



Testimony

Before the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate

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)

For Release on Delivery
Expected at
9:00 a.m. EDT
Tuesday
Sept. 12, 2000

U.S. DEPARTMENT OF AGRICULTURE

This report discusses USDA's
inadequacies in handling
Discrimination Complaints.

Problems in Processing Discrimination Complaints

Statement of Robert E. Robertson,
Associate Director, Food and Agriculture Issues,
Resources, Community, and Economic Development Division



GAO

Accountability * Integrity * Reliability

Mr. Chairman and Members of the Committee:

We are here today to discuss the U.S. Department of Agriculture's (USDA) civil rights program and, more specifically, the problems that have contributed to delays in its processing of discrimination complaints. Our statement is based on a report we issued last year, which discussed these issues in detail.¹ In that report, we found that despite efforts to process discrimination complaints more expeditiously, USDA was not processing these complaints in a timely manner. We identified a number of long-standing problems that were impeding USDA's efforts to improve its timeliness, including

- continuing management turnover and reorganizations in USDA's Office of Civil Rights (OCR);
- inadequate staff and managerial expertise;
- a lack of clear, up-to-date guidance and procedures; and
- poor working relationships and communication within OCR and between the office and other USDA entities.

We also noted that the Department was not consistently using alternative dispute resolution techniques, such as mediation, to address workplace and other disputes before they become formal employment complaints. Federal law encourages the use of alternative dispute resolution in resolving federal workplace and other disputes.

We made four recommendations to the Secretary of Agriculture to address the problems identified in our report. In commenting on a draft of our report, the Director, OCR, stated that the management weaknesses we cited were real and that our recommended changes were necessary. Furthermore, she said that USDA was actively moving toward the full adoption and implementation of our recommendations. In preparation for this

¹*U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints* (GAO/RCED-99-38, Jan. 29, 1999).

hearing, we reviewed the status of USDA's implementation of our recommendations. We found that USDA has not fully implemented any of the four recommendations. USDA officials note, however, that the agency has drafted a long-term improvement plan to systematically address problems in the program. They expect to begin implementing the plan in October 2000.

Background

USDA's civil rights program has long been hamstrung by a variety of problems and internal discord. The years prior to our report's issuance in 1999 had been a period of upheaval for civil rights at USDA. During that period, increasing numbers of employees had filed discrimination complaints, and a minority farmer class action suit charged the Department with discrimination in lending and other farm programs.

In response to allegations of discrimination, the Secretary of Agriculture appointed the Civil Rights Action Team in December 1996 to review civil rights issues and develop recommendations as appropriate. In February 1997, after holding "listening sessions" with USDA's customers and employees nationwide, the action team issued its report. Among other things, the report noted that (1) USDA's civil rights program had been in a persistent state of chaos because of numerous changes since the 1980s, (2) USDA's process for resolving complaints about the delivery of program benefits and services was a failure, and (3) USDA's system for addressing employment discrimination complaints was untimely and unresponsive. The report made 92 recommendations to address problems in four major areas—organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices. Shortly after the report was issued, the Secretary established the Civil Rights Implementation Team to implement the report's recommendations.

In March 1997, USDA consolidated its departmental civil rights functions into a new Office of Civil Rights.² While the new office had overall responsibility for civil rights programs, USDA's agencies retained their own civil rights offices that were responsible for ensuring agency-level compliance with civil rights laws and regulations.

Several Problems Hampered USDA's Ability to Process Complaint Cases in a Timely Manner

It was against this backdrop of change that we conducted our 1999 review on USDA's processing of discrimination complaints. On the basis of the most current information available to us at the time, we reported that OCR was not processing discrimination complaints within its own deadlines for program discrimination complaints or within the requirements of the Equal Employment Opportunity Commission for employment complaints.³

We identified the following factors as impediments to USDA's efforts to improve processing timeliness: continuing management turnover and reorganizations in OCR; inadequate staff and managerial expertise; lack of clear, up-to-date guidance and procedures; and poor working relationships and communication within OCR and between the office and other USDA entities. Furthermore, we noted that USDA and its agencies were not consistently using alternative dispute resolution techniques with a neutral third party to address workplace disputes. We made recommendations to the Secretary of Agriculture to address most of these problems.

²Before the consolidation, departmental civil rights responsibilities were divided between two offices—one office was responsible for employment and program complaints and the other for all remaining civil rights issues, including developing civil rights policy. In addition, most USDA agencies had their own civil rights offices that performed some complaint-processing functions.

