

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)

October 2008

# U.S. DEPARTMENT OF AGRICULTURE

## Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights





Highlights of [GAO-09-62](#), a report to congressional requesters

## Why GAO Did This Study

For decades, numerous federal reports have described serious weaknesses in USDA's civil rights programs—in particular, in resolving discrimination complaints and providing minority farmers with access to programs. In 2002, Congress authorized the position of Assistant Secretary for Civil Rights (ASCR) at USDA to provide leadership for resolving these long-standing problems. GAO was asked to assess USDA's efforts to (1) resolve discrimination complaints, (2) report on minority participation in farm programs, and (3) strategically plan its efforts. GAO also reviewed experiences of other federal agencies to develop options for addressing the issues. This report is based on new and prior work, including analysis of ASCR's discrimination complaint management, strategic planning, and interviews with officials of USDA and other agencies, as well as 20 USDA stakeholder groups.

## What GAO Recommends

GAO recommends that USDA improve its efforts to resolve discrimination complaints, data reliability, strategic planning, and explore establishing an ombudsman. Also, Congress may wish to consider establishing a statutory performance agreement and an oversight board for ASCR. USDA agreed with most of GAO's recommendations but raised concerns about the options GAO presented to Congress.

To view the full product, including the scope and methodology, click on [GAO-09-62](#). For more information, contact Lisa Shames at (202) 512-3841 or [shamesl@gao.gov](mailto:shamesl@gao.gov).

# U.S. DEPARTMENT OF AGRICULTURE

## Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights

### What GAO Found

ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing backlogs of complaints. The credibility of USDA's efforts has been and continues to be undermined by ASCR's faulty reporting and disparities in ASCR's data. Even such basic information as the backlog of complaints is subject to wide variation in ASCR's reports to the public and Congress. For example, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to manageable levels drew a questionable portrait of progress. By July 2007, ASCR's backlog had surged to 885 complaints and ASCR officials were in the midst of planning to hire attorneys to address that backlog. Also, some steps ASCR had taken to speed up its work may have sometimes been counterproductive and adversely affected the quality of its work. ASCR does not have a plan to correct these problems.

USDA published three annual reports on minority farmers' participation in farm programs, as required by law. However, USDA considers much of its data to be unreliable because they are based on employees' visual observations about participants' race and ethnicity that may not be correct. USDA states that it needs the Office of Management and Budget's (OMB) approval to collect more reliable data. ASCR started to seek OMB's approval in 2004 but, as of August 2008, had not followed through to obtain approval.

ASCR's strategic planning does not address key steps needed to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees. For example, strategic planning should be based to a large extent on the perspectives of stakeholders, but stakeholders' views are not explicitly reflected in ASCR's plan. Also, ASCR could better measure performance to gauge its progress. ASCR's strategic plan also does not link funding with anticipated results or discuss the potential for using performance information for identifying USDA's performance gaps.

The experience of other agencies in addressing significant performance issues provides important insights and options that are relevant for addressing certain long-standing ASCR issues. First, Congress required executives at three federal agencies to be subject to statutory performance agreements. Such an agreement for ASCR could be used to achieve specific expectations by providing additional incentives and mandatory public reporting. Second, Congress has authorized oversight boards for a variety of purposes, including one for the Internal Revenue Service to oversee performance. A USDA civil rights oversight board could be authorized to oversee USDA's activities to identify weaknesses that need to be addressed and to provide transparency. Third, an effective USDA ombudsman—one who is independent, impartial, fully capable of conducting meaningful investigations and who can maintain confidentiality—could assist in resolving civil rights concerns at USDA. USDA has some authority to establish an ombudsman but has not done so.

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**Abbreviations**

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| ADR  | Alternative Dispute Resolution                     |
| ASCR | Office of the Assistant Secretary for Civil Rights |
| EEOC | U.S. Equal Employment Opportunity Commission       |
| GS   | general schedule                                   |
| IRS  | Internal Revenue Service                           |
| OGC  | USDA Office of General Counsel                     |
| OIG  | USDA Office of Inspector General                   |
| OMB  | Office of Management and Budget                    |
| USDA | U.S. Department of Agriculture                     |

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United States Government Accountability Office  
Washington, DC 20548

October 22, 2008

### Congressional Requesters

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

Notable among these many reports was the 1997 report of the Secretary of Agriculture's Civil Rights Action Team.<sup>1</sup> The Secretary's team—composed of senior USDA officials—reported on USDA's customers' and employees' concerns about patterns of discrimination in USDA programs and operations, as well as minority farmers' concerns that USDA had played a part in the severe decline in minority farm ownership. Among other things, the report noted that USDA's civil rights program had been in a “persistent state of chaos” because of numerous changes since the 1980s and declared that USDA's process for resolving complaints about the delivery of program benefits and services was a “failure.” The report made many recommendations to address USDA's organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices.

In addition, USDA has been and continues to be involved in large class-action civil rights lawsuits claiming discriminatory behavior on the part of USDA. In 1999, in the case of *Pigford v. Glickman*, a settlement agreement was reached between USDA, the Department of Justice and African-American farmers. In approving the consent decree settling the case, the

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

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court stated that for decades USDA had discriminated against African-American farmers by denying or delaying their applications for farm loan and other credit and benefit programs. Under the consent decree, as of April 7, 2008, more than 15,400 claims had been approved for payments and benefits totaling about \$972 million, and almost 7,000 claims had been denied. However, about 74,000 people requested permission from the court to file a claim after the filing deadline of October 12, 1999. Except for a relatively few extraordinary cases, the court denied the claims received after the filing deadline as not timely. In addition, USDA is currently defending itself against similar lawsuits brought by other customers—Native American, Hispanic, and women farmers—alleging discrimination in the delivery of farm programs and lending.<sup>2</sup>

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

In 2002, we reported that USDA's Office of Civil Rights continued to face significant problems in processing discrimination complaints in a timely manner.<sup>3</sup> We reported that the office had made only modest progress in

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<sup>2</sup>These cases include *Keepseagle v. Schafer*, Civil Action No. 99-03119 (D.D.C.); *Garcia v. Schafer*, Civil Action No. 00-02445 (D.D.C.); and *Love v. Schafer*, Civil Action No. 00-02502 (D.D.C.).

<sup>3</sup>GAO, *Department of Agriculture: Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers*, [GAO-02-942](#) (Washington D.C.: Sept. 20, 2002).

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processing complaints from customers and employees because (1) it had not established time frames for resolving complaints and (2) it had not addressed its severe human capital problems. For example, the office had long-standing problems in hiring and retaining staff with the right mix of skills, and severe morale problems were exacerbating problems with staff productivity and retention. At that time, we recommended that USDA establish time frames for all stages of the complaint process and develop an action plan to address its staff turnover and morale problems. In commenting on our 2002 report, USDA stated that it had a long-term improvement plan that would address the human capital problems and agreed to formalize time frames for all phases of the process.

As requested, this report examines ASCR's (1) progress in resolving discrimination complaints, (2) reporting on minority participation in USDA programs, and (3) strategic planning for ensuring USDA's services and benefits are provided fairly and equitably. The report also reviews the experiences of other federal agencies and identifies options for addressing USDA's long standing problems. Also, on May 14, 2008, we testified on these matters before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives.<sup>4</sup> Subsequently, on June 18, 2008, Congress passed the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which contains various provisions that address USDA civil rights matters and minority farmers' participation in USDA's programs.

This report is based on new information and previously issued reports. To assess ASCR's efforts to resolve discrimination complaints, we conducted interviews with officials of ASCR, USDA's Office of Inspector General (OIG), USDA's agency-level civil rights offices, and the Equal Employment Opportunity Commission; examined USDA documents about efforts to resolve discrimination complaints; and analyzed data provided by ASCR. To evaluate USDA's reporting on minority participation in USDA's programs, we reviewed USDA reports and interviewed officials of USDA, community-based organizations, and minority groups. To analyze ASCR's strategic planning, we examined ASCR's strategic plan and other relevant planning documents, and interviewed USDA officials and representatives of community-based organizations and minority groups, among others. We also considered GAO's guidance and reporting on results-oriented

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<sup>4</sup>GAO, *U.S. Department of Agriculture: Management of Civil Rights Continues to Be Deficient Despite Years of Attention*, [GAO-08-755T](#) (Washington, D.C.: May 14, 2008).

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management.<sup>5</sup> To assess the reliability of data provided by ASCR, we compared various sources of ASCR data and interviewed ASCR officials. We found ASCR data to be unreliable and made recommendations accordingly. To identify options for addressing USDA's long standing problems, we reviewed our experience in addressing the problems of high-risk, underperforming agencies,<sup>6</sup> as well as our reporting on results-oriented management. We conducted this performance audit from December 2006 through September 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. While our efforts were impeded by delays in gaining access to documents, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additional details on our scope, methodology, and access to USDA records is included in appendix I.

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## Results in Brief

ASCR's difficulties in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of discrimination complaints. At a basic level, the credibility of USDA's efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data. Even such basic information as the number of discrimination complaints is subject to wide variation in ASCR's reports to the public and Congress. For example, fiscal year 2005 data that ASCR reported to the public and to a congressional subcommittee varied by hundreds of complaint cases, and data provided to us on its complaint cases varied from one report to another. Moreover, ASCR's public claim in July 2007 that it had successfully reduced a backlog of about 690 discrimination complaints in fiscal year 2004 and held its caseload to

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<sup>5</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington D.C.: June 1996); *Agencies' Strategic Plans Under GPR: Key Questions to Facilitate Congressional Review*, [GAO/GGD-10.1.16](#) (Washington, D.C.: May 1997); *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, [GAO/GGD-10.1.20](#) (Washington, D.C.: April 1998); and *Results-Oriented Government: GPR Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004).

<sup>6</sup>For example, see GAO, *High-Risk Series: An Update*, [GAO-05-207](#) (Washington D.C.: January 2005).



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manageable levels drew a questionable portrait of progress. By July 2007, ASCR had another backlog on hand, and this time the backlog had surged to an even higher level of 885 complaints. In fact, before ASCR made its report to the public in 2007, ASCR officials were planning to hire additional attorneys to address the backlog of complaints, including some complaints that ASCR was holding dating from the early 2000s that it had not resolved. Altogether, these conditions could undermine public confidence in USDA's upholding of civil rights. In addition, some steps that ASCR had taken to speed up its investigations and decisions on complaints may have sometimes been counterproductive and adversely affected the quality of its work. For example, an ASCR official stated that some employees' complaints had been addressed without resolving basic questions of fact, raising concerns about the integrity of the practice. ASCR does not have a plan to correct the problems we identified.

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

ASCR's strategic planning is limited and does not address key steps needed to achieve its mission. While ASCR has articulated a compelling strategic goal—to ensure USDA provides fair and equitable services to all customers and upholds the civil rights of its employees—its implementation will require further development. For example, strategic

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planning is based to a large extent on the perspectives of stakeholders. However, ASCR's plans do not reflect ASCR's stakeholders' interests, which include such things as having USDA improve the delivery of farm programs to facilitate access by underserved producers. While ASCR's stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR's strategic planning does not address the diversity of USDA's field staff. In addition, ASCR could better measure performance to gauge progress and it has not yet started to use performance information for identifying USDA performance gaps. For example, ASCR measures USDA efforts to ensure USDA customers have equal and timely access to programs by reporting on the numbers of participants at USDA workshops rather than measuring the results of its outreach efforts on access to benefits and services. ASCR's plans do not link funding with anticipated results or discuss the potential for using performance information for identifying USDA's performance gaps. Moreover, ASCR's plans do not identify the most critical USDA agency functions that relate to ASCR's strategic goals.

