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# U.S. DEPARTMENT OF AGRICULTURE

## Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues

Statement of Lisa Shames, Director  
Natural Resources and Environment

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



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Accountability \* Integrity \* Reliability



Highlights of [GAO-09-650T](#), a testimony before the Subcommittee on Department Operations, Oversight, Nutrition and Forestry, Committee on Agriculture, House of Representatives

## Why GAO Did This Study

For decades, there have been allegations of discrimination in the U.S. Department of Agriculture's (USDA) programs and workforce. Numerous federal reports have described serious weaknesses in USDA's civil rights program—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.

This testimony focuses on ASCR's efforts to (1) resolve discrimination complaints, (2) report on minority participation in farm programs, and (3) strategically plan its efforts. GAO also reviewed the experiences of other federal agencies to develop options for addressing management deficiencies within ASCR. This testimony is based primarily on GAO's May 2008 testimony ([GAO-08-755T](#)) on ASCR management deficiencies and October 2008 report ([GAO-09-62](#)) that made a number of recommendations to the Secretary of Agriculture and suggested certain matters for congressional consideration. At the time, USDA agreed with most of the recommendations but not with the matters for congressional consideration. In April 2009, ASCR officials said USDA accepts all of the recommendations and is beginning steps to implement them; these officials also said they hope doing so will preclude the need for the Congressional actions GAO suggested.

View [GAO-09-650T](#) or [key components](#). For more information, contact Lisa Shames at (202) 512-2649 or [shamesl@gao.gov](mailto:shamesl@gao.gov).

## U.S. DEPARTMENT OF AGRICULTURE

### Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues

#### What GAO Found

ASCR's difficulties in resolving discrimination complaints persist. ASCR has not achieved its goal of preventing backlogs of complaints, and this effort has been undermined by ASCR's faulty reporting and disparities in ASCR data. Also, some steps ASCR took to speed up its work may have adversely affected the quality of its work. Consequently, we recommended that the Secretary of Agriculture implement plans to (1) improve how USDA resolves discrimination complaints and (2) ensure the reliability of ASCR's databases on customer and employee complaints. We also recommended that USDA obtain an independent legal examination of a sample of USDA's prior investigations and decisions on civil rights complaints.

USDA considers much of its data on minority farmers' participation in farm programs to be unreliable because they are based on employees' visual observations about participants' race and ethnicity that may not be correct. USDA stated that it needs the Office of Management and Budget's (OMB) approval to collect more reliable data. Consequently, in October 2008, we recommended that the Secretary of Agriculture work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.

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. In October 2008, we recommended that the Secretary of Agriculture develop a strategic plan for civil rights at USDA that unifies USDA's departmental approach with that of ASCR and that is transparent about USDA's efforts to address the concerns of stakeholders.

Three options that have been used at other agencies dealing with significant performance issues are relevant to addressing certain long-standing ASCR issues: statutory performance agreements, which could help ASCR achieve specific expectations by providing additional incentives and mandatory public reporting; an oversight board, which could improve USDA's administration of civil rights activities and provide transparency; and an ombudsman office, which could assist in resolving civil rights concerns at USDA. In October 2008, we suggested 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. In addition, we recommended that the Secretary of Agriculture explore the potential for an ombudsman office to help address the civil rights concerns of USDA customers and employees.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the U.S. Department of Agriculture's (USDA) progress in addressing long-standing civil rights issues. For decades, USDA has been the focus of federal inquiries into allegations of discrimination against minorities and women both in the programs it administers and in its workforce. Numerous reports and congressional testimony by officials of the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, USDA's Office of Inspector General (OIG), 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. In addition, USDA has been the subject of several large class-action lawsuits claiming discriminatory behavior on the part of the department. For example, the *Pigford v. Glickman* case has resulted in the payment of about \$1 billion in claims to African-American farmers.

