

**STATEMENT TO THE HOUSE COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS, OVERSIGHT, NUTRITION,
AND FORESTRY**

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Good morning, Mr. Chairman, Representative Clayton, and members of the Committee. Thank you for inviting us to testify before you today on civil rights at the Department of Agriculture (USDA).

I am offering this testimony on behalf of Secretary Ann M. Veneman, as well as my colleagues here with me today – Nancy S. Bryson, our General Counsel, and Hunt Shipman, Deputy Under Secretary for Farm and Foreign Agricultural Services. In addition to this written testimony, Nancy, Hunt, and I stand ready to answer any questions you may have.

President Abraham Lincoln founded the United States Department of Agriculture in 1862 to serve all of the people of this Nation. Today, nearly 150 years later, USDA employees are among the finest public servants, committed to ensuring that every customer and colleague is treated with fairness, equality, and respect.

Secretary Veneman and I are firmly committed to ensuring that USDA is working in compliance with civil rights and equal employment opportunity for everyone regardless of race, color, national origin, gender, religion, age, sexual orientation, disability, marital or familial status, or any other factor. As the Secretary herself has said, “As public servants, we cannot be effective without being fair. We cannot be responsive without

being respectful. We cannot deliver programs and services without being sensitive to the human issues that are so much a part of our work.”

When I arrived at USDA, Secretary Veneman made it clear that there is nothing more important to her than continuing to advance the Department’s civil rights record. This Administration is, of course, aware of the long history of problems and challenges the Department has faced in the area of civil rights. We have committed ourselves to make constant progress in addressing the circumstances that give rise to complaints, concerns and criticisms on the one hand, and in processing the complaints we receive in a timely and efficient manner, on the other.

We are not here to tell you that the problems are fixed. We’re here to tell you that we take them seriously, and that we are doing everything we can to fix them. We appreciate the role of Congress, oversight agencies like GAO and EEOC, as well as USDA customers and employees, in pointing out where we can improve. We have opened a productive dialogue with constituent groups, including both admirers and detractors, and we’re eager to hear their thoughts and their suggestions.

African American Farmers Class Action Consent Decree

Mr. Chairman, let me now provide you with an update on the implementation of the Consent Decree in the *Pigford* class action concerning African-American farmers. As you know, the previous Administration settled the *Pigford v. Glickman* class action lawsuit by African American farmers concerning the Department’s farm loan and benefit programs.

In particular, Mr. Chairman, I believe that there has been a great deal of misunderstanding and many misconceptions about the Consent Decree, and I would like to take this opportunity to bring clarity to some of the issues that have arisen surrounding the Consent Decree.

Perhaps the one thing that all parties will agree on is that the Consent Decree is not perfect. However, given the complexity of the problem, there probably was no perfect solution. Nevertheless, the Consent Decree was an historic and far-reaching settlement of a long-standing dispute between USDA and African-American farmers. The settlement was reached after extensive negotiations between the parties, and it was approved by United States District Court Judge Paul Friedman. I should add that Judge Friedman only approved the Consent Decree after an extensive fairness hearing at which interested parties had an opportunity to provide their comments and objections to the then-proposed settlement agreement.

Many of the same individuals and groups who are now seeking to vacate the Consent Decree objected to the Consent Decree at the fairness hearing. However, after hearing those objections, Judge Friedman approved the Consent Decree in a 32-page opinion, finding that the Decree—while not perfect—was an appropriate resolution of the class action. Judge Friedman approved the Consent Decree on April 14, 1999. I am happy to report to you today, Mr. Chairman, that a substantial part of the Consent Decree implementation has been completed, and we are now turning toward the final steps under the Decree.

As you and the members of the Committee know, under the Consent Decree, a claimant could choose to proceed under one of two tracks—Track A or Track B. Track A, which is the track the vast majority of claimants chose, is an expedited track under which claimants simply fill out a claim form under oath, with a lowered evidentiary standard applied, and certain relief is provided to those who prevail. Specifically, claimants who prevail on a claim involving farm loans receive a cash payment of \$50,000, debt relief as determined by the adjudicator, a tax payment to the IRS of 25% of the total of the cash payment and any debt relief, and certain future injunctive relief, which I shall describe in more detail later. Claimants who prevail in Track A on a non-loan issue receive a cash payment of \$3,000.

Those claimants who believe that they have the evidence to prove a larger amount of relief may choose Track B, which has a higher evidentiary standard that entitles them to a one-day arbitration hearing before an independent arbitrator who may award any proven relief.

No official of USDA makes any determinations as to who is entitled to relief under the Consent Decree. This point is often misunderstood by the farmers and seems to get misreported in media reports. Under the Consent Decree, the entire process is coordinated by an outside court-appointed Facilitator, specifically, the Poorman-Douglas Corporation.

All determinations as to whether claimants prevail under the Track A process of the Decree are made by the independent Adjudicator, the JAMS-Endispute Corporation. The individual adjudicators who make determinations on claims are mostly retired state and federal judges. Again, USDA makes no determinations as to who is entitled to relief.

For those claimants who choose to proceed under Track B of the Decree, those claims are heard by an independent Arbitrator, specifically, ADR Associates, led by Michael Lewis, a well-respected attorney and mediator in Washington, D.C. Finally, Judge Friedman appointed an independent monitor, Randi Roth of the Farmers Legal Action Group, to oversee implementation of the Consent Decree and to report to the Court.

In short, USDA makes no official determinations under the Consent Decree, but rather, such determinations are made by independent, court-appointed entities. USDA's role, as set forth in the settlement, is limited to providing a response to each of the Track A claims filed. This response is not an "opposition," as such, to the claim, but rather is to provide information to the Adjudicator so that the Adjudicator can make an appropriate determination on the claim. In essence, the information provided by USDA is similar to the type of information the farmer would have had access to in the traditional discovery process.

