

**Statement by
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Oversight, and Department Operations
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Introduction

Good afternoon, Chairwoman Hayes, Ranking Member Bacon, and Members of the Subcommittee. Thank you for inviting me to testify before you today to discuss the Office of Inspector General's (OIG) audit of the Office of the Assistant Secretary for Civil Rights' (OASCR) oversight of the civil rights complaints process.

As you know, OIG's mission is to promote the economy, efficiency, and integrity of the United States Department of Agriculture's (USDA) programs and operations. OIG performs audits, inspections, investigations, data analyses, and other reviews to address fraud, waste, and abuse, and makes recommendations that we believe will help improve how USDA's programs operate. In OIG's *USDA Management Challenges*—OIG's annual report on the most critical management challenges facing USDA—we have noted that, due to public attention concerning how USDA has historically treated members of socially disadvantaged groups, the Department is continually challenged to find effective ways to encourage and support all citizens in their agribusiness endeavors, especially those within underrepresented groups.¹ Since noting this management challenge, OIG has conducted audits to make recommendations designed to improve the Department's civil rights programs and processing of civil rights complaints.

For instance, in 2012, OIG published an audit report evaluating OASCR's decision-making process for settling with complainants who were found to have a high probability of experiencing discrimination in USDA programs. Specifically, this report: (1) assessed the adequacy of OASCR's procedures for determining whether settling with complainants was the appropriate course of action; (2) determined whether settlement amounts were appropriate and supported; and (3) assessed OASCR's controls to ensure USDA agencies met the terms agreed upon in program complaint settlement and conciliation agreements. In addition, this report followed up on prior OIG audit recommendations relating to

¹ USDA-OIG, *Management Challenges* (Feb. 4, 2021), <https://www.usda.gov/oig/reports/management-challenges>.

settlement agreements. OIG has also assessed the Department's actions to implement legal decisions, publishing audit reports in 2015 and 2016.^{2, 3} Finally, we have conducted audits assessing the grants the Department gives through the Office of Partnerships and Public Engagement's (OPPE) 2501 Program, to ensure their outreach is appropriate.^{4, 5, 6}

USDA Oversight of Civil Rights Complaints

While OIG has conducted numerous reviews over the years designed to improve the Department's civil rights programs and processing of civil rights complaints, the main focus of my statement today is our recent audit of OASCR's oversight of the civil rights complaints process, specifically OASCR's processing of program complaints. Program complaints are complaints of discrimination filed by any person or group of persons who believe they have been subjected to prohibited discrimination in a USDA program. Within USDA, OASCR is responsible for making final determinations on program complaints.

In October 2018, OASCR reorganized to streamline the delivery of program complaint services at the mission area level and ensure that USDA projects a unified voice on all civil rights issues. Within OASCR, the Center for Civil Rights Enforcement supports OASCR's mission largely through its program directorates—the Program Complaints Division and the Program Adjudication Division. The program complaint process begins in the Program Complaints Division's Intake Division, which receives complaints from persons alleging discrimination in USDA's Federally conducted or assisted programs. The Program Complaints Division then determines which Federal civil rights laws, regulations, and policies the complaint pertains to, and chooses one of the following courses of action: administrative closure, programmatic referral, or investigation.

The first process, administrative closure, can occur at any stage in the process if OASCR determines that procedural grounds exist warranting administrative closure. The second process, programmatic referral, occurs if the complaint pertaining to a USDA agency does not include a jurisdictional basis of discrimination covered under the civil rights statutes; in those instances, the complaint is forwarded to the respective agency for review and processing. The third process, investigation, results in OASCR assigning an investigator to determine the facts and evidence surrounding the complaint. After the

² Audit Report 50601-0003-21, *In re Black Farmers Discrimination Litigation*, Sept. 2015.

³ Audit Report 50601-0002-21, *Hispanic and Women Farmers and Ranchers Claims Resolution Process*, Mar. 2016.

⁴ Audit Report 91099-0001-21, *Controls Over the Grant Management Process of the Office of Advocacy and Outreach*, Feb. 2013.

⁵ Audit Report 91099-0003-21, *Section 2501 Program Grants Awarded FYs 2010-2011*, Mar. 2015.

⁶ Audit Report 91601-0001-21, *Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (2501 Program) in Fiscal Years 2018 and 2019*, Nov. 2021.

investigation has been completed, an assigned adjudicator reviews the investigative report, analyzes the evidence, applies the applicable laws, and drafts a final agency decision. If OASCR determines that discrimination occurred—or if the issue is resolved through a settlement—the Compliance Division monitors to ensure all parties comply with the agreements and implement corrective actions.

OASCR does not evaluate and process all complaints for USDA and it relies on the assistance of two organizations: USDA's Food and Nutrition Service (FNS) and the United States Department of Housing and Urban Development (HUD). USDA used memoranda of understanding to establish agreements to coordinate civil rights program complaint processing with FNS and HUD. OASCR refers program complaints relating to FNS programs to FNS officials to evaluate and process the complaints. Similarly, USDA refers any complaints alleging a potential Fair Housing Act violation to HUD. USDA's Rural Development serves as an intermediary between OASCR and HUD.

OASCR's oversight of complaint resolution is critical to ensuring that complaints are resolved in accordance with Departmental and Federal requirements. Furthermore, it is essential that OASCR resolve complaints timely; when complaints are not resolved timely, individuals who have a legitimate claim of discrimination and would otherwise be eligible for USDA programs may not continue pursuing their complaint. Additionally, lengthy processing times could discourage potential complainants from filing a complaint.