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 may delegate responsibility to the Assistant Secretary for Civil Rights for ensuring that USDA complies with all civil rights-related laws and considers civil rights matters in all USDA strategic planning initiatives. 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 and subsequent legislation require USDA to report annually on minority participation in USDA programs.

The new Administration has indicated its commitment to improve the management of civil rights at USDA. For example, the new Secretary of Agriculture testified in March 2009 that improving this management is one of his top priorities and he will dedicate the resources necessary to achieve this improvement. And earlier this month, USDA's new Assistant Secretary for Civil Rights was confirmed. This official, who brings to the position prior civil rights experience, also has pledged to improve this management. Furthermore, on April 21, 2009, the Secretary issued a

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memorandum to all USDA employees reiterating that civil rights is one of his top priorities and stating that he intends to take definitive action to improve USDA's record on civil rights and move USDA to a new era as a model employer and premier service provider. Thus, this oversight hearing is particularly timely: it provides an opportunity to briefly restate the scope of civil rights problems at USDA, but more importantly it offers an opportunity to discuss possible solutions to these problems for the benefit of these new officials.

I will focus my testimony today on three primary issues: ASCR's (1) resolution of 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. I will also discuss lessons learned from the experiences of other federal agencies to develop options for addressing USDA's long-standing problems. My statement is based primarily on our May 2008 testimony on management deficiencies in ASCR and our October 2008 report on recommendations and options to address these deficiencies.<sup>1</sup> To perform that work, we interviewed officials representing ASCR, USDA's OIG, USDA's agency-level civil rights offices, the Equal Employment Opportunity Commission, community-based organizations, and minority groups. We examined ASCR's strategic plan and other relevant planning documents, USDA documents about efforts to resolve discrimination complaints, and USDA's reporting on minority participation in its programs. In addition, we analyzed data provided by ASCR and found it to be unreliable; we made recommendations accordingly. We also considered our own guidance and reporting on results-oriented management<sup>2</sup> and reviewed our experience in addressing the problems of high-risk, underperforming agencies.<sup>3</sup> We

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<sup>1</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) and *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, [GAO-09-62](#) (Washington, D.C.: October 22, 2008).

<sup>2</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>3</sup>For example, see most recently GAO, *High-Risk Series: An Update*, [GAO-09-271](#) (Washington, D.C.: January 2009).

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conducted this work 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. We believe the evidence obtained provides this reasonable basis.

In summary, I would like to make two observations. First, we found numerous deficiencies in ASCR's management of civil rights, and we offered a number of recommendations to address them. In April 2009, ASCR officials said that USDA has begun to take steps to implement each of these recommendations. Specifically:

- Regarding discrimination complaint resolution, we reported that ASCR had not achieved its goal of preventing backlogs of complaints and that this effort was undermined by ASCR's faulty reporting and disparities in ASCR data. Also, some steps ASCR took to speed up its work may have adversely affected the quality of its work. Consequently, we recommended that USDA prepare and implement an improvement plan for resolving discrimination complaints; develop and implement a plan to ensure the accuracy, completeness, and reliability of ASCR's databases on complaints; and obtain an independent legal examination of a sample of USDA's prior investigations and decisions on civil rights complaints. ASCR officials said that the department is taking steps to set timeframe goals and establish proper management controls; move data from ASCR's three complaint databases into one; and obtain independent legal advice on its program complaints.
- Regarding minority participation in USDA programs, we reported that much of the data that USDA provided to Congress and the public on minority farmers' participation in farm programs are unreliable because they 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. To address this inherent shortcoming, USDA said it needs to collect standardized data directly from program participants, which requires approval from the Office of Management and Budget (OMB). Accordingly, we recommended that USDA work expeditiously to obtain such approval from OMB. ASCR officials indicated that a draft *Federal Register* notice requesting OMB's approval to collect these data is being reviewed within the department.
- Regarding strategic planning, we reported that ASCR's planning was limited and did not reflect the views of relevant stakeholders, such as community-based organizations and minority interest groups; did not link

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to the plans of other USDA agencies or the department; could better measure performance to gauge its progress; did not discuss the potential for using performance information for identifying USDA's performance gaps; and did not link funding with anticipated results. Consequently, we recommended that USDA develop a results-oriented department-level strategic plan for civil rights 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 stakeholder concerns. ASCR officials said they plan to implement this recommendation during the next department-wide strategic planning process.

