.

Mr. **GOODLATTE**. OK, but we have a long, long way to go. You have 11,000 on hand, you are expecting 4,000 more for a total of 15,000. And only 400 have been adjudicated. Of those 400, do we have a figure there as to what the average size of the settlements are?

Mr. **HARRIS**. Yes, we do. Under that process, which is the abbreviated so-called Track A process, if a person wins, the person automatically receives a liquidated damages amount of \$50,000 plus debt forgiveness plus an amount that is paid in escrow, more or less, to cover any tax liability because of the debt forgiveness and because of the payment of the \$50,000.

All that is paid ultimately out of the judgment fund, controlled by the Department of Justice.

Mr. **GOODLATTE**. Well, let's just project forward, I do not know where the \$2 billion figure came from, I wish we had that, but if 60 percent of 15,000 potential claims are found to be valid claims, that is 9,000 claims. And it is a minimum of \$50,000, because if they can show individual, a minimum of \$62,000 according to Mrs. Clayton, \$62,000 times 9,000 is \$550 million. Some of those claims are going to be greater than that. So it is conceivable we could get up into the billions.

Ms. Gray, it is my understanding that five employees have been terminated, is that right?

Ms. **GRAY**. Yes, and that would have been for either employment or program discrimination?

Mr. **GOODLATTE**. All right. How is it conceivable that five employees could have perpetrated acts of discrimination on perhaps 9,000 farmers from a multitude of districts across this country? [Laughter.]

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Ms. **GRAY**. That would be pretty difficult, especially since I do not think any of those five were terminated related to discrimination against black farmers.

Mr. **GOODLATTE**. So now tell us what needs to be done by the Department of Agriculture to take appropriate action with regard to people that may have discriminated.

Ms. **GRAY**. We have circulating through clearance for new procedures for accountability and on disciplinary procedures for discrimination and misconduct, so that not only will there be disciplinary action taken where there is a finding of discrimination, which has been the case in the past, but also there will be disciplinary action taken where there is a large amount of money required to be paid in settlement, and/or there are multiple settlements that involve the same manager.

Mr. **GOODLATTE**. When might we expect those actions to be taken, since apparently none have been taken thus far?

Ms. **GRAY**. I do not know that there will be any actions taken relative to the *Pigford* consent decree. Because right now, I do not have any way of identifying the managers who would have been involved, because of the way the claims are being processed. I do not have any of that information.

Mr. **GOODLATTE**. Does the outside adjudicator have that information?

Ms. **GRAY**. I do not think so.

Mr. **GOODLATTE**. Well, who does? Somebody has to know. If discrimination is taking place, somebody has to have the evidence that it is taking place in order to adjudicate and settlement these claims. Otherwise, one has to question it from the other point of view, and that is, why are we settling claims if we do not have any proof of actions being taken to discriminate?

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Ms. **GRAY**. The only thing we are going to be able to do is, once there are findings or payments made, we are going to be able to know which offices were involved, to identify those offices and to go into those offices and do a— —

Mr. **GOODLATTE**. As these claims are received, why don't you have that information at your fingertips?

Ms. **GRAY**. They are not filed in my office. They are not filed at USDA. They are filed with Porman Douglas.

Mr. **GOODLATTE**. Well, but USDA has contracted with this company to adjudicate these claims, have they not?

Ms. **GRAY**. Yes.

Mr. **GOODLATTE**. And the Secretary of the Department of Agriculture has full control over all of the employees involved, including the county employees who may have participated in this, does he not?

Ms. **GRAY**. USDA does not have full control over the contracting or the information that the contractors

are using?

Mr. **GOODLATTE**. Why not? You entered into a contract that says you are going to take care of this for us. Why would you not say as a part of that, as you do it, please send us the names of employees who are discriminating against African-American farmers?

Ms. **GRAY**. I do not know that they even collect those names.

Mr. **GOODLATTE**. Well, don't you think it would be a good idea for you to communicate with the Secretary and say, hey, we have a problem here, it looks like the problem is ongoing, because we are continuing to get complaints, and that as a result of that, we ought to be getting this agency or this organization that we have contracted with to be giving us on a, in the technology age, on a real-time basis, the information that we need to do to correct the activities taking place in our Department of Agriculture?

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Ms. **GRAY**. I certainly will communicate that to the Secretary.

Mr. **GOODLATTE**. I thank you.

I will yield to the gentleman.

Mr. **BISHOP**. Mr. Chairman, could I just ask, interject the fact that there are some systemic and some institutional infrastructure mechanisms in place that prevent, for example, the Secretary does not have control over county employees. That is one of the problems that has precipitated many of the complaints that we are faced with now.

Second, the Secretary, in fact, two Secretaries, Secretary Espy and Secretary Glickman, have brought certain reforms to this committee and to the Congress and asked for legislative authority and for legislation that would put in place some mechanisms that would prevent this, which the committee and the Congress in its wisdom has not yet adopted.

Mr. **GOODLATTE**. Reclaiming my time, and I am aware of that issue, let me just say that it is my understanding that the Secretary can remove and discipline employees, and has done so.

Mr. **BISHOP**. But not county employees.

Mr. **GOODLATTE**. Yes, including county employees. Well, we will have to look into that, but I believe he does have that authority.

Let me ask you one other question, Ms. Gray, and that is with regard to your answer that your office conducts an investigation of new complaints, is that correct?

Ms. **GRAY**. That is correct.

Mr. **GOODLATTE**. Who has the right to review what is in the completed investigative report?

Ms. **GRAY**. The Office of General Counsel.

Mr. **GOODLATTE**. Does an individual have the right to review that? Can somebody walk into your office and say, I would like to see the completed investigative report for John Smith?

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Ms. **GRAY**. No. And even the individual who filed the complaint would not be able to get that entire file without our redacting certain information and names of persons who might have provided information.

Mr. **GOODLATTE**. Have you received information which would indicate that individuals outside the office and outside the Office of General Counsel have obtained information from these investigative reports?

Ms. **GRAY**. No. But that is not to say that that has not happened. But no, I have not received information that persons who do not have authority to have those files have the files.

Mr. **GOODLATTE**. And what measures do you take that assure that that does not happen?

Ms. **GRAY**. I have communicated to employees in the Office of Civil Rights that they should not provide information from the file to any person, including not to the person who filed the complaint. And the



appropriate procedure for that information to be obtained is the filing of a Freedom of Information request, where we then have the opportunity to take out persons' names and other confidential information.

Mr. **GOODLATTE**. I have a letter which I will make a part of the record from Mr. John Boyd, who will be testifying shortly, representing the National Black Farmers Association, to Donald Davis, the State Executive Director of the Virginia State office in Richmond, in which he refers to, in the letter, he says, "Attached is a copy of a letter that was given to me by Ms. Rosalind Gray, who is the Director of the Office of Civil Rights for USDA, which will verify the allegations against Mr. Taylor, who is referenced in this letter."

And I am wondering if you would care to tell us how that came into Mr. Boyd's possession?

Ms. **GRAY**. I do not know. I have never given Mr. Boyd a copy of any document from an investigative file in the Office of Civil Rights.

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Mr. **GOODLATTE**. You are contradicting the statement in his letter.

Ms. **GRAY**. I understand.

Mr. **GOODLATTE**. We will ask for his side of that in a moment. At this point, I will yield to the gentlewoman from North Carolina, Mrs. Clayton.

Mrs. **CLAYTON**. You referred to a procedure that you have in place since August. I think all of us might have asked for it, but I want to make sure I understand that there is now a different procedure as of August than there has been that has been in the process for handling the bulk of your cases. Is that correct?

Ms. **GRAY**. That is correct.

Mrs. **CLAYTON**. So if you could also summarize for us the procedure that was in place as to handling most of those cases, we will get a feel for how this has happened. Can you do that for us?

Ms. **GRAY**. Previously, the — —

Mrs. **CLAYTON**. Summarize it. You do not have to give it to me now. You can summarize it in the materials you are giving us.

Ms. **GRAY**. All right, that will be fine. And I will also send you over a full copy.

Mr. **THOMPSON**. Will the gentlelady yield?

Mrs. **CLAYTON**. Yes.

Mr. **THOMPSON**. Ms. Gray, for the record, am I to understand that given this tremendous cost, that the Department of Agriculture employees will cost the Government, because they discriminated against black farmers, that no disciplinary actions to date have been taken against any employee?

Ms. **GRAY**. As it relates to the *Pigford* consent decree?

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Mr. **THOMPSON**. That is correct.

Ms. **GRAY**. That is my understanding. I am not aware of any.

Mr. **THOMPSON**. Now, I had an opportunity this weekend to look at some farmers who have been offered, under settlement A, some money. It was clear in the settlement offer that the allegation of discrimination was verifiable. And that was the reason which those farmers would receive money.

So now is it your testimony that you do not have access to that information?

Ms. **GRAY**. These are cases that are being processed under the *Pigford* consent decree?

Mr. **THOMPSON**. That is correct.

Ms. **GRAY**. That is correct. As of this date, that information is not in my office.

Mr. **THOMPSON**. Is the procedure that you will have it?

Ms. **GRAY**. Yes. The information will be returned along with lists relative to persons who were processed and provided payment.



Mr. **THOMPSON**. OK. After you receive it, do you plan to then look at the information provided by the documents relative to discrimination and recommend some disciplinary action?

Ms. **GRAY**. We will look at the information, do a review and analysis of the information and in appropriate places, we will recommend disciplinary action.

Mr. **THOMPSON**. So will you have access to all the files?

Ms. **GRAY**. Yes.

Mr. **THOMPSON**. On each farmer?

Ms. **GRAY**. Well, right now we do not. But yes, we can have that access. Because actually, of the 11,000 and some farmers who have filed to date, we only had complaints and information in our office on 300 of those farmers. We did not have complaints from 11,000 farmers.

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Mr. **THOMPSON**. Yes, but we know why.

Ms. **GRAY**. Right.

Mr. **THOMPSON**. My point is, it was clear on that document that I read, most of the farmers indicated that, I applied for a loan and white farmers were approved after I applied. It was clear that when it went to the files to be the case. So in a situation like that, has your experience been not just with the black farmer, but when you have been able to document a case of discrimination of that nature, have you recommended disciplinary action in the past?

Ms. **GRAY**. I do not recommend disciplinary action. I refer the information and the finding of discrimination or misconduct to the FSA administrator. Because I cannot take any disciplinary action.

Mr. **THOMPSON**. OK, but part of that information that I asked for earlier, you will be able to tell me what happened?

Ms. **GRAY**. Right. And the FSA director has the information before I get it, because the information about farmers in comparable position is in fact from their files.

Mr. **THOMPSON**. OK, thank you. I yield back.

Mrs. **CLAYTON**. I am having my time now. But thank you.

I want to follow that just a little bit as well. But I want to follow the costs, because I want the record to be clear, or either I want to have a clarification made for me. How many cases have you received administratively, independent of the *Pigford v. USDA*? Is that the thousand-some cases you mentioned?

Ms. **GRAY**. The 1,088 cases that were filed before November 1997 would have included approximately 270 black farmer cases which are now in the *Pigford* case.

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Mrs. **CLAYTON**. OK. Well, if you took that total administratively, I was trying to give some supporting evidence to Mr. Stenholm's statement, and he made the \$2 billion assertion. If you took that number and multiplied it times 20,000, it has been reported that it will almost cost \$20,000 per case to investigate. Is that close to being true?

Ms. **GRAY**. That is basically correct.

Mrs. **CLAYTON**. All right, that is enough. If that is basically correct, then you multiply 20,000 times 1,000, you would almost get to Mr. Stenholm's position. Oh, he said \$2 billion. All right, if you then took the rest of them that are being adjudicated under A, and at a minimum, you have \$62,000, an debt relief on average is between \$75,000 and \$125,000, if you begin to average that out, you are going to have pretty close to \$100,000 per case, including debt, at a minimum, including debt and cash and paying for the taxes. And then whatever it costs to investigate.

And you multiply that out, you are going to get close to the \$2 billion. Two billion dollars and growing. And yet we cannot find any action on the part of USDA to stop that in terms of a staff to be held

accountable for that.

So if there is no structure for accountability, we have to assume that, you know, this is going to continue. Now, I think the farmers are right to try to get their cases adjudicated. But what we are doing in this process, we are finding acts of discrimination without correcting the system that allows the discrimination.

Now, I understand the issue about the committee because I introduced the legislation last year to make sure that the staff all become Federal and just received all kinds of flak from everybody. We need to revisit that and introduce it again, because we need a system, it seems to me, that corrects this.

Mr. **GOODLATTE**. Would the gentlewoman yield on that point?

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Mrs. **CLAYTON**. Yes, I would be glad to.

Mr. **GOODLATTE**. When we had the colloquy between myself and Mr. Bishop a little while ago, the chief of staff of the committee heard it and came in to tell me that, both when he was at the Department, under the previous Republican administration, and during the current administration, there have been numerous cases of county employees being fired under the authority of the Secretary of Agriculture.

So we stand by our position, we certainly are willing to look at any structural changes that need to be made. But we do not agree that county employees are not accountable to the Department.

Mrs. **CLAYTON**. Assuming that that is correct, I still think that we need to have a structure that allows for monitoring and holding the management accountable. But I would agree that if you are in a position of adjudicating discrimination, it has to be based on a set of facts that says that these farmers were denied these benefits, technical assistance or loans. Someone denied it. Someone denied it. It would seem to me that a separate case of discrimination could be made against, in the finding, against that employee.

Now, the question whether the Secretary has the total power is something different. But findings against those employees, and therefore, I think we need to define a system where we have a parallel track, using those same set of facts that give evidence that discrimination has been occurring, that gives you confidence to make that kind of adjudication, we need to do that so the employee is identified and the system can take whatever authority they have now. We need to work on correcting the system as well.

I am not sure we have used all the authority we have now. But I think we need to work on it.