If a claimant prevails on a Track A claim, the relief is either immediately implemented or, as I will discuss more below, USDA files a petition with the independent court-appointed Monitor for review. If the Adjudicator finds that the claimant has not prevailed, or denies complete relief to the claimant, the claimant may also petition the Monitor to review the decision.

As of the end of August, the Facilitator accepted 21,583 claims under Track A and 181 claims for processing under Track B. This is out of a total of 22,829 claims submitted to the Facilitator. The Adjudicator has issued final decisions in 21,358 of the Track A claims with the claimants prevailing in approximately 60% of the cases. Virtually all of the prevailing claimants in Track A have been provided with their cash payment and with their debt relief. Specifically, the government has paid out well over \$600 million dollars in cash and tax payments, and USDA has discharged over \$17 million in outstanding debts of claimants. USDA has also returned almost \$200,000 in offsets taken against prevailing claimants.

Many have commented that a much smaller percentage of claimants have prevailed under Track A than was anticipated at the outset of the Consent Decree implementation. However, it should be noted that, at the time the Consent Decree was signed, class counsel anticipated that 3,000 to 5,000 claimants would file claims under the Decree. However, as I stated earlier, more than 20,000 individuals filed claims under the Consent Decree. Therefore, it is not surprising that a smaller percentage of claimants prevailed than was once anticipated. This is even more understandable when one considers that USDA has no records or any evidence that the vast majority of the claimants ever farmed or participated in USDA programs.

Another myth is that USDA has delayed the Consent Decree process. In fact, USDA has done an exemplary job in implementing the Consent Decree without delay. I'm proud of the Herculean effort that went into this, thousands of staff hours, in fact. Many more individuals filed claims than anyone—USDA, class counsel, Judge Friedman—had

anticipated, and this is the main cause of the length of time the process has taken. Beyond that, USDA has done everything within its power to meet the requirements of the Consent Decree. USDA has ensured that all prevailing claimants were provided with appropriate relief in a timely manner.

I mentioned earlier that USDA has the option of filing a petition with the independent Monitor if it believes that the Adjudicator made an error in its determination. USDA has been judicious in exercising its option to appeal. Of almost 13,000 Track A claims in which the claimant prevailed, USDA has only filed about 600 petitions (less than 5%). In addition, in cases in which claimants filed petitions, USDA has filed the required response to the petition in a timely manner. USDA has not delayed the Consent Decree process.

With regard to Monitor petitions filed by claimants, a high percentage of claimants who did not prevail filed a petition with the Monitor for review of their decision, and even many claimants who did prevail filed a petition seeking additional relief. Thus, over 4,500 claimant petitions were filed with the Monitor. The Monitor has yet to rule on 1,000 of these. In addition, it must be remembered that, under the terms of the Consent Decree, the Monitor cannot reverse these decisions herself. Rather, she can only send the decision back to the Adjudicator for reexamination, and a readjudication decision is then issued. Therefore, in addition to the Monitor process, the Adjudicator will likely have to issue readjudication decisions in over 2,500 cases. As I noted above, the initial claims process is nearly completed. Thus, the fact that the Consent Decree process continues long after many thought it would be over is due to the petition process, the volume of which—like the initial claims process itself—was not anticipated at the outset of the Consent Decree.

The Monitor has been sending decisions back to the Adjudicator for reexamination at a rate of about 60%, and affirming the Adjudicator's decision in about 40% of the cases.

In addition to the approximately 20,000 individuals who filed claims, approximately 60,000 additional individuals have requested permission to file late claims in the case. Judge Friedman delegated the late-claims process to the Consent Decree Arbitrator, who makes the final determination as to whether any of these individuals should be permitted to file late claims. USDA plays absolutely no role in this process. The Arbitrator has only allowed a very small percentage of these individuals to file claims. These additional claims must follow the same process as if they were timely submitted, and this is another reason that the process is taking longer than expected to complete.

I would like to mention something about the debt relief in this case. At an earlier point in the case, class counsel disagreed with the type and extent of debt relief that the Adjudicators were awarding prevailing claimants. Thus, the parties entered into negotiations, which led to a Stipulation and Order being signed by the parties and Judge Friedman on February 7, 2001. Under this order, the parties set forth with specificity the extent of debt relief that should be provided to prevailing claimants. Rather than requiring the Adjudicator to re-look at the decisions, USDA completed a review of decisions already issued, to determine if any claimants were entitled to additional debt relief under the order. Based on this review, USDA discharged approximately \$6.5 million dollars of additional debt for these claimants.

Mr. Chairman, another step that USDA has taken is to freeze all loan accelerations and foreclosures against African-American farmers until they have gone completely through the Consent Decree process, including any Monitor appeals. USDA has gone beyond what the Consent Decree requires in this regard in that we implemented this policy long before the Consent Decree was signed and we have applied the policy to all African-American farmers, not just to those who we are aware filed claims. Secretary Veneman recently reaffirmed that USDA will continue this policy in effect.

As I discussed earlier, prevailing claimants are also entitled to certain injunctive relief. This includes: 1) priority consideration on the purchase of inventory property; 2) priority

consideration on certain loan applications; 3) having future applications for loans viewed in a light most favorable to the applicant; and 4) adequate technical assistance.

USDA has set forth a structure to ensure that this relief is being properly implemented. While this structure is quite resource intensive for our Farm Service Agency, I am happy to report that this structure is working very well. In addition, and this cannot be overemphasized, *Pigford* claimants who are active farmers can take advantage of the many other efforts USDA is making, and that I will discuss today, to assist minority farmers.