The experience of other federal agencies provides important insights and options that are relevant to addressing long-standing ASCR issues. Based on prior experience in improving federal agencies' performance, we identified three options that are relevant for consideration. The first two would require action by Congress, whereas the third could benefit from USDA's attention, although effective implementation may also require congressional action.

- Option one: Congress could require USDA's Assistant Secretary for Civil Rights to be subject to a statutory performance agreement. Congress has previously required certain executives of the Departments of Education and Homeland Security and the U.S. Patent Office to be subject to statutory performance agreements. For example, the executive performance agreement required of the Chief Operating Officer of the Department of Education's Office of Federal Student Aid was a feature that Congress required and that assisted in turning around that organization's poor performance. The expectations in the Chief Operating Officer's performance agreement with the Secretary of Education are made public as is the annual progress toward those expectations. In 2005, we removed the Office of Federal Student Aid from our high-risk list and reported that this office had made sustained performance improvements—it had succeeded in achieving unqualified financial opinions on its financial statements over 3 fiscal years, made progress toward integrating its information systems, reduced the rate of loan defaults, and addressed

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its human capital challenges. Such an agreement for ASCR could assist in achieving specific expectations by providing additional incentives and mandatory public reporting.

- Option two: Congress could authorize an oversight board for USDA civil rights activities. Oversight boards have been used for a wide variety of purposes by the federal government, including oversight of public accounting, intelligence matters, civil liberties, and drug safety. For example, in 1998, Congress established an oversight board for the Internal Revenue Service to oversee the agency's performance. The Internal Revenue Service Oversight Board operates much like a corporate board of directors, tailored to fit the public sector. The board provides independent oversight of IRS administration, management, conduct, and the direction and supervision of the internal revenue code. At USDA, a civil rights oversight board could be authorized to oversee USDA's civil rights activities, to identify weaknesses that need to be addressed, and to provide transparency.
- Option three: The Secretary could explore establishing an ombudsman office to address customer and employee concerns about civil rights, including determining whether legislation is a prerequisite for an ombudsman to be effective at USDA. Many agencies have already created ombudsman offices for addressing employees' concerns as authorized by the Administrative Dispute Resolution Act, although USDA is not among them. Ombudsmen can provide an alternative means of resolving employees' disputes, and can also handle a wide range of concerns—including, for example, citizens' concerns about access to programs, systemic management problems, policy shortcomings, and workplace issues. Ombudsmen who handle concerns and inquiries from the public—external ombudsmen—help agencies be more responsive to the public through impartial and independent investigation of citizens' complaints, including from people who believe their concerns have not been dealt with fairly and fully through normal channels. ASCR staff developed a preliminary background discussion paper about the feasibility of an ombudsman function at USDA but stated that more development of the concept would be needed to design an effective USDA ombudsman function. It also noted that for an ombudsman office to be minimally effective, its legitimacy and authority must be inherent, clear, and unequivocal. An ombudsman who is independent, impartial, fully capable of conducting meaningful investigations and who maintains confidentiality could assist in resolving civil rights concerns at USDA.

To provide for fundamental improvements in the performance of USDA's Office of the Assistant Secretary for Civil Rights, we suggest that Congress

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consider (1) making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement and (2) establishing an agriculture civil rights oversight board. We are also making recommendations to the Secretary of Agriculture aimed at improving USDA's efforts to resolve discrimination complaints, including the time frames USDA requires for resolving complaints; the accuracy, completeness and reliability of ASCR's discrimination complaint databases; and the investigation of and decision making on civil right complaints. We are also recommending that the Secretary improve the collection of accurate data on race and ethnicity for reporting on minority farmers' participation in USDA programs, improve USDA's civil rights strategic planning, and give further consideration to establishing a USDA civil rights ombudsman office.

In commenting on a draft of this report, the Secretary of Agriculture stated that USDA acknowledges many of the problems identified in the report, but also said that the report does not duly recognize USDA's significant progress. We believe the report does recognize USDA's actions, plans, and progress; and it places them in context considering USDA's performance shortcomings. Concerning our recommendations, USDA generally agreed with 5 of our 6 recommendations, including those to prepare and implement an improvement plan for resolving discrimination complaints; to improve the quality of ASCR's databases on customer and employee complaints; to work to obtain approval to collect the data necessary for reliable reporting on race and ethnicity; to develop results oriented, departmental level civil rights strategic plan; as well as to explore the establishment of an ombudsman office. However, USDA disagreed with our recommendation to obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of USDA's investigation of and decisions on civil rights complaints. Given the substantial evidence of civil rights case delays and questions raised in the report about the integrity of the USDA's civil rights casework, we believe that this recommendation remains valid and necessary to restore confidence in USDA's civil rights decisions. We also clarified this recommendation to state that this examination should include a sample of prior investigations and decisions.

The Secretary also disagreed with our two options for congressional consideration. Concerning the establishment of a statutorily-mandated performance agreement for the Assistant Secretary, the Secretary stated, in part, that this additional statutory change would usurp the Secretary's authority. We disagree. The specific terms of a statutory performance agreement would be developed by the Secretary for the Assistant Secretary's activities and, as such, it would not limit the authority of the

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Secretary to take or direct action. Concerning the establishment of a USDA civil rights oversight board, the Secretary stated that it would be unnecessarily bureaucratic and delay progress. While we understand such concerns, a well-operated oversight board can be the source of timely and wise counsel to help raise USDA's civil rights performance. Taken together, these options would provide a level of transparency that has been lacking in USDA civil rights matters—transparency that provides compelling evidence to help direct improvement efforts and better demonstrate USDA's accomplishments.

USDA's written comments appear in appendix II.

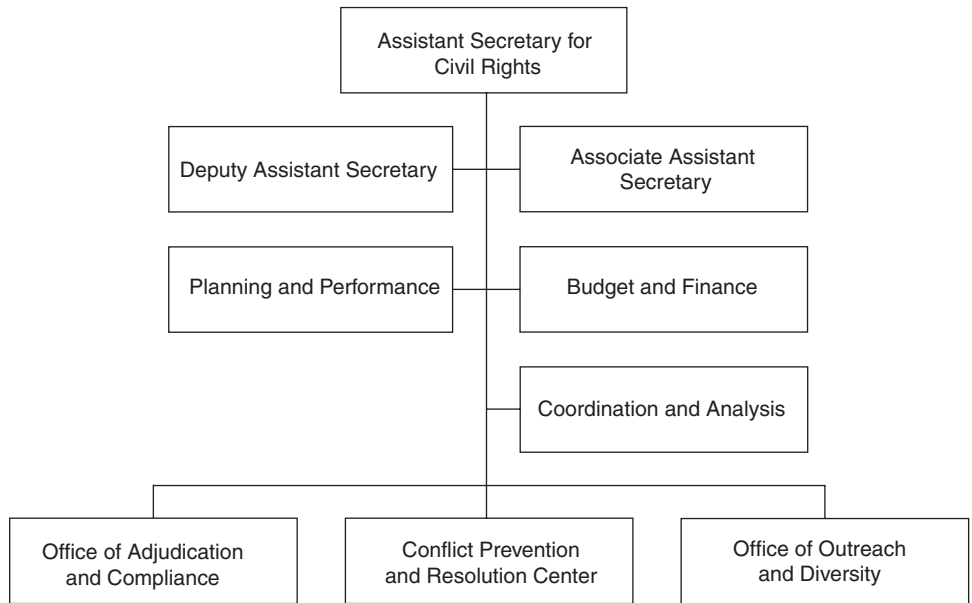
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## Background

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

USDA's ASCR was created in 2003. For fiscal year 2007, ASCR had 129 staff and an annual budget of about \$24 million. ASCR is composed of multiple offices, some of which were in existence within USDA prior to the creation of ASCR.

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



Source: USDA.

ASCR’s Office of Adjudication and Compliance (formerly the Office of Civil Rights) is to resolve customers’ and employees’ complaints of discrimination and to conduct civil rights compliance reviews of USDA’s agencies. The Conflict Prevention and Resolution Center is to provide guidance to USDA agencies on using alternative dispute resolution (ADR) methods to resolve conflicts. The Office of Outreach and Diversity is to develop ASCR’s diversity initiatives, and it oversees the *1890* and *1994 Programs*. The *1890 Program* offers educational scholarships to people seeking degrees at one of the 18 historically black land-grant institutions and requires 1 year of USDA service for each year of financial support. Similarly, through the *1994 Program*, ASCR is to set up a comparable program with the 33 tribal colleges and universities designated as 1994 land-grant institutions. Within ASCR’s Office of Outreach and Diversity, the Office of Outreach is to provide coordination for USDA agencies on outreach efforts and produce a required annual report on the rates at which minorities participate in USDA programs.

The first USDA Assistant Secretary for Civil Rights—Vernon Parker—was sworn in on April 1, 2003, and served until resigning in January 2006. At the outset of his tenure, over a 4-month period, ASCR staff developed 13 initiatives to guide ASCR’s actions through fiscal year 2004 and beyond.

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These initiatives (see appendix III) were intended to address the most immediate problems occurring at the time and concentrated on eliminating backlogs of unresolved discrimination complaints and taking certain steps to reduce complaints in the future. Most notably, ASCR established annual “partners meetings” to create, for the first time, a substantive and ongoing dialogue between USDA and representatives of community-based organizations as a basis for improving the delivery of USDA benefits and services. The second and current Assistant Secretary for Civil Rights, Ms. Margo McKay, was sworn in on August 21, 2006. Assistant Secretary McKay’s priorities and initiatives are also included in appendix III. These initiatives include, among other things, a diversity forum to promote a diverse and inclusive workforce within USDA.

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## Problems Resolving Discrimination Complaints Persist

The credibility of USDA’s efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data.<sup>7</sup> For example, fiscal year 2005 data that ASCR reported to the public and to a congressional subcommittee varied by hundreds of complaint cases, and data reported to GAO on its complaint cases varied from one report to another. In addition, some steps that ASCR had taken to speed up its investigations and decisions on complaints may have sometimes been counter productive and adversely affected the quality of its work. These ongoing problems are a continuation of the inadequate conditions that we and USDA’s OIG have reported for over a decade. In June 2008, Congress passed the 2008 Farm Bill, which, among other things, states that it is the sense of Congress that all pending claims and class actions brought against USDA by socially disadvantaged farmers and ranchers should be resolved in an expeditious and just manner.

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## ASCR Reporting on Backlogs of Discrimination Complaints Has Been Faulty and Contains Disparities

When ASCR was created in 2003, there was an existing backlog of complaints. In recognition of this problem, USDA’s Assistant Secretary for Civil Rights made discrimination complaint inventory reduction ASCR’s highest priority initiative. This initiative called for ASCR’s senior managers and employees to make a concerted 12-month, \$1.5 million effort to reduce the backlog of complaints they had inherited. Moreover, according to a

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<sup>7</sup>ASCR’s backlogs of discrimination complaints generally consist of numbers of complaints for which ASCR has insufficient capacity to adjudicate promptly.

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briefing book ASCR prepared for the Senate Committee on Agriculture, Nutrition and Forestry, this complaint inventory reduction initiative was to put lasting improvements in place to prevent future complaint backlogs. It also stated that USDA's Office of Civil Rights would focus substantial resources on fair, equitable, and legally supportable resolution of cases.