I want to know, Mr. Harris, tell me, what is the role of the General Counsel in all of this? And let me say parenthetically, part of the problem that had been identified some time ago, both internal and external, the problem was in the General Counsel. Now, what is the role of the General Counsel? And I guess my time is up, but please respond as quickly as you can.

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Mr. **HARRIS**. The role is multi-fold. One is to provide legal advice, opinions, what have you, to every agency of the Department involving civil rights issues. With respect to the decisions that are reached by the Office of Civil Rights, with respect to civil rights claims, we do conduct a quick review for legal sufficiency to make sure that what the Department is doing does not go against what Congress has mandated.

And also, we do assist with respect to the drafting of the settlement agreements, to again make sure everything is covered and everything is legal.

Mrs. **CLAYTON**. Do you make the settlement, or is it arbitrary and independent? Do you, Ms. Gray, make the recommendation of settlement, or you, Mr. Harris, or is this a process that is an independent arbitration process?

Mr. **HARRIS**. The decision to make the settlement is totally Ms. Gray's decision. And this is a decision that she has from the Secretary. The General Counsel's role is only to assist her to make sure that the decisions that are made comply with the laws that this body has enacted.

Ms. **GRAY**. The decision is mine, but if the Office of General Counsel disagrees, it does not necessarily

get processed.

Mrs. **CLAYTON**. He has a veto power, I hear you.

But how does that work? Do you make the final financial decision, or is that a Department engagement?

Ms. **GRAY**. Both. I make the final civil rights decision and the final financial decision.

Mrs. **CLAYTON**. OK.

Mr. **GOODLATTE**. Thank you, Mrs. Clayton.

The Chair now recognizes the gentleman from Louisiana, Mr. Cooksey. I would ask if he would yield to me for just a moment.

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Mr. **COOKSEY**. Yes, Mr. Chairman, I will yield to you any time you want me to.

Mr. **GOODLATTE**. Thank you. In further pursuit of what authority the Department has to deal with county employees, I would refer the members of the committee to title VII of the Code of Federal Regulations, in particular, section 7.28, dealing with removal from office or employment for cause, part A, any county committee member or community committee member, delegate. And then referring to further down in the same paragraph, refuses to carry out or fails to comply with the Equal Opportunity and Civil Rights, including the Equal Employment policy, or who interferes with others in carrying out such policy, or violates official instructions, shall be suspended from office or employment.

And then it goes on to make clear that the Secretary does have the authority, under current law, to take action with regard to employees at the county level— —

Mrs. **CLAYTON**. Does it say employees or employee committee?

Mr. **GOODLATTE**. Both.

Mrs. **CLAYTON**. Both?

Mr. **GOODLATTE**. Yes.

Mr. **BISHOP**. If the gentleman would yield.

Mr. **GOODLATTE**. I would yield.

Mr. **BISHOP**. We have had the Secretary up on numerous occasions, we had the CRAT report, we had the review team. Everybody indicated that without specific legislative authority, the Secretary could not do that. When was that enacted?

Mr. **GOODLATTE**. This is revised as of January 1, 1999.

Mr. **BISHOP**. OK. So that is subsequent to the— —

Mr. **GOODLATTE**. I do not know whether the change was made in that particular section since that hearing has taken place. But if the Secretary feels that way, I am concerned that he is not looking at the authority that he has. I certainly hope that it is not for the purpose of avoid taking responsibility, because action should be taken if there is indeed evidence of discrimination. And we have certainly heard plenty of testimony, I think we are going to hear after this panel more evidence of such discrimination.

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Mr. **BISHOP**. If the gentleman would yield, the problem as I hear from Ms. Gray is that the right hand does not know what the left is doing. Once an adjudication has been made, the information is not being processed and analyzed so that the responsibilities can be laid at the feet of the responsible respondent.

Mr. **GOODLATTE**. The gentleman is absolutely correct. But I think the Secretary can take action to correct that as well by requiring the adjudicating entity to provide information to the Department, so the Department can take action under whatever authority they have.

Mr. **BISHOP**. Right.

Mr. **GOODLATTE**. I yield back to the gentleman from Louisiana and apologize for taking more of his time than I intended.

Mr. **COOKSEY**. Thank you, Mr. Chairman.

A couple of quick questions. I have been reading ahead from some of the statements of the subsequent panel members. In 1899, there were approximately 6 million farmers in the United States. Today there are probably 1 to 2 million, approximately 1 to 2 million farms, something in that range. Mr. Boyd, on behalf of the National Black Farmers Association, in his statement says there are 18,000 black farmers. And they are farming approximately 3 million acres.

Mr. Boyd, could you raise your hand just so I will know you? Is that correct? OK.

My question again, how many complaints of discrimination have been filed by these 18 thousand black farmers? It is on page 2 of his statement.

Ms. **GRAY**. In the administrative process, prior to November, 1997, we had approximately 264 complaints filed from black farmers. Most of those complaints are now subsumed in the class action.

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Since that time, I would say that we probably have approximately 50 to 100, and I will give you the exact number when I submit the information next Tuesday.

Mr. **COOKSEY**. OK, so there are probably 400 or 500 complaints that have been filed to date then, outside, would that be a safe estimate?

Ms. **GRAY**. I think it would, yes.

Mr. **COOKSEY**. OK, good. Have there been any complaints filed by women farmers?

Ms. **GRAY**. Yes.

Mr. **COOKSEY**. What is the number there, approximately? Just a ball park figure.

Ms. **GRAY**. I really do not have that number isolated. And I presume you mean women farmers?

Mr. **COOKSEY**. Yes, no matter what their racial background is.

Ms. **GRAY**. Right. Yes, there have been, and I do not have the number. But I can certainly get it to you.

Mr. **COOKSEY**. What about Native Americans? Have they filed any complaints, and would they be able to file through your agency?

Ms. **GRAY**. Absolutely.

Mr. **COOKSEY**. Good. Great.

Would you be the individual, the person in your office, that would adjudicate this racial discrimination?

Ms. **GRAY**. I am not the person who writes the adjudicative decision. It is actually drafted and then forwarded to the Office of General Counsel for legal sufficiency review, and then it comes back to me for signature and distribution.

Mr. **COOKSEY**. Have you had any indication that people are just going in and signing up that are Indians or women or African-American that are not farmers or that are not, or that have never applied for a USDA type loan?

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Ms. **GRAY**. If you are talking about in the complaint system at USDA, a number of our cases indicate that we do not have jurisdiction for the reasons that you just mentioned, that the person has not applied for a loan or there has been no contact between USDA and the person. And we dismiss those cases, yes.

Mr. **COOKSEY**. Has that been a problem?

Ms. **GRAY**. If you are talking about applying for relief under the consent decree, that is another question. If you are talking about complaints in our system, we receive complaints from everybody about everything, and a number of the cases and complaints that we receive, our office does not have jurisdiction to process then, because it does not involve a USDA activity, or there has been no contact between the complainant and the Department.

Mr. **COOKSEY**. Let me ask you this. If someone does go in and in fact applies for this \$50,000 that my

colleague says could amount to \$100,000 in cost, and this person, No. 1, is not a farmer or has never had any contact with FSA or whatever, or USDA, who would be responsible for telling this person that No. 1, they are not eligible and No. 2, would they be committing fraud by doing that? And if so, what entity would adjudicate that?

Mr. **HARRIS**. With respect to the *Pigford* process, sir, both the Office of General Counsel and Farm Service Agency reviews all of the claims. We actually submit affidavits to the adjudicators.

In the process of reviewing those, if we find, and we have found, for example, there was one case in which a non-African American filed a claim, we have submitted that information to the Inspector General and to the Justice Department.

Mr. **COOKSEY**. So you will in fact screen out these?

Mr. **HARRIS**. Yes, sir, we do screen them out. Where it appears that it was an honest mistake, we simply point it out to the adjudicator, such as where we have three or four people filing a claim and it is a single incorporating operation. But where it appears to be clear fraud, we point it out to the adjudicators, plus we have submitted and we will continue to submit the information to the Department of Justice and to the Inspector General.

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Mr. **COOKSEY**. Good. Well, I personally would like, feel it would be most fair to find the people that have really had obvious, blatant discrimination, I assume it has occurred, and give them an even greater amount than \$50,000, or divide it up equally among those. But by the same right, if someone goes in and applies that is not eligible, and they are making a fraudulent application, I think there are a lot of white guys that do that in agriculture, or not a lot, but it occurs. Because I have had farmers explain how they commit insurance fraud. I think they ought to be penalized for doing that sort of thing.

But anyway, because again, discrimination is wrong, no matter where it is, whether it is in Kenya, where I used to work, or in Mozambique, or the other places in East Africa where I was, or the Sudan, or here or on the farm. There is no place for it. Thank you very much.

Mr. **GOODLATTE**. Thank you. We have about 6 minutes remaining on a vote. The gentleman from Kansas, do you want to return?

Mr. **MORAN**. Mr. Chairman, if I may, I will use less than half of that, assuming the answers are brief as my questions.

The administrative settlements that you are responsible for, Ms. Gray, where do the dollars come from to make those payments?

Ms. **GRAY**. Those dollars from FSA.

Mr. **MORAN**. Out of the administrative account of the agency?

Ms. **GRAY**. Salary and expense accounts.

Mr. **MORAN**. Do we have a pretty good sense that discrimination has ended at the Department of Agriculture?

Ms. **GRAY**. No, sir.

Mr. **MORAN**. It is a continuing problem?

Ms. **GRAY**. Yes. I am trying to be brief. [Laughter.]

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Mr. **MORAN**. I appreciate that. And finally, on the topic that we are talking about today, on past discrimination and redress of that discrimination, how does the story and when does it end?

Ms. **GRAY**. The story ends when discrimination ends in this country. USDA is just a reflection of our larger society.

Mr. **MORAN**. How does it end, though, with specifics to these claims?



Ms. **GRAY**. To these claims? When the payments are made and all the relief provided and settlement agreements provided.

Mr. **MORAN**. And that is approximately when?

Ms. **GRAY**. There is usually a provision in the settlement agreements that the money should be paid within 30 days. Various relief is provided for, over 2 or 3 years after the settlement agreements, in some instances.

Mr. **MORAN**. I thank you, Ms. Gray. Thank you, Mr. Chairman.

Mr. **GOODLATTE**. Thank you, Mr. Moran.

Ms. Gray, Mr. Harris, thank you very much for your participation. We will excuse you and begin with the second panel once we are finished with this vote. The subcommittee stands in recess.

[Recess.]

Mr. **GOODLATTE**. The subcommittee will reconvene. We would like to invite our second panel to the table.

Joining us today are Mr. Stephon Bowens, executive director, Land Loss Prevention Project; Mr. John Boyd, president, National Black Farmers Association; Mr. James Tatum, Rural America Association of Community Based Organizations; Mr. George Hall, Black Farmer Class Action Lawsuit Plaintiff; Mr. Gary Grant, Black Farmers and Agriculturists Association.

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I want to thank all of you for joining us today. Mr. Bowens, I understand you have another obligation, so we want you to testify first. And whenever you feel you need to leave, feel free to excuse yourself from the panel.

We are glad to have you with us. Your statement, as well as the other members of the panel, will be made a part of the record, and we would be pleased to hear your oral testimony at this time. We would ask all the members to limit their oral statements to 5 minutes.

Mr. Bowens, welcome.

STATEMENT OF STEPHON J. BOWENS, EXECUTIVE DIRECTOR, LAND LOSS PREVENTION PROJECT, DURHAM, NC

Mr. **BOWENS**. Mr. Chairman, as it relates to my oral statement, I am going to ask if I could to just illuminate on some of the things that have been said prior to me, so I can make certain that those points are raised. I would ask to submit my written statement or my oral statement, that way, if the chairman and other committee members have other questions, I can resolve those questions while I am here.

Mr. **GOODLATTE**. Sure. Your written statement is made a part of the record, and your statement you give here now will be recorded.

Mr. **BOWENS**. Previously this morning, there were a number of points that were made as it relates to the functionality of the class action settlement itself and as it relates to the *Pigford* case. Presently, we represented more than 115 African-American farmers who objected to the class action settlement as the terms were confined in the consent decree. A number of the points that were in the objections are in fact now coming to light to be valid points. As such, I would like to take a few moments to raise those with you and with the committee members.

One of the things that was said this morning was that most farmers, if they were fortunate enough to manipulate the hurdles of meeting the class criteria, would receive at a minimum \$50,000. Mr. Chairman, I would like to say that that is just not true. Because there is also a provision in the class settlement that requires that an individual who receives non-credit related, who complains of a non-credit related incident, i.e., a programmatic relief, that that individual can only receive that relief if it is still available.



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So in some instances, there will be individuals, and actually in a number of instances that we are aware of, there will be individuals who will receive in essence no relief because the program is either in the process of being phased out or is no longer available and therefore, no relief will be provided to that farmer.

So when we talk about those, well, what types of programs are we talking about? For example, we are familiar with the AMTA payments, or payments that are subsidies to farmers who grow crops that the Government wants to help the farmer transition into another area. Well, the farmer may have been entitled to a certain payment for a certain program year. But in fact, if that payment is no longer available, that farmer would not receive the payment that he or she was entitled to under the terms of the consent decree.

Also, other issues that were raised that need to be at least addressed are related to some of the provisions in the implementation of the Civil Rights Action Team report. If you look at the provisions, for example, recommendation No. 6, which says it will streamline the process for disciplining those who discriminate, in essence, when you look at that provision and you hear the statistics, they just do not bear out what is happening.

In fact, if we know that USDA is the fourth largest administrative agency in the United States, and we know that they have in essence, I believe it is now over 30,000 employees, if that is the case—oh, 90,000— if that is the case, it is unconscionable that fewer than 46 employees have been disciplined in some fashion, and even fewer employees, less than five, have been terminated, and that no employees have been disciplined as a result of the *Pigford* litigation.