Thus, USDA has gone beyond what the Consent Decree technically requires to assist African-American farmers who wish to continue farming. Also to assist active farmers, USDA has worked with the Facilitator and the Monitor to prioritize the remaining pending Monitor petitions so that those claimants who are active farmers can have their petitions ruled on first.

USDA also works with the Monitor's office outside of the petition process to respond to claimant inquiries on a variety of matters. Based on this process, USDA has provided additional relief to some claimants, and has resolved many claimant issues in a satisfactory manner.

Mr. Chairman, as you may know, USDA has discussed many Consent Decree issues with farmers and farmer groups in several forums. We have listened to these concerns, and discussed them fully. As a result of these conversations, USDA has taken some of the actions I have discussed earlier, and we are continuing to look for ways to improve the process. We will continue to have such fruitful discussions on these issues.

I hope I have shown you today, though, that USDA has done its part –and more–in implementing the Consent Decree. As I stated at the outset, the Consent Decree is not perfect. It has its flaws. With hindsight, the parties may have done many things differently. However, as Judge Friedman has stated on more than one occasion, this

was an historic settlement that has resulted in great progress by providing relief to thousands of African-American farmers. Indeed, Judge Friedman has declined the requests of some African American farmers to vacate the Consent Decree on two occasions, including very recently.

The key now is for the parties to continue to work together, and with the Monitor 's office, to ensure that the Consent Decree continues to be properly implemented. And USDA will continue its efforts to ensure that African-American farmers are treated fairly and that they have every opportunity to be successful as farmers.

Plain-English information and status updates to the public are always available through a special *Pigford* web site, www.usda.gov/da/consent.htm.

Class Complaints Against USDA

Mr. Chairman, I would also like to provide you with an update on the other class actions pending against USDA by minority and female farmers. As you and the other members of the Committee know, there are class actions pending against USDA by Native American farmers, Hispanic farmers, and female farmers. Each of these class actions, like the *Pigford* class action, alleges discrimination against USDA in regard to our farm loan and benefit programs, as well as alleging that USDA did not process the administrative complaints of class members.

The government's position is that the cases are not proper for class certification. In the Native American class action, known as *Keepseagle v. Veneman*, United States District Judge Emmett Sullivan certified the class in September of 2001. Because the government disagreed that certification was proper, it filed an appeal on behalf of USDA with the federal court of appeals. In January of this year, the appeals court agreed to hear the appeal, and it also stayed further proceedings in district court pending the appeal. An oral argument was recently held on the appeal, and the parties expect a decision on this case soon.

The Hispanic farmer class action (*Garcia v. Veneman*) and the female farmer class action (*Love v. Veneman*) are both pending before United States District Judge James Robertson. The class certification issue has not been decided in either case, but DOJ is strongly opposing class certification and the District Court has noted its view that it believes that class certification is questionable. The parties are currently in the middle of conducting discovery and filing briefs on the class issue. A decision on the class issue in these cases is not expected for some time.

I should note that the fact that the government is opposing class certification in these cases is separate and apart from our position on the merits of the cases. The class certification issue is a technical legal matter, and the government simply does not believe that the requirements for class certification have been met. If the classes are not certified, the government will evaluate the merits of the cases of any individuals who choose to go forward on an individual basis.

Even if the courts agree that class certification is not the proper vehicle for addressing these complaints, the individual class agents and putative members of the class may pursue their claims in court or may seek resolution in the agency's administrative process. Thus, the class action procedure is not the only mechanism for the individual farmers to obtain relief on their complaints.

In the meantime, as I will discuss today, USDA continues to implement new ways of ensuring that minority and female farmers are treated fairly and are provided with the proper technical assistance and the other tools needed to be successful farmers. We also continue to ensure that all customers in our local offices are provided with proper customer service and that every customer is treated on an equal basis.

FSA Action Plan

On September 12 the Farm Service Agency (FSA) formalized a comprehensive plan to improve service delivery for all of its customers, with a particular focus on minority, small, and disadvantaged farmers, ranchers and producers. The aggressive actions included in this plan provide additional focus for our efforts to ensure fair and equitable treatment for all producers. Most importantly, Mr. Chairman, the plan incorporates many of the suggestions voiced by African American and other minority farmers during several meetings held during the summer.

Some of the more important provisions in the FSA plan are already in place. For example, on September 10, FSA began operating a toll-free telephone help-line (1-866-538-2610) to answer technical inquiries about its loan programs. The new help-line is a part of the new Office of Minority and Socially Disadvantaged Farmers Assistance which reports to the FSA Administrator. This new office will operate under FSA and will work with minority and socially disadvantaged farmers who have concerns and questions about loan applications that they have filed in their Service Centers. It will also address technical issues and answer questions concerning other FSA programs. This is being done to ensure that every effort is made to protect the civil rights of any individual and that discrimination against anyone because of race, color, national origin, sex, or any other covered basis has not occurred.

FSA has also established a senior level review team in Washington, D.C., that will review all borrower files for farmers in the Pigford class, to determine that all servicing rights are properly considered before the account can be accelerated or foreclosed. FSA will continue using State Civil Rights Independent Review Groups for the review of all other pending acceleration and foreclosure cases. These reviews do not circumvent or void a borrower's appeal rights to the National Appeals Division.

The action plan also covers a broad range of initiatives that will ensure we work more closely with our customers, particularly those who are having difficulty in meeting their repayment obligations. To this end, FSA will:

Continue its standing policy, as I mentioned earlier, that no acceleration of loan repayment or foreclosure will take place on a borrower who has a claim pending under the Pigford Consent Decree. Acceleration or foreclosure will be held in abeyance for any individual who has an open and accepted administrative complaint of discrimination pending that has been accepted by the USDA Office of Civil Rights but has not yet been resolved.