³Most of this information was as of October 1, 1998—it was taken from reports from OCR's database on dealing with the timeliness of program and employment complaints.

Management Turnover and Reorganizations Created Instability

Since October 1990, the various incarnations of OCR had eight different directors. Similarly, the Program Investigation Division had six chiefs between 1991 and 1998, and the Employment Complaints Division had eight chiefs from 1993 through 1998.⁴ To add to this instability, the Department's civil rights program had been reorganized three times since 1993, resulting in numerous changes at the division and staff levels. Civil rights officials and the USDA Office of Inspector General's reports cited a number of examples that demonstrated how ongoing management turnover and reorganizations had affected the quality of OCR's work and contributed to poor morale and low productivity.

In the 19 months since our report was issued, OCR has continued to experience a high level of management turnover. According to USDA's Assistant Secretary for Administration, OCR's most recent reorganization was intended to address this issue and the new Deputy Director has drafted a long-term improvement plan that addresses many of the personnel concerns within OCR. However, it is too soon to tell whether this initiative will effectively resolve the many concerns that the Inspector General and we have identified because implementing the draft plan will require a long-term effort. Some of the key initiatives, particularly training and staffing, depend on additional funding that USDA plans to request in its fiscal year 2002 budget.

Inadequate Expertise Contributed to Processing Delays

The Civil Rights Action Team's report noted that USDA employees generally viewed the Department's civil rights offices as a "dumping ground" for many staff who had settled their Equal Employment Opportunity complaints. The issue of inadequate staff expertise surfaced throughout our review, and we cited several examples of this in our report. The Acting Assistant Secretary at the time cited inadequate staff expertise as an initial obstacle in resolving the existing backlog of program complaints and the lack of qualified staff as a significant contributor to delays in processing employment complaints. She

⁴These positions were held in either a permanent or an acting capacity.

noted that while many new staff had been hired, many individuals still lacked the necessary skills for their positions. To address this issue, she and the Director, OCR, developed a list of 36 staff members (almost a third of the office's staff) whom she described as being inappropriately placed in their current positions. As of mid-November 1998, OCR was working with USDA's personnel office to develop procedures for placing these individuals in other positions within USDA; plans were to refill all 36 positions with qualified individuals.

GAO's Recommendation: We recommended that USDA establish target dates and ensure that they are met for having the Director, OCR, implement the office's plans to relocate the OCR employees identified as lacking the necessary skills and fill the vacated positions with employees who have appropriate civil rights expertise. Additionally, we recommended that USDA assess the training needs of OCR employees and implement a program to meet current and future training needs.

Status of USDA's Implementation: USDA did not implement its plan to relocate the 36 staff members. Instead, USDA officials told us that they plan to address personnel problems through (1) a systematic assessment of the skills needed for OCR, (2) the implementation of training programs to properly educate employees, and (3) the use of performance evaluations that would provide the basis for taking appropriate action in regard to employees who are not performing at acceptable levels. These actions are outlined in OCR's draft long-term improvement plan.

Clear, Up-to-Date Guidance and Procedures Were Lacking

USDA did not have clear, current guidance and procedures that would govern the receipt, handling, and resolution of its program and employment complaints. Such guidance and procedures are important in promoting departmentwide compliance with, and standardization and effective enforcement of, civil rights statutes and Equal Employment Opportunity Commission regulations. However, USDA had not issued regulations that establish program policies and prescribe procedures for either type of

complaint. In addition, USDA's operations manuals, which provide more detailed and technical guidance and instructions than the regulations, did not accurately reflect existing processes for program and employment complaints.

GAO's Recommendation: We recommended that USDA establish target dates and ensure that they are met for (1) issuing departmental regulations for program and employment complaint processes and (2) revising and/or issuing operations manuals so that they accurately reflect departmental regulations. We also recommended that USDA develop procedures to ensure that departmental regulations and manuals are kept current to reflect organizational, policy, or procedural changes that can affect the implementation of USDA's civil rights program.

Status of USDA's Implementation: In March 1999, USDA issued departmental regulations that addressed the processing of both employment and program complaints. OCR is in the process of issuing two operations manuals and several standard operating procedures for implementing these regulations. In particular, OCR's program complaint section has finalized 9 of 10 standard operating procedures, while the employment complaint section has drafted, but not finalized, its procedures.