What that says is that in essence, the Department has received the information on 11,000 of the 15,000 complaints of discrimination that have been filed under the *Pigford* processes, and that they have yet to review those in a systematic way. And we must note that that information is in fact available to them, because they are going forward diligently, so you have heard this morning, with reviewing those claims packages for inequities to ensure that those persons who are not entitled to benefits under the terms of the consent decree will not receive them.

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So to say that they do not have the mechanism or the ability in place to go forward with reviewing those pockets and those places where an individual has committed acts of discrimination and where they are pervasive is disingenuous. Certainly the information is there. It is available. And it only requires the appropriate use.

More importantly, the regulations and the rules for disciplining employees did not just come about in the past 2 years. They certainly have been in place well before the *Pigford* class action lawsuit, and certainly at the latest, in 1964 and 1965. So what we are saying here is that the farmers deserve the right to go to an agency of this Government that will address their needs fairly and equitably.

One of the other interesting notes about the class action itself and the provisions of the class action is the issue of the similarly situated white farmer. One of the things that the objectors objected to was the fact that those objectors were not permitted to obtain information that would provide them with the names and/or specific identifying information of those farmers who were white who did receive benefits that were different and in most cases, greater than the ones denied the African-American farmers. What is significant about that is that these same farmers are in turn being denied, on the basis of their claims applications, because those specifically identified farmers have not borrowed during that specific year.

So when we look at that, that is a real issue and it is a real concern as to the equity and the fairness of this particular consent decree and how it will affect many of those farmers who are ostensibly trying to obtain relief under the terms of the settlement agreement.

[The prepared statement of Mr. Bowens appears at the conclusion of the hearing.]

Mr. **GOODLATTE**. We are next joined by Mr. John Boyd. Mr. Boyd, do you live in Mr. Goode's district or do you live in another district in Virginia?

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Mr. **BOYD**. Yes, I do, I reside in Virgil Goode's district, yes.

Mr. **GOODLATTE**. Mr. Goode was here earlier, and expressed to me, he was not sure if he was going to make it back or not, but he wanted to make sure that I welcomed you to the committee, and we are delighted to have you with us today.

STATEMENT OF JOHN W. BOYD, JR., PRESIDENT, NATIONAL BLACK FARMERS ASSOCIATION

Mr. **BOYD**. Thank you very much. Again, it is a pleasure being here, Mr. Chairman. I would like to thank you and the other members of this committee, especially those with the Congressional Black Caucus, and Senator Charles Robb, for their efforts in keeping this issue on the front burner, so that we may get some results.

I would like to take some time just to address some of the things that I heard this morning within the Office of Civil Rights. One thing that I am deeply touched by is this issue about the gun. Someone said, did the farmer see the gun. Well, the farmer cannot see the gun inside the desk drawer. The desk drawer had to open up and the gun had to get on top of the desk in order for the farmer to see it.

But the point here, Mr. Chairman and members of this committee, is that individual should not be able to work for me. That individual should not be able to work for anybody on this committee, coming to work with a loaded gun and threatening a black farmer with this gun.

I have here today a copy, two pages of the investigation, where this particular county supervisor was investigated. He was asked, did he have a loaded gun, and his answer was yes. Now, Chairman Goodlatte, I can promise you, if I had gone into one of the local offices in Mecklenburg County, VA, or Haysville, VA, or northern neck of Virginia, or any part of the South, with a loaded handgun, and laid on top of the desk top, and said, this gun is for a county official, there would be so many cops there, so many sheriffs there, so many FBI agents there, to carry me away in handcuffs. That would be the punishment for John Boyd if I came into the office if I came into the office with a loaded gun. We have to hold these people accountable.

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Farm Service Agency, Mr. Chairman, is the worst agency within the U.S. Department of Agriculture. In my opinion today, if you read my testimony, the Farm Service Agency should be abolished for the way it has treated its citizens, i.e., black people, Native American Indians, Hispanics and other people of color. Farm Service Agency should not be able to exist with a county committee system that has minorities on its county committee. But when the other three white members raise their hand to vote, and I sit on that county committee next to them, Mr. Chairman, and I cannot vote, on the verge of the year 2000, we still have a group of people in this country that are not allowed to vote on a county committee system, it is totally unacceptable, Mr. Chairman.

This committee should look deeply into the issue of the Farm Service Agency and the county committee system. It is totally corrupt. I have traveled from State to State along with my other colleagues on this panel. And we have heard nightmare after nightmare about the Farm Service Agency and the county committee system on how they deprive black farmers access to credit, on how they particularly go after prime real estate of black farmers.

Let me explain to you one example. I am going to use my own today, because I know it is true. They said, well, Mr. Boyd is in trouble, he is a little behind in his payments. So the county committee person, Mr. Chairman, came to my farm and said, Mr. Boyd, I know you are in trouble. How about you selling me your farm today? And come on and live on my farm and come work for me?

Three weeks later, Mr. Chairman, I got a foreclosure notice in the mail from Farm Service Agency. Now, he should not be out exploiting my business in the community that I live in, telling that Mr. Boyd is in trouble and he is going to lose his farm. This is the kind of county committee that represents us across the country, 8,000 white males, 28 blacks. And as I indicated earlier, these black individuals on these committees, Mr. Chairman, cannot vote. How degrading to a group of people. We should all today in this room be ashamed of ourselves, to allow this committee to exist.

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I would like to turn to the Office of Civil Rights. The Office of Civil Rights today is totally dysfunctional. And the Office of Civil Rights might even need to be put into what is called receivership, Mr. Chairman, where a management team could come in and take a real close look at what is going on. There are 240 cases right now, Mr. Chairman, that exist on individuals who have opted out of the class action lawsuit. There was an early resolution process that was put in for predominantly white males, people with handicaps, where they went in and resolved the backlog of complaints.

When it got down to African-American farmers, when the *Pigford* class was certified and pretty much a done deal, the early resolution process was shut down. I am asking the committee today to look into the early resolution process for the additional 240 individuals that remain in the backlog right now today. So again, we need to take a closer look at the Office of Civil Rights. There are cases right now where there are findings of discrimination.

The Government should immediately make those individuals offers. They should not have to wait on more documentation. They have all the documentation. There is a finding of discrimination. Look at those individuals' crop losses and make that farmer a fair and reasonable offer. It should not be whether the lawyer can prove their losses, whether the lawyer can do this, whether the lawyer can do that. Make that farmer a fair offer, and if he does not want that offer, Mr. Chairman, he can go elsewhere, he can go back to court. There are other avenues that they can do.

So again, we have to take a close look at what we are leaving in place for our children. If I leave the Farm Service Agency in place, Mr. Chairman, for my children, to walk into that door and not be treated as a fair citizen, I have failed as a man, I have failed my people, ladies and gentlemen. So we have to do something about Farm Service Agency.

And Mr. Chairman, I was listening earlier, the civil rights apparatus was dismantled in 1983. There was a big sign that said Office of Civil Rights, but only two people working in it. And I called this number for years, and they said, Mr. Boyd, I am working on your complaint, we are going to issue you a decision. For years, Mr. Chairman. And one day I dialed that number, and I said, this is John Boyd, president of the National Black Farmers Association. And they immediately came to the telephone and talked to me. I called the Federal Government, and I have it documented, 88 times before I got a response.

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That is really a national disgrace. Here we are on the year 2000, on the verge of the new millennium. A committee system that cannot vote, Farm Service Agency officials that refer to black people as niggers, and not be penalized, Farm Service Agency officials carrying loaded guns and showing them to the black farmer. That farmer is here today, Mr. Haynie, raise your hand, they threatened him and his family.

Mr. Chairman, we have failed in our duties in penalizing Farm Service Agency officials, and I hope that that message has come through loud and clear today. Again, I have other documents that I would like to become part of the record, Mr. Chairman. I have a copy of the investigation relating to the gun that I would like to become part of the record.

Mr. **GOODLATTE**. Without objection, the investigative report will become part of the record.

Mr. **BOYD**. The other information, Mr. Chairman, is the issue with the farm foreclosures. Here we have

thousands of black farmers in litigation, and just this September, Farm Service Agency sent hundreds of foreclosure notices to these individuals. Not sending them a check for relief. When will they receive a check? They repeatedly receive foreclosure notices. And I would like to submit a few of those for the record today as well, Mr. Chairman.

So the problem is not over yet. I think we have made some progress. The Secretary opened the door, he is listening. This committee has opened the door and is listening. Now we are at the point, Mr. Chairman, of what are we going to do to hold these individuals accountable. Yes, we know they have guns. Yes, we know that they have been found guilty of discrimination. Now we are at the point of what are we going to be able to do to hold them accountable.

And again, I thank you for this time. I know I have exceeded my time, but thank you very much for listening. I hope that the committee will take some of my recommendations into consideration and follow through with them. Thank you very much.

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[The prepared statement of Mr. Boyd appears at the conclusion of the hearing.]

Mr. **GOODLATTE**. Thank you, Mr. Boyd.

Mr. Tatum, we are pleased to have you join us today.

STATEMENT OF JAMES E. TATUM, RURAL AMERICA ASSOCIATION OF COMMUNITY BASED ORGANIZATIONS

Mr. **TATUM**. Thank you, Mr. Chairman.

As you indicated, my name is James Tatum, and I am very pleased to appear before you and the other distinguished members of this committee as well.

I am appearing today on behalf of the Rural American Association of Community Based Organizations. The Rural American Association of Community Based Organizations is a diverse organization working to help empower and sustain underserved and socially disadvantaged farmers, ranchers and rural residents. The mission is to develop a culturally diverse, multi-State grass roots organization empowered to build a network focusing on dissemination of information and providing leadership in addressing the needs of underserved and socially disadvantaged farmers and rural communities.

Mr. Chairman, agricultural policies and farm program activities undertaken by national, State and local elected officials requires input from a wide range of stakeholders. At times, for a number of reasons, the agricultural needs of underserved and socially disadvantaged individuals and groups are not fully met. These individuals and groups face a broad range of issues associated with USDA the civil rights program and responsible individuals.

Such issues include farm loans, cost share and natural resource program participation on the land that they own and operate. The report by the Civil Rights Action Team, which is referred to as the CRAT report of 1997, indicated that these individuals and groups have been denied access to Government services due to bias, grief, indifference, hostilities and ruthlessness by those who are supposed to serve them.

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Given the U.S. Department of Agriculture's record on civil rights, and the fact that the Secretary of Agriculture, Mr. Glickman, has on many occasions referred to USDA as the Last Plantation, and some of the people here would even think of it as a new plantation, that is in itself enough to convince many of us that the civil rights program is very much in need, and that discrimination is alive and well at USDA.

Mr. Chairman, civil rights at the U.S. Department of Agriculture as presented by this CRAT report was very comprehensive. I will not spend a lot of time reiterating that comprehensiveness that was brought out in that report. But what I would like to say is that the underserved and socially disadvantaged farmers now

only comprise about 2 percent of the farms and operate about 5.8 percent of the land in farming. Because of their lack of program knowledge, they tend to lose their land and program benefits as a result of the current program delivery system and policy making process.

Many of the listening sessions that I personally attended back in 1997 echoed a common theme, that USDA discriminated in its programs that were delivered through the Farm Service Agency and the Farm Home Administration at the county office level. As these sentiments continued to exist, alternative program delivery systems must be proposed. Mr. Chairman, we have some proposed alternatives. For more than 20 years, community based type organizations have provided a major access to information associated with program deliver, agricultural policy, outreach, research, teaching and extension programs.

Let me just suggest some things by which these community-based organizations can take up where maybe USDA has failed to reach out. That is in outreach and technical assistance to socially disadvantaged. Community Based Organizations has long been involved in both outreach and technical assistance to rural America. They are ready, willing and able to take on full responsibilities of outreach and technical assistance to the underserved and socially disadvantaged.

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In order to do so, this group is asking for an appropriation of \$30 million to fund the 2501 Program. The 2501 Program is referred to in as section 2501 in the Food, Agriculture, Conservation and Trade Act of 1990, the FACT Act, Public Law 101-624. This is a critical component of the Department of Agriculture's civil rights initiative and overall outreach and technical assistance to socially disadvantaged and minority farmers.

This program is vital in assisting farmers and ranchers to weather the crises of lost family farms and ranches. It provides farmers and ranchers and rural residents who have been for too long neglected by USDA with information and assistance in applying for loans as well as technical assistance.

Another area in which I think we need help is a small farmers market development assistance program. The family farm produces and markets important crops that are good sources of food and fiber. In fact, they produce and market niche crops. Recent trends in the decline of farmers indicate that very soon family farms will no longer continue to exist. Losing these niche products and marketing becomes ever more depressing on small farmers.

In order for small farmers to survive, to begin to engage in a value added activity, to produce more niche market, they need an appropriation of \$25 million earmarked for assistance in market development of their product. And \$15 million of this should be used for grants and cost share assistance.

The other area in which, Mr. Chairman, is agriculture policy and research analysis has never been a part of the decision making process of underserved and socially disadvantaged farmers and ranchers. The time has come for community based organizations to make a bold request. The request we are making to your subcommittee is to recommend that 1 percent of the appropriated 2501 fund be used to establish and operate a policy research and analysis center.

The policy research and analysis center will assist underserved and socially disadvantaged farmers and ranchers and rural residents by conducting research on emerging policy issues, analyzing current policies and its implications on underserved and socially disadvantaged farmers. They will also provide leadership in organizing farmers and ranchers in rural communities. Additionally, they will train participants to articulate their needs, seize opportunities in solving their problems, thus becoming proactive rather than reactive in resolving issues, concerns and opportunities confronting them.

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And finally, Mr. Chairman, an alternative lending institution. Family farmers play an important role in the economy, especially in the development of rural areas. Small family farmers need special attention,



especially in times of depressed commodity prices. As the Government's role in providing direct loans to farmers has declined tremendously, and the costs and the difficulties of underserved and socially disadvantaged farmers have in obtaining the necessary funds for both the public and private sector, the number of family farms has declined substantially, particularly during the most recent past. Many farmers want to farm, but they are considered to be bad risks, and certainly there is a lack of securing capital.