In July 2007, ASCR released a public report stating that its fiscal year 2004 backlog reduction initiative was a success.<sup>8</sup> The report stated that the backlog of 690 complaints had been resolved and that ASCR had held the complaint inventory to manageable levels through fiscal year 2005. However, the data ASCR reported lack credibility because a month earlier the office had reported different data to a congressional subcommittee (see table 1). Specifically, according to the June report, the numbers of complaints at the beginning of fiscal year 2005 was 552; according to the July report, the number was 363. Moreover, the June report cited the number of complaints at the end of fiscal year 2005 as 1,275, and the July report said it was 404. The lower numbers reported to the public were not qualified and provided a more favorable impression than the data reported to the subcommittee. However, the Assistant Secretary's letter transmitting the data to the subcommittee contained a footnote qualification stating that USDA's statistics on customers' complaints were the best available, although they were incomplete and unreliable. Before that letter was sent, ASCR's former Director of USDA's Office of Adjudication and Compliance<sup>9</sup> (former Office of Civil Rights), who had responsibility for the data, cautioned the Assistant Secretary about the poor data quality and stated that, if questioned, USDA would not be able to explain its data.

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<sup>8</sup>USDA, *First 1,000 Days, 2003-2006* (Washington, D.C., July 2007).

<sup>9</sup>We conducted our interviews with the former Director, Office of Adjudication and Compliance, prior to her resignation near the end of August 2007.



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

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

Source: USDA documents.

<sup>a</sup>Letter of Margo M. McKay, Assistant Secretary for Civil Rights, USDA, to the Chairman, Subcommittee on Government Management, Organization, and Procurement, House Committee on Oversight and Government Reform, June 29, 2007.

<sup>b</sup>USDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

<sup>c</sup>As reported by USDA, without explanation.

Moreover, ASCR's July 2007 report claiming success in addressing the backlog of 690 complaints is questionable because at least 2 months earlier, officials of ASCR and USDA's Office of General Counsel (USDA OGC) had started discussing a plan of "triage" to address a backlog of complaints that had recurred by hiring additional attorneys to draft final decisions on those cases. ASCR had identified a backlog of 885 customer and employee discrimination complaints, according to ASCR data. Furthermore, while claiming success, ASCR was holding old complaints from customers that it had not resolved. ASCR data show, for example, that 46 complaints dating from 2002 and earlier remained open at least until August 2007.<sup>10</sup> Based on our interviews, we attribute the growth of the latest backlogs to the lack of adequate management controls and vigilance. To address the backlog of customers' complaints, in August 2007 USDA contracted for six attorneys to draft final agency decisions, expecting that this effort would be completed by the end of 2007. To address the backlog of employees' complaints, USDA anticipated using these attorneys to prepare USDA's case decisions and to contract with the Postal Service to address USDA employees' complaints as well, expecting that these cases would be completed by the end of fiscal year 2008.

In addition to its reporting to Congress and the public, we identified other disparities in the data reported by ASCR on its inventories of customer

<sup>10</sup>In addition, ASCR held complaints associated with pending and potential class action litigation in abeyance during this time period.

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complaints. For example, for fiscal year 2006, data we were given showed 290 complaints were resolved—less than 30 percent of the 991 shown by an internal briefing document. Significant disparities were also evident in earlier fiscal years and on individual cases. ASCR officials and staff recognize that the data they use are unreliable. They provided us with examples of known data inaccuracies, including (1) data that are being transferred into the new ASCR database, which is intended to address the existing data management problems, and (2) data that USDA reports to the Equal Employment Opportunity Commission on employees' complaints. Other ASCR officials and staff told us that erroneous data had been migrated to the new database, and start-up problems with the new system have further contributed to data inaccuracies. Furthermore, ASCR staff reported that occasionally customers' case files cannot be readily found, that files were missing documents, and that sometimes the files incorrectly contained documents that actually pertain to other cases. Nevertheless, while correspondence from the former Director of USDA's Office of Adjudication and Compliance to USDA OIG said that only verified data were entered into the new system to prevent "garbage in, garbage out," USDA OIG reported that ASCR had not implemented a process to validate the accuracy of its data and did not have sufficient controls over the entry and validation of data into its new system.

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### Delays in Resolving Complaints Adversely Affect Complainants

USDA has not processed certain cases in a timely manner even though it has been aware that a 2-year time limit may apply. In such cases, when USDA's processing extends beyond 2 years, USDA may be prevented from compensating a farmer who has been subject to discrimination. More specifically, following a January 29, 1998, legal memorandum from the Department of Justice's Office of Legal Counsel, USDA will not award administrative settlements for Equal Credit Opportunity Act claims once the 2-year statute of limitations for filing such a claim in federal court has passed, unless the farmer has filed a timely complaint in federal court.<sup>11</sup> We are aware of one such case in which USDA's final decision found discrimination in 2005 and stated that the farmer's 1997 farm loan debt would be forgiven. However, a USDA official informed us that this action has not yet occurred because the farmer had not filed a timely complaint in federal court, and USDA decided the case after the 2-year period for filing in federal court had expired. In addition, ASCR appears to be holding

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<sup>11</sup>Customers may file a complaint (1) with the agency, (2) in federal court, or (3) both. They need not file a claim with the agency before filing in federal court.

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additional cases that may be similarly affected. An ASCR document identified 92 cases that were being held in abeyance—that is, ASCR had set these cases aside from receiving a final decision on the merits because the complainant is, or could be, a member of a class action lawsuit.

We also identified one active discrimination complaint filed in 1990, 18 years ago. This complaint involves American Indians of the Fort Berthold Reservation in North Dakota, some of whom have died awaiting a final decision.<sup>12</sup> USDA investigated this case of alleged discrimination in farm lending in 1999. In June 2008, a USDA administrative law judge issued a proposed determination finding that the 1990 complaint was filed in a timely manner, that discrimination against the lead complainant’s family had occurred, and stated that USDA did not produce any evidence to refute the complainant’s charges of discrimination other than documents from which a negative inference is necessarily drawn against the agency. The administrative law judge subsequently awarded the lead complainant \$5.2 million as compensation for the effects of discrimination suffered by the complainant’s family. However, on June 12, 2008, the Assistant Secretary of Civil Rights issued a ruling stating her intention to review the ruling of the administrative law judge. Subsequently, USDA also required each of the complainants to explain their complaints in detail and show that they are entitled to a hearing before an administrative law judge, or their claim would be closed “due to failure to pursue.”

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### Steps ASCR Took to Address Unresolved Complaints May Have Affected Quality

We found that as ASCR accelerated the pace of its work to reduce its backlogs of discrimination complaints in 2004, it took some steps that may have sometimes been counter productive and adversely affected the quality of its work. ASCR’s plan to accelerate its work did not address how the quality of its work would be maintained. ASCR’s plan called for USDA’s investigators and adjudicators, who prepare agency decisions, to nearly double their normal pace of casework for about 12 months. One technique that ASCR adopted was to have its investigators conduct interviews by phone and interrogatories by e-mail whenever possible. Civil rights investigative standards indicate that interviews by telephone are acceptable under certain circumstances, such as when there is good reason to conclude that the complainant is the only person affected by the

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<sup>12</sup>A second and separate case involving American Indians of the Fort Berthold Reservation is incorporated within the *Keepseagle* class action case.

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allegations of discrimination.<sup>13</sup> ASCR employees told us it is now usual for ASCR investigations to be conducted by phone.

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

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

In August 2008, ASCR officials stated that they are developing standard operating procedures for ASCR's Office of Adjudication and Compliance. For example, according to ASCR officials, these procedures outline processes for handling incoming mail, reviewing and distributing reports of investigation, and handling hearing requests, among others. In addition, ASCR officials stated that they have attempted to address employee concerns by holding "town hall" meetings, team-building efforts, training

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<sup>13</sup>Department of Justice, Civil Rights Division, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (Washington, D.C., September 1998). In addition, the *Quality Standards for Investigations* of the President's Council on Integrity and Efficiency (December 2003), calls for using due professional care in performing investigations by, among other things, achieving thoroughness through the application of appropriate techniques.

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on communication and conflict management, revival of the telework program, and establishment of a “worklife” coordinator. While these are positive steps, they do not directly respond to whether USDA is adequately investigating complaints, developing complaint decisions, and addressing the problems that gave rise to complaints of discrimination within ASCR.

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### USDA OIG and GAO Have Long Reported on Problems in Resolving Discrimination Complaints

USDA’s stated policy is to fairly and efficiently respond to discrimination complaints, but over the past years it has not done so. USDA’s OIG and GAO have together invested heavily in reporting on and developing recommendations to overcome USDA’s untimely handling of discrimination complaints. In 1999, for example, when we reported that USDA had exceeded four target dates for closing backlogs of customers’ complaints and three target dates for employees’ complaints, we made recommendations to address USDA’s continual management turnover in civil rights offices, frequent reorganizations, inadequate staff and managerial expertise, and poor working relationships and communication within the Office of Civil Rights.<sup>14</sup> USDA management agreed with these reports and committed to implement our recommendations.

In 2002, USDA officials again committed to setting and meeting time frames for processing discrimination complaints. In 2003, we identified the processing of discrimination complaints as a significant management challenge for USDA.<sup>15</sup>

However, by 2007, USDA’s OIG stated that it was making its seventh attempt to provide USDA’s Office of Civil Rights with constructive ways to overcome its case processing inefficiencies.<sup>16</sup> The OIG also stated that officials of the Office of Civil Rights had agreed to a major transformation of the system for processing complaints, but, in fact, the office did not make any significant changes. The OIG stated that unless the Office of Civil Rights provided effective leadership, changed the organizational

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<sup>14</sup>GAO, *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints*, [GAO/RCED-99-38](#) (Washington, D.C.: Jan. 29, 1999).

<sup>15</sup>GAO, *Major Management Challenges and Program Risks: Department of Agriculture*, [GAO-03-96](#) (Washington D.C.: January 2003).

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

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culture, and addressed its customer focus and process engineering, it would be questionable whether further complaints of discrimination would receive due care.

In addition, in 2007, USDA's OIG reported that material weaknesses persisted in ASCR's civil rights control structure and environment for processing employees' discrimination complaints. ASCR's former Director, Office of Adjudication and Compliance, responded that there were several causes for these conditions: the Equal Employment Opportunity Commission standards were unrealistic; there was a substantial backlog of cases; there had been an influx of new cases; staffing and resource shortages; and individual USDA agencies were not meeting their responsibilities. ASCR's former Director also claimed that these weaknesses in resolving employees' discrimination complaints would be addressed in the next 5 years. However, the OIG observed that ASCR did not have an effective plan to get this done.

In August 2007, USDA's OIG designated civil rights as a major management challenge at USDA, and reiterated that challenge in 2008.<sup>17</sup> The OIG commented that because of the conditions it had found, public confidence in USDA's upholding of civil rights might be lost.

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### Congress Has Taken Several Recent Actions to Address the Discrimination Complaints Made against USDA

In June 2008, Congress passed the 2008 Farm Bill, which contains three provisions related to the discrimination complaints filed against USDA.<sup>18</sup> First, the Farm Bill states that it is the sense of Congress that all pending claims and class actions brought against USDA by socially disadvantaged farmers and ranchers should be resolved in an expeditious and just manner. Second, the Farm Bill provides that any claimants in the Pigford case who previously submitted a late filing request under the original consent decree and have not received a determination on the merits of their claims may now obtain such a determination. Prevailing claimants may receive payments and debt relief, with up to a total of \$100 million available for all prevailing claimants. Third, the Farm Bill requires USDA

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<sup>17</sup>USDA Office of Inspector General, *Management Challenges* (Washington, D.C., Aug. 1, 2007); and *Management Challenges* (Washington, D.C.: Aug. 1, 2008). USDA's OIG previously identified civil rights as a major management challenge for USDA in August 2004.