Moving forward, my second observation is that the experience of other agencies in addressing significant performance issues provides options that are relevant for addressing certain long-standing ASCR issues. We identified three options that are relevant for consideration.

- Option 1: Congress could require USDA's Assistant Secretary for Civil Rights to be subject to a statutory performance agreement. Congress previously required executives at several other federal agencies to be subject to these agreements. Such an agreement can be transmitted to congressional committees and made public, and the office in question can be required to report to Congress annually on its performance, including the extent to which it met its performance goals. Such an agreement for ASCR could assist in achieving specific expectations by providing additional incentives and mandatory public reporting.
- Option 2: 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. A USDA civil rights oversight board could be authorized to independently monitor, evaluate, approve, and report on USDA's administration of civil rights activities, thereby identifying weaknesses that need to be addressed and providing transparency.
- Option 3: USDA 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 other agencies have created ombudsman offices for addressing employees' concerns. A USDA ombudsman who is independent, impartial, fully capable of conducting meaningful investigations and who can maintain confidentiality could assist in resolving civil rights concerns at USDA.

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In October 2008, we suggested 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. USDA initially disagreed with these suggestions; in April 2009, however, ASCR officials said that, while the department no longer disagrees with these suggestions, they hope that the actions they are taking or planning to improve the management of civil rights at USDA will preclude the need for these mechanisms. In addition, we recommended that USDA explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees. In April 2009, ASCR officials indicated that the Assistant Secretary for Civil Rights has convened a team to study the ombudsman concept and to make recommendations by September 30, 2009, to the Secretary of Agriculture for establishing an ombudsman office.

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## Problems in Resolving Discrimination Complaints Persist

The credibility of USDA's efforts to correct long-standing problems in resolving customer and employee discrimination complaints has been undermined by faulty reporting of complaint data, including disparities we found when comparing various ASCR sources of data. When ASCR was created in 2003, there was an existing backlog of complaints that had not been adjudicated. In response, the Assistant Secretary for Civil Rights at that time called for a concerted 12-month effort to reduce this backlog and to put lasting improvements in place to prevent future complaint backlogs. In July 2007, ASCR reported that it had reduced its backlog of 690 complaints and held the complaint inventory to manageable levels through fiscal year 2005.<sup>4</sup> However, the data ASCR reported lack credibility because they were inconsistent with other complaint data it reported a month earlier to a congressional subcommittee. The backlog later surged to 885 complaints, according to ASCR data. Furthermore, the Assistant Secretary's letter transmitting these data stated that while they were the best available, they were incomplete and unreliable. In addition, GAO and USDA's OIG have identified other problems with ASCR's data, including the need for better management controls over the entry and validation of these data.

In addition, some steps that ASCR took to speed up its investigations and decisions on complaints in 2004 may have adversely affected the quality of its work. ASCR's plan called for USDA's investigators and adjudicators,

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<sup>4</sup>USDA, *First 1,000 Days, 2003-2006* (Washington, D.C.: July 2007).

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who prepare agency decisions, to nearly double their normal pace of casework for about 12 months. ASCR's former Director, Office of Adjudication and Compliance, stated that this increased pace led to many "summary" decisions on employees' complaints that did not resolve questions of fact, with the result that many decisions were appealed to the Equal Employment Opportunity Commission. This official also said these summary decisions "could call into question the integrity of the process because important issues were being overlooked." In addition, inadequate working relationships and communications within ASCR, as well as fear of retaliation for reporting management-related problems, complicated ASCR's efforts to produce quality work products. In August 2008, ASCR officials stated they would develop standard operating procedures for the Office of Adjudication and Compliance and had provided USDA staff training on communication and conflict management, among other things. While these are positive steps, they do not directly respond to whether USDA is adequately investigating complaints, developing thorough complaint decisions, and addressing the problems that gave rise to discrimination complaints within ASCR.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), enacted in June 2008, 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. In addition, the 2008 Farm Bill requires USDA 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.