Work with loan and benefit recipients to the maximum extent possible to restructure delinquent debts to minimize the potential for administrative offsets, as currently required by Federal law.

Request the Treasury Department's consideration of authority to waive administrative offsets under certain hardship cases.

Provide a renewed opportunity to use the full extent of primary loan servicing options for farmers who have filed claims under the *Pigford* Consent Decree. This will allow those borrowers, once a decision is final under the Decree, to explore the options for reducing annual payments on any remaining debt to forestall acceleration or foreclosure. FSA will have this new policy in place as expeditiously as possible.

FSA and Department leaders have visited with many customers throughout the country, and it is clear that this Department needs to do a better job on reaching out to our customers. Our programs are not always straightforward, and they are complicated. We need to better educate our customers as well as our employees. We need to provide more one-on-one technical assistance and become more sensitive to customers' cultural differences. Training is key, and we need to do more of it.

Department-wide, we are making progress. For example, USDA is working with states to provide resources for additional technical assistance. Resources from across USDA will be applied to this need, including the new authority provided in the 2002 Farm Bill,

which allows USDA to leverage existing outreach programs with the Section 2501 Program.

As part of the FSA action plan, it will be conducting customer service training for state and local managers and employees to emphasize the importance of more timely loan processing. Borrowers need to know in a timely manner whether or not they are going to have their loan approved so they can make planting decisions. Training will also be provided on understanding cultural differences of our very diverse client base and in improving our communications with all customers. Secretary Veneman and I strongly support these types of efforts because they will only strengthen our ability to serve constituents throughout the country.

In addition, Mr. Chairman, we're emphasizing other outreach initiatives, as well, including the Southwest Border Initiative, whereby we are working with other federal agencies, state and local governments, and local folks to improve the quality of life along the Mexican-U.S. border in four states. FSA also has a successful Native American outreach initiative that was recently expanded to 10 states in the Northwest region of the United States.

Last month, we transferred nearly \$100 million in additional funds to FSA's direct operating loan program to assist minority, small, beginning, limited resource and other farmers. This transfer will enable FSA to assist an additional estimated 2,000 farmers. We also are using new authority to transfer unused state allocations of funds for Socially Disadvantaged Farmer loans to states that have higher demand for this important program.

We are seeing positive results emerging from all these efforts, ranging from increases in the numbers of loans made to small, disadvantaged, and minority producers, to a significant drop in delinquencies.

I should note also that we are kicking off a series of at least six Farm Bill briefings around the Nation, coordinated by our Outreach staff, targeted at socially disadvantaged and minority producers. These special briefings begin October 30 in Richmond, Virginia, and involve all mission areas across the Department.

Processing of Civil Rights Complaints

As this Committee knows, Mr. Chairman, the Department of Agriculture is a very large and dispersed organization. With almost 100,000 permanent and temporary employees, it is the fifth largest Cabinet agency by employment. However, on a per capita basis, we do pretty well as far as the rate of EEO complaints filed. Our formal complaint filing rate of 0.6% per year is below the overall Government-wide rate at which Federal employees file discrimination complaints, reported as 0.8%, according to the EEOC's latest report available (1999) on its web site. And the Farm Service Agency does even better – a filing rate of just 0.4%. In other words, because our Department is so large, the complaint volume is numerically high. But on an equalized basis, the rate of complaint filing is relatively low. However, I do realize that from the claimant's perspective, one complaint is too many.

USDA program complaints -- which normally involve farm loans and rural housing benefits, but also can involve any one of our dozens of programs -- are unique to USDA's mission and therefore do not easily lend themselves to comparison. Again, however, the denominator of USDA customers is very large. In Fiscal Year 2001, for example, we made over 29,000 farm loans and serviced an inventory of over 198,000 farm loans. We also provided financial assistance to more than 70,000 families for new or improved housing. We logged over 85,000 calls to our Meat and Poultry Hotline, and about 214 million visitors to our National Forests and Grasslands for recreational purposes. We have inspectors every day in almost 6,400 privately owned meat and poultry plants. About 1 in 6 Americans, or about 48 million people, are touched by our Food and Consumer programs, such as Food Stamps or the WIC Program.

For the same period, FY 2001, we received just 1,092 program discrimination complaints. And we estimate 1,260 for the year that is about to end.

This is not meant to minimize or excuse any acts of discrimination -- which are anathema and unacceptable in any number. It is meant to place the volume of our civil rights complaints in context. A consequence of being an agency with tens of thousands of employees and millions of customers is that there is a lot of work to do. And as the GAO and our IG have pointed out, we have not been keeping up with our work.

Over the past five fiscal years, USDA has closed an average of 1,079 program discrimination complaints a year. We have been receiving an average of 1,045 program discrimination complaints a year for the same period. So we are making a bit of progress there, but not quite enough yet to significantly reduce our inventory. However, our average processing time for program complaints has been dramatically reduced -- from 576 days back in FY 1998, to 315 in FY 2001, the first year of this Administration, to 192 days this year.

Over the same past five fiscal years, USDA has closed an average of 709 employment discrimination complaints a year. Unfortunately, we have been receiving an average of 820 discrimination complaints a year for the same period. We expect a total of only about 657 new complaints this year, however. While our average processing time remains high, we are at the lowest level in the 5-year period, and our average time has dropped more than 100 days per complaint in just the last year.

We're making progress, but we know we have a lot more to do. Our average complaint processing time is still not acceptable to me or to the Secretary. We will devote the resources necessary to reduce it, and we have a carefully developed management plan to do it.