<sup>18</sup>Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246 §§ 14010-14012, 122 Stat. 1651, 2209.

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to report annually on, among other things, the number of customer and employee discrimination complaints filed against each USDA agency, and the length of time the agency took to process each complaint.

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

ASCR has published three annual reports on the participation rate of socially disadvantaged farmers and ranchers in USDA programs, which are required by section 10708 of the 2002 Farm Bill.<sup>19</sup> Over time, these reports could help make more transparent the progress made by socially disadvantaged farmers and ranchers in accessing USDA programs. However, as USDA discloses in these reports, the data USDA has reported are statistically unreliable. In addition, our analysis of the USDA reports shows that they do not include basic reference data needed for understanding the reports and examining trends.

The reports provide statistical data on the participation of farmers and ranchers in USDA programs by race, ethnicity, and gender, and in addition, USDA has included descriptions of its success stories in providing outreach and assistance to socially disadvantaged farmers and ranchers. USDA has stated that, through these reports, it intends to make clear that it is committed to and accountable for fair and equitable service to all customers. However, much of the statistical data USDA reports on program participation are unreliable. USDA stated that it does not have a uniform method of reporting and tabulating race and ethnicity data among its component agencies. More specifically, according to USDA, it does not have approval from OMB to implement standardized data collection of demographic information directly from program participants. For example, according to USDA, the Cooperative State Research, Education, and Extension Service; the Rural Business and Cooperative Service; and the Risk Management Agency are not authorized to collect race and ethnicity data for 18 programs. USDA reported that only the Farm Service Agency's farm loan program collects reliable and complete information on socially disadvantaged farmers and ranchers. Except for the data of the Farm Service Agency, most of USDA's demographic data are gathered by

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<sup>19</sup>USDA, *Bridges to the Future: 2003 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington D.C., December 2004); *Bridges to the Future: 2004 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C., December 2005); and *Bridges to the Future: 2005 Annual Report of the Participation of Socially Disadvantaged Farmers and Ranchers in USDA Programs, The Section 10708 Report* (Washington, D.C., June 2007).

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visual observation of the applicants, and USDA states in its reports that it considers visual observation to be unreliable, especially for ethnicity. Individual traits, such as ethnicity, may not be readily evident to an observer. In addition, for some Farm Service Agency programs, applicants who chose not to identify their race were, until 2004, designated as “white male.” When taken together, according to USDA, the mixture of data available for reporting is statistically unreliable.

In 2004, to overcome these conditions, ASCR published a notice in the Federal Register seeking public comment on its plan to collect additional data on race, ethnicity, gender, national origin, and age. While ASCR received some public comments, it did not follow through and obtain OMB’s approval to collect the data. In a January 2008 briefing document, an ASCR work group stated that ASCR does not have the staff or financial resources to proceed with this project. ASCR officials said, after meeting with GAO in May 2008, they convened an interagency work group to develop a revised notice to be published in the Federal Register. As of August 2008, the draft notice is under review within USDA, according to ASCR officials.

In addition, our analysis of these USDA reports shows that they are of limited usefulness because they do not include the basic reference data needed for understanding the reports and examining trends. USDA has published its demographic data as the percentage of program participants by county and state. While observers can track the percentage changes in program participation over time, the data are of limited usefulness without knowing the actual number of program participants and the census data for each county and state. In addition, if the issues regarding ethnicity and race were resolved, and data were in a searchable format, it could then be possible to compare minority participation by program, geographic location, and year.

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## The 2008 Farm Bill Contains Several Important Provisions Related to Reporting on Minority Farmers’ Participation in USDA Programs

First, the Farm Bill requires USDA to annually compile program application and participation rate data regarding socially disadvantaged farmers and ranchers for each program serving those farmers. The reports prepared using the technologies and systems of USDA’s National Agricultural Statistics Service are to include the raw numbers and participation rates for the entire United States and for each state and county. Second, the bill requires the Secretary to ensure, to the maximum extent practicable, that the Census of Agriculture and studies carried out by the Economic Research Service are to accurately document the number, location, and economic contributions of socially disadvantaged



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farmers and ranchers in agricultural production. While the Farm Bill changes require reporting actual data for states and counties, these provisions do not address the underlying data reliability issues discussed earlier, and the potential for USDA to take steps to facilitate data analysis by users.

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

In light of USDA's civil rights history involving controversial issues—including allegations of systemic discrimination against USDA customers carried out through the design and delivery of USDA programs as well as discriminatory treatment of USDA employees—strategic planning is vital for providing proactive ASCR leadership. Results-oriented strategic planning provides a road map that clearly describes what an organization is attempting to achieve, and over time, it can serve as a focal point for communication with Congress and the public about what has been accomplished.<sup>20</sup> Results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and making program improvements. ASCR has started to develop a results-oriented approach as illustrated in its first strategic plan, *Assistant Secretary for Civil Rights: Strategic Plan, Fiscal Years 2005-2010*, and its *ASCR Priorities for Fiscal Years 2007 and 2008*. The elements of these plans are summarized in appendix III. However, ASCR's plans do not include fundamental elements that are required for effective strategic planning.

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## ASCR Has Designed Its Mission and Strategic Goal

We found that ASCR has made progress by describing compelling missions and a strategic goal but has not explicitly described the viewpoints and interests of its stakeholders, assessed the environment, and aligned its activities, core processes, and resources to achieve its strategic goal.

- One of ASCR's missions is to ensure that USDA is in compliance with civil rights laws and regulations. This mission calls for ASCR to process employees' discrimination complaints, as required by the Equal Employment Opportunity Commission, and to review USDA agencies' implementation of civil rights laws and regulations.

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<sup>20</sup>GAO/GGD-96-118.

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- ASCR's second mission is to provide leadership to promote equal opportunity, equal access, and fair treatment for all USDA employees and customers.

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

Results-oriented organizations take several steps to effectively implement their mission and achieve their desired outcomes. They (1) involve stakeholders, (2) assess the environment, and (3) align activities, core processes, and resources. However, we found that ASCR's planning has several shortcomings. First, results-oriented organizations base their strategic planning, to a large extent, on the interests and expectations of their stakeholders. While ASCR's strategic plan states that ASCR relied on input from a variety of internal and external customers in developing its strategic plan, the plan does not identify who provided input or contain a discussion of their interests and perspectives. ASCR refers to its external stakeholders as "partners"—which includes representatives of community-based organizations and minority interest groups. ASCR's external stakeholders said they have a high degree of interest in ASCR's planning and have attended ASCR's annual Partners Meetings, where they discussed their wide-ranging interests in ASCR's mission. However, the interests of ASCR's partners are not explicitly reflected in ASCR's strategic plan. We developed a summary of the partners' interests based on interviews with the representatives of a selection of USDA's partners' groups, and we also considered issues identified in past studies of USDA. The interests were often mentioned in our 20 interviews with USDA stakeholder groups and in past studies of USDA civil rights issues. For example, ASCR's partners are interested in improvements in (1) USDA's methods of delivering farm programs to facilitate access by underserved producers; (2) the county committee system, so that they are better represented in local decisions; and (3) the diversity of USDA employees who work with minority producers. A list of these interests is included in appendix IV.

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

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Second, by building an environmental assessment into the strategic planning process, results-oriented organizations identify external and internal factors that can influence the achievement of their long-term goals. For example, some information about the civil rights environment as it affects farmers is described in a study of the Mississippi Delta area by the U.S. Civil Rights Commission and in a report on minority and women farmers by USDA's Economic Research Service.<sup>21</sup> These reports describe, among other things, regional characteristics and conditions that have adversely impacted minority farmers, such as limited representation on local county committees, poor relationships between farmers and USDA's county office staff, and the importance of extension services for minority farmers. ASCR's report does not discuss the development or use of such information. An assessment of the external environment is especially important because, according to ASCR, its Office of Outreach is to provide national leadership and coordination for USDA programs and services to ensure equal and timely access for all of USDA's constituents, especially the underserved. As for the internal environment, ASCR recognizes the efforts of various USDA agencies and offices that perform critical functions necessary for full implementation of ASCR's strategic goal; however, other facets such as their culture, management practices, and business processes are not recognized. Getting a good understanding of these facets of USDA operations could help contribute to determining what ASCR may need to accomplish and how ASCR could best work with other USDA agencies and offices. ASCR's Director of Outreach reported that her office is making some progress in developing relationships with USDA's agencies in their efforts to improve outreach to minority farmers.

Third, results-oriented organizations align their activities, core processes, and resources to support their mission and desired outcomes. Such organizations start by assessing the extent to which their programs and activities contribute to meeting their mission and make linkages between levels of funding and their anticipated results. ASCR used an organizational framework for developing its plan, according to an ASCR official, and developed objectives for each of ASCR's existing offices. However, these plans do not reflect consideration of the extent to which each of its office's activities is to contribute to ASCR's missions. For example, one ASCR strategic objective is to strengthen partnerships with

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

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historically black land-grant universities through scholarships provided by USDA, but it is not clear how scholarships bear significantly on ASCR's strategic mission. Moreover, the strategic plan does not make linkages between levels of funding and ASCR's anticipated results—without such a discussion, it is not possible to determine whether ASCR has the resources needed to achieve its strategic goal.

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### ASCR Could Better Measure Performance to Gauge Progress

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

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

ASCR's plans also have an important gap in the area of performance measurement, especially in an era of limited resources.<sup>22</sup> They do not discuss the kinds of data that USDA agencies collect or analyze that would

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

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demonstrate progress toward ASCR's strategic goal. To leverage resources, potential sources of data may be USDA's National Agricultural Statistics Service, which conducts the census of agriculture, and the Economic Research Service, which analyzes and reports on trends in agriculture, including social changes.

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### ASCR's Planning Has Not Considered the Use of Performance Information for Identifying Performance Gaps

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

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### The 2008 Farm Bill Reorganizes USDA to Accomplish a Portion of ASCR's Mission

First, the bill provides for establishing a USDA Office of Advocacy and Outreach to ensure access to and equitable participation in USDA's programs and services. This new office is to (1) establish and monitor USDA's goals and objectives to increase participation in USDA programs by small, beginning, and socially disadvantaged farmers and ranchers; (2) assess the effectiveness of USDA outreach programs; (3) develop and implement a plan to coordinate USDA outreach; (4) provide input into USDA agency and office program and policy decisions; (5) measure outcomes of relevant USDA programs; (6) recommend new initiatives and relevant programs; and (7) perform related duties as assigned by the Secretary. Second, the bill directs the Secretary to establish an advisory committee on minority farmers to, among other things, advise the Secretary on methods of maximizing the participation of minority farmers

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and ranchers in USDA programs and civil rights activities that relate to USDA program participants.