Why OIG Performed the Audit

In 2012, we reported that OASCR needed to strengthen its procedures for settlement agreements so that it could support its decisions, process cases timely, and report them accurately. Specifically, we identified control weaknesses surrounding timeliness, data accuracy, and supporting documentation.⁷ Additionally, in 2008, the Government Accountability Office (GAO) reported that OASCR needed to address several fundamental concerns about resolving discrimination complaints.⁸

Building on these earlier reports, we completed our 2021 audit to evaluate OASCR's controls over the civil rights complaints process to ensure that program complaints were being processed in accordance with requirements and timely and efficiently resolved. In this audit, we also followed up on all five

⁷ Audit Report 60601-0001-23, *Report Review of the Office of the Assistant Secretary for Civil Rights' Oversight of Agreements Reached in Program Complaints*, Aug. 2012.

⁸ GAO, *Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62 (Oct. 2008).

recommendations from our 2012 audit report and three of the six recommendations from GAO's 2008 audit report.⁹ Although OASCR agreed to take corrective action to address all recommendations at the time of each audit report's publication, our 2021 audit report noted that control weaknesses continue to exist.¹⁰

What We Found

Overall, we found that OASCR needs to develop a stronger internal control environment over its civil rights program complaints processing to ensure that complaints are timely and appropriately handled, and that OASCR achieves established goals and objectives.¹¹

More specifically, OASCR did not timely process civil rights program complaints. OASCR officials processed program complaints using the 540-day timeframe established in an internal 2013 policy memorandum rather than using the 180-day timeframe set forth in the publicly available Departmental manual. From October 1, 2016, through June 30, 2019, USDA processed 911 program complaints. Of these complaints, more than 85 percent of our sample took longer than 180 days to process.¹²

Furthermore, more than 67 percent of sampled program complaints took longer than 540 days to process. The average processing time of program complaints in our sample was over 630 days; overall, for all program complaints in FY 2019, OASCR processed program complaints within an average of 799 days. This is an increase from OASCR's average processing time for program complaints in FY 2018, which was 594 days and is an increase from OASCR's average processing time for program complaints in FY 2017, which was 571 days.

Similarly, because OASCR did not implement or update effective processes to monitor and track complaints, FNS and HUD did not timely resolve referred program civil rights complaints. Based on established agreements, FNS and HUD process civil rights program complaints for select areas of purview. Although program complaint processing is coordinated with these agencies, OASCR retains responsibility, oversight, and final authority for these complaints. Specifically, we found that between October 1, 2016, and June 30, 2019, FNS took an average of more than 220 days and HUD took an

⁹ OIG follows up on audit recommendations to evaluate the adequacy and effectiveness of the corrective actions taken by management.

¹⁰ Audit Report 60601-0001-21, *USDA Oversight of Civil Rights Complaints*, Sept. 2021.

¹¹ Due to the age of the prior audit recommendations provided by OIG and GAO, we did not report on the follow up of prior audit recommendations separately in a specific finding or section of this report. Rather, similar issues identified within prior audit reporting and addressed by prior audit recommendations were incorporated into our current findings and recommendations where applicable.

¹² Of the 911 complaints, we non-statistically selected a sample of 28 complaints to review.

average of more than 600 days to process complaints referred to them by OASCR. Furthermore, there were two cases—one each from FNS and HUD—that were not resolved until after 1,700 days.

Federal regulations require agencies to establish and make public procedures for the “prompt processing and disposition of civil rights program complaints.”¹³ Operating on timeframes that are different from those outlined in public guidance could diminish public confidence that USDA is carrying out its responsibility to process complaints in a timely manner. Additionally, without adequate oversight, OASCR cannot ensure that FNS and HUD promptly resolve referred program complaints in compliance with relevant directives and guidance. When faced with lengthy timeframes to process their complaints, individuals who have a legitimate claim of discrimination and would otherwise be eligible for USDA programs may not continue to pursue their complaint, and potential complainants may not file a complaint.

Additionally, although OASCR developed its Strategic Plan FY 2016–2020, we found that it did not use the plan to measure or assess its progress toward established goals and objectives relating to program complaints because OASCR’s management did not establish specific ways to: (1) monitor performance measures and indicators, (2) perform periodic reviews and regularly update the plan, and (3) report on actual performance compared to its goals and objectives. Using the performance measures provided in the strategic plan could have helped OASCR avoid shortcomings we identified in our audit; however, because OASCR has not established and implemented such measures, OASCR officials cannot determine whether they are achieving the Strategic Plan’s intended goals and objectives. This further hinders OASCR’s ability to improve the program complaint process.

In our report, we made 21 recommendations intended to help OASCR improve its processing of civil rights program complaints. For example, we recommended that OASCR evaluate the timeframe to process program complaints and, based on this analysis, develop and implement timeframes and a success rate to ensure program complaints are processed in a prompt and timely manner. We further recommended that based on this analysis, OASCR update Departmental guidance outlining timeframes for processing program complaints and publish the updated Departmental guidance on OASCR’s public website. Additionally, we recommended that OASCR use this analysis to revise and update the memoranda of understanding with FNS and HUD with timeframes for processing complaints to ensure

¹³ Department of Justice 28 C.F.R. § 42.408.

program complaints are processed in a timely manner. We have reached agreement with OASCR on its proposed corrective actions for all of the report's 21 recommendations.

Upcoming Civil Rights Work

In addition to our completed work, we have an audit planned that focuses on OASCR's Equal Employment Opportunity complaint process. Specifically, this audit will: (1) evaluate OASCR's Equal Employment Opportunity civil rights complaints process to ensure complaints are processed in a timely manner and in accordance with applicable procedures; and (2) ensure applicable corrective actions taken in response to prior audit recommendations remain effective.

Conclusion

This concludes my statement. I want to again thank the Chair, the Ranking Member, and Members of the Subcommittee for the opportunity to testify today. I welcome any questions you may have.