To minimize processing delays, the Office of Civil Rights (CR) recently undertook an initiative to contract out the preparation of 250 Final Agency Decisions (FADs) on

employment complaints. The contractors are required to submit legally sufficient draft FADs to CR for review and approval – CR retains sole authority to issue and sign decisions. This initiative will be completed within 120 days.

In April 2002, the new Employment Complaints Tracking System (ECTS) was successfully implemented to replace the aging legacy application. ECTS is a far more comprehensive, user-friendly caseload management system than the previous system. This will help us get a handle on our workload, identify and fix trouble spots, and provide up to date information to complainants and USDA agencies.

GAO and EEOC Reviews

In September 2001, the General Accounting Office (GAO) notified the Department of Agriculture of its intent to conduct a review of its discrimination complaint and direct loan programs to:

compare the processing times and approval rates for direct loans for Hispanic farmers with those for non-Hispanic farmers,
describe USDA's policies for staying foreclosure and how these policies have been implemented, and
assess USDA's progress in addressing previously identified problems associated with untimely processing of discrimination complaints and human capital issues within the Office of Civil Rights.

The review was initiated at the request of Congressmen Baca and Reyes. We received a copy of a draft of Report Number GAO-02-942, entitled "USDA: Improvements In The Operations Of The Civil Rights Program Would Benefit Hispanic And Other Minority Farmers."

GAO found very slight differences in processing times and approval rates. Processing times for all applicants were quite short. Although, on average, processing times for

Hispanics was slightly longer (20 days versus 16 days for non-Hispanics), the processing in three of the four states with the highest volume of Hispanic borrowers was actually faster for Hispanics than non-Hispanics. GAO stated, and I quote, “The vast majority – 91 percent – of all direct loan applications from Hispanic farmers were processed within FSA’s 60-day requirement.” We believe the minor differences noted, positive and negative, are within the margin of error, and basically show that there were no differences in treatment whatsoever.

Direct loan application approval rate for Hispanics was very slightly lower than for non-Hispanics (83% versus 90%), but within just 2% in the largest states, Texas and California. As GAO stated, “the agency monitors differences between minority and non-minority loan processing times and approval rates and [sic] both the national and state levels. In addition, FSA sends teams out to state offices to conduct civil rights reviews.” As the report also noted, these reviews are now being accelerated from every three years to every other year.

Any statistically significant disparities will be detected quickly, and will be addressed quickly. Secretary Veneman will not tolerate any disparate treatment against Hispanic, African American, or any other minority producer or customer.

GAO had only two recommendations concerning direct loan making in its draft report:

1. Establish criteria for determining when discrepancies between minority and non-minority processing times and approval rates warrant further inquiry.

USDA response: The Agency agrees that establishing criteria would be beneficial and will do so within 90 days.

2. Require state offices to implement recommendations made as a result of FSA field reviews or explain in writing their rationale for not doing so.

USDA response: As a general rule, state offices are required to implement recommendations resulting from field reviews, or explain why the recommendations cannot be implemented. FSA will re-emphasize to state office staffs and State Executive Directors the importance of addressing field review recommendations.

With regard to foreclosure policy, USDA has an active policy, as discussed above, of staying foreclosure action in administrative cases where discrimination has been alleged in individual complaints accepted for processing by the Office of Civil Rights that have not been resolved.

When a civil action is filed in United States District Court, however, whether it is an individual suit or a class action, FSA follows the recommendations of the Department of Justice, which are issued on a case-by-case basis.

GAO found that USDA faithfully implemented its administrative stay-of-foreclosure policy in 24 cases involving Hispanic farmers, and initially did not do so in two cases only because the information that a complaint was filed was not timely transmitted to FSA. The stay was implemented as soon as the information was received. We are immediately taking action to ensure that this initial communication problem does not recur.

GAO had three recommendations concerning FSA foreclosures:

1. Develop and promulgate a policy statement that lays out the factors USDA considers in issuing “stays of foreclosure” in class action lawsuits.

USDA response: The Agency finds it impossible to provide such a “policy” because the actions taken on such cases may differ as determined by the Department Of Justice. Once a lawsuit has been filed, the case is turned over to DOJ for appropriate legal action, which may or may not suspend foreclosure actions on the class.

2. Maintain historic information, by race, on foreclosures completed by FSA.

USDA response: The Agency has an automated system under development, known as Management of Agricultural Credit, or MAC, that will provide up to three years of history on foreclosures and will include the race of the borrower. These data should be in the system and obtainable by the end Fiscal Year 2003, for all states.

3. Ensure that FSA and the Office of Civil Rights promptly reconcile their respective lists of borrowers and complainants.

USDA response: This is already being done. Monthly meetings between the Office of Civil Rights and FSA were instituted two years ago to reconcile complaint information. FSA will continue to develop a closer working relationship with the Office of Civil Rights that should result in a better communication system for reconciling the list of borrowers with open and closed complaints.

With regard to processing of discrimination complaints and human capital issues within the Office of Civil Rights (CR), Mr. Chairman, we are in general agreement with the recommendations made by GAO regarding the need to formalize time frames for all phases of the complaint process and the need to increase capital and human resources to the complaint function. However, the draft GAO report does not include key information regarding CR's accomplishments and plans for complaint processing. Additionally, there is some information that is in error, and some information that is inappropriately characterized.

The draft report states that CR has made "modest" progress in reducing the processing time for complaints. Here are the numbers:

Average time to complete the investigation – program complaints

FY 2000

FY 2001

365 days

315 days (14% improvement)

Average time to issue final action on complaint – program complaints

FY 2000

FY 2001

772 days

676 days (14% improvement)

At the beginning of FY 2000, CR had an inventory of 1249 complaints. At the end of FY 2001 CR had reduced the program complaint inventory to 594.