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## Lessons Learned at Other Organizations Suggest Options That May Benefit USDA's Civil Rights Performance

Our past work in addressing the problems of high-risk, underperforming federal agencies, as well as our reporting on results-oriented management suggests three options. These options were selected based on our judgment that they (1) can help address recognized and long-standing problems in USDA's performance, (2) have been used previously by Congress to improve aspects of agency performance, (3) have contributed to improved agency performance, and (4) will result in greater transparency over USDA's civil rights performance. These options include (1) making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement, (2) establishing an agriculture civil rights oversight board, and (3) creating an ombudsman for agriculture civil rights matters. The first two would require action by Congress, whereas the third could benefit from USDA's attention, although effective implementation may also require congressional action.

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## Statutory Performance Agreement

USDA's Assistant Secretary for Civil Rights could be made subject to a statutory performance agreement that provides more specific direction and describes key expectations in critical performance areas, similar to federal executives in other agencies. Our prior assessment of performance agreements used at three agencies has shown that performance agreements have emerging potential benefits that may help improve the performance of USDA's Office of the Assistant Secretary for Civil Rights.<sup>23</sup> The emerging benefits of performance agreements that may assist USDA include (1) helping to define accountability for specific goals and align daily operations with results-oriented programmatic goals, (2) fostering collaboration across organizational boundaries, (3) enhancing use of performance information to make program improvements, (4) providing a results-oriented basis for individual accountability, and (5) helping to maintain continuity of program goals during leadership transitions.

For example, in 1998 Congress established the Department of Education's Office of Federal Student Aid as the government's first performance-based

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<sup>23</sup>The three agencies include the Office of Federal Student Aid, the Department of Transportation, and the Veterans Health Administration. GAO, *Managing for Results: Emerging Benefits from Selected Agencies' Use of Performance Agreements*, GAO-01-115 (Washington D.C.: Oct. 30, 2000).

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organization.<sup>24</sup> Congress did so following long-standing financial and management weaknesses and placement on GAO's high-risk list since 1990. Congress required the office's Chief Operating Officer to have a performance agreement with the Secretary of Education that is transmitted to congressional committees and made publicly available. In addition, the office was required to report to Congress annually on its performance, including the extent to which it met its performance goals. Based on the extent of progress, the Chief Operating Officer could receive performance bonuses of up to 50 percent of the officer's basic pay, which must be disclosed to the public and could also be removed or reappointed, depending on the extent of progress. In 2005, due to the sustained improvements made by the Office of Federal Student Aid in its financial management and in addressing its internal control weaknesses, we removed our designation of this program as high risk.<sup>25</sup> The office had by then received an unqualified or "clean" financial opinion on its financial statements for fiscal years 2002, 2003, and 2004, with no material weaknesses reported in its fiscal year 2003 and 2004 audits. The office had made progress toward integrating its many disparate information systems, reducing the rate of student loan defaults, and addressing its human capital challenges. Furthermore, in recent years, there have been several other examples of Congress requiring statutory performance agreements for federal executives, including the Commissioners of the U.S. Patent and Trademark Office and the Under Secretary for Management of the Department of Homeland Security.<sup>26</sup>

The responsibilities assigned to USDA's Assistant Secretary for Civil Rights were stated in general terms in both the 2002 Farm Bill and the Secretary's memorandum establishing this position within USDA. The Secretary's memorandum stated that the Assistant Secretary reports directly to the Secretary and is responsible for (1) ensuring USDA's compliance with all civil rights laws and related laws, (2) coordinating administration of civil rights laws within USDA, and (3) ensuring that civil rights components are incorporated in USDA strategic planning initiatives. While this set of responsibilities is broad in scope, it does not identify

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<sup>24</sup>Higher Education Amendments of 1998, Pub. L. No. 105-244 § 101(a), 112 Stat. 1581 (amending 20 U.S.C. § 1018).

<sup>25</sup>[GAO-05-207](#).

<sup>26</sup>Pub. L. No. 106-113, § 1000(a)(9) (§ 4713), 113 Stat. 1501, 1536, 1501A-21, 1501A-575 (1999) (amending 35 U.S.C. § 3); Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 § 2405(b), 121 Stat. 266, 548 (amending 6 U.S.C. §341(c)).

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specific performance expectations for the Assistant Secretary. A statutory performance agreement could assist in achieving specific expectations by providing additional incentives and mandatory public reporting.

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## Oversight Board

Congress could authorize a USDA civil rights oversight board to independently monitor, evaluate, approve of, and report on USDA's administration of civil rights activities, as it has for other federal activities. Oversight boards have often been used by the federal government—such as for oversight of public accounting, intelligence matters, civil liberties, and drug safety—to provide assurance that important activities are well done, to identify weaknesses that may need to be addressed, and to provide for transparency. For example, Congress established the Internal Revenue Service Oversight Board in 1998 to oversee the IRS's administration of internal revenue laws and ensure that its organization and operation allow it to carry out its mission.<sup>27</sup> At that time, the IRS was considered to be an agency that was not effectively serving the public or meeting taxpayers' needs. The Internal Revenue Service Oversight Board oversees the IRS by operating much like a corporate board of directors, tailored to fit the public sector. The Internal Revenue Service Oversight Board provides independent oversight of IRS administration, management, conduct, and the direction and supervision of the application of the internal revenue code. Among other things, the Internal Revenue Service Oversight Board reviews and approves the IRS's strategic plans and operations, recommends candidates for the Commissioner of the Internal Revenue Service (as well as the removal of a Commissioner), reviews compensation provided to senior executives, reviews plans for reorganization of the IRS, and develops reports for Congress on Internal Revenue Service activities. We have noted the work of the Internal Revenue Service Oversight Board—including, for example, the board's independent analysis of IRS business systems modernization.<sup>28</sup> Currently, there is no comparable independent oversight of USDA civil rights activities. Such a board could provide additional assurance that management functions effectively and efficiently, especially in light of the government's financial liability for compensating victims of discrimination.

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<sup>27</sup>Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206 § 1101(a), 112 Stat. 685, 691 (amending 26 U.S.C. § 7802).

<sup>28</sup>GAO, *Business Systems Modernization: Internal Revenue Service Needs to Further Strengthen Program Management*, [GAO-04-438T](#) (Washington D.C.: Feb. 12, 2004).



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## Ombudsman

An ombudsman (often referred to as an ombuds) for USDA civil rights matters could be created to address the concerns of USDA customers and employees. Many agencies have created ombuds offices for addressing employees' concerns, as authorized by the Administrative Dispute Resolution Act, although USDA is not among them. However, an ombuds is not merely an alternative means of resolving employees' disputes; rather, the ombudsman is a neutral party who uses a variety of procedures, including alternative dispute resolution techniques, to deal with complaints, concerns, and questions. We stated that ombudsmen can handle a wide range of concerns—including, for example, citizens' concerns about access to programs, systemic management problems, policy shortcomings, human rights, civil rights and workplace issues. Ombudsmen who handle concerns and inquiries from the public—external ombudsmen—help agencies be more responsive to the public through impartial and independent investigation of citizens' complaints, including people who believe their concerns have not been dealt with fairly and fully through normal channels. For example, we reported that ombudsmen at the Environmental Protection Agency serve as points of contact for members of the public who have concerns about Resource Conservation and Recovery Act (Superfund) activities.<sup>29</sup> We also identified the Transportation Security Administration ombudsman as one who serves external customers and is responsible for recommending and influencing systemic change where necessary to improve Administration operations and customer service.<sup>30</sup> We reported that a key feature distinguishing ombuds from other dispute resolution practitioners is the ombuds' focus on systemic issues and on developing strategies for preventing and managing conflict.

Within the federal workplace, ombuds provide an informal alternative to existing and more formal processes to deal with employees' workplace conflicts and other organizational climate issues. As of April 2007, 12 federal departments and 9 independent agencies reported having 43 ombudsmen, according to a federal interagency report on the use of alternative dispute resolution in the workplace.<sup>31</sup> In our study of the role of

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<sup>29</sup>The Superfund Program provides support to investigate and clean up hazardous waste sites nationwide.

<sup>30</sup>GAO, *Transportation Security Administration: Actions and Plans to Develop a Results-Oriented Culture*, GAO-03-190 (Washington D.C.: Jan. 17, 2003).

<sup>31</sup>Federal Interagency Alternative Dispute Resolution Working Group Sections, et al, *Report for the President on the Use and Results of Alternative Dispute Resolution in the Executive Branch of the Federal Government* (Washington, D.C.: April 2007).

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ombudsmen in dispute resolution, we found some common approaches as well as some differences in how ombudsmen operated at the National Institutes of Health, the International Broadcasting Bureau, and the U.S. Secret Service.<sup>32</sup> Common among the three ombudsmen offices were the high level of their manager, general schedule (GS) grade 15 or senior executive, and their broad responsibility and authority to deal with almost any workplace issue, their ability to bring systemic issues to management's attention, and the way in which they worked with other agency offices in providing assistance to employees. We also found that there were structural differences—such as in the independence of their office, level of reporting, and budgets. Importantly, we reported that officials at the three agencies generally viewed the ombudsman programs as beneficial. They said that the ombuds' offices, through their early intervention, were particularly helpful in resolving workplace conflicts quickly and in lightening the caseloads of other offices dealing with complaints and grievances. The ombudsmen estimated that they resolved between 60 percent and 70 percent of their cases. In addition, the ombudsmen and other officials identified lessons they learned in establishing and operating an ombuds office. Chief among these is the need for top-level support.

Several core aspects of an ombudsman's office make such an office an option relevant for consideration at USDA. First, USDA faces concerns of fairness and equity from both customers and employees—a range of issues that an ombudsman could potentially assist in addressing. Second, the standards for ombudsmen operations call for them to be independent, to be impartial in conducting inquiries and investigations, and to keep information confidential as appropriate—standards that are consistent with the need to help ensure the credibility of USDA actions. Third, an ombudsman is in a position to alert management to systemic problems and can thereby help correct organizationwide situations and develop strategies for preventing and managing conflicts. Finally, an ombudsman's office can help an organization ensure a fair, equitable, and nondiscriminatory environment.

We previously reported information about the potential use of an ombudsman to address USDA's civil rights issues.<sup>33</sup> Subsequently, ASCR

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<sup>32</sup>GAO, *Human Capital: The Role of Ombudsmen in Dispute Resolution*, [GAO-01-446](#) (Washington, D.C.: Apr. 13, 2001).

<sup>33</sup>GAO, *Pigford Settlement: The Role of the Court-Appointed Monitor*, [GAO-06-469R](#) (Washington D.C., Mar. 17, 2006).

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staff developed a preliminary background discussion paper about the feasibility of an ombudsman function at USDA but stated that more development of the concept would be needed to design an effective USDA ombudsman function.<sup>34</sup> Although ASCR's discussion paper included options for further study of an ombudsman function for USDA, it also stated that an option to establish an ombudsman office at USDA was not presented because existing conditions do not suggest a need, interest, or prior momentum toward establishing such an office. The discussion paper raised concerns about establishing a USDA departmental ombudsman because such an office would encounter difficulty establishing its credibility and usefulness, conducting investigations due to USDA's decentralized and entrenched agency structure and operations, and obtaining sufficient resources to be effective in light of the size and breadth of USDA operations. The paper also stated that for a USDA ombudsman office to be minimally effective, its legitimacy and authority must be clear and unequivocal. According to the American Bar Association, an ombuds office must, among other things, be independent in structure, function and appearance; be structured in an impartial manner; have full authority to conduct inquiries and investigations without being thwarted by agency staff; be able to operate with confidentiality; and have a sufficient legislative basis to provide for permanence, stability, and some assurance that the ombudsman is free to criticize without fear that the office will be abolished or unnecessarily restricted.