An alternative lending institution is needed if family farms are to survive. A one-time appropriation of \$1 million is requested to capitalize an alternative lending institution, and a multi-ethnic small farm and community development. This would make direct loans to farmers.

I appreciate the opportunity to appear before your committee. I hope my testimony will become a part of your record. Thank you.

[The prepared statement of Mr. Tatum appears at the conclusion of the hearing.]

Mr. **GOODLATTE**. Thank you, Mr. Tatum. Your testimony certainly will become part of the record.

Mr. Hall.

STATEMENT OF GEORGE HALL, BLACK FARMER CLASS ACTION LAWSUIT PLAINTIFF;  
ACCOMPANIED BY: LUCIOUS ABRAMS

Mr. **HALL**. Good morning, Mr. Chairman, Ranking Member Clayton, members of the subcommittee. My name is George Hall, and I am a farmer from Boligee, AL.

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With me today is Mr. Lucious Abrams. He may have something to say, but he is a farmer in Keysville, GA. Both of us are named plaintiffs in the Black Farmer Class Action Lawsuit, *Pigford v. Glickman* and *Brewington v. Glickman, Consolidated*. For ease and the interest of time, we will refer to this lawsuit as the *Pigford* case.

We appreciate the committee allowing us to respond today. Our administrative representative is Sam Taylor, and Tim Pigford, the original lead plaintiff in the *Pigford v. Glickman*, which is the driving force behind the Black Farmers Class Action lawsuit, they are not able to be here because they are in other engagements. We were asked to sit in and pursue for them. Therefore, we will proceed.

I will probably echo some things that have been said by Mr. Bowens and others here today. But it kind of bothers me and baffles me that we can have one of the most sophisticated systems there is in the world, probably, and cannot deal with the simple issue of discrimination. I look at the situation that happened to me in particular, I am sure you don't want to hear any more war stories, but I will tell you something that has happened since supposedly I received a settlement with the U.S. Department of Agriculture.

There was a signed document by the Secretary of Agriculture representative, that same document was signed by my attorney, Al Pireat, and I signed the document myself. The agreement was that the settlement would take place and that I would be able to receive benefits and programmatic assistance from the agency. It is sad that once you go back into the office of FSA to apply for a loan you cannot get it on a timely basis. The situation was that they gave me the document and told me that I could not receive assistance from the agency because the OIG had not reviewed the document, they had not signed off on it, and therefore, it was not official.

But they are giving me a document, telling me that I have this agreement but would not release my deed to my property. Therefore, they were holding me in hock.

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I complained. I even called back here to Washington to talk to someone, and they informed me, said, well, you need to go into the office and do a loan. Then when I went into the office and try to get a loan, they hold this against me, that I am supposed to be receiving X number of dollars, that my situation with my

finances has changed. Therefore, we cannot allow you to make this loan at this time.

So they take the paperwork, approximately two months later, after I go through numbers of visits, numbers of complaints to the office, they allow me to get the loan, which is too late for the farming year. There are numbers of farmers in Alabama who are complaining at this date about the settlement agreement. My son, in particular, Alfredo Hall, I have in my possession here where they sent him the results back and said that he would not receive relief under the consent decree.

I read this document several times and I was unable to determine the language or the correct gist of what it really means. Now, the statement of decision said in 1994, claimant leased its 6 acres of land in Green County, AL. In 1994 and 1995, he applied for an operating loan. And it goes on to talk about his farming history.

But when you look at the decision of the adjudicator of the claim, it says, having reviewed and considered the claim sheet and election form and the additional materials submitted by the claimant and his or her counsel, together with all materials submitted by the U.S. Department of Agriculture, and under the U.S. Department of Agriculture, the adjudicator hereby finds that the claimant has not established through substantial evidence that he or she is entitled to relief under the standards set forth under the consent decree.

Specifically, the claimant did not establish by substantial evidence that he or she A, owned or leased or attempted to own or lease a farm. And they just prior to here that he did. B, applied for a specific loan at the U.S. Department of Agriculture between January 1, 1981 and December 31, 1996. And they specifically give a date here in 1994 and 1995 he applied for an operating loan. So he was truly farming.

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But this is saying that he cannot establish this. So there are other farmers who fit in this same category or bracket out there that are complaining to us lead plaintiffs that they are having the same problem, that the Government or whoever is doing these forms is sending them back saying they are not acceptable on some bogus basis.

So we are asking that someone take a serious look at the situation with this. This is a serious problem. We have bona fide farmers who are actually farming and the adjudicator or whoever is making the decision here is rejecting the claims on unfound evidence.

I thank you for your time. I will ask Mr. Abrams if he would like to yield the balance of my time.

Mr. **ABRAMS**. Yes, I will yield the balance of my time to George Hall. But I would just like to make a quick statement, that I appreciate you inviting the lead plaintiffs here before this committee, and also taking the time out to hopefully address the true problems that are out here facing black farmers today. We also appreciate your coming up with the consent decree that went back and brought us back under the law.

But we want to say, and this is a serious problem, do not let the system take us back to before this decision. This is exactly what is going to happen again. I am getting calls every day. It is sad that when we can pay our attorneys \$1 million and I can go back, since I was a little kid, and my father, when he was being discriminated against, and it costs me to run up and down the road, but we can pay lawyers \$1 million, and we have farmers here where we can prove that this country has discriminated against black farmers, discriminated, proven, and we walk around with letters. The letters are coming out more rejection than being approval.

What I am asking you, I am not saying that you are asleep, but look, it is a problem out here. I went to the Secretary myself 2 years ago when I had a disaster, and my farm, I can farm, I am a fourth generation farmer, and my farm is just as any farm in the country. But I cannot get a loan from USDA. I own property that USDA has. And I still cannot get a loan, and with all these disasters we are having, I cannot get a loan. But it is still supposed to be fair.

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But all my neighbors around me get loans. A lot of them have filed bankruptcy, but by me being raised up the way I was raised up, I did not believe in filing bankruptcy. I believe in being a man and trying to fight your bills out the best way you can, with the help of the good Lord. But I am being penalized, where my neighbors have filed bankruptcy and are doing fine and still getting money from the Department of Agriculture.

The thing of it is, it is wrong, unjust, and I am going to say it, if I have to tote the cross that Christ toted, I will tote it. Our lawyers are not in our best interests, we did not agree with the consent decree, we did not agree with it. But they took it upon themselves and did not consult with me. Even after they signed the consent decree, I did not hear from my lawyer in 4 or 5 months. What is this? Is this America?

Please, we are crying out. We are crying out for help. Please help us. Thank you.

[The prepared statement of Mr. Hall appears at the conclusion of the hearing.]

Mr. **GOODLATTE**. Thank you. Mr. Grant.

STATEMENT OF GARY R. GRANT, BLACK FARMERS AND AGRICULTURISTS ASSOCIATION;  
ACCOMPANIED BY RIDGELY A. MU'MIN MUHAMMAD

Mr. **GRANT**. Thank you, Mr. Chairman and all of the committee for taking time to come and for having this hearing. I would also like to thank the chairman for his comments earlier this morning for his comments to Congresswoman Clayton regarding the flood in eastern North Carolina, primarily the first district, and to thank Congresswoman Clayton herself for coming down personally to see the devastation of rural eastern North Carolina, to which many of the black farmers cannot be here today, due to the flooding and trying to recover from the storm, Hurricane Floyd, and all the waters and all the other issues that we are confronted with.

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I would also like to acknowledge accompanying me is Dr. Ridgely Muhammad, who is the agricultural economist for the Black Farmers and Agriculturists Association. He will assist me upon questioning on some of the technical questions that any of you might have.

As president of the national organization, Black Farmers and Agriculturists Association, and we would like to have it clearly understood that it was the members of this organization that filed the class action lawsuit against the U.S. Department of Agriculture, to which Mr. Hall and Mr. Abrams are members, I am here to speak on behalf of the thousands of black farmers across America who have suffered at the hands of their local FmHA service agency officers and the hands of the U.S. Department of Agriculture.

There is also a personal story about my father and mother, Matthew and Florenza Moore Grant. I should say to you, Mr. Chairman, that in acknowledgement to the committee, my parents are not in the class action lawsuit, because they were in the last stages of the administrative process of appeal when the lawsuit was filed. And they are still in those last stages of administration appeal at this time.

As we talk about the gun that was laid on the table, or wherever it was in the office and on the property of the U.S. Department of Agriculture's property, that we would also raise the issue of the Sons of the Confederate neckties that these agencies wear, which also sends the same kind of message. They do not have to lay the gun around the table; the gun is around their neck for us to take a look at constantly while we are there.

We want to go on record and thank all the members of Congress who have been sympathetic and who have sometimes traveled to see us to gain first-hand knowledge about the plight of the black farmers, and who have actively worked to help black farmers get justice through this complicated political process. Especially Congresswoman Eva Clayton from North Carolina and here staff, and the Congressional Black Caucus under the leadership of Congresswoman Maxine Waters from California.

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We also want to thank the Congressional members of the Republican party who worked to remove the obstacles of the statutes of limitations regarding justice for black farmers. We are deeply appreciative to all who worked with us on those.

We want to recognize the energetic work also of Mr. Lloyd Wright, former Director of the Office of Civil Rights for USDA, who tried so desperately to negotiate a fair and just agreement for my parents, and for my brother, Richard Donald Grant, and for other black farmers, before his untimely retirement. The partial resolution agreement, dated January 24, 1998, has yet to be honored with my parents. A copy of the signed agreement is included in this package.

For almost a quarter of a century, my 81-year-old father now and my 77-year-old mother have been in foreclosure by USDA, and in a painful struggle with some of the most racist, most devious and most unscrupulous human beings to ever walk the face of the Earth, the employees of the Halifax County, NC FmHA. In almost 25 years, neither my father nor mother has had a peaceful night's sleep nor a day without fear and anxiety that their home, their means of making a living, and their way of life would be abruptly taken out from under them.

For almost 25 years, we as a family have spent thousands of dollars we did not have, and we have been calculating the cost of our tax dollars for the investigations. Well, we are taxpayers, but we also need to calculate the cost of what it is costing us individually of monies that we do not have to continue this fight, to continue the struggle, while the Government takes our tax dollars, the U.S. Department of Agriculture, to continue to fight us.

We have vigorously, my family, from the beginning, persistently complained about the unceasing racism and exploitation in person and in writing, many documents to the USDA, U.S. Senators, U.S. Congressmen and Congresswomen, and we have literally begged for help and relief from not one but from four United States Presidents, including President Bill Clinton. We should know that begging and complaining in our pursuit of justice would not help. After all, in 1978, in a meeting with FmHA officials, the three top officials in the State of North Carolina, they boldly told my father, Matthew, and this is a quote, "You can call and write to whomever you want, you can bring whomever you want to this office, it does not matter, we are going to sell you out."

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Please know that on February 24, 1999, a letter from my father's primary physician, Dr. Raven DeLoche, to Ms. Rosalind Gray, Special Assistant, verifies his professional medical belief that the congestive heart failure and continued deterioration of my father's health is due to the unnecessary and defining stress perpetuated by USDA and the agents of the Federal Government. Ms. Gray is the newest demon in our feverish quest for justice.

I have not included a copy of Dr. DeLoche's letter for fear that he will be retaliated against by either the local office through some means, or reporting him to the Internal Revenue Service for some means. They use every tactic that they possibly can.

What is more alarming is that my father and my mother and my family and the thousands of other black farmers not only have suffered discrimination and exploitation by USDA and the American judicial and legal system because of our race and color, but just as in the 400 years of the agonizing institution of American slavery, black people, including farmers, are still considered less than human, invisible, a nightmare to whites and to those who work and serve them, like Ms. Gray and the U.S. Department of Agriculture.

We have to wonder, is the ongoing hell that the U.S. Government persists in putting the black farmers through not meant to inflame and to incite unrest and violent acts? Is there not something sinister and evil

and calculating about terrorizing and keeping your foot on the necks of black farmers, and hacking away at the ability to make a living, destroying their pride and self-esteem and driving black farmers into a state of poor mental and physical health and decay and even driving many to early deaths. And then to have the Government employees nauseously lying and destroying documents and conspiring to cover up this violent inhumanity. I ask you, is this not a conspiracy?

With that, Mr. Chairman, I would like to offer a paper written by Dr. Ridgely Muhammad, "The USA Trying To Perpetuate A Perfect Crime" that it become a part of this hearing.

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Mr. **GOODLATTE**. Without objection, the document will be made a part of the record.

Mr. **GRANT**. Thank you very much.

So we have come here today not for glories or martyrdom or self-immolation, but determined to get justice and fairness. During this experience, we have learned this much about American capitalism, backed by Federal and State power, that it absorbs and legitimizes whatever it wills, and it subdues and destroys whatever it wills.

American can pay off the Japanese for their unfair detention, the Jewish people can collect all kinds of reparations for the horrors of the Holocaust, and even this morning I hear that we are now in negotiations with Korea for the Korean conflict to pay victims there. Everybody can get paid for their holocaust by America but us, black folk. Black farmers are admittedly tired. We are poor and psychologically whipped by the trauma of what the USDA has done to us, and for what USDA has allowed to be done to us.

But we are not without a plan and a purpose. Black farmers and their millions of city cousins and relatives will not be taken for granted in the historic political election of the year 2000.

I see that my time is out. We thank you for the 5 minutes. However, the 5 minutes is just a very short time for us to get warmed up, there is much, much more. But Mr. Boyd's letter that talks about the Office of Civil Rights giving out information, that information was also given out about my family's case, that had to come out of the Office of Civil Rights, that we know that there is some leakage going on in there, because the people who have the information have no reason, no business in having it.

Thank you very much.

[The prepared statement of Mr. Grant appears at the conclusion of the hearing.]

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Mr. **GOODLATTE**. Thank you, Mr. Grant.