Mr. Chairman, we respectfully submit that a reduction of more than 52 percent of the complaint inventory, simultaneous with a 14 percent improvement in processing time, is more than “modest.” The reason is that as you successfully eliminate a backlog, you are often actually *increasing* processing time, because the older complaints being closed obviously have been pending for a longer time, adding to the overall average number of days. Therefore, inventory reduction is generally a better metric of progress than is processing time. USDA takes pride in having reduced the overall processing time while significantly reducing the inventory at the same time.

The report states that the internal CR regulations require an investigation to be completed within 180 days from the date of acceptance. CR does not have a time requirement for other phases of complaint processing.

In the area of complaint processing, GAO issued the specific findings and recommendations that follow. Our actions in response are also included:

	FINDING	RECOMMENDATION	ACTIONS
1.	The Office of Civil Rights continues to be untimely in	Establish time requirements for all	CR has established time frames for each stage of

	<p>processing program discrimination complaints. Without a time requirement that covers all stages of the complaint process, USDA lacks a meaningful way to measure performance or to identify and remedy problem areas and staffing needs.</p>	<p>stages of the complaint process and monitor CR's progress in meeting these requirements.</p>	<p>the complaint process and has modified performance standards and measures to reflect the time frames. New performance standards will become operational October 1, 2002.</p>
2.	<p>Until USDA addresses longstanding human capital issues, it is unlikely that the timeliness of complaint processing will significantly improve.</p>	<p>Develop an action plan to address ongoing problems with obtaining and retaining staff with needed skills, establish performance measures to ensure accountability.</p>	<p>CR is developing an action plan to address its longstanding human capital issues. CR is working with dispute resolution experts from the shared neutrals program to craft an intervention specific to CR's needs.</p>

CR held a staff and management retreat in FY 2000 to address work processing, budget requirements, staffing requirements, teamwork and morale problems. This retreat led to formation of a working group composed of managers, specialists and support staff, who, in turn, developed the Long Term Improvement Plan (LTIP), a copy of which we provided to GAO. The LTIP identified deficiencies and delineated specific steps and methods to correct them.

The draft report also states: "Furthermore, severe morale problems have exacerbated staff retention problems and have lowered the productivity of the remaining staff. Management officials told us that they spend an inordinate amount of time and resources addressing internal staff complaints. In fact, OCR has a higher rate of administrative complaints filed by employees than any other agency within USDA."

We take issue with the implications of these statements. The GAO report shows an improvement in the time frames for completion of investigations and final resolutions, which contradicts the statement that the problem of employee morale has "lowered the productivity of the remaining staff." GAO presents no evidence of lowered productivity.

The complaint rate is high, as has been pointed out previously by GAO, among others. The turmoil in the office under the previous Administration is well documented. Most of the pending complaints stem from that time.

I am very satisfied with the professional, experienced management team we have in place in the Office of Civil Rights. But I cannot tell you that this means the complaint rate will decline. All I can tell you is that we have and have had a good, stable management team for some time now. And I can tell you that employees have the right to file complaints, and when they do, our managers will indeed spend quality time processing them, responding to them, and trying our level to resolve them amicably, fairly, and quickly.

On September 4, 2002, the Equal Employment Opportunity Commission (EEOC) issued its draft onsite report of its review. The EEOC requested a response from the Department on its findings; however, the draft report contained no recommendations. On September 12, 2002, the Department provided the EEOC with a response. The EEOC Report addressed a number of areas in the Department's Equal Employment Opportunity (EEO) Alternative Dispute Resolution Program, EEO Case Processing, and the role of the Office of the General Counsel in USDA's EEO complaint process. We

are waiting for the final onsite report, which is to include recommendations. Once the final report is received, we will respond to it.

Holding Managers Accountable

Accountability has been at the heart of the Secretary's civil rights commitment. Accountability comes in two forms – establishing objective standards of conduct, and taking appropriate disciplinary or corrective actions.

A separate civil rights element was added to every USDA manager's performance standards. Civil rights criteria have also been inserted into the existing standards for non-supervisory employees. We have tough, plain-English, quantifiable standards outlining each agency head's responsibility. The Secretary and I have required each agency head to report his or her accomplishments, and I will be providing performance ratings based on demonstrated accomplishments at the end of the fiscal year.

We started tracking disciplinary actions related to civil rights complaints as of January 1, 1998. In the period through June 30, 2002, or four-and-a-half years, USDA has taken a total of 203 disciplinary actions based on findings of discrimination or settlements. Of the 203 actions, 28 were removals and 38 were major suspensions appealable to the Merit Systems Protection Board (MSPB). Nineteen of the actions, including four removals, involved the Farm Service Agency, which has been the subject of some scrutiny.

One thing that gets overlooked at times is that all federal employees, even those accused of discrimination, have civil service rights and are entitled to due process of law. This means that we must abide by processes established by Congress, whereby we first propose action, employees can then respond orally and in writing and provide rebutting evidence, and even after the action, employees may either file a grievance based on the action or appeal to MSPB, depending on the action's severity. They have the right to go to court to fight the action even after their appeal.

We are aware that in the past, some managers have not been held accountable for discriminatory actions or practices. Mr. Chairman, the Secretary and I will not tolerate that. For the last several years, every time an EEO complaint is closed either with a finding of discrimination or by a settlement agreement, Human Resources staff reviews the complaint file. They determine whether and what disciplinary or corrective action is appropriate. This does not mean that every settlement agreement will result in someone being disciplined. But it does close a loophole in the system.

Our Office of Civil Rights regularly conducts compliance reviews of agency programs around the country to ensure nondiscrimination in the programs we run and the services we provide.