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## Conclusions

USDA has been addressing allegations of discrimination for decades and receiving recommendations for improving its civil rights functions without achieving fundamental improvements. One lawsuit has cost taxpayers nearly a billion dollars in payouts to date, and several other groups are seeking redress for similar alleged discrimination. While ASCR's established policy is to fairly and efficiently respond to complaints of discrimination, its efforts to establish the management system necessary to implement the policy have fallen far short. For example, both we and USDA's OIG have observed that ASCR has not achieved oversight and control over its inventory of discrimination complaints—which is vital to effectively manage this important function. Despite the numerous past efforts to provide this office with constructive analysis, including recommendations by the U.S. Commission on Civil Rights, the Equal

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<sup>34</sup>USDA, *Federal Ombudsman at USDA: A Preliminary Background and Discussion Paper* (Washington, D.C.; March 2007).

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Employment Opportunity Commission, USDA's OIG, and GAO, significant deficiencies remain.

Unless USDA addresses several fundamental concerns about resolving discrimination complaints—including the lack of credible data on the numbers, status, and management of complaints; the lack of specified time frames and management controls for resolving complaints; questions about the quality of complaint investigations; and the integrity of final decision preparation—the credibility of USDA efforts to resolve discrimination complaints will remain in doubt. In addition, unless USDA obtains accurate data on minority participation in USDA programs, its reports on improving minority participation in USDA programs will not be reliable or useful. Moreover, ASCR's strategic planning for civil rights has such significant gaps—in describing and responding to stakeholder interests, in considering the external and internal environments that affect the achievement of ASCR's goals, and in setting up and making use of performance measures that will demonstrate results—that it appears unlikely that USDA management will be fully effective in achieving its civil rights mission until better planning is performed.

In addition to these specific actions that warrant USDA's attention, there are broader options or actions that merit attention to address the long-standing problems in USDA's civil rights efforts. These options could lay a foundation for clarity over the expectations USDA must meet to restore confidence in its civil rights performance. Raising the public profile for transparency and accountability through means such as a statutory performance agreement between the Secretary of Agriculture and the Assistant Secretary for Civil Rights, a USDA civil rights oversight board, and an ombudsman for addressing customers' and employees' civil rights concerns would appear to be helpful steps because they have proven to be effective in raising the performance of other federal agencies.

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## Matters for Congressional Consideration

To better ensure sufficient oversight and management direction are provided to guide USDA's civil rights efforts, to make responsibility for improvement clear, and to make USDA's performance more transparent, we suggest that Congress consider (1) making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement and (2) establishing a USDA civil rights oversight board.

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## Recommendations for Executive Action

To improve USDA efforts to address civil rights issues and the participation of minority farmers and ranchers in USDA programs, we recommend that the Secretary of Agriculture take the following six actions:

- Prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints from beginning to end.
- Develop and implement a plan to ensure the accuracy, completeness and reliability of ASCR's databases on customer and employee complaints, and that provides for independent validation of ASCR's data quality.
- Obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of a sample of USDA's prior investigations and decisions on civil rights complaints, along with suggestions for improvement.
- Work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.
- Develop a results-oriented department-level strategic plan for civil rights at USDA that unifies USDA's departmental approach with that of ASCR and the newly created Office of Advocacy and Outreach and that is transparent about USDA's efforts to address the concerns of stakeholders.
- Further explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees, including seeking legislative authority, as appropriate, to establish such an office and to ensure its effectiveness, and advise USDA's congressional oversight committees of the results.

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## Agency Comments and Our Evaluation

In commenting on a draft of this report, USDA's Secretary stated that USDA acknowledges many of the problems identified in the report. However, the Secretary stated that USDA believes that the report does not duly recognize the efforts USDA is currently undertaking to address the issues and the significant progress that USDA has made. For example, the Secretary stated that we did not give adequate credit to the strategic plans for outreach and diversity that were under development during our audit. We believe the report does recognize USDA's actions, plans, and progress; and it places them in context considering USDA's substantial

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shortcomings. During our work, we obtained drafts and briefing documents on the outreach and diversity strategic plans, and mentioned them in our report. However, these plans and their strategies have not been finalized or in effect long enough to demonstrate accomplishments. The Secretary also stated that the report overly relies on unsubstantiated comments opined by a few individuals. We disagree. Our report was based primarily on substantial documentary evidence supplemented with over 130 interviews conducted with federal civil rights officials, USDA officials and staff, and USDA stakeholder groups (see appendix I).

Concerning our recommendations, USDA generally agreed with 5 of our 6 recommendations, including those to prepare and implement an improvement plan for resolving discrimination complaints; to improve the quality of ASCR's databases on customer and employee complaints; to work to obtain approval to collect the data necessary for reliable reporting on race and ethnicity; to develop a results-oriented departmental level civil rights strategic plan; and to explore the establishment of an ombudsman office. However, USDA was silent on one aspect of our recommendation to improve its complaint resolution process—that USDA establish time-frames for resolving discrimination complaints. Until USDA establishes time frames for the entirety of the civil rights complaint process, it will not have a goal against which to measure its performance.

USDA also disagreed with our recommendation to obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of USDA's investigation of and decisions on civil rights complaints, along with suggestions for improvement. USDA asserted, without providing any additional support, that it believes its internal system of legal sufficiency addresses GAO's concerns, works well, and is timely and effective, and that the review GAO recommends is unnecessary, impractical, cost prohibitive, and would add significant delays. We recognize that the scope of our recommendation may have been read too broadly by USDA, and therefore we have made a minor clarification to our recommendation to state that USDA should obtain an examination of a sample of prior investigations and decisions. Given the substantial evidence of civil rights case delays and questions raised in the report about the integrity of the USDA's civil rights casework, we believe that this recommendation remains valid and necessary to restore confidence in USDA's civil rights decisions.

The Secretary also disagreed with our two options for congressional consideration. Concerning the establishment of a statutorily-mandated performance agreement for the Assistant Secretary, the Secretary stated

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the Assistant Secretary's responsibilities are spelled out in the 2002 and 2008 Farm Bill, and that this additional statutory change would usurp the Secretary's authority. We disagree. The specific terms of a statutory performance agreement would be developed by the Secretary for the Assistant Secretary's activities and would not limit the authority of the Secretary to take or direct action. In addition, a statutory performance agreement would go beyond the existing legislation by requiring measurable organizational and individual goals in key performance areas.

Concerning the establishment of a USDA civil rights oversight board, the Secretary stated that it would be unnecessarily bureaucratic and delay progress. While we note such concerns, a well-operated oversight board can be the source of timely and wise counsel to help raise USDA's civil rights performance. Because of the lengthy history of USDA's difficulties in overcoming civil rights issues, we believe both options would help focus and improve USDA's performance. They would provide for a level of transparency that has been lacking in USDA civil rights matters—transparency that provides compelling evidence to help direct improvement efforts and better demonstrate USDA's accomplishments.

USDA's written comments appear in appendix II.

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We are sending copies of this report to the President, the Attorney General, the Secretary of Agriculture, appropriate congressional committees, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your staffs have any questions about this report, please contact me at (202) 512-3841 or [shamesl@gao.gov](mailto:shamesl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Lisa Shames  
Director, Natural Resources  
and Environment



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*List of Requesters*

The Honorable Tom Harkin  
Chairman  
Committee on Agriculture, Nutrition and Forestry  
United States Senate

The Honorable Joe Baca  
Chairman  
Subcommittee on Department Operations,  
Oversight, Nutrition, and Forestry  
Committee on Agriculture  
House of Representatives

The Honorable Edolphus Towns  
Chairman  
Subcommittee on Government Management,  
Organization, and Procurement  
Committee on Oversight and Government Reform  
House of Representatives

The Honorable Charles Grassley  
United States Senate

The Honorable Richard G. Lugar  
United States Senate

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# Appendix I: Scope and Methodology

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During this performance audit, we reviewed relevant reports prepared by the Department of Agriculture (USDA), USDA's Office of Inspector General (OIG), the U.S. Civil Rights Commission, the U.S. Equal Employment Opportunity Commission, and GAO, among others. We also conducted

- over 50 interviews with officials and staff of USDA's Office of the Assistant Secretary for Civil Rights;
- over 65 interviews with staff of USDA's Farm Service Agency; Natural Resources Conservation Service; Rural Development Mission Area; Cooperative State Research, Extension, and Education Service; the National Agricultural Statistics Service; and USDA field offices in California, Florida, North Carolina, Texas, and Washington;
- 20 interviews with USDA stakeholder groups, including the Rural Coalition; United Farmers USA, Federation of Southern Cooperatives, South East Asian American Farmers Association, Intertribal Agricultural Council, National Tribal Development Association, Hispanic Farmers and Ranchers of America, National Black Farmers Association, National Hmong American Farmers, USDA Coalition of Minority Employees; and
- three interviews with officials of the U.S. Commission on Civil Rights and the U.S. Equal Employment Opportunity Commission.

To assess ASCR's efforts to resolve discrimination complaints, we conducted interviews with officials of ASCR, USDA's OIG, USDA's agency-level civil rights offices, and the Equal Employment Opportunity Commission; examined USDA documents about efforts to resolve discrimination complaints; and analyzed data provided by ASCR. To evaluate USDA's reporting on minority participation in USDA's programs, we reviewed USDA reports and interviewed officials of USDA, community-based organizations, and minority groups. To analyze ASCR's strategic planning, we examined ASCR's strategic plan and other relevant planning documents and interviewed USDA officials and representatives of community-based organizations and minority groups, among others. We also considered GAO's guidance and reporting on results-oriented

management.<sup>1</sup> To assess the reliability of data provided by ASCR, we compared various sources of ASCR data and interviewed ASCR officials.

To identify options for addressing USDA's long-standing problems, we reviewed our experience in addressing the problems of high-risk, underperforming agencies,<sup>2</sup> as well as our reporting on results-oriented management. We selected options based on our judgment that the options (1) would address apparent deficiencies in USDA's performance, (2) had been used previously by Congress to improve aspects of agency performance, (3) have contributed to improved agency performance, and (4) will result in greater transparency over USDA's civil rights performance.

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

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<sup>1</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington D.C.: June 1996); *Agencies' Strategic Plans under GPRA: Key Questions to Facilitate Congressional Review*, [GAO/GGD-10.1.16](#) (Washington, D.C.: May 1997); *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, [GAO/GGD-10.1.20](#) (Washington, D.C.: April 1998); and *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004).

<sup>2</sup>For example, see GAO, *High-Risk Series: An Update*, [GAO-05-207](#) (Washington D.C.: January 2005).

obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted this performance audit from December 2006 through September 2008.

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

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# Appendix II: Comments from the U.S. Department of Agriculture

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United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

October 1, 2008

The Honorable Gene L. Dodaro  
Acting Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW., Room 2T23  
Washington, D.C. 20548

Dear Mr. Comptroller General:

I am in receipt of the draft GAO Report (GAO-08-1049) dated September 5, 2008, entitled U.S. DEPARTMENT OF AGRICULTURE, Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights (OASCR). Thank you for the opportunity to respond. I have enclosed specific responses to each recommendation posed in the draft report (Enclosure 1). I request that this letter and its enclosures be published with the final report in its entirety.