In October 2008, we recommended that the Secretary of Agriculture take the following actions related to resolving discrimination complaints:

- 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.



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USDA agreed with the first two recommendations, but initially disagreed with the third, asserting that its internal system of legal sufficiency addresses our concerns, works well, and is timely and effective. Given the substantial evidence of civil rights case delays and questions about the integrity of USDA's civil rights casework, we believe this recommendation remains valid and necessary to restore confidence in USDA's civil rights decisions. In April 2009, ASCR officials said that USDA now agrees with all three of the recommendations and that the department is taking steps to implement them. These steps include hiring a consultant to assist ASCR with setting timeframe goals and establishing proper management controls; a contractor to help move data from ASCR's three complaint databases into one; and a firm to provide ASCR with independent legal advice on developing standards on what constitutes a program complaint and actions needed to adjudicate those complaints.

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## Reports on Minority Participation Are Unreliable and of Limited Usefulness

As required by the 2002 farm bill, ASCR has published three annual reports on the participation rate of socially disadvantaged farmers and ranchers in USDA programs. The reports are to provide statistical data on program participants by race and ethnicity, among other things. However, much of these data are unreliable because USDA lacks a uniform method of reporting and tabulating race and ethnicity data among its component agencies. According to USDA, to collect standardized demographic data directly from participants in many of its programs, it must first obtain OMB's approval. In the meantime, most of USDA's demographic data are gathered by visual observation of program applicants, a method that is inherently unreliable and subjective, especially for determining ethnicity. To address this problem, ASCR published a notice in the *Federal Register* in 2004 seeking public comment on its plan to collect standardized data on race, ethnicity, gender, national origin, and age for all its programs. However, while it received some comments, ASCR has not moved forward to finalize this rulemaking and obtain OMB's approval to collect these data.

The 2008 Farm Bill contains several provisions related to reporting on minority farmers' participation in USDA programs. First, it requires USDA to annually compile program application and participation rate data for each program serving those farmers. These reports are to include the raw numbers and participation rates for the entire United States and for each state and county. Second, it requires USDA to ensure, to the maximum extent practicable, that the Census of Agriculture and studies by USDA's Economic Research Service accurately document the number, location,

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and economic contributions of minority farmers in agricultural production.

In October 2008, to address underlying data reliability issues, as discussed, and potential steps USDA could take to facilitate data analysis by users, we recommended that the Secretary of Agriculture work expeditiously to obtain OMB's approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program. USDA agreed with the recommendation. In April 2009, ASCR officials indicated that a draft *Federal Register* notice requesting OMB's approval to collect these data for Farm Service Agency, Natural Resources Conservation Service, and Rural Development programs is being reviewed within USDA. These officials said they hoped this notice, which they considered an initial step toward implementing our recommendation, would be published and implemented in time for USDA's field offices to begin collecting these data by October 1, 2009. According to these officials, USDA also plans to seek, at a later time, authority to collect such data on participants in all USDA programs.

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## Strategic Planning Is Limited and Lacks Needed Components

In light of USDA's history of civil rights problems, better strategic planning is vital. 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. 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*. However, ASCR's plans do not include fundamental elements required for effective strategic planning. In particular, we found that the interests of ASCR's stakeholders—including representatives of community-based organizations and minority interest groups—are not explicitly reflected in its strategic plan. For example, we found that ASCR's stakeholders 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 stakeholders are better represented in local decisions; and (3) the diversity of USDA

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employees who work with minority producers. A more complete list of these interests is included in the appendix.