Assistant Secretary for Civil Rights

We have made great progress toward establishing our new position of Assistant Secretary for Civil Rights (ASCR). Section 10704 of the Farm Bill authorized the Secretary of Agriculture to establish the new position. On July 23, 2002, Secretary Veneman appointed a Working Group, which I head, to “make recommendations as to the mission, responsibilities, and operating structure of the new office.”

The Working Group recommendations are in the final stages of clearance. The Secretary is interviewing candidates for the Assistant Secretary position. We are also revising the delegations of authority in 7 CFR to reflect the establishment of the new ASCR and working to finalize the actions needed to transfer the appropriate personnel and funding to this new office.

We hope to soon conclude our search for the individual with the strength and character necessary to fulfill the goals of this new mission area. We look to this new Assistant Secretary to take a proactive approach to addressing civil rights issues and also to

supply a higher degree of organizational stability to the civil rights staffs, which have been reorganized several times over the past ten years.

We hope that when this individual is selected and nominated by the President, the Senate will move swiftly to confirm him or her.

USDA Civil Rights Initiatives

Mr. Chairman, we understand that civil rights complaints USDA get in the press and get attention. What doesn't always get in there is what we have done, are doing, and will keep doing – to prevent complaints and respond to these concerns.

--Employee Input

Beginning with the Secretary, USDA strives to hear the message that employees and customers are sending us. The Secretary, those of us here, and the administrators of our agencies have maintained an ongoing and lively dialogue with groups and individuals representing employees, customers, and other stakeholders. We have honestly endeavored to maintain an "open door" policy.

Secretary Veneman has chartered a portfolio of employee diversity advisory councils focusing on the unique concerns of each diversity group. These councils give each diversity group a means to share concerns and provide advice directly to the Secretary, and a way for the Secretary to make policy that takes into account the perspectives of each group. The Secretary also created an overarching Diversity Council, comprised of the Co-Chairs of each of the employee councils, to harmonize the advice of the councils and provide consistent policy direction. Mr. Thompson and I co-Chair the Diversity Council.

These councils are active, vibrant, and making things happen. Some of their accomplishments include:

- Under new legislation, USDA signed a Memorandum of Understanding with the Department of Defense to use DOD's Computer/Electronic Accommodations Program to procure accessible technology for USDA employees. As you may know, USDA and its TARGET Center have long been government leaders in accessible technology. This new program will increase our effectiveness even more and help us be aggressive in ensuring that our employees with disabilities have the tools they need to do the job, and ensure that USDA is complying with Section 508 of the Rehabilitation Act.
- USDA has piloted and just recently launched a Department-wide competitively selected mentoring program that pairs experienced employees with more recently hired or lower grade employees. Excitement is high around the Department about this nation-wide initiative. This is an important program to encourage the upward mobility of current employees. We project that this year's mentoring class will consist of 50 mentor-mentee pairs. The first joint mentor-mentee training session kicks off this month.
- Each of the employee diversity councils has held educational forums and listening sessions around the Nation to address concerns particular to its constituents, and more are scheduled. These programs provide employees with information on diversity initiatives and serve as a forum for discussion and suggestions for council activities. They facilitate communications between employees and the Secretary.
- Several of the councils, including the women's council and the Asian American and Pacific Islander council, have held or will hold employee training events to encourage skill building and career advancement. For example, sessions were held on leadership assessment, presentation skills development, and dealing with sexual orientation issues in the workplace. Councils are also developing additional training materials for incorporation into managerial and civil rights training required for all employees.

- The Diversity Advisory Council has developed a recruitment booth and an exciting video/CD ROM for use at recruitment events. USDA has aggressively recruited at conferences of Blacks in Government, Federally Employed Women, the League of United Latin American Citizens, as well as at the Federal Asian and Pacific American Conference, USDA's Navajo Nation Job Fair, and many others.
- USDA recently signed a Memorandum of Understanding with the Federal Aviation Administration to hire an executive recruitment firm specializing in hiring professionals with disabilities. This will help USDA meet our bold strategic goal of hiring 9,000 individuals with disabilities over a 5-year period.
- The Hispanic Advisory Council has been instrumental in helping USDA reach out to Hispanic students, especially those in the more than 200 Hispanic-Serving Institutions. This year, the 909 Hispanic students hired as interns or summer hires represented a 17% increase over the previous year.

--1890 Task Force

Secretary Veneman has revitalized and appointed new members to the USDA/1890 Task Force. The Task Force is comprised of USDA senior officials and Presidents of "1890's" historically Black land grant institutions, and it seeks to enrich the mutually beneficial and unique relationship we have with these institutions.

There are ten USDA members and seven 1890 Presidents representing Alcorn State University, Alabama A&M University, Delaware State University, Lincoln University, Langston University, West Virginia State College, and Virginia State University.

For more than a decade, the Task Force has provided advice and recommendations to establish and promote cooperative efforts between USDA and the 1890 land grant

institutions on agricultural research, extension, recruitment, and educational issues. Some of the things it has done and is doing include:

- Established Centers of Excellence on more than ten 1890 campuses,
- Assigned full-time USDA Liaison Officers to every 1890 institution, and
- Providing technical advice and assistance in the development and implementation of Capacity Building Grants (research and education).

The 1890 land grant institutions have been and will continue to be valuable partners and resources in our activities to enhance program delivery to underserved customers, including under the 2501 program, as well as in our recruitment of a diverse workforce.

In June, the Department was pleased to award 26 scholarships to outstanding high school seniors who are majoring in agriculture at an 1890 institution. The 1890 Program not only helps young people who might otherwise not be able to attend college, but also provides the Department with a rich pool of well educated and trained employees.