The Department of Agriculture (USDA) is in general agreement with many of the recommendations of the Government Accountability Office (GAO) regarding the need to continue to improve management controls for all phases of the complaint process, quality control within data management systems, collection of demographic data, and strategic planning. USDA also agrees to continue to explore the establishment of an ombudsperson. USDA does not concur with GAO's recommendations to establish a statutory performance agreement for the Assistant Secretary for Civil Rights (ASCR), nor with the establishment of an oversight board.

USDA, through OASCR, has taken action to address the issues that have challenged the Department in the past, and will continue to do so. Significant progress has been made in civil rights at USDA since creation of the ASCR position in 2003. See enclosed list of OASCR accomplishments (Enclosure 2).

GAO, in its draft report, did not take into account efforts that are already underway at the Department, and overly relied on unsubstantiated comments opined by a few individuals. For example, GAO did not give adequate credit for strategic plans developed by OASCR subsequent to the initial five-year plan, such as the comprehensive, Department-wide Outreach Strategic Plan, and Department-wide Workplace Diversity and Inclusion Strategic Plan that were in clearance during the pendency of the audit. In developing these strategic plans, USDA consulted extensively with stakeholders and incorporated their input. In addition, for reasons outlined in the enclosed responses, USDA disagrees with GAO's conclusions that OASCR does not have a plan to ensure timely case processing and prevent future complaint backlogs.

An Equal Opportunity Employer

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**Appendix II: Comments from the U.S.  
Department of Agriculture**

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Mr. Gene L. Dodaro  
Page 2

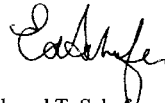
USDA acknowledges the intent of GAO's recommendation to establish a statutorily-mandated performance agreement; however, we believe that it is unnecessary because Congress has already clearly spelled out the duties of the Assistant Secretary for Civil Rights in Section 10704 of the Farm Security and Rural Investment Act of 2002 and various sections of the Food, Conservation, and Energy Act of 2008. The Assistant Secretary reports directly to me and regularly briefs me on her goals, performance plan, and accomplishments. Additional statutory change is unnecessary and would usurp my authority to manage the Department's civil rights program. Be assured that the Assistant Secretary, other leaders, and I are dedicated to accomplishing the intent of the law in the Farm Bill.

Likewise, USDA does not believe that establishing a statutorily-mandated oversight board is warranted. Establishing such a board would add an unnecessary level of bureaucracy. Responding to and developing reports for such a Board would have the effect of delaying and impeding, rather than promoting progress. ASCR and I are accountable for providing oversight of OASCR plans, performance, and progress.

In summary, USDA acknowledges many of the problems pointed out in the GAO draft report, however, we do not believe that the report duly recognizes the efforts currently being undertaken by the Department to address these issues and the significant progress to date. We are well on our way to making a difference in many of the challenges that we face, and have implementation strategies in place to address concerns brought forth by our stakeholders, GAO, and the Office of Inspector General.

Let me assure you of my personal commitment to USDA's civil rights, equal employment opportunity, and diversity policies. In my civil rights statement to all employees, I emphasized that all employees, applicants, customers, and stakeholders must and will have equal access to the opportunities, programs, and services offered by this great Department.

Sincerely,



Edward T. Schafer  
Secretary

Enclosures

Enclosure 1

**USDA Responses to GAO Recommendations**

**GAO Recommendation**

Prepare and implement an improvement plan for resolving discrimination complaints that sets timeframe goals and provides management controls for resolving complaints from beginning to end.

**Departmental Response**

Since the creation of the Office of the Assistant Secretary for Civil Rights (OASCR) significant efforts have been employed to provide better management controls for resolving complaints and to ensure timely case processing. This is an ongoing project and there are more improvements to come. The plan includes: (1) concentrated efforts to eliminate the complaint backlog and adhere to time standards for current cases; (2) more involvement by senior leadership for quality control; (3) an automated, Web-based, enterprise-wide case management and reporting tool; (4) development of a centralized intake process; (5) more focus on records management; (6) providing adequate resources, training, performance standards, and timetables for OASCR staff and contractors; (7) holding agencies responsible for timely submission of counselor reports, agency positions statements and reports of investigation; (8) increased use of alternative dispute resolution techniques; and (9) an independent review of organizational structure, workload, workflow, processes, and standards, in the Office of Adjudication and Compliance (OAC), which is responsible for complaint processing.

(1) As pointed out in GAO's report, OASCR undertook an "Inventory Reduction Initiative" in 2004. OASCR pointed out in its first annual report, published in July 2007, which covered the time period of the first ASCR from 2003 to 2006, that the 2004 inventory reduction initiative was largely successful. OASCR started fiscal year 2003 with 2,001 pending employment complaints and resolved 1,016 of those cases. During the year, OASCR received an additional 658 employment complaints, of which 199 were resolved. The Office started the year with 481 pending program complaints, and resolved 341. During the year, the Office received an additional 1,755 program complaints, of which 1,487 were resolved. This was deemed a manageable level at the time. There was no claim to the public that the complaint backlog had been eliminated. Due to various factors, the backlog remained and grew.

In 2007, OASCR implemented a "Final Agency Decision (FAD) Backlog Elimination" plan, utilizing contracting services and setting a timetable to complete issuance of FADs in all program and employment complaints where investigations had been completed. The established goals have been reached. The backlog of program FADs was eliminated by December 2007. The backlog of employment FADs was eliminated by September 30, 2008.

In addition, OASCR has taken steps to prevent future backlogs. Specifically, OASCR has entered into an interagency agreement with the National Equal Employment Opportunity Investigative Services in the U.S. Postal Service to process overflow cases that cannot be timely processed by staff, and has begun to assess USDA agencies for the preparation of FADs pursuant

Enclosure 1

to language in the Appropriations Act for the Department.

GAO makes reference to OASCR's use of summary decisions on employee complaints during the 2004 inventory reduction initiative. Summary decisions were issued in instances where there were no factual disputes, or, the facts, even if true, would not constitute a violation of law or policy. The ASCR's interpretation of the former director's concern is that the lay person may not understand the process in reaching such decisions and think that issues were overlooked.

GAO makes reference to Office of Inspector General's (OIG) observation that OASCR did not have an effective plan to address case processing inefficiencies. OASCR has been working with OIG and has submitted a plan and achieved management decision on all open recommendations in the 2007 OIG audit, for final action to occur by September 30, 2009.

(2) OASCR leadership personally reviews weekly reports of case inventory, productivity, and backlog elimination.

(3) OASCR has fully implemented and continues to enhance the Civil Rights Enterprise System (CRES), an automated, Web-based Department-wide system for monitoring, tracking, managing, and reporting of program for employment discrimination complaints and alternative dispute resolutions. Ongoing activities include training for OASCR and USDA agency staff and regular end-user meetings. CRES enables users to input complaints faster, track and manage complaints better, provide better customer service through auto-generated acknowledgements, and generate more accurate reports. Upcoming enhancements include e-filing and a centralized automated intake system. Within 12 months, complainants should be able to file online and see the status of their complaints in real time. This is in addition to the option of calling OASCR's customer service center.

(4) OASCR is currently developing a centralized intake system in order to determine the jurisdictional placement of complaints, and get them to the proper place for processing faster. This will enhance timeliness and efficient complaint processing.

(5) OASCR has hired a trained Records Manager, and is implementing procedures to ensure its records management program is in compliance with applicable Departmental regulations.

(6) OASCR has established performance standards for OAC staff, by level, and holds OAC employees accountable through performance management. OASCR further provides its employees training, professional development tools and team-building activities. The GAO report acknowledges the Assistant Secretary's attempts to provide resources and tools in order to improve morale of OASCR employees, through such activities as improved communication, team-building, worklife coordination, telework and professional development, but then dismisses such efforts because GAO does not see the relationship to increased productivity and reduced complaints. I have noticed marked improvement in performance by OASCR employees since these initiatives began.

GAO makes reference to employee fears of retaliation. Retaliation is not condoned at USDA, as evidenced by our zero-tolerance policy towards it. One of USDA's two mandatory civil rights



Enclosure 1

training courses in 2007 was on the subject of retaliation. Claims of retaliation can be heard in the complaint process, and any proven retaliation would be referred for disciplinary action.

(7) The timely processing of complaints within USDA is a joint responsibility between OASCR and the agencies. The process relies upon timely submission by USDA agencies of agency position statements, counselor reports, and reports of investigations. USDA agency heads are held accountable for timely processing of complaints through Annual Agency Head Civil Rights Performance Assessments. OASCR develops and communicates civil rights performance standards for agencies each year, and then, evaluates them against those standards, and submits a proposed rating to the rater and the Performance Review Board. Recent changes have been made to improve accountability even further. For example, certain standards are absolute and, if not achieved, will result in a lower score. The four absolute standards are to: (i) conduct compliance reviews, (ii) submit timely Agency Position Statements, (iii) submit timely Equal Opportunity Counselor Reports; and (iv) submit timely Reports of Investigation. Also, if agency heads are rated differently from that submitted by OASCR, the rater must submit a written justification.

(8) In addition to focusing on better management and timely disposition of complaints, OASCR has placed an emphasis on prevention of complaints. One way of preventing complaints is to encourage better communication and earlier and faster resolution of conflict through alternative dispute resolution techniques. USDA has an Alternative Dispute Resolution (ADR) policy which requires agencies to offer ADR at the informal complaint stage and strongly encourages ADR at the formal stage. OASCR has encouraged agencies to employ dedicated full-time ADR Program Managers. The Conflict Prevention and Resolution Center, within OASCR, conducts training for managers, practitioners, and employees and conducts various other activities to encourage more use of ADR. For example, additional ADR training is being offered through Webinar technology, and compliance reviews are conducted on agency ADR programs.

(9) OASCR has contracted for an independent organizational assessment of OAC to examine workload and work flow; assess knowledge and skills of staff; identify the operations, processes and systems of performance; evaluate efficiency and productivity; and, recommend areas of the organization in need of improvement. This organizational assessment will allow OASCR to better determine workload projections and resource requirements and employ more efficient processes and best practices. The results of the assessment will provide a footing for OASCR's Implementation and Improvement Plan for resolving and timely processing of discrimination complaints.

USDA is confident that all of these developments will enable OASCR to build upon the progress of recent years and achieve even greater success in the future towards the goal of processing all complaints in a timely and efficient manner and avoiding future backlogs.

**GAO Recommendation**

Develop and implement a plan to assure accuracy, completeness, and reliability of ASCR's data bases on customer and employee complaints to include the independent validation of the ASCR's data quality.

Enclosure 1

**Departmental Response**

OASCR acknowledges that, in years past, due to various ways of defining what is a complaint under various leaders and due to ineffective stand-alone legacy systems, USDA reports have been inconsistent. However, USDA has addressed this problem by investing in the CRES, a state-of-the-art, Department-wide Web-based complaint tracking system with standardized business rules. We expect current and future reports to be more accurate and lend themselves to better trend analysis. As mentioned above, appropriate OASCR staff and agency users have been trained and are being held accountable for timely and proper use of CRES. Any instances of poor data entry are addressed through training and performance management. Claims of data system failures have not been substantiated.

Nonetheless, OASCR is undertaking several initiatives to ensure accuracy, completeness, and reliability of the customer and employee complaint databases within CRES. OASCR has proposed revisions to its civil rights compliance regulations, currently in clearance, to incorporate a quality control function of these databases. The proposed regulation mandates that data integrity checks become an essential part of civil rights compliance reviews throughout the Department. This will ensure stronger internal controls of data management. OASCR has contracted with a commercial vendor to create a set of dashboard reports that will function as a tool for OAC managers to monitor complaint status, workload and workflow. In addition, USDA has established an accountability function within OASCR to oversee independent quality control reviews of both databases.