In addition, ASCR's strategic plan does not link to the plans of other USDA agencies or the department and does not discuss the potential for linkages to be developed. ASCR could also 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. 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 of, for example, strengthening partnerships with historically black land-grant universities through scholarships provided by USDA.

To help ensure access to and equitable participation in USDA's programs and services, the 2008 Farm Bill provided for establishing the Office of Advocacy and Outreach and charged it with, among other things, establishing and monitoring USDA's goals and objectives to increase participation in USDA programs by small, beginning, and socially disadvantaged farmers and ranchers. As of April 2009, ASCR officials indicated that the Secretary of Agriculture plans to establish this office, but has not yet done so.

In October 2008, we recommended that USDA develop a results-oriented department-level strategic plan for civil rights 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 stakeholder concerns. USDA agreed with this recommendation. In April 2009, ASCR officials said they plan to implement this recommendation during the next department-wide strategic planning process, which occurs every 5 years. Noting that the current plan runs through 2010, these officials speculated that work on the new plan will start in the next few months.

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## Lessons Learned That Could 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 that could benefit USDA's civil rights performance. 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.

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## A Statutory Performance Agreement Could Help Define Accountability for Results

Our prior assessment of performance agreements used at several agencies has shown that these agreements have potential benefits that could help improve the performance of ASCR.<sup>5</sup> Potential benefits that performance agreements could provide 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.

Congress has required performance agreements in other federal offices and the results have been positive. For example, in 1998, Congress established the Department of Education's Office of Federal Student Aid as the government's first performance-based organization.<sup>6</sup> This office had experienced long-standing financial and management weaknesses and we had listed the Student Aid program as high-risk since 1990. Congress required the office's Chief Operating Officer to have a performance agreement with the Secretary of Education that was 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. In 2005,

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<sup>5</sup>GAO, *Managing for Results: Emerging Benefits from Selected Agencies' Use of Performance Agreements*, GAO-01-115 (Washington, D.C.: Oct. 30, 2000).

<sup>6</sup>Higher Education Amendments of 1998, Pub. L. No. 105-244 § 101(a), 112 Stat. 1581 (amending 20 U.S.C. § 1018).

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because of the sustained improvements made by the office in its financial management and internal controls, we removed this program from our high-risk list. More recently, Congress has required statutory performance agreements for other federal executives, including for the Commissioners of the U.S. Patent and Trademark Office and the Under Secretary for Management of the Department of Homeland Security.<sup>7</sup>

A statutory performance agreement could benefit ASCR. 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. This set of responsibilities is broad in scope, and it does not identify 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.

In October 2008, we suggested that Congress consider the option of making USDA's Assistant Secretary for Civil Rights subject to a statutory performance agreement. USDA initially disagreed with this suggestion, in part stating that the Assistant Secretary's responsibilities are spelled out in the 2002 and 2008 farm bills. In response, we noted, in part, that a statutory performance agreement would go beyond the existing legislation by requiring measurable organizational and individual goals in key performance areas. In April 2009, ASCR officials indicated that the department no longer disagrees with this suggestion. However, these officials expressed the hope that the actions they are taking or planning to improve the management of civil rights at USDA, such as obtaining an independent external analysis of program delivery, will preclude the need for this mechanism.

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<sup>7</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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## An Oversight Board Could Improve ASCR Management

Congress could also authorize a USDA civil rights oversight board to independently monitor, evaluate, approve, 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 (IRS) Oversight Board in 1998 to oversee IRS's administration of internal revenue laws and ensure that its organization and operation allow it to carry out its mission. At that time, IRS was considered to be an agency that was not effectively serving the public or meeting taxpayer needs. The 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 application of the internal revenue code. We have previously noted the work of the Internal Revenue Service Oversight Board—including, for example, the board's independent analysis of IRS business systems modernization.<sup>8</sup> Currently, there is no comparable independent oversight of USDA civil rights activities.