Inadequate Working Relationships and Communication Complicated Efforts to Process Complaints

Difficulties in establishing effective working relationships and communication between OCR and some USDA agencies, between OCR and the Office of General Counsel, and within OCR itself had hindered efforts to process complaints more efficiently. Our 1999 report cited a number of specific examples demonstrating this problem:

- OCR's implementation of the program complaint process was hindered by agencies' disagreement with OCR about their role in the program complaint process and by inadequate OCR guidance.

- OCR continued to experience difficulties in developing effective working relationships with the Office of General Counsel; this contributed to inefficiencies in processing program complaints. In particular, problems were cited regarding lengthy General Counsel reviews of draft OCR decisions. The Office of General Counsel attributed these delays to the fact that many of OCR's draft decisions needed extensive revisions.
- Inadequate communication within OCR contributed to low morale and productivity. According to a 1998 Office of Inspector General report, many Program Investigation Division employees said that they were never consulted when decisions were made and that this lack of consultation resulted in the establishment of timetables that they viewed as unreasonable and unattainable.

GAO's Recommendation: We recommended that USDA establish procedures for ensuring more effective consultation and communication by OCR with agency civil rights offices, the Office of General Counsel, and other affected entities, particularly in implementing new processes, policies, and procedures that affect these organizations.

Status of USDA's Implementation: According to USDA's Assistant Secretary for Administration, OCR meets regularly with a committee of agency civil rights directors. While we did not evaluate the extent to which these meetings have resulted in improved working relationships and communication, a recent Office of Inspector General report found that problems continue to exist.

USDA's Use of Alternative Dispute Resolution in Addressing Workplace and Other Disputes Was Sporadic

USDA did not consistently use alternative dispute resolution techniques to address workplace and other disputes. These techniques, which typically involve intervention or facilitation by a neutral third party, range from more formal approaches (e.g., management review boards and arbitration) to less formal techniques, such as mediation, where a neutral third party helps craft a solution to the dispute. When used

early in a dispute, before positions solidify, mediation can resolve workplace disputes before they become formal complaints. By reducing the number of formal complaints, OCR would be relieved of some of the burdens imposed by its large caseload and could focus on streamlining its employment complaint process to make it more timely.

In May 1996, the Secretary of Agriculture directed each USDA agency or mission area to develop, by November 30, 1996, an alternative-dispute-resolution-based conflict resolution program outside of the formal employment complaint process. However, at the time of our report, USDA had only five alternative dispute resolution programs, which covered (1) all employees in 6 of USDA's 17 agencies, (2) employees in two regions of one agency, and (3) some employees in a department-level office. In March 1998, USDA established the Conflict Prevention and Resolution Center to coordinate its alternative dispute resolution and conflict prevention efforts, which was not fully funded or staffed at the time of our report.

In addition, OCR's operations manual for program complaints called for complainants to be offered mediation early in the complaint process. However, at the time of our review, mediation was not being offered as part of the program complaint process.

GAO's Recommendation: We recommended that USDA develop and implement a program for using alternative dispute resolution early in the program complaint process.

Status of USDA's Implementation: USDA's regulations for processing program complaints do not include the use of alternative dispute resolution, nor has OCR used alternative dispute resolution in the program complaint process. OCR officials said that they plan to examine the potential use of alternative dispute resolution in the program complaint process. However, they noted that alternative dispute resolution may not always be effective for resolving certain types of program complaints.

In conclusion, our 1999 report found that USDA's civil rights program had a long way to go before it achieved the Secretary's stated goal of making USDA the civil rights leader in the federal government. In recent months, USDA has taken some initial steps to address the Department's chronic problems in addressing civil rights complaints. Unfortunately, these plans will require long-term implementation, including additional funding for hiring and training personnel. As a result, it appears as if the Secretary's goal, at least in the short term, remains elusive.

Mr. Chairman, this concludes our formal statement. If you or other Members of the Committee have any questions, we will be pleased to respond to them.

Contact and Acknowledgments

For future contacts regarding this testimony, please contact Robert E. Robertson on (202) 512-5138. Individuals making key contributions to this testimony include Jerilynn Hoy, Richard Cheston, Rosellen McCarthy, and Jacqueline Cook.

(150293)

Orders by Internet

For information on how to access GAO reports on the Internet, send an e-mail message with "info" in the body to

info@www.gao.gov

or visit GAO's World Wide Web home page at

<http://www.gao.gov>

To Report Fraud, Waste, and Abuse in Federal Programs

Web site: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: 1-800-424-5454