**GAO Recommendation**

Obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of USDA's investigation of and decisions on civil rights complaints, along with suggestions for improvement.

**Departmental Response**

USDA does not agree with the recommendation to engage contractual services for an independent legal examination of investigations and decisions. USDA employs an internal system of legal sufficiency reviews both within the OASCR and by the Civil Rights Policy Division within the Office of General Counsel. This system works well, is timely and effective, and addresses GAO concerns. Employing an external legal examination of each case, or even a sampling of cases, is unnecessary and would be impractical, cost prohibitive, and add significant delays.

**GAO Recommendation**

Work expeditiously to obtain Office of Management Budget's (OMB) approval to collect demographic data necessary for reliable reporting on race and ethnicity by USDA program.

Enclosure 1

**Departmental Response**

OASCR agrees with this recommendation and has already convened a cross-agency working group to work on a plan to obtain OMB approval for all USDA agencies to collect data on race, ethnicity, sex, national origin, disability, and age (RESNODA). This group is working towards publication of RESNODA in the Federal Register to alert the public of this collection.

**GAO Recommendation**

Develop a results-oriented Department-level strategic plan for civil rights at USDA that unifies USDA's Departmental approach with that of ASCR and the newly created Office of Advocacy and Outreach, and that is transparent about USDA's efforts to address the concerns of stakeholders.

**Departmental Response**

Upon revision of OASCR's five-year strategic plan, USDA will ensure that the plan incorporates a comprehensive, results-oriented, Department-wide strategy for civil rights, and addresses the concerns of customers and stakeholders.

While the initial five-year strategic plan developed in 2005 may not have incorporated the views of stakeholders, subsequent implementation did incorporate stakeholder input. Both Assistant Secretaries conducted extensive listening tours of external and internal stakeholders before developing their initiatives and priorities, and have incorporated their views in subsequent strategic plans.

For example, after consulting with socially disadvantaged farmers and ranchers, the first Assistant Secretary established the annual partners meeting, at which farmers, ranchers, producers, and representatives of community-based organizations are provided the opportunity to meet with key USDA officials and program staff to discuss access to USDA programs and services, identify problems, and propose solutions. The success of these meetings is reflected by a significant increase in attendance of over 500 participants, and results in real, tangible progress towards outreach and equal access for our customers.

In addition, the Assistant Secretary holds regular meetings with representatives of USDA-recognized Employee Organizations and adopted many of their ideas when formulating the Department's Workplace Diversity and Inclusion strategy now being implemented. The GAO Report mentions one activity, "the Diversity Forum;" however, that is just one aspect of a major initiative currently being undertaken at USDA to make workplace diversity and inclusion a core value and address diversity of employee representation throughout USDA, including field offices. Other activities include: (1) A new Office of Workplace Diversity and Inclusion was established and reports directly to the Associate Assistant Secretary for Civil Rights; (2) a new Director for Departmental Diversity and staff was hired/reassigned; (3) Diversity Awareness Training has been developed and is mandatory for all USDA employees in 2008; (4) a Diversity Speaker Series, a forum through which the Office of Diversity invites leaders and executives from the public and private sectors to share their workplace and diversity-related experiences

Enclosure 1

through dialogue with attendees. This information exchange empowers USDA employees to take responsibility for creating and maintaining a productive work environment in learning to value differences; (5) a biennial Civil Rights and Diversity Conference to update USDA executives, managers, supervisors, employees and human resources, civil rights, ADR and Outreach practitioners on civil rights and diversity policies; (6) a Diversity and Inclusion Forum, a communication vehicle and sounding board to foster dialogue between USDA employees and senior management. The Forum consists of representatives from senior management, USDA recognized employee organizations, Departmental and Agency Civil Rights and Diversity Program Managers; and (7) a biennial ADR Conference for USDA conflict management practitioners to enhance skill and knowledge to constructively address workplace disputes.

**GAO Recommendation**

Further explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees, including seeking legislative authority as appropriate to establish such an office and to assure its effectiveness, and advise USDA's congressional oversight committees of the results.

**Departmental Response**

As the GAO Report points out, USDA is currently considering whether to employ an ombudsperson to help represent employee interests. OASCR is benchmarking best practices of established ombudsperson offices in other Federal agencies – the Environmental Protection Agency, Department of Veterans Affairs, National Institutes of Health, Department of Housing and Urban Development, and the Food and Drug Administration. Upon completion of our evaluation, USDA will advise appropriate congressional committees of the results.

Enclosure 2

**U.S. DEPARTMENT OF AGRICULTURE  
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS  
HIGHLIGHTS OF MAJOR ACCOMPLISHMENTS 2003 – 2008**

- Issued a Department of Agriculture (USDA) Civil Rights Policy Statement.
- Consolidated, elevated, and staffed functions with a civil rights focus to a higher organizational structural level.
- Created and implemented the USDA Civil Rights Enterprise System – a Web-based automated system to track, manage, and report employment and program complaints, and alternative dispute resolution Alternative Dispute Resolution (ADR) matters. Established a centralized customer service unit.
- Implemented an “Inventory Reduction Initiative” and “Final Agency Decision Backlog Elimination Plan.”
- Issued a USDA Accountability Policy to hold all managers and employees accountable for discriminatory actions.
- Established a uniform performance standard for USDA employees at all levels in the areas of civil rights, equal employment opportunity, and diversity.
- Amended the USDA ADR policy to enhance employment and program complaint processes. Held a Conflict Resolution Day to disseminate information on alternative resolution techniques. Conducted USDA-wide training conference on ADR.
- Developed annual mandatory civil rights and diversity awareness training for all USDA employees. Developed other civil rights training modules for AgLearn, such as Sexual Orientation, and incorporated civil rights and diversity modules in USDA management and leadership development training.
- Convened Department-wide training conferences to update USDA executives, managers, supervisors, employees and human resources, civil rights, ADR and Outreach practitioners on civil rights, equal employment opportunity, and diversity policies.
- Established a new Office of Diversity to coordinate and manage diversity initiatives at the Department level, and ensure “workplace diversity and inclusion” is incorporated as a core value in USDA’s organizational culture. Conducted Employee survey; Issued a USDA Workplace Diversity and Inclusion Policy Statement; and, Developed a Department-wide Workplace Diversity and Inclusion Strategic Plan.
- Conducted monthly Diversity Speaker Series to share workplace and diversity-related experiences through dialogue with employees.

Enclosure 2

- Conducted regular meetings with USDA-recognized Employee Organizations.
- Established a standing committee, called the “Diversity and Inclusion Forum,” to foster dialogue between USDA employees and senior management.
- Conducted a facilitated retreat for all Agency Outreach Coordinators, and Developed a comprehensive Department-wide Outreach Strategic Plan.
- Convened annual partners meetings with community-based organizations to address equal access to USDA programs and activities for socially and economically disadvantaged groups.
- Established the Center for Minority Farmers to provide information, referrals, and technical assistance to socially and economically disadvantaged farmers and ranchers.
- Launched Minority Farm Register to promote equal access to USDA farm programs and services for minority and underserved farmland owners, farmers, ranchers, tenants, and other individuals who participate in agriculture. This database enables USDA to make direct contact with farmers and ranchers who choose to register for information and outreach services. Marketed and expanded the use of the Minority Farm Register for use by the entire Department.
- Enhanced the market access of socially disadvantaged farmers and ranchers through a certification training program.
- Provided outreach, technical assistance, scholarships, internships, and employment opportunities to Minority-serving Institutions, Land-grant colleges and universities and their students in order to improve diversity of the workforce pipeline.
- Served as Co-chair of the USDA/1890 Task Force and provided leadership on the 1890 National Scholars Program; Agricultural Liaison Program; Centers of Excellence; and, work priorities for the Task Force including the establishment of a consortium for three major initiatives: (1) Nutrition, Health, Wellness, and Obesity in Underserved Populations, (2) Biofuel Research and Development and, (3) Food Biosecurity. Updated Memorandum of Understanding with Council of 1890 Presidents in 2007.
- Developed a Memorandum of Agreement with the American Indian Higher Education Consortium (AIHEC) to strengthen educational and research capacity in Tribal Colleges and Universities. Served as Chair of the USDA/AIHEC Leadership Group. Developed a strategic plan; Established a Scholarship Program; Hired Tribal Liaisons; and, Conducted a tour of tribal colleges and universities for USDA agency officials to gain a better understanding of the needs of these constituents.
- Entered into Memoranda of Understanding with other civil rights and advocacy organizations to further mutual goals.

Enclosure 2

- Published an annual report and other materials to highlight the role, objectives and activities of the Office of the Assistant Secretary for Civil Rights in order to increase public awareness.
- Presented Awards to internal and external stakeholders for civil rights best practices.

# Appendix III: ASCR Initiatives, and Strategic and Priority Plans

**Table 2: ASCR Initiatives for Fiscal Year 2004**

| <b>Challenges</b> | <b>Initiatives/accomplishments</b>   | <b>Status as of Dec. 2007</b> |
|-------------------|--|-------------------------------|
| Organization      | Consolidate USDA offices with civil rights focus into ASCR   | Complete                      |
|                   | Temporarily assign staff to address discrimination complaints  | Complete                      |
| Systems           | Develop a professional system for managing discrimination complaints   | Ongoing                       |
| Procedural        | Draft regulations to address the relationship between USDA's Office of General Counsel and ASCR's Office of Adjudication and Compliance  | Ongoing                       |
| Operational       | Create a unit to handle incoming phone calls for ASCR  | Complete                      |
|                   | Reduce backlogs of customer and employee discrimination complaints   | Complete                      |
|                   | Amend USDA's alternative dispute resolution policy to enhance the use of alternative dispute resolution  | Complete                      |
|                   | Conduct a public awareness campaign—several public forums and listening sessions to discuss partnerships, the Minority Farm Registry, the Notice of Farm Loan Application Receipts, and the 2008 Farm Bill   | Ongoing                       |
| Accountability    | Prevent program complaints—ASCR has convened three Partners Meetings with community based organizations and groups representing minority and limited resource farmers to address concerns about access to farm programs                                | Ongoing                       |
|                   | Prevent employee complaints—training for managers on equal employment opportunity is mandatory, and employee development programs are being implemented  | Ongoing                       |
|                   | Implement the "No FEAR Act"—Public Law 107-174 requires federal agencies to be held accountable for violations of anti-discrimination laws—USDA reported that its quarterly reports are being posted on time, and all employees have received training | Complete                      |
|                   | Develop ASCR accountability policy for USDA—USDA's Office of Human Resources will ensure that all USDA managers are held accountable for discriminatory actions  | Complete                      |
|                   | Convene annual civil rights conference   | Complete                      |

Source: USDA.



**Appendix III: ASCR Initiatives,  
and Strategic and Priority Plans**

**Table 3: ASCR Strategic Objectives for Fiscal Years 2005 to 2010**

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

Source: USDA.

**Appendix III: ASCR Initiatives,  
and Strategic and Priority Plans**

**Table 4: List of Civil Rights Priorities and Selected Initiatives for Fiscal Years 2007 and 2008**

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

Source: USDA.

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

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

Source: GAO analysis of documents and interviews.

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Lisa Shames, (202) 512-3841 or [shamesl@gao.gov](mailto:shamesl@gao.gov)

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## Staff Acknowledgments

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