The Secretary recently greeted and talked with the 1890 Scholars at their summer orientation meeting, and is deeply committed to this effort. It is a high priority for Task Force members and other senior USDA officials. The revitalized USDA/1890 Task Force will hold its first meeting in Washington, on December 3-4, 2002.

--2501 Program

We are excited about new authority in the Farm Bill that allows us to leverage our existing outreach programs with the Section 2501 Program. Secretary Veneman has transferred authority for the 2501 Program to the Cooperative State Research, Education and Extension Service to provide better coordination, planning and

distribution of grant-making for outreach and technical assistance programs for minority and disadvantaged farmers through both public and private groups.

--Special Help for a Special Place: Princeville, North Carolina

USDA continues its special relationship with Princeville, North Carolina, the first town founded by freed African American slaves in the Nation. After the devastating floods of Hurricane Floyd in September 1999, USDA was a leader in quickly getting people and help on the ground and working in the recovery effort. Our Rural Development, Farm Service Agency and Natural Resources Conservation Service folks were there to help clean up animal carcasses, clear stream ways, provide disaster relief funds, and help get rebuilding projects off the ground. We're still there today.

We recently arranged for a full-time USDA employee to be stationed in Princeville for a year, under our MOU with the National Conference of Black Mayors, beginning on October 1. The project manager will provide technical assistance and oversee projects for the recovery of Princeville.

We also provided the town with five computers to replace ones that were destroyed.

--National Council of Black Mayors

USDA has identified rural communities and rural areas that have endured decades of poverty as one of its key priorities in the delivery of our programs. Many of the areas we identified are served by the National Conference of Black Mayors (NCBM). An NCBM survey of its membership on USDA awareness and utilization was conducted in 2000. The survey found that most of the members were not aware of USDA programs and services.

On April 16, 2002, to improve program and technical assistance outreach efforts of USDA Agencies and to improve the executive management capacity and efficiency of

the NCBM membership, the Secretary signed a Memorandum of Understanding (MOU) with NCBM. This landmark MOU is designed to build capacity for improved and increased participation in USDA programs by NCBM constituents.

The USDA Outreach staff is coordinating this MOU. On June 21, 2002, implementation was kicked off in Princeville, North Carolina. Clyde Thompson, Associate Assistant Secretary for Administration, agreed to explore opportunities for providing computers for Princeville, North Carolina, to improve the community's ability to access USDA resources. Computers have already been identified for Princeville and for Gunnison, Mississippi, and more will be coming.

Activity is ramping up under the MOU all over the Department. The Animal and Plant Health Inspection Service (APHIS) has agreed to provide information on APHIS employment opportunities, provide employment briefings/workshops on how to apply for APHIS Jobs, and tie into NCBM's Workforce Empowerment Project. NCBM will provide data on issues/interests relating to APHIS programs.

The Farm Service Agency (FSA) will provide information on programs and services and work with mayors to provide information to the NCBM members' farmer constituents. The Forest Service has agreed to provide funds to conduct a technology assessment for NCBM towns and cities.

The Office of Small and Disadvantaged Business Utilization is partnering with Tuskegee University for their Seventh National Booker T. Washington Economic Development Summit, October 9-11, 2002, and is incorporating specific issues and programs related to NCBM and the Alabama Conference of Black Mayors.

Rural Development is providing expertise and contacts in support of the NCBM constituents for their programs and services. For example, the mayor of Gunnison, Mississippi requested assistance concerning a recent fire that destroyed the Town

Hall/Library. The MOU provided a vehicle for better access and contact on specific programs for assistance.

USDA, the Department of Energy (DOE) and others collaborated to conduct a Community Leader's Institute in Blackville, South Carolina July 30-31. Mayor Kenner was extremely pleased with the two-day workshop. USDA, DOE and others are collaborating to conduct additional community leader's institutes throughout the country. The next one is scheduled for Allendale, South Carolina. USDA is also collaborating with DOE and the Historically Black Colleges and Universities to provide technical assistance on energy, environment issues and economic development to NCBM. DOE will provide \$200,000 for this initiative.

USDA is working on partnering with the Department of Commerce, Economic Development Administration, to provide information on job creation, job retention, and stimulate industrial and commercial growth in economically distressed areas for NCBM constituents.

--Internships

I also want to highlight USDA's success in providing internships for young people. I must tell you that we have all been very impressed with their work. USDA had a total of 9,611 interns working for us this summer. Most of those continue to work for us during the school year and many have their schooling paid for by USDA. The Secretary is deeply committed and speaks passionately about the need for a strong relationship with these Leaders of Tomorrow. And we are very proud that this is indeed a diverse group. USDA benefited from the hard work of well over 1,000 African American interns and over 900 Hispanic interns in Washington and in our offices across the country. In all, minorities accounted for 27% of the total, and 46% of the interns were female.

--Civil Rights Info on the Web

The Office of Civil Rights (CR) launched a more extensive, more informative web site on July 10, 2002. The new web site is a comprehensive resource containing accurate, timely, and useful information on USDA's civil rights programs and services. It is a complete replacement of the old site and is fully accessible to people with disabilities. The new CR web site will continue to be updated as new information on USDA's civil rights programs and services becomes available. We invite you to visit at <http://www.usda.gov/da/cr.html>.

Summary

The Department of Agriculture remains firmly committed to ensuring USDA's compliance with civil rights and equal employment opportunity for everyone. All USDA employees at every level will continue to be held to the expectation of full compliance with Secretary Veneman's strong Civil Rights Policy Statement for the Department, and to work proactively with the measures in place to ensure compliance and fair treatment for all employees and customers.

Mr. Chairman, we would be pleased to take any questions you may have. Thank you very much for inviting us here today.