In October 2008, we suggested that Congress consider the option of establishing a USDA civil rights oversight board to independently monitor, evaluate, approve, and report on USDA's administration of civil rights activities. Such a board could provide additional assurance that ASCR management functions effectively and efficiently. USDA initially disagreed with this suggestion, stating that it would be unnecessarily bureaucratic and delay progress. In response, we noted that a well-operated oversight board could be the source of timely and wise counsel to help raise USDA's civil rights performance. In April 2009, ASCR officials said that the department no longer disagrees with this suggestion. However, these officials expressed the hope that the actions they are taking or planning to address our recommendations to improve the management of civil rights at USDA will preclude the need for this mechanism.

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<sup>8</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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## An Ombudsman Could Address Concerns of USDA Customers and Employees

An ombudsman for USDA civil rights matters could be created to address the concerns of USDA customers and employees. Many other agencies have created ombudsman offices for addressing employees' concerns, as authorized by the Administrative Dispute Resolution Act. However, an ombudsman 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.

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 those of 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 certain hazardous waste cleanup activities. 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>9</sup>

Within the federal workplace, ombudsmen provide an informal alternative to existing and more formal processes to deal with employees' workplace conflicts and other organizational climate issues. USDA faces concerns of fairness and equity from both customers and employees—a range of issues that an ombudsman could potentially assist in addressing. A USDA ombudsman who is independent, impartial, fully capable of conducting meaningful investigations and who can maintain confidentiality could assist in resolving these civil rights concerns. As of April 2007, 12 federal departments and 9 independent agencies reported having 43 ombudsmen.

In October 2008, we recommended that USDA 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. USDA agreed with this recommendation. In April 2009, ASCR officials indicated

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<sup>9</sup>GAO, *Transportation Security Administration: Actions and Plans to Develop a Results-Oriented Culture*, [GAO-03-190](#) (Washington, D.C.: Jan. 17, 2003).

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that the Assistant Secretary for Civil Rights has convened a team to study the ombudsman concept and to make recommendations by September 30, 2009, to the Secretary of Agriculture for establishing an ombudsman office.

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## Concluding Observations

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 about 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 short, and 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 concerns about the integrity of final decision preparation—the credibility of USDA efforts to resolve discrimination complaints will be 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. Furthermore, without better strategic planning and meaningful performance measures, it appears unlikely that USDA management will be fully effective in achieving its civil rights mission.

Given the new Administration's commitment to giving priority attention to USDA's civil rights problems, various options may provide a road map to correcting long-standing management deficiencies that have given rise to these problems. Specifically, 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 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. These options could lay a foundation for clarity about the expectations USDA must meet to restore confidence in its civil rights performance.



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

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## Contacts and Staff Acknowledgments

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. For further information about this testimony, please contact Lisa Shames, Director, Natural Resources and Environment, (202) 512-2649 or [ShamesL@gao.gov](mailto:ShamesL@gao.gov). Key contributors to this statement were James R. Jones, Jr., Assistant Director; Kevin S. Bray; Nancy Crothers; Nico Sloss; and Alex M. Winograd.

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

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

Source: GAO analysis of documents and interviews.

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# Related GAO Products

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*U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights.* [GAO-09-62](#). Washington, D.C.: October 22, 2008.

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

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

*Department of Agriculture: Hispanic and Other Minority Farmers Would Benefit from Improvements in the Operations of the Civil Rights Program.* [GAO-02-1124T](#). Washington, D.C.: September 25, 2002.

*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.: September 20, 2002.

*U.S. Department of Agriculture: Resolution of Discrimination Complaints Involving Farm Credit and Payment Programs.* [GAO-01-521R](#). Washington, D.C.: April 12, 2001.

*U.S. Department of Agriculture: Problems in Processing Discrimination Complaints.* [T-RCED-00-286](#). Washington, D.C.: September 12, 2000.



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

## Why GAO Did This Study

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

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

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

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

## U.S. DEPARTMENT OF AGRICULTURE

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

#### What GAO Found

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

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

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

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