I will now yield to the gentlelady from North Carolina, Mrs. Clayton, for 5 minutes.

Mrs. **CLAYTON**. Thank you, Mr. Chairman. And thank all of you for your testimony.

Mr. Bowens, you make a couple of interesting statements in your testimony. One is that on page 4, you say, it is imperative USDA is not permitted to use the class action settlement as a tool to unilaterally wipe the books clean of cases involving thousands of complainants alleging discrimination. Give me the basis of that. Do you feel that they are not taking complaints, and if this is supposed to be the answer to any future complaints? You make that on the basis of what?

Mr. **BOWENS**. Well, I make that first of all on the basis of the record that is before us. I think the first point is that in the earlier testimony by the Office of Civil Rights, they stated that only 280 some odd complaints had been made to them. In effect, if you look at the very terms of the *Pigford* consent decree, what you find is that you have 15,000 and possibly very many more, I think that is an underinflated number, African American farmers who have complained in one way or another.

And what you find is that the methodology of the complaint may be different, but they complain nonetheless. Yet this agency has turned a deaf ear and a blind eye to addressing those farmers' needs.

So when I make that statement, we look at the historical data, and then we look at what is going forward



from this point on. What we see is they have said that they have implemented 75 of the 92 recommendations of CRAT. When you look at what is really happening to the farmer on the ground, and I must say, I get the phone calls every day, we are a non-profit law firm, our job is to listen to the farmers and to respond to their needs. We hear it every day, X, Y and Z is happening, and you know, I thought this settlement was going to resolve the problems that are programmatic and systemic at USDA.

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Yet what we find is that the settlement itself does not address the systematic racist and discriminatory practices that have occurred at USDA. So when I make that statement, I think we put it in the larger context and it can be substantiated.

Mrs. **CLAYTON**. One of the concerns I thought that statement led to was not just what you said, but I agree with that wholeheartedly. I was under the impression that part of the testimony I heard earlier, there was a system still, if they were currently discriminating against individual farmers, there was a system that would receive complaints. In fact, I am going to ask Mr. Hall about his statement.

But there should be a system in place, in other words, farmers bringing a rightful lawsuit should not preclude me as a farmer from bringing a complaint if I have a legal complaint. And I did not want you, I was hoping that you were not saying that because there was this *Pigford* case against the USDA that that precluded any other farmers who have a legitimate right to bring a case. Because that is inequity, and in fact that is against the law.

Mr. **BOWENS**. That is correct. I am not saying that, and certainly, those persons are provided the opportunity to go forward, with bringing those legitimate complaints forward. So we do not intend to infer anything other than that, that we encourage it. And the Department itself should encourage that as well.

Mrs. **CLAYTON**. The other one, on a positive note, but I do not know if we have an answer, how do you propose that we get more young people in filling the potential economic viability of farming?

Mr. **BOWENS**. There are a number of things that can be done. For example, my background prior to coming to the Land Loss Prevention Project was working in the area of education. So how do you encourage individuals to come to a particular area? You provide them opportunity. Opportunity means providing them with education on the appropriate skill set necessary to make a farming operation viable. Then No. 2, you provide them with the funds and resources necessary to do that.

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I think those two things, hand in hand, would provide African Americans the opportunity to continue to ensure the base that they have established, which is the prosperity that America enjoys.

Mrs. **CLAYTON**. If you have additional recommendations to the committee, Mr. Chairman, I would invite him, if he would, to submit it. We are having an "aging out" of farming. And we are certainly having an aging out of African American farmers. So we need to find out how we make this area an attractive area to young people. I think we need to find out first how we make it more economically viable for them if they want to go into it.

If you are an African American young person and you have seen your father discriminated against, you have to overcome not only the economic barrier but the discrimination barrier. So I think there is a double challenge there, and I welcome whatever you may have.

Let me go immediately to Mr. Boyd. Mr. Boyd, you want to eliminate FSA.

Mr. **BOYD**. Yes, ma'am. I really do.

Mrs. **CLAYTON**. You just do not think it has any redeeming possibilities?

Mr. **BOYD**. I do not think at this point, Congresswoman, the Farm Service Agency has an intention of treating its customers fairly. I think that Congress can put a new agency in place, we create agencies all the time. They can create an agency that would be fair to all its customers.

Here you have one of the largest settlements in history that was done primarily because of the actions of Farm Service Agency. We left all the problem in place, from the top down, from Mr. Schumacher on down to big problem we have like Mr. Davis in Virginia. We cannot leave that system in place. We have to hold those people accountable. And I do not think, I am not talking about changing the name. We changed the name from Farmers Home Administration to Farm Service Agency. We need a new agency, Congresswoman, that is going to work with all farmers, and not ask what color you are first, on whether or not I am going to work with you.

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Mrs. **CLAYTON**. Well, we agree with that. We agree with that. But if you are not talking about changing the name, you are not talking about, you're saying, just do away with the whole system.

Mr. **BOYD**. Abolish it. Abolish it or put it in what is called receivership.

Mrs. **CLAYTON**. Thank you.

Mr. **BOYD**. Put it in receivership. It cannot manage itself, Congresswoman. Nor can the Office of Civil Rights. If you look at the Office of Civil Rights, as well, it is totally dysfunctional. We have been at this hearing twice, March and July of 1997. And we have heard some of the same, identical testimonies that we heard back in 1997.

Mrs. **CLAYTON**. Well, let me reclaim my time, because I am giving out. That would be also attributed to USDA, that indeed, then we want to abolish the USDA and all the services. I am saying, the discrimination is the culprit. We have to have a system to get rid of discrimination. I do not know if the people, that is why I was alarmed, that we did not have evidence that people had suffered the consequences and been held accountable for having had the misdeeds. In addition to discriminating against individual farmers that they should serve, they also were costing the taxpayers a lot of money, and still they were not being held accountable.

And they were indeed giving the whole agency and the Department, I will tell you, a bad name. So your logic would move to the whole Department. You could easily ascribe that to the whole Department. That is why they call it the last plantation, not just because it is called Farm Service. Whether it is called Farm Service or Farmers Home, it is what individuals do when they fail to apply a fair, equitable distribution of the services. And they are held to a standard.

What we need to have is a standard that can be enforced. I am not sure I would concur that the whole agency ought to be closed.

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Mr. **BOYD**. It might even, Congresswoman, need to start with the bill that you had out here last year, taking a closer look at the county committee system. That is certainly somewhere we can start.

Mrs. **CLAYTON**. I agree with that.

Mr. **BOYD**. The county committee has no business existing with individuals on the verge of a new millennium that cannot vote.

Mrs. **CLAYTON**. That is an injustice, you are absolutely right.

Mr. **BOYD**. You can start right there with the bill, and maybe you and your colleagues might want to resubmit that.

Mrs. **CLAYTON**. My time is running out, Mr. Boyd. I need to run to Mr. Hall.

Mr. Hall, I was shocked that after your settlement, you got your money, now, didn't you? After you got your settlement and your money, because you can get your settlement now and be 2 and 3 years later getting the money, but you got your money and your settlement. Are you farming?

Mr. **HALL**. Yes. Maybe I can elaborate on it, Congresswoman.

Mrs. **CLAYTON**. I have not asked my question yet.

Mr. **HALL**. OK, go ahead.

Mrs. **CLAYTON**. I want to know, they denied you a right for services and a loan as a farmer after you had settled your previous complaint?

Mr. **HALL**. Yes. The situation I was trying to interject here is that after they made their agreement with me, they did not give me the money at that point. That was an extended period of time before I got the money.

But during this period of time, we were trying to prepare the farm. So I went into the office to ask them if they would release my deeds they had held up. If I had gotten my deeds in my hand, I could go to the bank or whatever to try to finance myself. They were saying that the OIG had not reviewed this case and they were not in a position to release the deeds.

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So then when I tried to contact the authorities here, I contacted the person, and he was telling me, well, you need to go back in the office and apply for a loan, because we do not know what time frame it is going to take to get this matter resolved. We do not know how long it is going to take them to review it.

So then I go back and ask for the loan, and that is when they go through this thing about rejection, rejection, rejection, whatever.

Mrs. **CLAYTON**. Did you make a complaint? Did you file a complaint?

Mr. **HALL**. I filed back to the B plan. I went back in the B, yes.

Mrs. **CLAYTON**. Because you have a legitimate, it seems like you have a legitimate case. Did you file for this action? Did you file a separate action for their failure to deal with you fairly after you had your settlement?

Mr. **HALL**. Yes, I made a B claim.

Mrs. **CLAYTON**. OK. A B-claim means you are part of the *Pigford* litigation?

Mr. **HALL**. Yes.

Mrs. **CLAYTON**. Did the bank deny you a loan, you could not negotiate with the bank, because you did not have evidence of ownership, is that right?

Mr. **HALL**. That is correct.

Mrs. **CLAYTON**. The bank, as part of your evidence to give to your complaint—

Mr. **HALL**. Yes, I have documents from the bank where they would not make a loan to me.

Mrs. **CLAYTON**. I know I have exceeded my time. Mr. Chairman, I think this is an example of farmers not only being discriminated against once, but twice. And we would at least know where that office is, we would at least know where those people are. Somebody ought to be complaining, bringing a case of discrimination against the employee who is doing that. We can really get at the individuals who are responsible for this discrimination, and we should do that.

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Otherwise, you are at where Mr. Boyd goes. Mr. Boyd says we do not even have the ability to do that. So rather than deal with individuals, just wipe everybody out. I am at the point where you ought to deal with the individuals you can identify that have discriminated, rather than doing away with the whole case. But we need to do something about this.

And I know I have exceeded my time, plus the bell has rung.

Mr. **GOODLATTE**. Thank you, Mrs. Clayton.

I am going to ask a few questions and then we will adjourn the hearing.

Mr. Boyd, I wanted to follow up on the question that I asked Ms. Gray earlier regarding the reference you made in the letter you sent to Mr. Davis, citing a letter that was given to you by Ms. Gray. I understand while I was out of the room that Mr. Grant confirmed his understanding that she had provided that

information to you, and had provided other information to other individuals, and I wonder what you have to say about it.

Mr. **BOYD**. I am wondering which letter that was. I have probably written 100 letters to Don Davis.

Mr. **GOODLATTE**. It is a letter dated August 20, 1999, to Don Davis. At the bottom of the letter, you say, attached is a copy — —

Mr. **BOYD**. Oh, I am sorry, I know exactly what you are talking about. That is in reference to Mr. Herb Bateman, who we asked for help. He in turn asked why they were settling black farmer cases. That is what that letter pertains to. That letter is specifically talking about a Congressman, instead of trying to give us some assistance on discrimination within the Federal Government, he is turning in our black farmers who receive settlements to the Office of Inspector [General] for investigation.

That letter came from inside, I am not sure if came from Larson or Gray or whoever.

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Mr. **GOODLATTE**. Mr. Boyd, let me make very clear that we want to make sure that no one is discriminated against who receives discriminatory treatment at the hands of the U.S. Department of Agriculture. We also want to make sure that all of the proper procedures are followed to make sure that the integrity of the system is not called into question. And if the investigative files are not to be turned over to anybody other than the Office of General Counsel of the Department of Agriculture, and they have been provided to you, that is a breach of that system.

And in the process, it is important for us to know whether any individual has filed a claim that is not appropriate. There have been all kinds of reports of people filing claims who are not even farmers. If that indeed is the case, it is important to protect the integrity of the system and to protect farmers who truly have been discriminated against, that we not allow that to happen.

Now, Ms. Gray testified that she did not give this letter to you. And my question to you is, did she indeed give you a letter that you reference in your letter to Mr. Davis?

Mr. **BOYD**. I honestly cannot answer that without seeing the letters, Mr. Chairman. I would hope that this hearing will not be turned around about who gave Mr. Boyd a letter.

Mr. **GOODLATTE**. This hearing is about how the system is operating — —

Mr. **BOYD**. This is about discrimination and we should be here trying to resolve the effects of discrimination.

Mr. **GOODLATTE**. Absolutely. I agree with you 100 percent — —

Mr. **BOYD**. Versus how information got out. The question is, what are they going to do — —

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Mr. **GOODLATTE**. Mr. Boyd, the time of the Chair — —

Mr. **BOYD**. Let me speak, I listened to you — —

Mr. **GOODLATTE**. No. You will be ruled out of order.

Mr. Boyd, the issue here before this committee is are black farmers being discriminated against, and is the Department of Agriculture taking the necessary steps to assure that that does not happen again, and that it is being corrected.

But it is also important that the system operate effectively so that if anybody is attempting to abuse the system, we need to find that out as well, because abusing the system discredits the system and harms the rights of every black farmer who has indeed been discriminated against. So knowing whether or not the system is operating effectively is indeed a part of this hearing. And I will ask you again, since you wrote in a letter that we have a copy of under the letter head of the National Black Farmers Association — —

Mr. **BOYD**. Let me say that, Mr. Chairman — —

Mr. **GOODLATTE** [continuing]. Did you receive that information from Ms. Gray?

Mr. **BOYD**. Can I see the letter? You are asking me to answer something I have not seen.

Mr. **GOODLATTE**. You have seen it. You wrote it. You set your signature over it.

Now, while we are doing that, let me ask Mr. Bowens if you have any comments on whether there has indeed been any improvement in the treatment that black farmers have been receiving in the field since this issue has come to light. Has it been spotty? Has it been nonexistent? Or have there been tangible areas of improvement?

Mr. **BOWENS**. I would first say to you that by and large, from the comments that we have been getting from the farmers and the types of new cases that have been coming forward, it has been spotty at best and nonexistent at worst. Certainly, there have been a number of statements that have been made about how new service delivery is going to be implemented. But that has yet to see the light of day for the farmers.

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Our office takes thousands of calls each year from both black and white and other farmers from around the country. We address those complaints where they are addressable. And I can tell you that the sense is that it is not just that African Americans are being treated unfairly or inappropriately. Civil rights is an issue for all farmers. And it has been and it continues to be a real issue, based on the numbers and the phone calls that we are receiving from both African Americans, Native Americans, Hispanic and Latino, women, just about any group that you can identify, small farmers included.

Mr. **GOODLATTE**. Thank you.

Mr. Boyd, you have now had an opportunity to see that letter. Is that what you signed?

Mr. **BOYD**. Yes, this is one of many that I wrote to Mr. Davis.

Mr. **GOODLATTE**. When you referred to having received the letter from Ms. Gray —

Mr. **BOYD**. Yes, I received the letter from Ms. Gray, from Rosalind Gray.

Mr. **GOODLATTE**. Thank you very much. We will redirect our questions to her, then.

I think we are really out of time. Mrs. Clayton, did you have anything you wanted to add?

Mrs. **CLAYTON**. I do. I wanted to acknowledge that Mr. Lawrence Lucas is in the audience and he has prepared testimony. I would ask if his testimony could be a part of the record, please.

Mr. **GOODLATTE**. Without objection, so ordered.

Mrs. **CLAYTON**. Thank you.

[The prepared statement of Mr. Lucas appears at the conclusion of the hearing.]

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Mr. **GOODLATTE**. I want to thank you for your initiative in pursuing having a hearing on this issue, and I want to thank all the members of the panel.

Mr. Grant, very quickly, because we are out of time.

Mr. **GRANT**. Very quickly, I would just like to also ask that the objections to the proposed consent decree that were filed on behalf of the black farmers become a part of this record as well.

Mr. **GOODLATTE**. Without objection, we will certainly make that a part of the record as well.

[The information is on file with the committee.]

Mr. **GOODLATTE**. The Chair would seek unanimous consent to allow the record of today's hearing to remain open for 10 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel. Without objection, it is so ordered. And this hearing of the Subcommittee on Department Operations, Oversight, Nutrition and Forestry is adjourned.

[Whereupon, at 1:55 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Material submitted for inclusion in the record follows:]

Testimony of Rosalind D. Gray

Mr. Chairman, Ranking Member Clayton, members of the subcommittee, I want to thank you for the



opportunity to appear before you today to review the Department of Agriculture's civil rights programs and responsibilities.

On February 28, 1997, Secretary Glickman accepted the Civil Rights Action Team (CRAT) report and committed to implementing its 92 recommendations. Civil Rights Implementation Teams then developed comprehensive plans for the implementation of each recommendation. Of the 75 recommendations that could be implemented administratively, all but 3 have been or are well on their way to being implemented. Of the remaining 17 recommendations that require congressional action for their implementation, additional appropriations or new legislative provisions have been enacted relating to 5 of these recommendations.

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The Secretary appointed the CRAT to take a hard look at civil rights issues at USDA and to make strong recommendations for change. That team of senior USDA officials held 12 listening sessions around the country during January of 1997. The Secretary or Deputy Secretary participated in each of those sessions with the exception of one when the Secretary was snow bound in route. The Team heard from hundreds of USDA customers and employees about their experiences, concerns, and suggestions. The Team also reviewed the civil rights reports and documents of the last 30 years. From the reviews and listening sessions the team developed their 92 recommendations. The Secretary vowed to not let this report gather dust.

The report has not gathered dust. As the Secretary said at the 89th Annual NAACP Conference last year, "It is now a condition of employment that every employee treat every customer and co-worker fairly and equitably, with dignity and respect. If you cannot live with that creed, then you cannot work at USDA."

Through new management, a streamlined organizational structure, more than three dozen new policies and procedures, additional resources, and some new legislative language, we now have virtually everything in place that we can do administratively to ensure that a) USDA treats all of its customers and employees fairly and equitably, with dignity and respect; b) all potential customers have full access to all USDA programs and services; and c) our work force is becoming more reflective of the diversity of the Nation.

#### PROGRAM DISCRIMINATION COMPLAINTS

On August 2, 1999, we launched new procedures for processing program discrimination complaints. These procedures are designed to resolve program complaints within 180 days. All complaints received since August 2, 1999, are on schedule and are being processed according to the prescribed time table so that they should be resolved within 180 days. We intend to handle all new cases in accordance with that time frame.

Of the 1,088 program complaints that were in the backlog on November 1, 1997, all except 29 have been resolved or referred, for resolution pursuant to the *Pigford v. Glickman* consent decree. Of the 29, five are being adjudicated, nine are ready to be referred or closed, three are in Statute of Limitations review, two require investigation or the final report of investigation, and 10 cases are in process.

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Since November 1, 1997, we have accepted 502 new program complaints. Of these, 260 have been closed and 242 are active.

In March of this year, a consent decree was signed to settle the African American farmers class action, known as *Pigford v. Glickman*. With the signing of the consent decree, the Department has moved forward with all deliberate speed to support the process to assure that claims filed by members of the class are processed in a timely fashion. As of September 30, 1999, USDA had received 11,301 claims filed by members of the class under Track A (requires less documented evidence of discrimination; farmers can take a \$50,000 payment, as well as \$12,500 to cover taxes, and have their government debts forgiven); 20 under Track B (requires more evidence; farmers go before an independent arbitrator and seek larger damages); and 246 had opted-out of the class. Four hundred ninety three cases, which are all Track A cases, have been

decided by the adjudicators with findings in favor of the complainant in about 60 percent of the cases.

#### EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINTS

We now have a total of 1,679 active EEO cases. Of these 261 are being investigated, 394 are pending hearing; 749 are pending acceptance; 10 are pending election; 149 are pending decision, and 117 are pending classification. During fiscal year 1999 there were 880 new EEO cases filed and 751 closed.

The longstanding Forest Service Region V, EEO class lawsuit has a tentative agreement in place.

Beginning January 1, 2000, we will offer Alternative Dispute Resolution during the formal EEO complaint phase as well as during the pre-complaint phase. Our goal is to resolve at least half of the formal EEO complaints through Alternative Dispute Resolution.

#### ACCOUNTABILITY

For the last 2 years, we have been holding agency heads accountable for their agencies' civil rights performance through our Annual Performance Appraisal process. We are doing that again in fiscal year 2000. Agency heads, in turn, are holding their employees down through the ranks accountable. We are also strengthening our policy and procedures for taking corrective action in cases where employees are found to have discriminated or had misconduct. This new policy is in final clearance and will be issued soon.

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Records on disciplinary actions taken for discrimination and misconduct are somewhat incomplete but those that are available show that during fiscal year 1998 and the first half of fiscal year 1999, disciplinary or corrective actions were taken against 46 employees for discrimination or misconduct related to civil rights. Of these, five of the actions resulted in removal, one in reduction in grade, 20 in suspension without pay, and 20 in letters of reprimand. The new policies that are now being finalized will help assure that, in the future, disciplinary or corrective action will be taken in all cases where it is appropriate.

#### OTHER EFFORTS TO ASSURE FAIR AND EQUITABLE TREATMENT OF CUSTOMERS AND EMPLOYEES

Over 99 percent of the Department's approximately 90,000 employees participated in a half-day training program on civil rights and diversity during fiscal year 1998 and most took additional training in fiscal year 1999. Many committee members, cooperators, and volunteers also participated in this training.

Compliance reviews are being conducted to aggressively address issues relating to program delivery and under-representation in the USDA workforce. In many areas job training for potential managers is being planned to improve their job recruitment and promotion skills.

State Outreach Councils have been formed in each State and territory to provide leadership and coordination for identifying and addressing outreach needs in order to assure that all of the Department's programs and services are fully accessible to all potential customers.

A Native American workshop will be held in Oklahoma City next month to provide technical assistance training on USDA programs to representatives from as many as 63 tribes.

A Conflict Prevention and Resolution Center has been established in the Department to help resolve conflicts as early and as fairly as possible.

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USDA Service Centers have been established at 32 tribal headquarters and at 39 locations elsewhere on tribal lands to improve accessibility to USDA programs and services.

The Department has established a small farms policy with regards to the importance and role of small farms, ranches, and woodlots to U.S. agriculture and the establishment of strategies, systems, and a departmental framework for achieving and maintaining the viability of these small farms.

Minorities accounted for 20 percent of the members serving on State Committees in fiscal year 1999, and minorities serving on County Committees increased from 168 in fiscal year 1998 to 240 in fiscal year 1999.

During fiscal year 1999, the Farm Service Agency (FSA) implemented a short-form application for guaranteed loans of \$50,000 or less, increased the number of farm ownership and operating loans to socially disadvantaged borrowers by 21 percent, and reduced the nationwide average processing time to 16 days for direct loans applications and 8 days for guaranteed loan applications.

#### PRIORITIES FOR FISCAL YEAR 2000

We are making good progress and we will continue to progress in fiscal year 2000. Our priorities are to:

1. Improve diversity throughout USDA. One of the measures in the Office of Civil Rights' Annual Performance Plan is the reduction in under-representation in the USDA workforce. Presently, USDA has about 8,000 fewer minorities and women than it would have if its workforce were proportioned to the civilian labor force. We will be tracking new hires and promotions very closely. To better integrate special emphasis into the recruitment process, responsibility for that program has been transferred to the Office of Human Resources Management.
2. Resolve complaints in a timely manner-generally within 180 days of filing. As noted above, new EEO and program complaints processing regulations and procedures have been implemented that will resolve program complaints within 180 days and EEO complaints in accordance with prescribed time frames which generally include completing investigations within 180 days. The Office of Civil Rights will monitor the time-line for each case and as well as the proportion of cases being resolved through Alternative Dispute Resolution during the pre-complaint stage and during the formal stage.

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3. Resolve class action suits. The Department, working with the Department of Justice, will do all it reasonably can to expedite the resolution of class action suits.

4. Improve accountability. A new policy on Discipline-Accountability in Discrimination Cases is in final clearance and about to be issued. It establishes policy that addresses USDA's commitment to ensure disciplinary or other corrective action for employees who engage in discriminatory or related misconduct. This policy will provide uniform guidelines to be used throughout the Department. The Office of Civil Rights will monitor each case to assure corrective action is taken where appropriate.

5. Conduct program and EEO compliance reviews. New EEO and program compliance units have been established in the Office of Civil Rights. Our goal is to conduct compliance reviews that cover about one-fifth of the programs and staff each year so that all are reviewed once every 5 years.

6. Achieve equity in program delivery. The new policies and procedures, compliance reviews, training, outreach, and diversity will all contribute to equity in program delivery. This will be monitored closely by the agencies and the Office of Civil Rights.

I am convinced that we are making solid progress toward improving civil rights at USDA. Although it is taking longer than we had hoped, the administrative changes we are putting into effect are rooted in new, well-thought-out policies, regulations, and procedures that should endure. With these in place, the Office of Civil Rights is poised to assume its proper leadership role in civil rights enforcement and to take affirmative steps to address the longstanding civil rights issues of the Department. However, to fully address the civil rights issues faced by the Department, we need to enact new legislative items in accordance with the CRAT recommendations.

With you, our partners in Congress, we can continue to progress so that soon the civil rights program at USDA can be viewed by other agencies as a model. Thank you again for the opportunity to testify here today. I am happy to answer any questions you may have.

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Statement of James E. Tatum

To The Honorable chairman Mr. Bob Goodlatte, and other distinguished members of this Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, it is an honor for me to be invited to appear before this subcommittee. I am appearing on behalf of the Rural America Association of Community Based Organizations.

The Rural America Association of Community Based Organizations is a diverse organization working to help empower and sustain underserved and socially disadvantaged farmers, ranchers, and rural residents. The mission is to develop a culturally diverse, multi-state, grassroots organization empowered to build networks focusing on the disseminating of information and providing leadership in addressing the needs of underserved and socially disadvantaged farmers, ranchers, and rural communities.

Mr. Chairman, agricultural policies and farm program activities undertaken by national, state, and local elected officials require input from a wide range of stakeholders. At times, for a number of reasons, the agriculture needs of underserved and socially disadvantaged individuals and groups are not fully met. These individuals and groups face a broad range of issues associated with USDA Civil Rights Programs and responsible individuals. Such issues include farm loans, cost share, and natural resources programs participation on land owed or operated by these individuals and groups. The report by the Civil Rights Action Team (CRAT, 1997) indicated that these individuals and groups have been denied access to government services due to bias, greed, indifference, hostility, and ruthlessness by those who were supposed to serve them. Because, these individuals and groups are considered underserved and socially disadvantaged customers, statements made by them were hopeless as they dealt with the bureaucracy. Given the U.S. Department of Agriculture's record on Civil Rights and the fact that the Secretary of Agriculture, Mr. Dan R. Glickman, has on many occasions referred to USDA as "the last plantation," and "old line department" are enough reasons to convince many of us that Civil Rights programs are very much needed and discrimination is alive and well at USDA.

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The problems of Civil Rights and discrimination are not new and are not unknown. Studies and reports have documented the problems dating back from 1965 throughout 1997. Despite this documentation and the open discussions about the need to eliminate discrimination in program delivery and employment, it continues to exist to a large degree unabated at USDA.

Mr. Chairman, Civil Rights at the United States Department of Agriculture as presented by the 1997 CRAT report was very comprehensive. It told how farmers blame USDA's program delivery system, with its wide-ranging and relatively autonomous local delivery structure for much of their demise. The report stated that "according to the most recent Census of Agriculture, the number of all minority farms has fallen-from 950,000 in 1920 to around 60,000 in 1992." The undeserved, socially disadvantaged farmers and ranchers now comprise only 2.2 percent of farms and operate 5.8 percent of the land in farms, because of their lack of program knowledge they tend to lose their lands and program benefits as a result of the current program delivery systems and policy making process. The land lost trends associated with underserved, socially disadvantaged farmers and ranchers vary from group to group. From 1978 to 1992 Agriculture Census data indicated that the number of African-American farmers declined 50 percent to 18,816 farmers. Inadequate supervised farm loans, lack of special cost share and natural resources programs may have contributed to the falling number of African-American farmers. Although Census data on Hispanic farmers only goes back to 1987, there has been a dramatic (22 percent in 5 years) rise in the number of Hispanic farmers. Finally, American Indian farmers (8,346) and Asian American farmers (8,096) have roughly maintained their numbers during the 1978 to 1992 period. The Rural American Association of Community Based Organizations is working closely with the African-American and other minority farmers and ranchers to prevent further loss of farms as a result of poor delivery systems and farm policies.

Many of the listening sessions that I personally attended, echoed a common theme that USDA



discriminated in its programs that were delivered through the Farm Service Agency (FSA) and the Farmers Home Administration (FmHA) at the county office level. As these sentiments continue to exist, alternative program delivery systems must be proposed. Mr. Chairman, we have some proposed alternatives.

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For more than 20 years, the community-based type organizations have provided a major access to information associated with program delivery, agricultural policies, outreach, research, teaching and extension programs. The teaching, research, outreach, and extension programs at the community-based organizations (CBO) serve to improve the quality of life and well being for all Americans. In addition to working with the underserved and socially disadvantaged farmers and ranchers, these organizations are open to all people regardless of race, sex, creed or socioeconomic status.

It is important for the CBOs to continue its leadership role in program delivery, agriculture polices, extension programs, capacity building, technical assistance and outreach to the underserved and socially disadvantaged farmers and ranchers. In order to continue a long -term partnership to deliver research, extension and educational programs, a consistent Federal presence is needed. The base Federal support provides the framework around which the other programs are wrapped.

#### CORE ISSUES

In keeping with USDA priorities and the 1997 CRAT Report, the CBO's is leveraging its strengths to focus on the following key issues:

- Outreach and technical assistance to the socially disadvantaged

- Small farmer Market Development Assistance

- Debt Relief/Debt for Nature Program

- Alternative Lending Institution

#### OUTREACH AND TECHNICAL ASSISTANCE TO THE SOCIALLY DISADVANTAGED

CBO's have been involved in both outreach and technical assistance in rural America. They are ready willing and able to take on the full responsibility of outreach and technical assistance to underserved and socially disadvantaged farmers and ranchers. In order to do so, an appropriation of \$30 million is needed to fund the 2501 Program. The 2501 Program refers to Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (Public Law 101-624), a critical component of the Department of Agriculture's (USDA) civil right initiative and overall outreach and technical assistance to small and underserved farmers, ranchers, and rural residents. This program is vital in assisting farmers and ranchers to weather the crisis of loss of family farms and ranches. It provides farmers and ranchers and rural residents who have been for too long neglected by USDA with information and assistance in applying for loans as well as technical assistance in production, marketing, accounting, and overall management so that operators could run successful businesses. If assistance is not provided conditions of rural areas and residents will decline.

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#### SMALL FARMER MARKET DEVELOPMENT ASSISTANCE

Family farmers produce and market important crops that are a good source of food and fiber. In fact, they produce and market niche crops. Recent trends in the decline of farmers indicate that very soon family farms will no longer continue to exist (leading to loss of the niche products and markets) because of the increasing role of big farms and corporate agribusinesses. To survive, family farmers need to begin to engage themselves in value-added activities, from production to marketing. One way of doing so is by developing cooperatives, a process that requires capital, which family farmers do not have. Given their important role in the economy, farmers who want to organize into cooperatives, need an appropriation of \$25 million earmarked for assistance in market development. Of this amount \$15 million should be used for



grant or cost-share assistance under the existing USDA program authorities and \$10 million for technical and educational assistance farmers and ranchers need to run successful businesses. The formation of cooperatives should especially be encouraged because together, family farms control many land and economic resources that the Nation can ignore only to its detriment.

#### DEBT RELIEF/DEBT FOR NATURE PROGRAM

An appropriation of \$50 million is needed to provide substantial relief to farmers burdened by both depressed farm income prices and high debt loads. An innovative way is to have the small and underserved farmers' debts forgiven in lieu of putting their land resources into practices what would benefit the environment by establishing a Debt Relief-Debt for Nature Program. For instance, those small and underserved farmers and ranchers whose all or partial loans are forgiven should enter into long-term (but not permanent) conservation contracts with the Natural Resources Conservation Service (NRCS) to put their land into the Debt for Nature Program. Enough funds should be set aside for technical assistance to help the producer adopt and maintain the necessary conservation practices.

#### ALTERNATIVES LENDING INSTITUTION

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Family farmers play an important role in the economy and especially in the development of rural areas. Small family farmers need special attention, and especially in time of depressed commodity prices. As the government's role in providing direct loans to farmers has declined tremendously and because of difficulties small and underserved farmers have had in obtaining the necessary funding from both the public and private sector the number of family farmers has declined substantially, particularly during the most recent past. Many farmers want to farm, but they are constrained by a lack of capital. An alternative lending institution is needed if family farms are to survive. A one time, emergency appropriation of \$10 million is requested to capitalize an alternative lending institution, the Multi-Ethnic Small Farm and Community Development, that would make direct loans to the farmers.

#### SUMMARY

The problem of Civil Rights and discrimination are not new and are not unknown at USDA. Studies and reports have documented the problems dating back from 1965 through 1997. Despite this documentation and open discussions about the need to eliminate discrimination in program delivery and employment, it continues to exist to a large degree unabated at USDA.

A common theme echoed at many of the secretary's listening sessions that USDA discriminated in its programs that were delivered through Farm Service Agency and the Farmers Home Administration at the county office level. As these sentiments continue to exist, alternative program delivery systems must be proposed.

As a proposed alternative program delivery system, agriculture policies, and outreach and technical assistance to underserved and socially disadvantaged farmers and ranchers you need to look to community-based organizations. These organizations for more than 20 years have long been involved in both outreach and technical in rural America. Their involvement is vital in assisting the underserved and socially disadvantaged farmers and ranchers to weather various farm crisis including the loss of family farms and ranchers.

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They are also the principle source of information to the underserved and socially disadvantaged farmers, ranchers, and rural resident who have been for too long neglected by USDA and other government agencies.

Testimony of John W. Boyd, Jr.

Mr. Chairman and Members of the Committee:

I am John Boyd, president of the National Black Farmers Association (NBFA). The NBFA was formed in 1996 to create a cohesive and unified voice for African-American (black) farmers who suffered and are suffering from racial discrimination in the agricultural industry. The NBFA is also involved in land retention, land reparation, and rural development issues for socially and economically disadvantaged farmers. Specifically, we have and will continue to champion for full and unbiased access to the United States Department of Agriculture's (USDA) services and resources.

With that in mind, Mr. Chairman, I appreciate this opportunity today to speak on behalf of African American farmers. Before I begin, however, I would like to recognize, Chairman Robert Goodlatte (R-VA), the Committee, and particularly, Congresswoman Eva Clayton (D-NC); Congressman Sanford D. Bishop, Jr. (D-GA); Congressman Earl F. Hilliard (D-AL); Congressman Bennie Thompson (D-MS); and the entire Congressional Black Caucus (CBC) for their efforts in educating their constituents and colleagues about this issue. Furthermore, I appreciate Congresswoman Maxine Waters' (D-CA) leadership in focussing the attention of Congress on the awful plight of the black farm families in America and, especially, helping to lift the statute of limitations regarding the *Pigford v. Glickman*, Civil Aciton No. 97-1978-PLF (DDC 1999) (hereinafter, "*Pigford*") settlement and allowing more black farmers to become eligible for class membership. Also, I would like to acknowledge the efforts of Senator Charles Robb (D-VA), Senator Conrad Burns (R-MT) and Secretary Dan Glickman of the USDA for their contributions in helping black farmers.

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It is with utmost urgency that we (political and community leaders, attorneys and businesses people) come together to mend the tattered relationship between black farmers and the USDA. As I speak today, I would like this honorable Committee to remember this important fact: the black farm community is moving at the speed of light for a head-on collision with extinction. In 1910, black farmers owned 16 million acres of farmland and, by the end of the decade, there were more than 900,000 black farmers in the United States. At the close of the millennium, just 80 years later, there will be less than 18,000 black farmers who will operate productive farms on less than three (3) million acres of land. Tragically, since 1910, we have lost 98 percent of this nation's black farmers. Unfortunately, these farmers did not leave the farm fields for better jobs. No, quite the contrary. They were driven off their farms by the United States Department of Agriculture's discriminatory policies, practices, and malignant interaction. Mr. Chairman, please help me put an end to decades of discrimination committed by the USDA, especially its Farm Services Agency (FSA) and the USDA Office of Civil Rights (OCR). In particular, we need your commitment to implement corrective measures and policies that will remove all vestiges of racial discrimination still within the USDA.

While reflecting on what has been shared today, I cannot help but see that on one hand, the black American agricultural experience is rich in history. On the other, it is horribly tarnished. We have been farming in America from about 1619. We were not, as a race, allowed to own any farms until after the enactment of the 13th Amendment in 1865. Ever since black Americans were "allowed" to own land, the community has struggled to keep their property—including myself. We have lost millions of acres of farmland and millions of dollars worth of property due to years of systemic racial discrimination and the unfair practices of the USDA.

For the past 5 years, NBFA has worked tirelessly to educate its constituents and organize rallies to bring intentional attention to the plight of the black farmer. Our efforts have been especially fruitful in states like Virginia, North and South Carolina, Mississippi, Arkansas and Georgia. With our fiery conviction and our two mules in tow (named Struggle and 40 Acres), we were able to capture the attention of the United States Department of Agriculture, the United States Department of Justice (DOJ), the United Nations (UN), United States Congress, and the White House. We also, met with President William J. Clinton, Vice President Albert Gore, Jr., and USDA Secretary Daniel J. Glickman to discuss the problems facing the black farmers.

These leaders immediately recognized the acuteness of our dilemma. Eventually, the conversations prompted the USDA to investigate civil rights violations by conducting nationwide "listening sessions". The results from these investigations served as the impetus for the largest class action settlement in history. The settlement, however, pales in comparison to the size of the problems created by USDA for black farmers. This settlement can never make whole the damages done to black farm families.

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The impact of institutional racial discrimination on black farmers by the USDA was, and continues to be, so severe that many farmers WILL NOT return to the business of agriculture despite the restitution provided by the *Pigford* Consent Decree (dated April 14, 1999). As the president of the NBFA, I interface with thousands of my constituents, on a regular basis, to provide them assistance and advice on this issue. While doing so, I continue to hear the same phrase: "Even though we have this settlement, how do folks expect us to trust the government? What else can we do?"

Mr. Chairman, I ask you, what else can be done to assure that racism will never again occur at the USDA?

Allow me to elaborate, I do not desire to mislead this honorable subcommittee nor do I want to give the wrong impression to the people gathered here today. The *Pigford* Consent Decree, Mr. Chairman, does not in any manner, stop racism at the USDA toward black farmers. The facts are that the relationship between the black farmers and the USDA has become significantly worse following the *Pigford* Consent Decree. While you and the Committee hear us today, I would like for you to consider the following: (1) the FSA county committee system is severely corrupt and improper farm foreclosures continue on black farmers; (2) the dysfunctional USDA Office of Civil Rights (OCR) remains insensitive to the needs of black farmers; (3) and, that not extending the *Pigford* Consent Decree filing deadline is a miscarriage of justice. With that in mind, I draw these conclusions based on several public documents published by the United States Department of Agriculture:

United States Department of Agriculture - Civil Rights Action Team (CRAT), Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team, Feb. 1997.

United States Department of Agriculture - Civil Rights Implementation Team (CRIT), Implementation of the Civil Rights at Action Team Report: An Interim Progress Report, Sept. 1997.

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United States Department of Agriculture - Civil Rights Implementation Team (CRIT), Civil Rights at the United States Department of Agriculture, March 1998.

#### Point 1 - Dissolution of Farm Service Agency

In order for justice to prevail, FSA officials must be held accountable for their actions. To date, the USDA has not demanded accountability from the FSA. In fact, USDA has turned a blind eye and a deaf ear to the pleas and cries of black farmers who seek to stay alive under the programs administered by the FSA. Rather than fulfilling its statutory mandate, FSA's agenda appears to be the annihilation of the black family farm. Again, Mr. Chairman, I invite your attention to the fact that 98 percent of the black farmers have perished, or have been driven out of farming by USDA over the last 80 years. Truly, black farmers are an endangered species. We are close to becoming extinct unless you, your committee and this Congress take a specific interest and commitment to reversing USDA's discriminatory practices against black farmers. Today, USDA's acts create an appalling cancer on the fabric of our American heritage.

Since the USDA discrimination issue came to light in 1996, FSA, as an agency, has done absolutely nothing to identify and/or correct the discriminatory patterns, policies, and practices towards black farmers. While the *Pigford* settlement has provided the opportunity for black farmers to receive restitution for their

losses, the settlement does not call for the FSA to reform its current management practices. These practices are rooted in illegal discriminatory behavior. This behavior must be reversed. In entering his memorandum of opinion and order in the *Pigford* class settlement, the Honorable Judge Paul L. Friedman of the United States District Court for the District of Columbia, recognized that a very serious problem in FSA's County Committee System (CCS) existed. He stated from the bench that the resolution of the CCS problem was certainly necessary, but the resolution was within the jurisdiction of the legislature and not the court. Mr. Chairman, it is now before you and this honorable committee to correct this appalling system. This system adversely affects the lives of black citizens without any accountability to the Federal laws enacted for our very protection. What Congress giveth, USDA taketh away!

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USDA is the fourth largest agency in U.S. Government. The USDA had a 1998 program level budget of \$84 billion. How can these individuals, who are a part of the FSA CCS, and incidentally are not Federal employees, have the authority to control billions of dollars of Federal funding without answering to the laws of the land that protect a citizen's right to be treated fairly? USDA has made the CCS above the law. They are modern day untouchables!

It is ridiculous and insulting that a high ranking FSA official would refer to me as a "nigger" over the telephone and it is also shameful that a FSA county supervisor recently threatened a black Virginia farmer with a gun he had in his FSA office. Why haven't these people been removed from their FSA positions? Are they untouchable? Are they above the law? The legal problems don't stop there. In the FSA office while farmers were seeking technical assistance—it is shameful that in light of this *Pigford* settlement, many farmers stand in fear of retaliation from the FSA county supervisors and their cohorts. We cannot have an arm of the Federal Government that serves one race of people (white) while, at the same time, destroying another race (black). Yet under its current structure, that is exactly what is happening.

To elaborate, the USDA is a huge decentralized bureaucracy that administers several hundred federally assisted and federally conducted programs. USDA has more than 90,000 Federal and nearly 20,000 non-Federal employees throughout the world. CRAT Report (2/97) at 2. This large work force is disproportionately white! For example, based on the CRAT report (2/97), Farm Service Agency employed 6,407 people; 84.90 percent are white. Of its 6,407 employees, only 671 are black. Of these blacks, 295 occupy the lowest eight, pay grades and 262 occupy the grades 9–12. Of 8147 county commissioners, 37 are black which amounts to approximately 0.45 percent. At the highest end of the pay grade there is only one black male and one black female, while the remaining 87.5 percent are white. (See exhibit 1, attached hereto and incorporated herein for all purposes).

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Mr. Chairman, we believe that the perspectives of black farmers have not been taken in consideration in hiring for FSA officials. As a result, the black family farm experience has not been given appropriate attention while Federal funding was disbursed by FSA. To support this point, the CRAT Report (2/97) states:

"Legislation passed by Congress in 1994 to reorganize the USDA requires that the county committees be representative of the agricultural producers in the county or multi-county area. In counties, with relatively high concentrations of minority farmers without elected minority advisors to increase the awareness of and participation of minorities in FSA programs, including elections. Minority advisors are also intended to ensure that minority group problems and viewpoints are fully understood and considered in all FSA actions.

However, both FSA and minority and limited-resource farmers and ranchers recognize that the minority advisor system does not work. Without representation that has equal voting status on the county or area committees, the interests of minorities and limited-resource farmers and ranchers will not carry any weight."



CRAT Report (2/97) at 20.

Federal Civil Rights laws demand that we all must be treated equally and equitably. For some reason, this concept does not apply to the USDA, especially; the FSA. The CCS of the FSA suffers from severe corruption and racist practices that still exist since the USDA has not sufficiently and effectively implemented the changes outlined in the CRAT Report (2/97) which provided:

Recommendation 17 - Modernize the FSA State and county committee system by converting all county non-Federal FSA positions, including county executive directors, to Federal status; changing the committee selection process; and removing county committees from any farm loan determinations.

Recommendation 18 - Conduct a complete review of county committees and county office staffs to determine whether nepotism, conflict of interest, and/or discrimination in program delivery exist.

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Recommendation 19 - Establish a system to assure timely and equitable handling of loan application by county offices, including review and concurrence by FSA and Rural Development State Directors within 30 day of any adverse decision that affects a member of a defined socially disadvantaged group.

Recommendation 57 - Strengthen the training program for FSA county committee and county office staff on all programs, with special emphasis on civil rights issues and outreach responsibilities.

Since no positive changes have been made by the USDA pursuant to the CRAT Report's recommendations, Mr. Chairman, today I propose that the FSA county system be abolished. It simply does not work! Clean the slate and start over again. Start with all of the people, not just white people. And, with a clean slate, I call for the USDA to create a brand new system where preservation of equitable policies is an inherent priority in the disbursement of loans and other non-credit benefit program funding.

With this in mind, please consider that currently, the USDA disaster relief funding is also primarily administered through the FSA. In light of the summer drought of 1999 and Hurricane Floyd, we urge that until discriminatory problems that plague the FSA are rectified, all disaster relief funding for individual farmers be disbursed through another venue. One with procedures, processes, and technical assistance that will guarantee fair access to resources provided by the agency to protect farmers. Swift action in this regard is necessary to assist the black farmers to repair the damage to the viability and quality of this year's harvest.

#### Point 2- Land Reparation Due To Unlawful FSA Foreclosures

It is critically important to my constituents and me that this Committee and the USDA address the issue of land reparation. The USDA has illegally confiscated an estimated 1.5 million acres of black American farmland through foreclosure. These foreclosures would not have occurred if black farmers were allowed the same access to loans and other funding programs as similarly situated white farmers. FSA has not permitted equality in access to primary and preservation loan services. This land must be returned to the rightful owners, or black farmers will continue to suffer economic hardships and emotional stress over the loss of a precious part of their heritage.

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Regarding FSA farm foreclosures, Secretary Glickman stated in his March 19, 1997 testimony before this committee that, "[the USDA has] a new foreclosure policy. Now when a written civil rights complaint is lodged, the foreclosure is frozen wherever it is in the process until an independent review occurs and a judgement is made as to whether or not discrimination occurred." The question is, has this new policy been implemented and enforced? To my knowledge the policy has done nothing to ease the suffering of black farmers. Just last week, hundreds of my constituents received FSA foreclosure notices. These notices were all dated September 30, 1999, notwithstanding the fact that the farmers happen to be a part of the *Pigford* settlement. This violates the spirit as well as the letter of the Consent Decree as well as the promises of



Secretary Glickman.

### Point 3 - Accountability for the Office of Civil Rights

In the February CRAT report and according to Secretary Glickman in his testimony before this Committee on March 19, 1997, he stated, "[the] report listed 92 specific recommendations to improve the civil rights climate at the USDA. To carry them out, we have organized 33 implementation teams, involving approximately 300 people. Together they have logged tens of thousands of hours of work. We have long way to go, but we have started down the road to a solution." The question is why haven't these changes been implemented? Why the delay? Why does USDA continue to treat black farmers unfairly? Why does USDA continue to get away with discrimination against black farmers? Does anyone in Congress care about us?

The USDA, through its own February, 1997, Civil Rights Action Team (CRAT) Report (pages 47–48) and its March 1998, Civil Rights Implementation Team (CRIT) Report (pages 17–18), admitted that its Office of Civil Rights (OCR) was "effectively dismantled" in the early and mid 1980's. Specifically, the investigative unit was disbanded in 1983, which meant that there were no USDA investigators available to investigate the discrimination claims of farmers. Some formal complaints lay for more than 10 years in a room collecting dust. With no enforcement, FSA picked off black farmers like sitting ducks. In 1993, civil rights complaints were heard by the Office of Personnel, shortly thereafter, renamed the Office of Advocacy and Enterprise (OEA).

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The OEA specialized in Equal Employment Opportunity matters. Farmer complaints regarding program delivery discrimination were relegated to this office, although few of the personnel in that office had any knowledge of program discrimination issues. Each year from its re-establishment in 1993 to 1998, the responsibility for program delivery discrimination complaints was shuffled from one newly organized USDA subdivision to another "re-organized" subdivision. This included the creation of a Civil Rights Division of the Office of General Counsel (OCG) to be included in the review process. This lack of organization, consistency, expertise and responsiveness have left farmers not knowing where to complain, how to complain, and with little hope that their complaints would be acknowledged—let alone investigated—if they complained. While Washington shuffled, black farmers died in the fields of their farms.

When the complaints of black farmers were investigated, the investigation was not conducted in a professional manner. USDA Headquarters generally "rubber stamped" the initial discriminatory acts of the FSA agents who were denying and delaying the delivery of FSA programs to black farmers on the basis of race. With no time limits on USDA to complete its investigation of a discrimination complaint, farmers waited, sometimes for years, for USDA decisions on their complaints. Farmers were not advised that USDA did not possess a complaint processing procedure. It is ironic that although USDA did not have a legitimate working Civil Rights Office, such an office was fully funded. What happened to the money, Mr. Chairman?

While USDA took absolutely no steps to investigate complaints of discrimination, FSA foreclosure proceedings went forward. Many, and I would say, most of these foreclosures were based on a bias and highly discriminatory process. Many of the black farmers lost their farms to this corrupt system. These farms were then sold to local white farmers, never to be returned to their rightful owners. A finding of discrimination, after this point, does nothing to restore the land of African-American farmers who lost land that their parents and grandparents struggled to buy and keep in the "Jim Crow" south after Reconstruction. Jim Crow is as much a part of USDA as the eagle is to a silver dollar or a June bug to summer. This Jim Crow must go! Only you and this Committee can send Jim Crow to its proper burial. May I count on you of finally bury Jim Crow?

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The USDA Office of Civil Rights (OCR), under the leadership of Rosalind Gray, in my opinion, is in total disarray and is clearly dysfunctional. Change is very necessary and must start at the top. The top of USDA Office of Civil Rights is mean-spirited and uncaring. We cannot tolerate civil wrongs; we must take a stand to preserve civil rights! It is shameful that the staff of this office is totally insensitive to the citizens (socially disadvantaged farmers) it is supposed to represent. To date, there is approximately 250 black farmers who have opted out of the *Pigford* class action lawsuit. But yet, very few of the 250 cases have been settled. For those cases still in negotiation, this process has lasted more than six months.

In an effort to curtail this travesty, I propose that the Early Resolution Process (ERP) be used to get these cases out the door. The ERP was established to handle the backlog of complaints; however, for no apparent reason, this process was shut down after black farmers became eligible for restitution from the USDA. There is no reason why the ERP should have been set aside leaving black farmers hanging on a string. Furthermore, Ms. Gray not only discriminates against black farmers, she makes a personal effort to hurt the contributions of several lawyers who assist black farmers. Her acts are unlawful and an abuse of authority and position. This must be changed. Ms. Gray should do the honorable thing! The honorable thing is to resign! If she refuses to resign, I think she should be terminated!

#### Point 4 - Equitable Enlargement of the Time to File Pigford Claims

Lastly, I would like for this Committee to consider assisting black farmers by extending the October 12 deadline (which was this past Tuesday) for *Pigford* class members to file claims for relief under the Consent Decree. This extension is absolutely essential to avert a fatal miscarriage of justice. Currently, hundreds if not thousands of farmers are victims of Hurricane Floyd. They can neither return to their homes nor, in some cases, to their home cities, to collect personal records or records from their local USDA offices. Clearly, it will be a while before the farmers can reasonably expect to return to their farms. It was unreasonable to require the farmers—under this natural disaster—to have concentrated on the deadline of the Consent Decree when their entire farm, home, livestock and equipment have, in most cases, have been totally lost.

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Part of this horrific flood took place in the home state of your honorable member Congresswoman Eva Clayton. Mr. Chairman, more than 39 counties in North Carolina and several counties in South Carolina were declared disaster areas as a direct result of Hurricane Floyd. These damaged counties were significantly farming districts that contained the homes and farms of a substantial number of black farmers.

Mr. Chairman, through no fault of their own, these farmers are being excluded from participation in the *Pigford* class. How can we, as a civilized people, not show some mercy to these flood victims. If the President, Vice President, the Federal Emergency Management Agency, as well as state and local political, community, and business leaders contribute their time and effort to assist the farming communities, why hasn't the USDA taken the time to assist the farmers, particularly black farmers? black farmers have been victims of the worst flood in history and their misery is further compounded by being totally cut out of the *Pigford* class action when they need all the help they can receive. It would be an unforgivable sin not to enlarge the time to file under *Pigford*. I cannot imagine that God would or could forgive us if we do not help out our fellow brothers during this horrible time of their lives. Also, recall that the farmers of the U.S. Virgin Islands, have survived three hurricanes and heaven only knows where their records are. Yet, these black farmers are trying to comply, at great odds, with the Order of the Court. Give them a fair chance to achieve justice.

Furthermore, there remain numerous pockets of black farmers throughout America who have yet to receive the notice published in this case. The notice provision under Section 4 of the Consent Decree has been nothing short of a complete failure. While the notice satisfied the face of the law, it did not reach the eyes and ears of the black farm family. The media that reaches most blacks was not even utilized by the

notice. Thus, these farmers lost out altogether since proper notice was not given and more time has not been obtained to file their claims. As you may have learned, there were several farmers who attended the hearing held by the Congressional Black Caucus on September 18, 1999, who—for the first time—were able to secure counsel to assist in preparing their claims. Their cases were not adequately prepared to simply comply with an arbitrary deadline. This is not fair, adequate or reasonable!

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Lastly, in order to satisfy the essential elements of the claim form in the Consent Decree, the farmer must provide certain official records and documentation. This evidence is often in the hands of USDA and some of your agents have refused to provide the farmer with the very evidence needed to prove their discrimination. This was and still is totally unfair. The USDA should not be permitted to prevail against the farmer by withholding the very lifeblood needed to make a viable claim. Only with the enlargement of time may these issues be properly addressed and injustice averted. Only you can help. It is not too late for you to save the "40 acres" that Judge Friedman so eloquently spoke of in his Memorandum Opinion. Will you help us, Mr. Chairman?

#### CONCLUSION

To conclude, Mr. Chairman, the USDA's Farm Service Agency (FSA) is broken and must be fixed. To fix FSA, it should be abolished and reorganized from top to bottom. The CCS must be corrected consistent with the CRAT and CRIT Reports.

The USDA's Office of Civil Rights is utterly dysfunctional and must be fixed. This should be done by appointing a new director. Thirdly, the foreclosures must be stopped and stopped immediately. Why should blacks follow their passion and work a lifetime just to have FSA take their farms by unlawful and unconscionable means? Lastly, the enlargement of time for filing claims under *Pigford* is a must if we are to give farmers a fair chance. A reasonable extension of time must be granted.

Mr. Chairman, once again, I appreciate the time you have given me to express the concerns of the National Black Farmers Association regarding the USDA Civil Rights programs and responsibilities. Keep in mind, it is important to remember this historical note: Black Americans have long endured the vestiges of discrimination after the horrible bondage of almost 300 years of slavery where black Americans provided free labor to build America's wealth. Mr. Chairman, we ask for your support to allow justice to prevail, to correct the wrongs, and to protect and preserve equal opportunity for all.

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"The Official Committee record contains additional material here."